

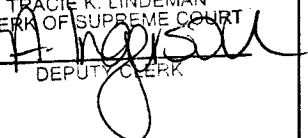
IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK JOSEPH BATTLE A/K/A JACK
JOSEPH BATTLE, JR.,
Appellants,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59473

FILED

NOV 15 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of robbery with the assistance of a child. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

First, appellant Jack Joseph Battle contends that insufficient evidence was adduced to support the jury's verdict. We disagree because the evidence, when viewed in the light most favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Mitchell v. State, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

Trial testimony indicated that Battle, alone, entered the Toys 'R' Us located on Maryland Parkway approximately ten minutes before closing. Soon after, Jeanie Jimenez (Battle's girlfriend), his teenage daughter, her minor friend, and Jimenez's two minor daughters entered the store. According to Wendy Martinez, an employee assisting with loss prevention, Battle caught her attention after he parked a shopping cart near the exit door and remained standing there. Martinez found it unusual and began to monitor the situation. Battle noticed Martinez

watching him and, according to Martinez, stated, "I can take anything I fucking really want to." Battle testified on his own behalf and confirmed that he made that statement.

Eventually, the five females met up with Battle and attempted to exit the building without paying for the merchandise some of them were carrying. Martinez, however, stood between them and the door and ordered the girls to either pay for the items or leave them. Martinez testified that Battle then "walked up on me and said: Don't touch my fucking girls. Don't touch my fucking girls. He said it four times." Battle continued walking towards Martinez and she believed he was holding "[s]ome kind of knife" in his right hand.¹ As Martinez backed away from Battle, the five females walked around her and exited from the building with Battle following immediately after. Martinez testified that Battle stated, "I told you I could take whatever I fucking well wanted." Video surveillance footage admitted at trial confirmed that two of the minors exited from the store without paying for the merchandise. As Martinez watched the women get into their own vehicle, Battle returned to the store and stood a couple of feet from her, between her and the window, and tried to block her from seeing what vehicle they were leaving in. Battle then repeated, "I told you I could take whatever I fucking well wanted to." Battle fled from the scene in his own vehicle.

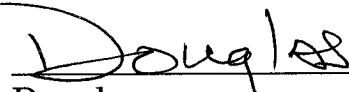
¹On the final day of trial, the State filed a second amended information and dropped the "with use of a deadly weapon" language from the count of robbery with the assistance of a child.

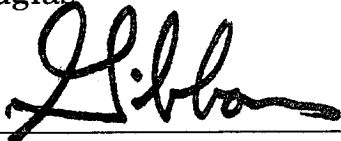
Circumstantial evidence alone may sustain a conviction. Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003). It is for the jury to determine the weight and credibility to give conflicting testimony, McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992), and a jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict, Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also NRS 200.380(1); NRS 193.162. Therefore, we conclude that Battle's contention is without merit.

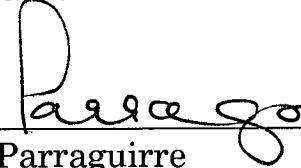
Second, Battle contends that the district court erred by (1) rejecting his proposed instructions on "robbery" and "robbery with the assistance of a child," and (2) failing to properly instruct the jury on NRS 193.162 and define "with the assistance of a child." In support of his argument that the jury was not properly instructed, Battle claims that a conviction for robbery with the assistance of a child requires proof of specific intent. We disagree. "This court reviews a district court's decision to issue or not to issue a particular jury instruction for an abuse of discretion." Ouanbengboune v. State, 125 Nev. 763, 774, 220 P.3d 1122, 1129 (2009). Here, Battle's proposed instructions contained incorrect statements of the law. See Carter v. State, 121 Nev. 759, 765, 121 P.3d 592, 596 (2005) (defendant not entitled to misleading or inaccurate jury instructions). Additionally, robbery is a general intent crime, see Daniels v. State, 114 Nev. 261, 269, 956 P.2d 111, 116 (1998), and NRS 193.162 does not require proof of a specific intent. And although the jury was not provided with a definition of "with the assistance of child," we conclude that the phrase does not have a technical legal meaning and the words were used in their commonly understood, ordinary sense requiring no

further explanation. See Dawes v. State, 110 Nev. 1141, 1145-46, 881 P.2d 670, 673 (1994). Therefore, we conclude that the district court did not abuse its discretion in the settling of jury instructions. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk