

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT JOHNSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74407-COA

**FILED**

DEC 26 2018

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

*ORDER OF AFFIRMANCE*

Robert Johnson appeals from a judgment of conviction, pursuant to a jury verdict, of battery with use of a deadly weapon resulting in substantial bodily harm, robbery with use of a deadly weapon, and grand larceny auto. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

Johnson hit Johnathan Friesen in the back of the head with a metal pipe and drove away with Friesen's motorcycle.<sup>1</sup> Johnson was charged with (1) conspiracy to commit robbery, (2) burglary, (3) battery with use of a deadly weapon resulting in substantial bodily harm, (4) robbery with use of a deadly weapon, (5) grand larceny auto, and (6) bribing or intimidating witness to influence testimony. A jury found Johnson guilty on counts (3)-(6) and the district court sentenced him to an aggregate term of 66-240 months in prison. Johnson appeals his convictions on counts (3)-(5) only.

On appeal, Johnson argues that the jury lacked sufficient evidence to find him guilty beyond a reasonable doubt of battery, robbery, and grand larceny because of the inconsistent testimonies presented at trial. We disagree.

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.

In reviewing a challenge to the sufficiency of the evidence, we consider “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A conviction may be upheld even where the State’s primary evidence is the testimony of the victim, because it is the jury’s province to determine what weight and credibility to give to the evidence. See *Hutchins v. State*, 110 Nev. 103, 107, 867 P.2d 1136, 1139 (1994). Moreover, “circumstantial evidence alone may support a conviction.” *Hernandez v. State*, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002).

With respect to the convictions on appeal, the State alleged three alternative theories of criminal liability: (1) that Johnson directly committed the offenses, (2) that he aided or abetted his cohorts, and (3) that he was acting pursuant to a conspiracy. “When alternate theories of criminal liability are presented to a jury and all of the theories are legally valid, a general verdict can be affirmed even if sufficient evidence supports only one of the theories.” *Bolden v. State*, 121 Nev. 908, 913, 124 P.3d 191, 194 (2005) *receded from on other grounds by Cortinas v. State*, 124 Nev. 1013, 1026-27, 195 P.3d 315, 324 (2008).

Here, the State presented sufficient evidence for a rational jury to find that Johnson committed battery, robbery, and grand larceny auto under at least one of the State’s alternative theories. The victim, Friesen, testified at trial that Johnson arrived at his home and became irate upon learning the motorcycle Friesen was repairing for Johnson was not completed. Friesen testified that Johnson grabbed a metal pipe and began hitting things in his garage. About 20-30 minutes later, two other men joined Johnson at Friesen’s house. Friesen was talking to one of these men when he was hit

from behind with a metal pipe. Friesen testified that only Johnson was behind him at the time he was hit. When Friesen regained consciousness shortly after being hit, he saw Johnson driving away on one of his motorcycles. Additionally, Friesen's neighbor testified that he saw the altercation between Friesen and the three men. While he was not looking at Johnson the moment Friesen was struck with the metal pipe, Johnson was the only person standing behind Friesen, and he saw Friesen put the pipe down after Friesen was struck. The neighbor also saw Johnson drive away on one of Friesen's motorcycles shortly after the attack. Lastly, the jury heard a recorded phone call between Friesen and Johnson in which Friesen said he wanted his motorcycle back from Johnson and Johnson responded that he would get it back to him if Friesen agreed to tell the police someone else hit him.

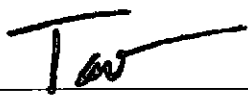
"[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness." *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975). The jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict. *See McNair*, 108 Nev. at 56, 825 P.2d at 573. Based on the record before us, we conclude the evidence was sufficient to support Johnson's convictions. Accordingly, we

ORDER the judgment of conviction AFFIRMED.



C.J.

Silver



J.

Tao



J.

Gibbons

cc: Hon. Jennifer P. Togliatti, District Judge  
Gregory & Waldo, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk