

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES EARL PARKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70139

FILED

MAY 01 2017

ORDER OF AFFIRMANCE

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

James Earl Parker appeals from a judgment of conviction, pursuant to a jury verdict, of four counts of conspiracy to commit robbery, four counts of burglary while in possession of a firearm, nine counts of robbery with the use of a deadly weapon, and two counts of attempted robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

At trial, the State contended that Parker and an accomplice named Ralph Alexander perpetrated robberies at four locations over a three-week period. Pursuant to a plea agreement, Alexander's girlfriend—Tonya Martin—testified against Parker and Alexander, asserting that she transported the two men to the sites of the first three robberies (*i.e.*, the Kwiky Market, Las Vegas Nail Spa, and Rainbow Market robberies), and that she drove Alexander to the location of the fourth robbery (*i.e.*, the Family Dollar robbery).¹ At trial, Parker asserted that primarily because the perpetrators wore masks, there was insufficient credible evidence

¹The parties to this appeal refer to these four establishments using names that differ slightly from those that appear in this order. This order instead uses the terminology employed by the superseding indictment.

tying him to the first three robberies, but nonetheless conceded during closing argument that he was “present” during the fourth robbery.²

On appeal, Parker first contends that his convictions arising out of the Kwiky Market, LV Nail Spa, and Rainbow Market robberies should be reversed because the State did not adequately corroborate Martin’s testimony pursuant to NRS 175.291(1). We disagree.

Under NRS 175.291(1), “[c]orroborative evidence need not in itself be sufficient to establish guilt—it will satisfy the statute if it merely tends to connect the accused to the offense.” *Evans v. State*, 113 Nev. 885, 891-92, 944 P.2d 253, 257 (1997) (quoting *Heglemeier v. State*, 111 Nev. 1244, 1250, 903 P.2d 799, 803 (1995)) (internal quotation marks omitted). Further, “corroborative evidence may be either direct or circumstantial, and can be taken from the evidence as a whole.” *Heglemeier*, 111 Nev. at 1250, 903 P.2d at 803 (citation omitted).

However, corroborative evidence that is merely consistent with the accomplice’s testimony will not satisfy the statute. See *Evans*, 113 Nev. at 892, 944 P.2d at 257. Furthermore, evidence that “shows no more than an opportunity to commit a crime, simply proves suspicion, or is equally consonant with the reasonable explanation pointing toward innocent conduct on the part of the defendant . . . is . . . insufficient.” *Id.*

²On appeal, Parker does not aver that the four robberies did not occur, nor does he challenge his convictions arising from the Family Dollar robbery. Instead, he contends only that there was insufficient evidence establishing that *he* participated in the Kwiky Market, LV Nail Spa, and Rainbow Market robberies.

Further, we do not recount the facts except as necessary to our disposition.

(quoting *Heglemeier*, 111 Nev. at 1250-51, 903 P.2d at 803) (internal quotation marks omitted).

Here, the State presented evidence that, “taken . . . as a whole[,]” constitutes “independent, inculpatory evidence . . . tending to connect” Parker to the three robberies at issue. *See Heglemeier*, 111 Nev. at 1250, 903 P.2d at 803. First, the testimonies of an eyewitness to the Family Dollar robbery, a detective who investigated this case (*i.e.*, Detective David Miller), and a forensic examiner who conducted a DNA analysis on a mask recovered near the site of that robbery, collectively support the inference that Parker had worn a “skull mask” (*i.e.*, a black mask with a white skull on the front of it) while personally participating in that robbery.³

Next, Detective Miller’s testimony and the testimony of eyewitnesses indicated that all four robberies displayed the following pattern: (1) they were each perpetrated by two suspects “entering businesses in the northeast” part of Las Vegas, (2) the suspects “target[ed] victims in the store” in three out of the four robberies, (3) one suspect in each robbery wore a skull mask whereas another wore a bandana, and (4) “weapons were used in all of the robberies[.]” Additionally, Detective Miller testified that the video surveillance from all four robberies revealed

³Although the forensic examiner testified that there was “a mixture in [the DNA] profile” that was generated from the sample that was retrieved from the mask, she also testified that the “full major profile” she obtained was consistent with Parker’s DNA. She further testified that “[t]he probability of randomly selecting an unrelated individual having the DNA profile that is consistent with the full major [profile] obtained in the evidence sample” was “one in . . . 6.21 quintillion[.]”

that “the general builds and sizes of the suspects in each of these robberies . . . appeared to be the same[.]” Lastly, Detective Miller testified that after Parker and Alexander were arrested for committing the Family Dollar robbery, no more similar robberies were reported.

We conclude that this evidence satisfies NRS 175.291(1) because it tends to connect Parker to the three robberies in question. *Cf. Amen v. State*, 106 Nev. 749, 752-53 & n.2, 801 P.2d 1354, 1357 & n.2 (1990) (emphasis added) (holding that “corroboration derived from unconnected victims defrauded in a *similar, consistent pattern*” may satisfy an analogous “corroboration statute applicable to false pretense cases”).⁴ Accordingly, we conclude that the State satisfied NRS 175.291 by advancing sufficient independent evidence corroborating Martin’s testimony.

Parker also argues that there was insufficient evidence to convict him of the charges arising from the Kwiky Market, LV Nail Spa, and Rainbow Market robberies because Martin’s testimony is the only evidence tying him to these robberies, and she was not a credible witness. Further, he argues that Martin made a plea agreement with the State

⁴*See also Cheatham v. State*, 104 Nev. 500, 505-06, 761 P.2d 419, 422-23 (1988) (concluding that “there was sufficient corroboration evidence tending to connect [the defendant] to [a] robbery and murder” in part because there was evidence that the defendant did not have money until *after* these crimes occurred); *Gallego v. State*, 101 Nev. 782, 784, 786-89, 711 P.2d 856, 858, 860-61 (1985) (concluding that “the State produced corroborative evidence that . . . sufficiently connected” the defendant to the crimes in part because “evidence was adduced concerning similar conduct by [the defendant] in the earlier killing of two young women kidnapped from another shopping mall”).

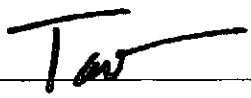
allowing her to avoid prison and to continue to care for her children, and that her testimony was inconsistent with her prior interviews with the police. We disagree.

In reviewing a challenge to the sufficiency of the evidence supporting a criminal conviction, this court considers “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) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (internal quotation marks omitted).

Parker’s attacks on Martin’s testimony fail because they concern only “the weight of the evidence and . . . the credibility of [a] witness[[]]” both of which are within the exclusive province of the jury. *See McNair*, 108 Nev. at 56, 825 P.2d at 573. Further, our review of the record reveals that a rational trier of fact could have concluded that Martin’s testimony and the State’s other evidence established beyond a reasonable doubt that Parker participated in the robberies. *See McNair*, 108 Nev. at 56, 825 P.2d at 573. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
The Law Office of Travis Akin
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk