IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK ANTHONY GREEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36841

FILED

JUN 18 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of conspiracy to commit robbery, two counts of robbery from a victim 65 years or older, and one count of battery with substantial bodily harm. The district court sentenced appellant: to a prison term of 12 to 48 months for conspiracy; to a concurrent prison term of 40 to 120 months for each count of robbery with equal and consecutive terms for the victim 65 years or older; and to a concurrent prison term of 24 to 60 months for battery.

Appellant contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. 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.[1]

In particular, we note that both victims identified appellant as one of the men who robbed them. At the time of the crime, the robbers escaped in a red car. Appellant's roommate owned a red car, and appellant's roommate's fingerprints were found on an envelope that was recovered with the victim's purse from a nearby dumpster.

The jury could reasonably infer from the evidence presented that appellant committed the crimes charged. It is for

[1]See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980).

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.[2]

Appellant next contends that the reasonable doubt instruction given to the jury was unconstitutional. The district court gave Nevada's statutory reasonable doubt instruction as set out in and mandated by NRS 175.211. This court has repeatedly held that the current statutory definition is constitutional.[3] This contention is therefore without merit.

Finally, appellant contends that a witness for the State improperly vouched for the trustworthiness of one of the victims' memory and perception. Specifically, appellant takes issue with a passing statement made by a police officer referring to an interview with one of the witnesses. The officer said, "You have to remember, that human beings are very remarkable. We never forget anything that any of our five senses come in contact with." Counsel for appellant immediately objected, and the district court ordered the comment stricken.

This court has previously held that "it is improper for one witness to vouch for the testimony of another."[4] Such error is, however, subject to a harmless error analysis.[5] We conclude that any error in this case was harmless beyond a reasonable doubt, in light of the fact that the testimony was unsolicited, the statement was ordered stricken, and there was overwhelming evidence of appellant's guilt, including eyewitness

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[2]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981).

[3]See, e.g., Chambers v. State, 113 Nev. 974, 982-83, 944 P.2d 805, 810 (1997); Evans v. State, 112 Nev. 1172, 1191, 926 P.2d 265, 277-78 (1996); Lord v. State, 107 Nev. 28, 40, 806 P.2d 548, 556 (1991).

[4]Marvelle v. State, 114 Nev. 921, 931, 966 P.2d 151, 157 (1998), overruled on other grounds by Koerschner v. State, 116 Nev. ___, 13 P.3d 451 (2000).

[5]See Townsend v. State, 103 Nev. 113, 119, 734 P.2d 705, 709 (1987).

testimony and circumstantial evidence. We therefore conclude that appellant's argument is without merit.

Having considered all of appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

Young, J.

Leavitt, J.

Becker, J.

cc: Hon. Lee A. Gates, District Judge
Attorney General
Clark County District Attorney
Edward B. Hughes
Clark County Clerk
Gary E. Gowen