

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL MENESES,

No. 37088

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

MAR 27 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of battery with a deadly weapon. The district court sentenced appellant to a prison term of 48 to 120 months.

Appellant contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Specifically, appellant argues that the victim testified that she did not remember whether appellant beat her about the head with a broomstick, and that a broomstick should not be considered a deadly weapon. 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, at the time of the incident, the victim told police several times that appellant had struck her head with the broom. The victim suffered numerous injuries as a result of the three-hour beating, including a knot on the back of her head, lacerations to her scalp, a fractured eye socket, swollen and blackened eyes, and facial lacerations.

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

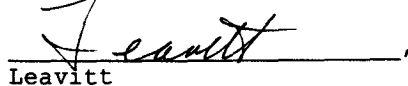
The jury could reasonably infer from the evidence presented that appellant struck the victim with the broom and that the manner in which the broom was used rendered it readily capable of causing substantial bodily harm.² It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.³

Having considered appellant's contention and concluded it is without merit, we

ORDER the judgment of conviction AFFIRMED.


Shearing J.


Agosti J.


Leavitt J.

cc: Hon. Janet J. Berry, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk

²See *Zgombic v. State*, 106 Nev. 571, 574, 798 P.2d 548, 549-50 (1990) (a deadly weapon is defined by the functional test where the deadly weapon is an element of the crime).

³See *Bolden v. State*, 97 Nev. 71, 624 P.2d 20 (1981).