

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH WALTER WILLARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67753

FILED

DEC 16 2015

ORDER OF AFFIRMANCE

THOMAS K. LINDEMAN
CLERK OF APPEALS COURT
BY *Angela*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery with the use of a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Appellant Joseph Willard argues that the State presented insufficient evidence to support his conviction under any of its theories. Specifically, he argues that the State presented insufficient evidence that he directly committed the offense, or that he aided and abetted or conspired with his codefendant, Eric Knoblauch, to commit the offense. Therefore, the only issue we address in this appeal is whether a jury acting rationally could have found Willard guilty.

On the evening of September 2, 2014, Willard visited Knoblauch at the apartment of Knoblauch's girlfriend, Amber Letner. In the early morning hours of September 3, Letner and her neighbor, Quanisha Brown, had a verbal altercation over Diamond Walker, the father of Brown's child. The altercation escalated into a physical fight involving multiple people in the neighborhood. Willard and Knoblauch got involved to help Letner and Walker, Quanisha's brother, D'Andre Brown, and Quanisha's friend, Ray-Ray, came outside to defend Quanisha.

During the fight, Letner, Willard, Knoblauch, and Walker sustained injuries that required hospitalization.

The State charged Willard and Knoblauch with attempt murder with use of a deadly weapon and battery with use of a deadly weapon resulting in substantial bodily harm. During trial, the jury heard testimony from seventeen witnesses, who each provided a varying version of the events. Willard and Knoblauch both testified. After an eight-day trial, the jury found Willard and Knoblauch guilty of battery with use of a deadly weapon resulting in substantial bodily harm. The jury did not reach a verdict as to the attempted murder charge. The district court sentenced Willard to serve 24 to 144 months in the Nevada Department of Corrections, with 203 days credit for time served. Willard now appeals.

In reviewing the sufficiency of the evidence, this court must determine “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.” *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (internal quotation marks omitted). “[I]t is the jury’s function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses.” *Id.* “This court will not disturb a jury verdict where there is substantial evidence to support it, and circumstantial evidence alone may support a conviction.” *Hernandez v. State*, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002).

In this case, in order to sustain a conviction for the battery, the record must contain sufficient evidence that either (1) Willard directly committed the battery, *see* NRS 200.481(2)(e)(2), (2) that he agreed with Knoblauch to commit the battery, *see Garner v. State*, 116 Nev. 770, 780 6 P.3d 1013, 1020 (2000) (summarizing this court’s case law on

conspiracy), *overruled on other grounds by Sharma v. State*, 118 Nev. 648, 56 P.3d 868 (2002), or (3) that he aided, abetted, encouraged, or induced Knoblauch to commit the battery, *see* NRS 195.020. Additionally, the record must contain sufficient evidence that the defendant used a deadly weapon to commit the battery, *see* NRS 193.165(6), and that the victim suffered substantial bodily harm, *see* NRS 200.481(2)(e)(2).

Here, Willard does not dispute that he was involved in a fight that resulted in Walker suffering multiple stab wounds that required him to have surgery and remain in the hospital for one week. Willard testified at trial and admitted that he and Knoblauch fought with Walker and five of Walker's friends that night. Willard denied, however, that he ever touched Walker. According to Willard, Knoblauch stabbed Walker when Willard stepped away to throw a bicycle into Letner's backyard. Knoblauch testified and corroborated Willard's version of the events. Knoblauch claimed ownership over the folding knife used to stab Walker and admitted that he stabbed Walker four times with the knife. Knoblauch stated that Willard did not hold Walker down during the fight, but rather intervened to pull Knoblauch off the ground after he fell unconscious when someone hit him in the head with an object.

Several witnesses, including Walker, however, testified that Willard played a much different role in the stabbing. In particular, Walker testified that he saw Willard and Knoblauch run toward him with knives. Walker further testified that Knoblauch stabbed him in his groin, and that he believed Walker stabbed him in the back, but was "not for sure" because Walker could not clearly see Willard's actions because he was standing behind him.

Kristine Roach, a temporary resident of the neighborhood, testified that she saw Letner's daughter hand "something" to Knoblauch before Knoblauch and Willard ran after Walker. Roach testified that when Walker slid on the ground in an attempt to grab a broomstick, Willard caught up with him. Roach stated that Willard grabbed Walker around the neck in a headlock and held him while Knoblauch appeared to jab and punch Walker. Melvin Pitts, Roach's husband, provided a similar version of events. Pitts testified that he saw Letner's daughter hand Knoblauch a knife and also stated that he saw Willard grab Walker from behind and hold him with both hands while Knoblauch stabbed him in the stomach.

Jordan Shaw, another resident in the neighborhood, testified that she saw two white males run after Walker. She testified that she eventually saw Walker on the ground and the two white males on their knees, hovering over Walker and punching him. Shaw stated, however, that she was unable to tell whether the two white males had any weapons in their hands. The State also presented Sophie Johosky's, another neighborhood resident, written statement, where she stated that two white men had fought with Walker and that when she turned around, she saw the two men leave Walker laying in a pool of blood on the street.

Additionally, police officers discovered two knives at the scene—a folding knife and a kitchen knife. The folding knife, which police found next to Walker, had apparent blood on it. The kitchen knife, which police found next to the dumpster, did not appear to have blood on it. Although Knoblauch testified that the folding knife belonged to him and Johosky testified that she saw D'Andre retrieve a kitchen knife from his

apartment and then run toward the dumpster, police officers did not send either of the knives to the forensic lab for fingerprint or DNA analysis.

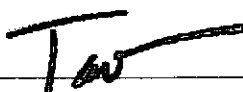
After reviewing the evidence in the light most favorable to the prosecution, we conclude that a jury acting rationally could have found the essential elements of battery with the use of a deadly weapon resulting in substantial bodily harm beyond a reasonable doubt.¹ While the State presented little evidence that Willard directly committed the battery, it presented sufficient evidence that Willard aided or abetted Knoblauch. The evidence, through witness testimony and exhibits, supports that Willard held Walker while Knoblauch stabbed him with his folding knife. The evidence also supports Willard's conviction under the State's alternative conspiracy theory. *See Garner*, 116 Nev. at 780, 6 P.3d at 1020 ("Evidence of a coordinated series of acts furthering the


¹Willard's reliance on *Griego v. State*, 111 Nev. 444, 893 P.2d 995 (1995) is misplaced. Willard relies on *Griego* to argue that inconsistencies and contradictions in witness testimony may alone lead to a finding that there is insufficient evidence to support a conviction. In *Griego*, the Nevada Supreme Court found that substantial evidence supported the defendant's conviction, despite inconsistent and conflicting witness testimony. 111 Nev. at 448, 893 P.2d at 995. We emphasize that "[w]here conflicting testimony is presented, the jury determines what weight and credibility to give it." *Garner*, 116 Nev. at 779-80, 6 P.3d at 1019. And "[t]his court will not disturb a jury verdict where there is substantial evidence to support it." *Hernandez*, 118 Nev. at 531, 50 P.3d at 1112.

underlying offense is sufficient to infer the existence of an agreement and support a conspiracy conviction.”). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kenneth C. Cory, District Judge
Edward B. Hughes
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk