

IN THE SUPREME COURT OF THE STATE OF NEVADA

MURRAY JOSEPH MACHADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41970

FILED

FEB 10 2004

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 count of robbery with the use of a deadly weapon. The district court sentenced appellant to a prison term of 24 to 60 months, with an equal and consecutive term for the use of a deadly weapon.

Appellant contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.¹

In particular, we note that evidence was adduced at trial that appellant entered a market and took a bottle of tequila without paying for it. A store employee followed appellant out of the market and asked him to return to the store. Appellant began running, but stumbled and fell. The bottle came out of appellant's pocket and landed on the ground unbroken. Appellant stood up and swung a six-inch knife at the employee,

¹See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

who backed away from appellant. Appellant then picked up the bottle of tequila and ran away.

NRS 200.380(1) defines robbery, in pertinent part, as:

[T]he unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. A taking is by means or force or fear if force or fear is used to:

- (a) Obtain or retain possession of the property;
- (b) Prevent or overcome resistance to the taking; or
- (c) Facilitate escape.

The degree of force used is immaterial if it is used to compel acquiescence to the taking of or escaping with the property.

The jury could reasonably infer from the evidence presented that appellant brandished the knife to retain possession of the tequila and facilitate his escape with the tequila.² It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict


²See Martinez v. State, 114 Nev. 746, 748, 961 P.2d 752, 754 (1998) (holding that "where force is used only to facilitate escape, the use of force must be subsequent to a taking by force or fear, or used to compel acquiescence to the escaping with the property in order to constitute the crime of robbery").


will not be disturbed on appeal where, as here, substantial evidence supports the verdict.³

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Janet J. Berry, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

³See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).