

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD MULITAUOPELE,

No. 35809

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

NOV 05 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of conspiracy to commit robbery (counts I, V), two counts of burglary while in the possession of a firearm (counts II, VI), two counts of robbery with the use of a deadly weapon (counts III, VII), and one count of first-degree kidnapping with the use of a deadly weapon (count IV). The district court sentenced appellant to serve concurrent prison terms of 12-36 months for count I, 24-84 months for count II, two consecutive terms of 24-84 months for count III, two consecutive terms of life with the possibility of parole after five years for count IV, 24-84 months for count VI, and two consecutive terms of 24-84 months for count VII; and a consecutive term of 12-36 months for count V. Appellant was also ordered to pay restitution jointly and severally with his codefendants in the amount of \$70.00, and he was given credit for 160 days time served.

Appellant contends the State adduced insufficient evidence at trial to support the first-degree kidnapping conviction. More specifically, appellant argues that the movement of the victim was incidental to the

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robbery, and therefore, pursuant to Wright v. State,¹ the kidnapping should not be considered a separate crime. We disagree.

When reviewing a claim of insufficient evidence, the relevant inquiry is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."² Furthermore, "[w]hether the movement of the victims is incidental to the associated offense and whether it increased the risk of harm to the victims are questions of fact to be determined by the trier of fact in all but the clearest cases."³

NRS 200.310(1) provides in relevant part: "A person who willfully seizes, confines, . . . abducts, conceals, kidnaps or carries away a person by any means whatsoever with the intent to hold or detain . . . is guilty of kidnapping in the first degree." This court has stated that "where kidnapping is incidental to another crime, the evidence of kidnapping must include an element of asportation, physical restraint, or restraint which either increases the risk of harm to the victim or has an independent purpose and significance."⁴

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. The evidence adduced at trial indicated that the victim was

¹4 Nev. 415, 581 P.2d 442 (1978) (holding that conviction for kidnapping must be set aside if movement of the victim was incidental to robbery and did not substantially increase risk of harm already present during commission of robbery).

²Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).


³Turner v. State, 98 Nev. 243, 245, 645 P.2d 971, 972 (1982); see also Nev. Const. art. 6, § 4; NRS 177.025.

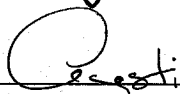
⁴Davis v. State, 110 Nev. 1107, 1114, 881 P.2d 657, 662 (1994).

already robbed of all of his money before being seized, dragged, and shoved into the trunk of his taxi cab at gunpoint; the kidnapping was not necessary for the consummation of the robbery. When the victim protested and initially refused to enter the trunk, he was threatened with his life. Once the victim was inside the trunk of his cab, appellant and his codefendant drove away in the taxi cab to the location of their getaway car. The victim was subsequently abandoned in the trunk of the cab when appellant and his codefendant made their escape. We therefore conclude that the kidnapping occurred after the completion of the robbery, involved an element of asportation and physical restraint, and greatly increased the risk of harm to the victim.

Having considered appellant's contention and concluded that it lacks merit, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
William L. Wolfbrandt, Jr.
Clark County Clerk

⁵Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.