

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOE WINSTON REEKS,

No. 35958

Appellant,

FILED

vs.

DEC 05 2001

THE STATE OF NEVADA,

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

Respondent.

**ORDER AFFIRMING IN PART, REVERSING IN PART
AND REMANDING**

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of conspiracy to commit robbery with a firearm, one count of robbery with a firearm, one count of battery with a deadly weapon, and one count of ex-felon in possession of a firearm. The district court sentenced appellant: for conspiracy, to a prison term of 16 to 72 months, with an equal and consecutive term for the firearm enhancement; for robbery, to a consecutive prison term of 40 to 180 months, with an equal and consecutive term for the firearm enhancement; for battery, to a concurrent prison term of 12 to 120 months; and for ex-felon in possession of a firearm, to a consecutive prison term of 16 to 72 months.

Appellant first contends that the constitutional prohibition against double jeopardy was violated. Specifically, appellant argues that the district court should not have retried appellant after the first trial ended in a mistrial. Appellant moved for a mistrial because the charge of being an ex-felon in possession of a firearm should have been severed from the other charges.¹ "As a general rule, a defendant's motion for, or consent to, a mistrial removes any double jeopardy bar to reprosecution."² There is no indication in the record that the State engaged in harassment of

¹See Brown v. State, 114 Nev. 1118, 1126, 967 P.2d 1126, 1131 (1998).

²Melchor-Gloria v. State, 99 Nev. 174, 178, 660 P.2d 109, 111 (1983).

appellant, or intended to goad appellant into moving for a mistrial.³ We therefore conclude that appellant's contention is without merit.

Appellant next contends that the testimony of his accomplices was not sufficiently corroborated.⁴ The victim, however, testified at appellant's trial, and identified appellant as one of the individuals who robbed him. Moreover, the victim testified that appellant was known to him before the robbery. This testimony, standing alone, would have been sufficient to convict appellant, and we therefore conclude that this contention is without merit.

Appellant next contends that the evidence presented at trial was insufficient to support the jury's finding of guilt as to the charge of ex-felon in possession of a firearm. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.⁵

In particular, we note that evidence was adduced at trial that appellant was in possession of the gun when he confronted and beat the victim, and that appellant had previously been convicted of grand larceny and dissuading a witness.

The jury could reasonably infer from the evidence presented that appellant was an ex-felon in possession of a firearm. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.⁶

Finally, appellant contends that the district court erred by applying the deadly weapon enhancement provided for in NRS 193.165(1) to his conspiracy conviction. This court recently held it "improper to enhance a sentence for conspiracy using the deadly weapon

³Cf. Oregon v. Kennedy, 456 U.S. 667, 675-676 (1982).


⁴See NRS 175.291(1) ("A conviction shall not be had on the testimony of an accomplice unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense . . .").

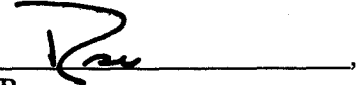
⁵See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980).

⁶See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981).

enhancement."⁷ Accordingly, the consecutive enhancement term of appellant's conspiracy sentence must be vacated. We therefore

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court with instructions to vacate the second, consecutive term of appellant's sentence for conspiracy.⁸

 J.
Shering

 J.
Rose

 J.
Becker

cc: Hon. David A. Huff, District Judge
Attorney General/Carson City
Churchill County District Attorney
James F. Sloan
Churchill County Clerk

⁷Moore v. State, 117 Nev. ___, ___, 27 P.3d 447, 450 (2001).

⁸We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.