

IN THE SUPREME COURT OF THE STATE OF NEVADA

JARED JAMES CONKLIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42528

FILED

OCT 19 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of three counts of battery by a prisoner who is in lawful custody, a violation of NRS 200.481(2)(f). Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge. The district court sentenced appellant Jared James Conklin to serve three concurrent prison terms of 24 to 60 months.

Conklin contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Citing to Dumaine v. State,¹ Conklin argues that he was not a prisoner, as defined by NRS 200.481(2)(f), because during the altercation with police officers he had neither submitted to arrest nor was under their physical control. We conclude that Conklin's contention lacks merit.

In Dumaine, this court defined the "prisoner" element of the offense of battery by a prisoner, explaining that a "prisoner" is a person

¹103 Nev. 121, 734 P.2d 1230 (1987) (holding that a defendant who battered a police officer as he attempted to handcuff him could not be convicted of battery by a prisoner because he was not under the arresting officer's physical control at the time of the battery).

"deprived of his liberty and kept under involuntary restraint."² Therefore, in order to be convicted of the offense of battery by a prisoner, the State must present some evidence that at the time the battery occurred, the defendant had either submitted to the police officer's authority or was captured, *i.e.*, held in "actual physical control."³

Our review of the record on appeal reveals sufficient evidence to establish that Conklin was a prisoner as defined in Dumaine.⁴ In particular, the jury could reasonably infer from the police officers' testimony that Conklin was under their actual physical control at the time the batteries occurred. At trial, several police officers testified that, when the batteries were committed, Conklin was handcuffed, physically restrained, and being led or carried to a police transport van. Moreover, at least one police officer testified that, although Conklin was combative, he was never out of the police officers' physical control. Although Conklin argues that he struggled with the police officers preventing them from obtaining actual physical control, 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.⁵

²Id. at 125, 734 P.2d at 1233.

³Id.

⁴See 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).

⁵See 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).

Having considered Conklin's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Andrew J. Puccinelli, District Judge
Brian D. Green
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Elko County Clerk