

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMUEL JAMERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42206

FILED

MAY 06 2004

ORDER OF AFFIRMANCE

JANETTE M. WOODS
CLERK OF SUPREME COURT
BY *J. Ruben*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of assault with a deadly weapon. The district court sentenced appellant Samuel Jamerson to serve a prison term of 24 to 60 months.

Jamerson first contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. In particular, Jamerson contends that there was no evidence presented that he used a knife to place the victim in reasonable apprehension of immediate bodily harm. 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 the victim testified that Jamerson argued with her while he was holding a knife. Additionally, a restaurant employee testified that the victim asked her to call 9-1-1 because Jamerson had threatened to stab the victim and her children. Although arguably the victim's testimony about the specific nature of the

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).

threats was inconsistent, 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 appeal where, as here, substantial evidence supports the verdict.²

Jamerson also contends that reversal of his conviction is warranted because the jury was given an improper deadly weapon instruction. In particular, Jamerson notes that the jury was instructed as if the deadly weapon was an enhancement, pursuant to NRS 193.165, rather than under the functional test, which is used when a deadly weapon is an element of the crime.³ We decline to consider Jamerson's contentions.

At trial, Jamerson neither objected to the deadly weapon jury instruction nor proffered an alternative one. This court has repeatedly held that the failure to object to a jury instruction precludes appellate review.⁴ We conclude that the giving of the jury instruction at issue did not result in plain or constitutional error, and thus a review of Jamerson's claim is precluded by his failure to object.

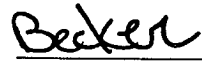
²See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

³See Zgombic v. State, 106 Nev. 571, 574, 798 P.2d 548, 550 (1990) (recognizing that the "functional test" is used to define a deadly weapon when it is an element of a crime).

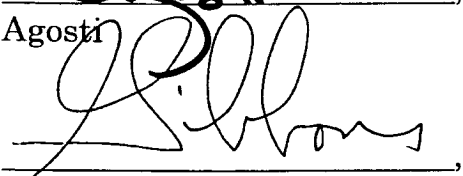
⁴See Etcheverry v. State, 107 Nev. 782, 784-85, 821 P.2d 350, 351 (1991); McCall v. State, 91 Nev. 556, 540 P.2d 95 (1975); Clark v. State, 89 Nev. 392, 513 P.2d 1224 (1973).

Having considered Jamerson's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

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