

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN L. MITCHELL, SR.,

No. 36557

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

JAN 09 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a bench trial, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to a prison term of 62 to 156 months, with an equal and consecutive term for the use of a deadly weapon.

Appellant contends that the evidence presented at trial was insufficient to support the judge's finding of guilt. Specifically, appellant argues that the State failed to prove that appellant's gun was not actually a toy gun.<sup>1</sup> Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980).

In particular, we note that the victim testified that appellant had a semiautomatic weapon, and that it clicked when appellant pointed it at the victim and pulled the trigger but that it did not fire.

The jury could reasonably infer from the evidence presented that a deadly weapon was used in the commission of

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<sup>1</sup>The weapon was never recovered. The victim testified that the gun looked real to him. After numerous questions on this point, the victim conceded that he couldn't state for sure whether it was real or a replica.

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. Connie J. Steinheimer, District Judge  
Attorney General  
Washoe County District Attorney  
Jenny Hubach  
Jack A. Alian  
Washoe County Clerk