


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HASAN MALIK DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88543-COA

FILED
APR 09 2025
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Hasan Malik Davis appeals from a judgment of conviction, entered pursuant to a jury verdict, of robbery of a person 60 years of age or older. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Davis argues the district court erred by denying his motion to set aside the jury verdict and enter a judgment of acquittal based on insufficient evidence. Davis contends the State failed to present sufficient evidence that he committed a taking of the victim's property by force, violence, or fear of immediate or future injury. Davis also argues that the district court utilized an incorrect test to evaluate his motion to set aside the jury verdict and enter a judgment of acquittal.

Where there is insufficient evidence to support a conviction, the trial judge may set aside a jury verdict and enter a judgment of acquittal. NRS 175.381(2). The evidence to support a conviction is insufficient if "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) (quotation marks omitted). "Because the district court decides a motion for a judgment

of acquittal under NRS 175.381(2) based on a sufficiency of the evidence standard, appellate review of an order denying such a motion is in essence the same as a review of the sufficiency of the evidence.” *Kassa v. State*, 137 Nev. 150, 152, 485 P.3d 750, 755 (2021) (internal citations and quotation marks omitted). 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). “Circumstantial evidence may constitute the sole basis for a conviction.” *Washington v. State*, 132 Nev. 655, 661, 376 P.3d 802, 807 (2016) (quotation marks omitted).

At trial, the victim in this matter testified that he purchased beer and then proceeded to a local park. The victim also testified that he recently obtained his rent money and had various personal items in his possession, including his identification and other cards containing his name. The victim stated that those items were either on his person or in his walker. The victim also testified that he wore a lanyard that displayed his identifying information so that he could easily present that information if necessary. The victim testified that he was seated and noticed a large Black man approach him. The victim testified that he was thereafter physically attacked but he was unclear of the details after he was approached and struck by the aforementioned person. The victim sustained

injuries as a result of the attack, including bleeding from his head and nose, and was later transported to a hospital for treatment.

A firefighter testified that he received a report of an incident at a park and that he drove a fire engine to the park in response. Upon arriving in his vehicle, the firefighter viewed three individuals. One was in a seated position and two others were standing near him. The firefighter viewed one of the standing individuals, who the firefighter described as a large African American man, punching the person that was seated, later identified as the victim in this matter. The firefighter turned on the fire engine's sirens and, as a result, the two individuals left the victim. One person fled the scene away from the fire engine but the second, the same person that had been hitting the victim, walked toward the fire engine. That man, who the firefighter identified at trial as Davis, walked closely in front of the fire engine and the firefighter was able to get a clear view of him. The firefighter thereafter parked the fire engine and the other members of the fire engine crew provided aid to the victim of Davis's attack.

Police officers arrived very soon after the firefighter and they detained Davis. They ultimately placed Davis under arrest and an officer conducted a search of Davis incident to the arrest. The officer explained that he searched Davis and discovered various items in Davis's pockets. Those items included a lanyard, the victim's Nevada identification card, and other items containing the victim's information. In addition, the search revealed a wallet and money held in a clip. At trial, the victim reviewed photographs of the items recovered during the search and testified that those items belonged to him. The victim also testified that he was more than 60 years of age when the incident occurred.

On these facts, a rational trier of fact could conclude that Davis committed robbery of a person 60 years of age or older. *See* NRS 193.167(1); NRS 200.380(1). The victim's testimony concerning his property and that he had been in possession of that property prior to the attack, together with the firefighter's affirmative identification of Davis as the person he viewed hitting the victim and the discovery of the victim's property in Davis's possession shortly after the attack, when viewed in the light most favorable to the State, was sufficient for the jury to conclude Davis unlawfully took the victim's personal property from him or in his presence by means of force or violence. *See* NRS 200.380(1). While Davis contends there was insufficient evidence that he took the victim's property through the use of force or violence, the aforementioned information provided sufficient evidence, both direct evidence of the use of force, and circumstantial evidence that Davis came into possession of the victim's property as a result of the attack, to support the conviction. Further, circumstantial evidence alone is sufficient to sustain a conviction. *See Washington*, 132 Nev. at 661, 376 P.3d at 807; *Buchanan v. State*, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003) ("Circumstantial evidence alone can certainly sustain a criminal conviction."). 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).

Turning to Davis's contention that the district court utilized an incorrect test to evaluate his motion to set aside the jury verdict and enter a judgment of acquittal, we conclude his argument lacks merit. Davis asserts the proper test for his motion should be whether a rational trier of fact could have properly found a defendant guilty. Davis further argues

that the district court erroneously relied on the jury's finding of guilt in this matter to find that a rational trier of fact could have found the elements of robbery were proven beyond a reasonable doubt in this matter.


In its order, the district court stated the following: "On review [of a motion to set aside the jury verdict and enter a judgment of acquittal], one must determine if *any* rational trier of fact could have found the elements beyond reasonable doubt." The court also noted that it was required to review the evidence in the light most favorable to the prosecution. This was the appropriate test for a district court's review of a motion to set aside the jury verdict and enter a judgment of acquittal. See *Kassa*, 137 Nev. at 152, 485 P.3d at 754 ("NRS 175.381(2) sets a high bar—if the record contains evidence on which any rational juror might convict, then its demanding standard is not met."); see also *Jackson*, 443 U.S. at 319 (stating the test for reviewing the sufficiency of the evidence). We also conclude the district court did not erroneously rely on the jury's finding of guilt in this case when it evaluated Davis's motion, as it specifically explained which facts presented at trial supported its decision to deny the motion and it did not simply rely upon the jury's finding of guilt.

In addition, the district court noted that, while there had been direct evidence of Davis hitting the victim and that Davis was later found to be in possession of the victim's property, there had not been direct evidence presented of Davis taking the victim's property. However, the court found that the circumstantial evidence could lead a rational trier of fact to conclude that Davis was guilty of robbery. This circumstantial evidence included the aforementioned testimony from the firefighter identifying Davis as the person that he viewed hitting the victim and the victim's property discovered in Davis's possession shortly after the

unprovoked attack. In light of the foregoing, we conclude Davis fails to demonstrate that the district court erred by denying his motion to set aside the verdict and enter a judgment of acquittal.¹ Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

¹We note that during trial, the district court expressed concern as to the sufficiency of the evidence presented. The district court accordingly instructed the jury, pursuant to NRS 175.381(1), "When the Court deems the evidence insufficient to warrant a conviction of an offense charged, it may advise the jury to acquit the Defendant of that charge, but the jury is not bound by such advice. In this case, I advise the jury to acquit the Defendant of Count 1: Robbery of a Person 60 Years of Age or Older, a violation of NRS 200.380 and NRS 193.167, a category B Felony." The jury did not follow the district court's advice and found Davis guilty. After the jury issued its verdict, Davis moved the district court to set aside the jury verdict and to enter a judgment of acquittal but the district court denied that motion. And, for the reasons discussed previously, we conclude the district court did not err by denying the motion to set aside the jury verdict and enter a judgment of acquittal.

cc: Hon. Egan K. Walker, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk