

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUAN M. ARAIZA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67159

**FILED**

JUN 16 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of robbery with the use of a deadly weapon. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant Juan Araiza claims that insufficient evidence supports his conviction because he did not take the bottles from or in the presence of another person and he did not attempt to escape with the bottles. We disagree.

When reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the prosecution and determine whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). “[W]here force is used *only* to facilitate escape, the use of force must be subsequent to a taking by force or fear, or used to compel acquiescence to the escaping with the property in order to constitute the crime of robbery.” *Martinez v. State*, 114 Nev. 746, 748, 961 P.2d 752, 754 (1998). If force or threat of force is used to retain possession

of the item or to escape with the item, then a robbery is committed. *Barkley v. State*, 114 Nev. 635, 636-367, 958 P.2d 1218, 1219 (1998).

The jury was shown a video that depicted an individual taking two bottles from the Terrace Lounge Bar in the Peppermill Casino and exiting the casino. Security dispatcher Robert Davis testified that he was monitoring the surveillance cameras at the time and reported the incident to his manager. Pursuant to his manager's directive to all security officers to detain and question the individual, Davis exited the dispatch office to approach the individual and saw Araiza kneeling in a bush, attempting to hide the bottles in his pant legs. Davis approached Araiza and asked if he could speak with him. Araiza did not respond and Davis continued approaching him, repeating the question. Araiza again did not respond, but got up with the bottles in his hands and started to walk away. Davis testified that he decided to detain Araiza and started running toward him. Araiza saw Davis and raised one bottle and tried to strike Davis with it, but Davis deflected the blow with his hand. The bottle struck Davis' left hand and broke across the bottom of Davis' palm. Davis testified, after striking him with one bottle, Araiza held tightly to the other bottle and ran northbound toward another security officer, Aldwin Brown.


Brown testified he saw the confrontation between Davis and Araiza and realized he needed to detain Araiza. Brown ran toward Araiza and as he attempted to grab Araiza, Araiza hit Brown across his nose with a bottle. Both Brown and Araiza ended up on the ground. Brown's nose was broken in two places and had a large laceration that needed six stitches to close it.


Davis testified he never verbally identified himself as security to Araiza during his contact with him; however, he was wearing a black

security officer uniform and a duty belt with a security badge, handcuffs and a radio. Brown testified that he was dressed in his bike security officer uniform and was wearing a utility belt with a security badge, handcuffs and radio. Both uniforms had markings and/or patches on them that identified Davis and Brown as security officers. Photos of the uniforms were shown to the jury.

The jury could reasonably infer from the evidence presented that Araiza committed robbery with the use of a deadly weapon by using force to retain possession of one of the bottles and to facilitate his escape. See NRS 193.165(6); NRS 200.380(1). 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. See *Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Patrick Flanagan, District Judge  
Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk