

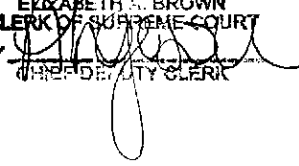
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL DIGGS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71810

FILED

JAN 09 2018

ELIZABETH S. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Michael Diggs appeals from a judgment of conviction entered pursuant to a jury verdict of two counts of conspiracy to commit robbery, three counts of robbery with the use of a deadly weapon, and two counts of grand larceny auto. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Diggs contends the evidence presented at trial was insufficient to support the jury's finding of guilt. Specifically, he claims the convictions were based on unreliable testimony and his confession, which he asserts was obtained during an untrustworthy juvenile detention interview. 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

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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 evidence presented at trial showed that Diggs, along with several other people, robbed two people late at night in a park. During the robbery the two victims were shot, one in the knee and the other in the hip. Several days later, Diggs, along with another person, approached a woman in a park and robbed her at gunpoint. At trial the woman identified Diggs as the gunman. A vehicle was stolen during each robbery. Two witnesses testified Diggs told them he was the person who shot the victims during the first robbery and these same witnesses testified they observed Diggs participate in the second robbery. Further, it appears Diggs confessed to the police to participating in both robberies and being the shooter in the first robbery.¹


The jury could reasonably infer from the evidence presented that Diggs twice conspired to commit robbery, committed robbery with the use of a deadly weapon three times, and committed grand larceny auto two times. *See* NRS 193.165; NRS 199.480(1); NRS 200.380(1); NRS 205.228(2). Although Diggs asserts the witness testimony, identification, and his confession were all unreliable, “it is the jury’s function, not that of the court,

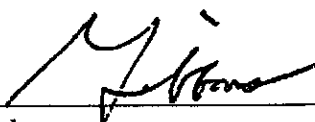
¹The confession has not been provided to this court as part of the record on appeal.

to assess the weight of the evidence and determine the credibility of the witnesses." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). The jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. *See id.* Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Valerie Adair, District Judge
Law Office of Benjamin Nadig, Chtd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk