IN THE SUPREME COURT OF THE STATE OF NEVADA

HORACE CALVIN HOUSTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42011

HORACE CALVIN HOUSTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42046

FILED

AUG 2 7 2004

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

ORDER OF AFFIRMANCE

These are consolidated appeals from a judgment of conviction pursuant to a jury verdict. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

Appellant was convicted of one count of first degree kidnapping with the use of a deadly weapon, one count of second degree kidnapping with the use of a deadly weapon, two counts of robbery with the use of a deadly weapon, one count of invasion of the home while in possession of a deadly weapon, one count of burglary while in possession of a deadly weapon, and one count of conspiracy to commit robbery and/or kidnapping. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole after 60 months for first degree kidnapping with the use of a deadly weapon, two consecutive terms of 35 to 156 months for second degree kidnapping with the use of a deadly weapon, two consecutive terms of 72 to 180 months for each count of robbery with the use of a deadly weapon, one term of 35 to 156 months for invasion of the home while in possession

of a deadly weapon, one term of 35 to 156 months for burglary while in possession of a deadly weapon, and one term of 13 to 60 months for conspiracy to commit robbery and/or kidnapping. The terms for each count were imposed to run concurrently.

Appellant first contends that the evidence presented at trial was insufficient to support the jury's finding of guilt for the deadly weapon enhancements. Specifically, appellant argues that a jury could not have reasonably determined that a box cutter constitutes a deadly weapon. Appellant relies on the "inherently dangerous" test set forth in Zgombic v. State[1] and this court's holding in Collins v. State[2] that an exacto knife is not a deadly weapon. However, in 1995, NRS 193.165 was amended to include both a functional and an "inherently dangerous" definition of "deadly weapon,"[3] overruling both Zgombic and Collins.

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.[4] In particular, we note that one of the victims, Silvia, testified that when they entered her residence, some of the assailants had "switch blades." Silvia and two other victims, Francisco and Emelida, also testified that their assailants held knives to their neck or back when moving them through the residence, searching the residence and taking

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[1]106 Nev. 571, 798 P.2d 548 (1990).

[2]111 Nev. 56, 888 P.2d 926 (1995).

[3]See 1995 Nev. Stat., ch. 455, §1, at 1431.

[4]See Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

their possessions. It is for the jury to determine the weight and credibility to give testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.[5] The jury could reasonably infer from the evidence presented that appellant possessed or used a deadly weapon as presently defined by NRS 193.165 when committing the crimes he was convicted of. Accordingly, we reject appellant's challenge to the sufficiency of the evidence supporting the deadly weapon enhancements.

Appellant next contends that the evidence presented at trial was insufficient to support the jury's finding of guilt on the charge of first degree kidnapping of Silvia. Appellant specifically contends that the kidnapping conviction is improper because the kidnapping was incidental to the robbery.

A separate conviction of first degree kidnapping will lie if the movement of the victim is not incidental to the associated offense and there is an increased risk of harm beyond that necessarily present in the associated offense.[6] 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.[7] In particular, Silvia testified that she was immediately separated from the only adult male in the apartment and forcibly moved to the back of the apartment. Silvia also testified that on

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[5]See 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).

[6]See Wright v. State, 94 Nev. 415, 581 P.2d 442 (1978).

[7]See Wilkins, 96 Nev. at 374, 609 P.2d at 313; see also Origel-Candido, 114 Nev. at 381, 956 P.2d at 1380.

several occasions she was forcibly moved with a knife held to her throat. Additionally, Silvia testified that she was moved from the bathroom to her son's room where a man searched her by putting his hands up her shirt and inside her bra. The jury could reasonably infer from the evidence presented that appellant kidnapped Silvia because the multiple movements at knifepoint increased the risk of harm to Silvia. Accordingly, we reject appellant's challenge to the sufficiency of the evidence supporting the conviction for first degree kidnapping.

Finally, appellant contends that the evidence presented at trial was insufficient to support the jury's finding of guilt on the charge of second degree kidnapping of Emelida. Appellant again contends that the kidnapping conviction is improper because the kidnapping was incidental to the robbery.

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.[8] Because the defendants were not charged with the associated offense of robbery against Emelida, the jury need only have found that Emelida was forcibly moved in order to find appellant guilty of second degree kidnapping of Emelida.[9] Nonetheless, Emelida testified that one or more men repeatedly moved her throughout the apartment while holding a knife to her neck. Even under the standard enunciated in

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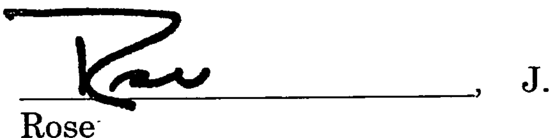
[8]See Id.

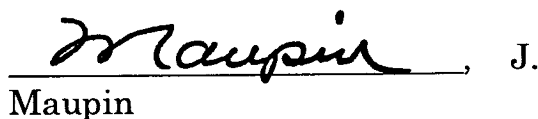
[9]See Langford v. State, 95 Nev. 631, 638, 600 P.2d 231, 236 (1979) (holding that "where the kidnapping charge stands alone, '[i]t is the *fact*, not the *distance* of forcible removal of the victim that constitutes kidnapping'") (quoting Jensen v. Sheriff, 89 Nev. 123, 125-26, 508 P.2d 4, 5 (1973)).

Wright, the jury could reasonably infer from the evidence presented that appellant kidnapped Emelida. Accordingly, we reject appellant's challenge to the sufficiency of the evidence supporting the conviction for second degree kidnapping.

Having concluded that appellant's contentions lacks merit, we ORDER the judgment of conviction AFFIRMED.[10]



_______________________, J.
Rose



_______________________, J.
Maupin

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Douglas

cc: Hon. Joseph T. Bonaventure, District Judge
Mueller & Associates
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[10]When reviewing this appeal, this court relied on the trial transcripts filed in Docket No. 42067, a direct appeal brought by one of appellant's co-defendants.