IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANKIE ALAN WATTERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59659

FILED

JUL 25 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of robbery. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. Appellant Frankie Alan Watters raises four contentions on appeal.

Watters contends that insufficient evidence was adduced to support the jury's verdict. Specifically, Watters argues that the State failed to prove that Watters was the perpetrator and that the parking lot altercation was related to the larceny. 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), 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). The victim in this case, Steven Pashon, worked the graveyard shift at a convenience store. Watters had frequented the store for several months. One morning, Pashon watched Watters on the surveillance cameras and saw Watters take two cases of beer from the freezer and walk toward the door. Fearing Watters was stealing the beer, Pashon followed Watters and confronted

him in the parking lot. Watters threw the beer at the victim and then punched and kicked him. While the victim was on the ground bleeding, Watters grabbed one of the cases of beer and ran off. Watters was a frequent customer and was recognized by Pashon and another store clerk. Also, the altercation happened in the parking lot so that Watters could complete the larceny. Based on this evidence, we conclude that Watters' contention is without merit.

Watters contends that the district court erred by admitting Pashon's testimony and photographs concerning Pashon's injuries because the evidence was cumulative and irrelevant as the State did not charge Watters with causing substantial bodily harm. At trial, Watters only objected to the photographs as being irrelevant. We conclude that Watters has failed to demonstrate that the evidence was cumulative or irrelevant. See NRS 200.380(1) (robbery statute requires the State to prove taking "by means of force or violence or fear of injury"). The challenged evidence was relevant to show the use of force notwithstanding the State's failure to charge Watters with more serious offenses. See Doyle v State, 116 Nev. 148, 161, 995 P.2d 465, 473 (2000). Accordingly, we conclude that Watters has failed to demonstrate that the district court abused its discretion by admitting the evidence. See Archanian v. State, 122 Nev. 1019, 1031, 145 P.3d 1008, 1017 (2006) (stating that the decision to admit photographs is reviewed for an abuse of discretion).

Watters argues that Detective Luis Araujo's testimony regarding the SCOPE database was a reference to a prior bad act that prejudiced Watters because the jury could believe that being in the database suggested prior criminal activity. We disagree. Araujo explained to the jury that he used the SCOPE database to identify Watters and briefly explained several reasons why a person would be put into the system. Only one of the reasons involved past criminal activity.

Watters did not demonstrate that the testimony amounted to plain error in light of the brevity of the comments and the other evidence adduced at trial. See Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001) (reviewing for plain error where party fails to object at trial), abrogated on other grounds by Nunnery v. State, 127 Nev. ___, 263 P.3d 235 (2011), cert. denied, No 11-9433, 2012 WL 985411 (U.S., June 18, 2012).

Watters further contends that the district court erred by overruling his objection to the jury instruction on the presumption of innocence. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error." Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). Here, the jury instruction was a correct statement of the law and we conclude that the district court did not abuse its discretion. See NRS 175.191; Blake v. State, 121 Nev. 779, 799, 121 P.3d 567, 580 (2005) (rejecting challenge to use of the word "until" in instruction).

Having considered Watters' contentions and concluded that he is not entitled to relief, 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