

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC LAMONT DALE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66637

FILED

FEB 17 2016

TRACIE A. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of attempted murder with the use of a deadly weapon, battery with a deadly weapon with substantial bodily harm, and discharging a firearm at or into a vehicle, and, pursuant to a court finding of guilt, of felon in possession of a firearm. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Appellant Eric Dale contends the evidence presented at trial was insufficient to support the jury's finding of guilt. Specifically, he asserts the State failed to prove that he possessed the requisite intent to commit the crimes.¹ 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,

¹Dale does not challenge the conviction for felon in possession of a firearm.

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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).

The jury heard testimony that an individual walked up to a truck while it was stopped at a red light and tried to open the passenger door. When unsuccessful in opening the door, the individual fired two shots into the truck, both of which struck the driver—one in the head and one in the arm. As the driver drove the truck across the intersection, the individual continued to hold onto the truck and fired two additional shots into the truck, neither of which struck the driver. The individual then ran to a grassy area, where he stayed for a short period of time. The individual later ran across the street to an area with a tree. A police officer contacted the individual when he was near the tree and the individual was identified as Dale. During a search of the area near the tree, a police officer found a revolver and a bag of ammunition. The entire event was captured on surveillance video and the video was shown to the jury.

The jury could reasonably infer from the evidence presented that Dale willfully and maliciously discharged a firearm into the truck, *see* NRS 202.285, he willfully and unlawfully used force against the driver that caused substantial bodily harm by shooting him in the arm, *see* NRS 200.481(1)(a), (2)(e)(2), and he intended to kill the driver when he shot him in the head with a gun, *see* NRS 193.330, NRS 200.010(1); NRS 200.020.

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, 73, 624 P.2d 20, 20 (1981); *see also McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).


Dale also contends the district court abused its discretion by limiting the testimony of his defense witnesses. Dale claims he should have been allowed to elicit testimony from his witnesses that, within a month of the event, he had told the witnesses he believed he was being followed and he believed someone had broken into his home. Dale asserts that this testimony would have highlighted his paranoia leading up to the shooting and supported his defense that he did not have the requisite intent to commit the crimes.


We review a district court's decision to admit or exclude evidence for an abuse of discretion. *Thomas v. State*, 122 Nev. 1361, 1370, 148 P.3d 727, 734 (2006).

The district court found testimony regarding Dale's behavior prior to the event was relevant and admissible. However, the district court generally limited Dale's witnesses' testimony to their observations of his behavior in the few days immediately preceding the event. Although the district court also ruled that Dale's statement to one witness that he thought he was being followed was admissible under NRS 51.105(1), Dale did not elicit this testimony from the witness. Even with the limitations imposed by the court, Dale was able to present evidence that he was acting unusual and appeared to be extremely paranoid in the days leading to the event. Having reviewed the record, we conclude the district court did not

abuse its discretion by limiting the testimony of the defense witnesses.
NRS 50.115(1).

Having concluded Dale's contentions lack merit, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elliott A. Sattler, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk