

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH A. DIMEGLIO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42116

FILED

APR 26 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. The district court adjudicated appellant Joseph A. Dimeglio as a habitual criminal and sentenced him to serve a prison term of 60-240 months.

Dimeglio contends that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt of robbery. Dimeglio argues that his taking of approximately \$20.00 from a tip jar "was wholly unrelated to any force or threat of force," as required by NRS 200.380(1).¹ We disagree with Dimeglio's contention.

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational

¹NRS 200.380(1) defines robbery 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.

trier of fact.² In particular, we note that Dimeglio lied about his identity, stating that he was “Tony Gambino,” allegedly the building owner’s son, in order to gain access to the non-public area of the Cobalt Bar for the purpose of conducting an inventory. When the bartender realized that he, in fact, did not know Dimeglio, he asked Dimeglio to return to the public area of the bar, and Dimeglio refused. The bartender attempted to verify Dimeglio’s identity, but Dimeglio, a much larger man than the bartender, physically removed the telephone from the bartender’s hand and told the bar manager to call back in ten minutes. Dimeglio proceeded to question the bartender about the money on the premises. When the bartender had the opportunity, he tried again to telephone the bar manager, and he testified that Dimeglio then “pushed me up against the walk-in fridge and told me I was starting to fucking piss him off.” Within a few minutes, the telephone rang and the bartender was able to tell the bar manager to come to the bar. Dimeglio, meanwhile, headed towards the front of the bar, took approximately \$20.00 from the bartender’s tip jar, and exited the premises. The bartender testified at trial that he never believed that Dimeglio was the owner’s son, and that throughout the ordeal, he was scared and did whatever Dimeglio told him.


Based on the above, we conclude that the jury could reasonably infer from the evidence presented that Dimeglio committed the crime of robbery. 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

²See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

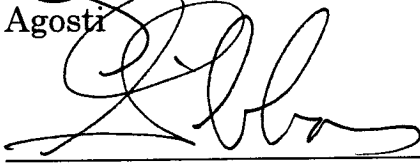
appeal where, as here, sufficient evidence supports the verdict.³ We also note that circumstantial evidence alone may sustain a conviction.⁴ Dimeglio used intimidation, fear, and the threat of violence to effectuate the robbery. As this court stated in Leonard v. State, “a robbery may be shown where a defendant simply takes advantage of the terrifying situation [he or she] created and flees with the victim’s property.”⁵ Therefore, we conclude that the State presented sufficient evidence to sustain the conviction.

Accordingly, having considered Dimeglio’s contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

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

⁴See Buchanan v. State, 119 Nev. ___, ___, 69 P.3d 694, 705 (2003).

⁵117 Nev. 53, 77, 17 P.3d 397, 412 (2001) (internal quotation marks and citations omitted).