

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD BANDA, A/K/A TONY
BANDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73946

FILED

JUL 31 2018

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

ORDER OF AFFIRMANCE

Richard Banda appeals from a judgment of conviction, entered pursuant to a jury verdict, of burglary, assault with the use of a deadly weapon, and possession of a controlled substance. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Banda contends the evidence presented at trial was insufficient to support the jury's finding of guilt as to the burglary and the assault with a deadly weapon counts.¹ Specifically, he claims the burglary was not proven because no one saw him enter the garage, the garage was not processed for fingerprints or DNA, and the sightline of the person who saw him leave the garage was obstructed. He claims the assault with a deadly weapon was not proven because the victim did not allege Banda swung the tool at him on the 911 call and the victim was easily able to disarm Banda. We disagree.

¹Banda does not challenge his conviction for possession of a controlled substance.


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).

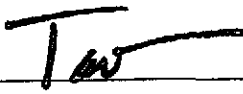
A witness told the victim he saw a man leaving the victim’s garage with something in his hands. The victim then took off and saw a man walking down the road in the direction pointed out by the witness. The witness testified the man walking down the road was the same man he saw leave the garage. This man was Banda. The victim stopped Banda and confronted him. Banda pulled an axe/hammer from behind his back and swung it at the victim. The victim recognized the axe/hammer as a tool from his garage. The victim was able to disarm Banda and took pictures of Banda and the car he drove off in. Banda was later apprehended and arrested. The victim identified Banda as the person who assaulted him.

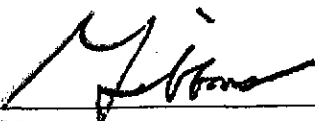
The jury could reasonably infer from the evidence presented that Banda burglarized the victim’s garage and assaulted him with the use of a deadly weapon. See NRS 200.471(1)(a), (2)(b); NRS 205.060(1). It is for the jury to determine the weight and credibility to give testimony, and the jury’s verdict 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). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. William D. Kephart, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk