

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID TURNER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39166

FILED

OCT 08 2002

ORDER OF AFFIRMANCE

JANETTE L. FLORES  
CLERK OF SUPREME COURT  
BY *J. Richard*  
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of battery with the use of a deadly weapon with substantial bodily harm (count II), three counts of battery with the use of a deadly weapon (counts III-V), one count of assault with the use of a deadly weapon (count VI), and two counts of burglary while in possession of a deadly weapon (counts VII and IX).<sup>1</sup> The district court sentenced appellant David Turner to serve a prison term of 72 to 180 months for count II, three consecutive prison terms of 24 to 72 months for counts III-V, a consecutive prison term of 12 to 36 months for count VI, a concurrent prison term of 24 to 120 months for count VII, and a concurrent prison term of 24 to 120 months for count IX.

Turner's convictions arose from an incident occurring on January 23, 2000. On that day, Ronald Parker, his wife, his daughter Traci, and Traci's two children stopped at Albertson's to purchase groceries. As Ronald exited his vehicle to go into the store, he observed a vehicle driven by Turner, Traci's estranged husband, hit Ronald's vehicle

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<sup>1</sup>Appellant was acquitted of attempted murder with the use of a deadly weapon (count I) and mayhem (count VIII).

then occupied by his wife, his daughter, and his two grandchildren. As Ron walked to the rear of the vehicle, Turner threw a large rock at him. Meanwhile, Traci exited the vehicle and ran towards the Albertson's. According to Traci, Turner caught her after she entered the first of two sets of doors of the Albertson's and began stabbing her. Traci and Turner then spilled into the Albertson's store, where Turner sliced Traci's face. Eventually, Turner discarded the knife and left the store.

Turner first contends that the State adduced insufficient evidence to sustain his conviction for assault with a deadly weapon because the evidence shows that he threw the rock past Ronald, rather than at him. We conclude that Turner's contention lacks merit.

When reviewing a claim of insufficient evidence, the relevant inquiry is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."<sup>2</sup> Further, "it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses."<sup>3</sup>

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. In particular, Ronald testified that he observed Turner throw a rock at him and that he thought the rock would hit him. Additionally, Traci testified that she observed Turner throw the rock at Ronald. We

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<sup>2</sup>Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)) (emphasis in original omitted).

<sup>3</sup>McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

conclude the jury could reasonably infer from the evidence presented that Turner assaulted Ronald, placing him in reasonable apprehension of bodily harm, by throwing a large rock at him.<sup>4</sup> 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.<sup>5</sup>

Turner also contends that there was insufficient evidence to sustain his conviction for the burglary count involving Albertson's because he did not voluntarily and intentionally enter the store. Specifically, Turner contends that he began the attack on Traci outside the Albertson's, and "his entrance into the store was a function of the automatic doors he was on opening up and spilling both he and [his estranged wife] into the store." We conclude that Turner's contention lacks merit.

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. In particular, Traci testified that Turner chased her through the first of two doors into the Albertson's, and then pushed her through the second set of doors into the store, where he proceeded to attack her with a knife. Additionally, several eyewitnesses testified that Traci ran into the store before Turner caught up with her. For example, one eyewitness Anthony Eager, who was inside the store, observed Turner stab Traci in the face while she was inside the store. We conclude the jury could reasonably infer from the evidence presented that Turner entered the Albertson's with the intent to commit a felony; namely, to attack Traci

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<sup>4</sup>See NRS 200.471(1)(a).


<sup>5</sup>See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981).

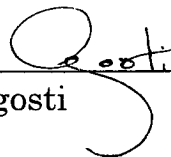
with a knife.<sup>6</sup> It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.<sup>7</sup>

Having considered Turner's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

cc: Hon. Donald M. Mosley, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Clark County Clerk

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<sup>6</sup>See NRS 205.060(1).

<sup>7</sup>See Bolden, 97 Nev. 71, 624 P.2d 20.