

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES WALLACE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36481

FILED

JAN 09 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary while in possession of a firearm (Count I), one count of conspiracy to commit robbery (Count II), one count of battery with intent to commit a crime (Count III), and one count of robbery with the use of a deadly weapon (Count IV). The district court sentenced appellant: for Count IV, to a prison term of 24 to 156 months, with an equal and consecutive term for the use of a deadly weapon; for Count III, to a concurrent prison term of 24 to 96 months; for Count II, to a concurrent prison term of 12 to 48 months; and for Count I, to a concurrent prison term of 24 to 96 months.

Appellant contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Specifically, appellant argues that the State failed to prove that appellant's co-defendant used a deadly weapon, and that the gun was not actually a toy gun.¹ Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational

¹The weapon was never recovered, and the only evidence that it was a toy gun was a statement by appellant to that effect.

trier of fact. See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980).

In particular, we note that the three victims testified that appellant's co-defendant brandished a gun and struck one of the victims in the face with the gun, breaking the victims nose and requiring thirty-five stitches. The victims also testified that they feared for their lives and believed the gun was real. Moreover, the jury was able to view the gun in the surveillance videos that were recorded at the time of the robbery.

The jury could reasonably infer from the evidence presented that a deadly weapon was used in the commission of the crime. See Davis v. State, 110 Nev. 1107, 1116-17, 881 P.2d 657, 663 (1994). 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, 624 P.2d 20 (1981).

Having considered appellant's contention and concluded it is without merit, the judgment of conviction is affirmed.

It is so ORDERED.

Young, J.
Young

Rose, J.
Rose

Becker, J.
Becker

cc: Hon. Jack Lehman, District Judge
Attorney General
Clark County District Attorney
Kirk T. Kennedy
Clark County Clerk