

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT L. MILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59873

FILED

DEC 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge. Appellant Robert Miller raises six errors on appeal.

First, Miller argues that there was insufficient evidence to support his conviction because video footage of the incident does not conclusively demonstrate that Miller committed battery. We review the evidence in the light most favorable to the prosecution to determine whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt” McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)). While video footage of the incident is not dispositive as to the intentional nature of the battery, the jury also heard arguably inculpatory statements made by Miller before and after the incident as well as testimony that he returned to the casino after being ejected several days prior, refused to leave, and pulled a knife on security officers. It is for the jury to determine the weight to give evidence, and the jury’s verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981);

see also McNair, 108 Nev. at 56, 825 P.2d at 573. Accordingly, we conclude that a rational juror could infer from these circumstances that Miller committed battery with the use of a deadly weapon. NRS 200.481(1)(a),(e).

Second, Miller argues that the district court erred by declining to dismiss the venire because it was not representative of the community. Miller asked the district court to subpoena the jury commissioner in order to determine whether the method used to cull jurors from the community systematically excluded African Americans. The district court denied his request. Because Miller did not establish that the jury commissioner's testimony could in any way substantiate his claim of systemic exclusion of African Americans, we conclude that he has failed to demonstrate that the district court erred. See Williams v. State, 121 Nev. 934, 940, 125 P.3d 627, 631 (2005).

Third, Miller argues that the district court erred by admitting a knife in the absence of a proper chain of custody establishing that it had not been exposed to tampering. We disagree. The State is not required to rebut "the possibility of an opportunity for tampering with an exhibit nor to trace its custody by placing each custodian upon the stand." Carter v. State, 84 Nev. 592, 595, 446 P.2d 165, 168 (1968). Instead, any doubt about tampering goes to the weight of the evidence, not its admissibility. Sorce v. State, 88 Nev. 350, 352-53, 497 P.2d 902, 903 (1972). Because the knife was sufficiently identified, we conclude that the district court did not err in admitting it into evidence. Id.

Fourth, Miller argues that the district court erred by admitting statements obtained without a knowing and intelligent waiver of his rights under the United States and Nevada Constitutions. Even

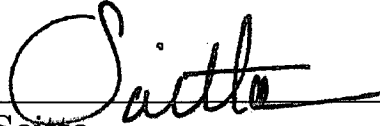
assuming that the district court erred in admitting Miller's statements to police officers, we conclude that any error was harmless because the statements were similar to others made by Miller that were properly admitted. See Arizona v. Fulminante, 499 U.S. 279, 295-96 (1991) (applying harmless error review to admission of a statement obtained in violation of Miranda); see also Allred v. State, 120 Nev. 410, 415, 92 P.3d 1246, 1250 (2004) ("An error is harmless when it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error." (internal quotations omitted)).

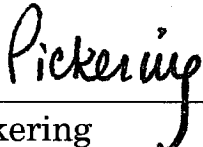
Fifth, Miller argues that the district court violated his right to confrontation by denying him the opportunity to cross-examine one of the security officers regarding a prior battery conviction in order to demonstrate that the officer may have used excessive force. Because Miller argued that the injury to the victim was an accident that occurred as they fell to the floor, the testimony Miller sought to elicit was irrelevant and properly excluded. Moreover, to the extent that Miller now implies that he acted in self-defense, we decline to revisit our case law that is contrary to Miller's position and conclude that the district court properly excluded the testimony. See Daniel v. State, 119 Nev. 498, 515, 78 P.3d 890, 902 (2003) (holding that evidence of specific acts showing that the victim was a violent person is admissible only if a defendant was aware of those acts).

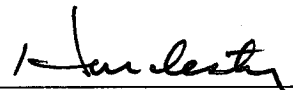
Sixth, Miller argues that cumulative error warrants reversal of his conviction. Because we have concluded that the only arguable error is harmless and there are no other errors to accumulate, we conclude that Miller is not entitled to relief based upon this claim.

Having considered Miller's contentions and concluded that they do not warrant relief, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Linda Marie Bell, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk