

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY TOBY FRANCIOSI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39403

FILED

AUG 21 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one felony count of battery causing substantial harm, victim 65 years of age or older (count I), and one gross misdemeanor count of preventing or dissuading person from testifying or producing evidence (count III).¹ The district court sentenced appellant Anthony Toby Franciosi to serve a prison term of 60-240 months for count I and a concurrent jail term of 12 months for count III. Franciosi was given credit for 323 days time served.

Franciosi contends the State adduced insufficient evidence at trial to sustain his conviction for battery causing substantial bodily harm. More specifically, Franciosi argues there was insufficient evidence for the jury to conclude that the victim, his 71-year old mother, suffered substantial bodily harm as a result of the attack. We disagree with Franciosi's contention.

When reviewing a claim of insufficient evidence, the relevant inquiry is "whether, after viewing the evidence in the light most favorable

¹The second amended criminal information filed also charged Franciosi with attempted murder, victim 65 years of age or older (count II); the jury found him not guilty of this charge.

to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”² 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.”³ In other words, a jury “verdict will not be disturbed upon appeal if there is evidence to support it. The evidence cannot be weighed by this court.”⁴ We also note that “[c]ircumstantial evidence alone may sustain a conviction.”⁵

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. The district court instructed the jury as follows:

As used in these instructions, “substantial bodily harm” means:

1. Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ;
or
2. Prolonged physical pain.

(Emphasis added.) The evidence presented by the State indicated that the victim experienced prolonged physical pain. Franciosi attacked his mother after she tried to evict him from the shed on her property where he

²Koza 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).

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

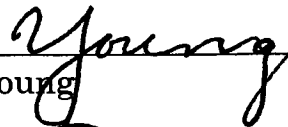
⁴Azbill v. State, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972); see also Nev. Const. art. 6, § 4; NRS 177.025.


⁵McNair, 108 Nev. at 61, 825 P.2d at 576.


was living with his girlfriend. Franciosi pushed his mother to the ground, sat on top of her, placed his hands over her face, and repeatedly threatened to kill her. As she tried to free herself, Franciosi punched her in the head. Eventually, at the urging of Franciosi's girlfriend, he released his mother but then kicked her twice, breaking her ribs. The victim's face was bloody, and her facial bruises lasted approximately 2-3 weeks before healing; the broken ribs took approximately 3 months to heal. Franciosi's mother testified that the recovery from her son's attack was a long and painful process. Therefore, we conclude that the State presented sufficient evidence to sustain Franciosi's conviction for battery causing substantial bodily harm.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Jeffrey D. Sobel, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk