

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AGERE WORKENEH HAILU,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85147-COA

FILED

MAY 10 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

Agere Workeneh Hailu appeals from a judgment of conviction entered pursuant to a jury verdict of battery with use of a deadly weapon and assault with use of a deadly weapon. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

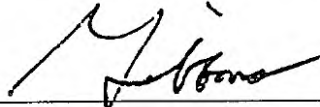
Hailu argues that insufficient evidence supports his convictions because the victim's description of the offenses was inconsistent with the victim's lack of injuries. When reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the prosecution and 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); accord *Mitchell v. State*, 124 Nev. 807, 816, 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).

The victim testified he was doing landscaping work for a furniture business when Hailu attacked the victim with a piece of rebar approximately four feet long. Hailu tried multiple times to hit the victim on the head, but the victim was able to block the attacks, resulting in strikes


to the victim's hands and wrists. Hailu and the victim struggled for control of the rebar and ended up on the ground. Hailu then pulled out a knife, tried to stab the victim, and told the victim he was going to kill him. While the victim and Hailu struggled over the knife, the victim's coworker ran over, saw Hailu with the knife, and assisted the victim in disarming Hailu. The victim explained that he had no marks from the attacks because he was only hit on his hands and wrists and was wearing work gloves. The victim testified he thought he was going to die during the knife attack.

Based on this testimony, any rational juror could have found beyond a reasonable doubt that Hailu committed battery with the use of a deadly weapon by striking the victim with the rebar. *See* NRS 200.481(1)(a) (defining battery); *see also Rodriguez v. State*, 133 Nev. 905, 909, 407 P.3d 771, 774 (2017) (defining "deadly weapon"). Any rational juror also could have found beyond a reasonable doubt that Hailu committed assault with a deadly weapon by trying to stab the victim with a knife and threatening to kill him. *See* NRS 200.471(1)(a),(2)(b) (prohibiting assault with the use of a deadly weapon). Therefore, we conclude Hailu is not entitled to relief, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Crystal Eller, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk