

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCUS ALLEN WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40508

FILED

APR 09 2003

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 two counts of attempted robbery. The district court sentenced appellant Marcus Allen Williams to serve two concurrent prison terms of 12-36 months, and ordered that the two prison terms be served consecutively to the sentence imposed in district court case no. C184586.

Williams contends that the State adduced insufficient evidence at trial to sustain his conviction beyond a reasonable doubt. Williams argues that there was no evidence to prove that he, and not his twin brother, committed the crime. In a related argument, Williams claims that the State used an overly suggestive photo line-up for eyewitness identification purposes. We conclude that Williams' contentions are without merit.

First, we note that Williams did not object to either the pretrial identification procedures or during trial to witness testimony regarding his identification. This court has stated that counsel's failure to timely object to an allegedly suggestive photo line-up waives the issue for appellate review.¹ Therefore, we will not address this issue.

Second, our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a

¹See Lovell v. State, 92 Nev. 128, 132, 546 P.2d 1301, 1304 (1976) (citing Rodriguez v. State, 91 Nev. 782, 542 P.2d 1065 (1975)).

rational trier of fact. In particular, we note that one of the victims testified at trial that while playing video games in his apartment, a black man "came in with a gun with a red rag over his face and told us [the two victims] to give him all our money." Williams held the two victims at gunpoint for approximately five minutes, all of the lights were on in the apartment, and the victim was able to clearly notice Williams' eyes. A friend of the victims then returned to the apartment, and upon seeing Williams holding them at gunpoint, grabbed Williams from behind and dragged him outside. The victim was able to notice Williams' corn-row hairstyle after his friend attacked him and his hat fell off. Williams, meanwhile, screamed for help and two accomplices came to the scene. One of the victims testified that he confronted one of the accomplices and punched him in the face. The accomplice who was punched was the same size and shape as the one with the gun, but he had "just a plain, short haircut." The three assailants eventually fled from the scene leaving the gun behind, and without having stolen any money. Two days later, one of the victims was able to pick Williams out of a photo line-up, stating, "Cause soon as I looked at it, I remember those eyes."


Detective Michael Wilson of the Las Vegas Metropolitan Police Department also testified at trial. Detective Wilson stated that the victims were able to give a description of the assailant with the gun, and the description would later prove to accurately describe Williams. Additionally, Detective Wilson testified that soon after arriving at the scene of the crime, he was confronted by a witness who knew Williams and told him that he saw Williams enter the victims' apartment carrying a gun. Therefore, based on all of the above, we conclude that sufficient evidence was presented for a rational trier of fact to conclude beyond a

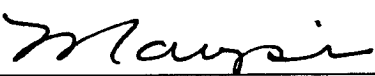
reasonable doubt that Williams committed the crime of attempted robbery.²

Finally, Williams contends that the jury “disregarded their duty and ignored the instructions” of the district court because the evidence presented at trial indicated that a greater crime was committed, namely, attempted robbery with the use of a deadly weapon. Williams has not provided any support for this argument. Moreover, this court has stated that “where a jury relieves a defendant of punishment for a greater offense . . . and convicts him of a lesser included offense . . . the jury may have adopted its conclusion as an act of clemency. In such a case, the defendant cannot complain because the error does him no harm.”³ Therefore, we conclude that Williams’ contention is without merit.

Having considered Williams’ contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

²See Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984).

³Cunningham v. State, 113 Nev. 897, 909, 944 P.2d 261, 268 (1997) (quoting Brinkman v. State, 95 Nev. 220, 224, 592 P.2d 163, 165 (1979)) (citations omitted).

cc: Hon. Valorie Vega, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk