

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SEQUOYAH WALKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79940-COA

FILED

SEP 16 2020

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

ORDER OF AFFIRMANCE

Sequoyah Walker appeals from a judgment of conviction, pursuant to a jury verdict, of robbery and burglary. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

Walker entered a Wells Fargo Bank, approached Lizeth Horta, who was working at a teller window, and flashed her a note with a written message stating "wearing explosives" and demanding "50s, 100s, and 20s."¹ When Horta realized she was being robbed, she ducked down and yelled that she was being robbed. Walker directed her to stand up and comply or else he was going to make the explosive go "boom." The bank manager, Xochilo Hernandez, instructed Horta to comply with the robber's demands. Horta stood up, pulled all the cash from her drawer, amounting to \$493, and handed the money to Walker. When Walker demanded more money, Horta offered him the remaining coins in her drawer, which Walker declined. Walker left Wells Fargo with the \$493, heading in the direction of a nearby Albertson's Grocery Store.

As police officers interviewed witnesses and gathered surveillance footage, a plumber, Brian Mizanskey, who had been repairing a plumbing problem in Albertson's communal men's restroom, saw the police activity in the parking lot and approached the police to inquire about what

¹We do not recount the facts except as necessary to our disposition.

had happened. Police told Mizanskey that someone had robbed the Wells Fargo and showed him a surveillance image of the robber. Mizanskey told police that he recognized the clothing the man was wearing because he had just discovered the same hat, gray sweatshirt, and pants in the trashcan in the Albertson's restroom. He also said, despite placing cones to block off public access to the restroom, he discovered a person, whom he believed to be a vagrant person, had occupied one of the stalls. Mizanskey added that he had misplaced his cellphone so he searched the trashcan, thinking that he might have accidentally disposed of it, only to discover the clothing instead. After giving his statement to police, Mizanskey submitted a DNA sample.

Detectives immediately collected the clothing from the Albertson's trashcan. The clothing included an XXL gray sweatshirt, black Dickey's pants, a pair of sunglasses, and a hat with "Telecris" across the front. Detectives also recovered surveillance footage from Albertson's that showed a man matching the physical and clothing description of the suspect walking into Albertson's at around 1:17 p.m. Minutes later, at 1:25 p.m., surveillance footage shows the same individual shopping in Albertson's and leaving with a bag, wearing an orange and yellow striped shirt and blue jeans. Notably, the Albertson's surveillance videos show that despite the suspect removing his hat and sunglasses and changing his shirt and pants, he wore the exact same pair of sneakers with thick black laces.

The investigation led the police to an initial suspect who matched the description of the robber, but who, after questioning, was determined to probably not be the robber. Officers requested and obtained a DNA sample from him, which excluded him as the robber.

The investigation stalled, but around seven months after the incident detectives received a lead connecting Walker to the crime. Detectives then administered a photo lineup to Hernandez, the bank manager working

at the time of the incident, who identified Walker's photo as the person who robbed the bank. She claimed that the photo of Walker caught her "attention because his jaw line was very structured, his lips defined shape and nose." In a two-count indictment, the State charged Walker with burglary and robbery.

The case proceeded to a two-day jury trial during which the State presented the testimony of Hernandez, Horta, Mizanskey, various investigating detectives, Tiffany Adams (the police department forensic DNA scientist), as well as another eyewitness from the bank. Adams testified that Walker's DNA profile matched the full major DNA profile on the gray sweater and black pants, and that the hat also contained a partial major profile matching Walker's DNA profile. Although she noted that other unknown male DNA profiles were discovered on some of the collected items, Adams confirmed that the major DNA profile on the sweater and pants matched Walker's DNA profile.²

The jury convicted Walker of both counts and the district court sentenced Walker under the habitual sentencing statute to a term of 10 to 25 years for each offense to run concurrently.

On appeal, Walker argues that substantial evidence does not support his burglary and robbery convictions because detectives were unable to collect fingerprints linking him to Wells Fargo and Hernandez lacked the ability to accurately identify him as the robber in the photo lineup seven months after the crime. Walker further contends that the DNA collected from the various pieces of clothing is unreliable because the DNA specialist improperly used only one swab per article of clothing, and two other unknown male DNA profiles were found on certain articles of clothing. We disagree.

²Adams also testified that the DNA samples from Mizanskey and the initial suspect were not identified on any of the collected clothing.

We will not reverse a jury's verdict on appeal if that verdict is supported by substantial evidence. *Moore v. State*, 122 Nev. 27, 35, 126 P.3d 508, 513 (2006). "There is sufficient evidence if the evidence, viewed in the light most favorable to the prosecution, would allow any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt." *Leonard v. State*, 114 Nev. 1196, 1209-10, 969 P.2d 288, 297 (1998). Conversely, evidence is insufficient when "the prosecution has not produced a minimum threshold of evidence upon which a conviction may be based, even if such evidence were believed by the jury." *Evans v. State*, 112 Nev. 1172, 1193, 926 P.2d 265, 279 (1996) (emphasis omitted) (internal quotations omitted). The jury's role as the fact-finder is to "resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); see also *Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) ("[I]t is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of the witnesses." (quoting *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992))).

Here, the State presented the jury with surveillance videos from Wells Fargo and Albertson's, still shots from the surveillance videos, and Hernandez's identification of Walker in a photo lineup. Further, DNA specialist Adams identified Walker's DNA profile as the full major DNA profile on the sweatshirt and pants and a partial major DNA profile on the hat. Based on all of this, the jury could have reasonably concluded that Walker was the robber. See *Origel-Candido*, 114 Nev. at 381, 956 P.2d at 1380.

Although Walker argues that the State failed to prove every element of the crimes, the jury could have concluded that Walker committed robbery when he approached Horta's station and showed her a note with a

demand and a bomb threat in order to obtain the \$493 in the register. See NRS 200.380(1) (defining "robbery" as "the unlawful taking of personal property from the person of another . . . against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person . . . or of anyone in his or her company at the time of the robbery"). The existence of the bomb threat, evidently written before Walker entered the premises, supports the jury's conclusion that Walker possessed the necessary intent when he entered the bank to commit the robbery. See NRS 205.060 ("[A] person who, by day or night, enters any . . . shop, warehouse, store . . . or other building . . . with the intent to commit grand or petit larceny, assault or battery on any person or any felony, or to obtain money or property by false pretenses, is guilty of burglary."). Viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could find Walker guilty of burglary and robbery beyond a reasonable doubt.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. David M. Jones, District Judge
Sandra L. Stewart
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk