

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID LEE MARTINEZ,

No. 36180

Appellant,

vs.

FILED

OCT 08 2001

THE STATE OF NEVADA,

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

Respondent.

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count of battery causing substantial bodily harm. The district court sentenced appellant, David Martinez, to five years in prison with minimum parole eligibility after two years. The district court suspended execution of the sentence and placed Martinez on probation for five years.

Martinez first contends that he is entitled to reversal of his conviction because the State lost photographs taken by the police shortly after the altercation between Martinez and the victim that depicted a scrape on Martinez' neck. Martinez argues that he was prejudiced by the loss of the photographs because they were exculpatory since they proved the nature and extent of his injuries and that he acted in self-defense.

Where material evidence is lost in a criminal case, a conviction may be reversed if the defendant is prejudiced by the loss or the state acted in bad faith in losing it.¹ To establish prejudice, the defendant must show that it could be reasonably anticipated that the evidence would have been exculpatory and material to the defense.²

In this case, it is not clear that the photographs were in fact lost because the record reveals that Martinez declined the district court's offer of a continuance to locate them. Additionally, given the undisputed testimony at trial that Martinez had a scratch or scrape on his neck when interviewed by police after the incident, Martinez has not established that

¹Cook v. State, 114 Nev. 120, 125-26, 953 P.2d 712, 715-16 (1998) (citation omitted).

²Id.

the photographs were in fact exculpatory. Finally, Martinez does not allege, nor does the record reveal, that the state acted in bad faith in losing the photographs. Accordingly, we conclude that Martinez is not entitled to reversal of his conviction.

Martinez also contends that erroneous jury instructions denied him a fair trial. However, Martinez failed to include in the record on appeal the jury instructions actually given to the jury in this case or his proffered instruction. Additionally, the trial transcript provided to this court does not include a transcription of the jury instructions because they were not recorded. Accordingly, we conclude that Martinez has precluded meaningful appellate review of this issue.³

Finally, Martinez contends that the state failed to prove beyond a reasonable doubt that he did not act in self-defense when he hit the victim and that the loss of the victim's eye was an ordinary consequence of his actions.

When the sufficiency of the evidence is challenged on appeal in a criminal case, "the relevant inquiry for this court 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.'"⁴ In making that determination, this court has stated that "the jury must be given the right to make logical inferences which flow from the evidence," and it is the jury's function to assess the weight of the evidence and to determine the credibility of witnesses.⁵ This court has reversed a conviction, however, where a rational trier of fact rejected "a plausible explanation consistent with appellant's innocence" and inferred the defendant to be guilty "based on evidence from which only uncertain inferences may be drawn."⁶

Our review of the record reveals sufficient evidence from which the jury, acting reasonably and rationally, could have found the

³See NRAP 30(b) (requiring appendix to include portions of the record essential to determination of issues raised on appeal).

⁴Hutchins v. State, 110 Nev. 103, 107-08, 867 P.2d 1136, 1139 (1994) (quoting Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984)).

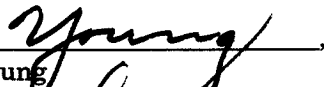
⁵Hern v. State, 97 Nev. 529, 531, 635 P.2d 278, 279 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 576 (1992).

⁶Woodall v. State, 97 Nev. 235, 237, 627 P.2d 402, 403 (1981).


elements of battery causing substantial bodily harm. Battery is any "willful and unlawful use of force or violence upon the person of another."⁷ Additionally, unless the context otherwise requires, "substantial bodily harm" is any "[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ, or [p]rolonged physical pain."⁸

In this case, it was undisputed at trial that Martinez punched or kicked the victim, permanently blinding his left eye on May 8, 1998. The issue was whether Martinez acted in self-defense. Although it was also undisputed that Martinez had a scratch on his neck when interviewed by police after the incident and Martinez testified that he acted in self-defense, the State presented several witnesses who testified that Martinez was the aggressor in the altercation and that the victim never hit Martinez. The jury evaluated the credibility of the witnesses and apparently chose to believe the State's witnesses. Accordingly, we conclude that Martinez' conviction is supported by substantial evidence. We therefore

ORDER the judgment of conviction AFFIRMED.



Young J.



Leavitt J.



Becker J.

cc: Hon. Jeffrey D. Sobel, District Judge
Clark County Public Defender
Attorney General
Clark County District Attorney
Clark County Clerk

⁷NRS 200.481(1)(a).

⁸NRS 0.060.