

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN EVOL FORNEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67242

FILED

JAN 21 2016

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 battery with the use of a deadly weapon constituting domestic violence and battery resulting in substantial bodily harm constituting domestic violence. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Appellant John Forney contends the evidence presented at trial was insufficient to support the jury's finding that the acts constituted domestic violence. He specifically asserts the State failed to demonstrate his living conditions fell under any description to trigger a domestic violence charge. 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). "[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness." *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975). And

circumstantial evidence is enough to support a conviction. *Lisle v. State*, 113 Nev. 679, 691-92, 941 P.2d 459, 467-68 (1997), *holding limited on other grounds by Middleton v. State*, 114 Nev. 1089, 1117 n.9, 968 P.2d 296, 315 n.9 (1998).

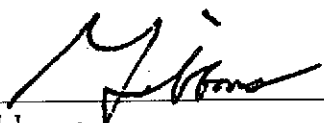
The jury heard testimony Forney and Cruz Cardenas were living at the Beacon of Hope Sober Living Facility. The facility is a multilevel, 5,000-square-foot house with five bedrooms and three bathrooms. Forney and Cardenas each rented a room in the house. Forney's room was on the bottom level of the house and he did not share his room with anyone else. Cardenas' room was on the top level and he shared his room with another man. The kitchen, living room, bottom level recreation area, bathrooms, and yard were common areas shared by all in the house. Only the house manager's bedroom had a door that locked.


After leaving for work early one morning, Cardenas returned to the house upon realizing he had forgotten some items. Cardenas walked up some stairs to enter the house through a back entrance. Forney was inside the house. When Cardenas opened the door to enter the home, Forney hit him in the head with a hammer. Cardenas put his hands up in a blocking motion. Forney continued to come at Cardenas and Cardenas fell down the stairs. Cardenas woke up on the grass with Forney on top of him, hitting him again with the hammer. Cardenas' roommate and another housemate pulled Forney off of Cardenas. Cardenas was taken to the hospital, where he remained in ICU for four days. As a result of the altercation, Cardenas suffered a wound to the head, a lacerated spleen, and some bruising.


The jury could reasonably infer from the evidence presented that Forney committed the acts of battery and the acts constituted

domestic violence because they were perpetrated against a "person with whom [Forney] is or was actually residing," NRS 33.018(1). See NRS 33.018(1)(a); NRS 200.481(1)(a). 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). Therefore, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. David B. Barker, District Judge
Sanft Law, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk