

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK JOSEPH BATTLE A/K/A JACK
JOSEPH BATTLE, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59413

FILED

NOV 14 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary, robbery, and conspiracy to commit robbery. Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.¹ Appellant Jack Joseph Battle raises four errors on appeal.

First, Battle contends that the district court erred by denying his motion to strike the entire jury panel because a prospective juror stated that he could not be fair or impartial because of a preconceived notion or stereotype that Battle's facial tattoos were gang-related. This juror was later excused. Battle argues that the prospective juror's statement prejudiced the entire jury and he was denied the right to a "fair trial by a panel of impartial, 'indifferent' jurors." Irvin v. Dowd, 366 U.S. 717, 722 (1961). We disagree. The district court inquired of each juror whether he or she could consider the case fairly and impartially. Each juror responded affirmatively. There is nothing to indicate that any one of the jurors was less than truthful about his or her ability to be fair and impartial, or that any of the jurors harbored any bias or prejudice against Battle. In fact, when Battle's counsel asked the entire panel if anyone

¹The Honorable Lee Gates, Senior Judge, presided over the trial.

harbored any negative feelings toward Battle because of his tattoos, the only response was, “for me, his tattoos shouldn’t be an issue.” Therefore, we conclude that Battle was not denied the right to a fair trial.

Second, Battle contends that there was insufficient evidence to support his conviction for burglary and robbery and the district court erred by failing to grant his motion for a directed verdict. As an initial matter, we note that Nevada law does not provide for a directed verdict. Instead, Battle “should have moved for an advisory instruction to acquit pursuant to NRS 175.381(1),” or moved for a judgment of acquittal after the verdict. See State v. Combs, 116 Nev. 1178, 1180, 14 P.3d 520, 521 (2000). As to Battle’s sufficiency claim, we review the evidence in the light most favorable to the prosecution and determine whether any rational juror could have found the essential elements of the crime beyond a reasonable doubt. McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Here, evidence was presented that Battle parked his vehicle at the far end of a K-Mart parking lot and entered the store with five to six other individuals around 8:30 or 9:00 p.m. As Battle passed an employee in the fashion department with several members of his entourage, he said in a loud voice that he was going to take merchandise from the store and walk out of the store with it, and if anyone stopped him, he would “shank” them. Battle then looked directly at the employee and repeated his statement, telling her that she could tell her manager if she wanted, as members of his group laughed and walked behind him. The employee called the loss prevention officer and Battle was captured on video holding a pile of clothes as other members of his group stood around him. When the officer made an announcement over the intercom for “security [to] scan

all departments,” Battle put the clothes down and walked to the cosmetics department where he removed the packaging and security tag from a bottle of cologne and placed it in his pocket along with a cologne gift set. Battle then grabbed a gallon of milk and the group left the store and hurried to their vehicle.

We conclude that a rational juror could infer from these circumstances that Battle entered the store with the intent to commit robbery and that he committed robbery by taking property and placing the store employee in fear of injury. NRS 205.060(1); NRS 200.380(1). Battle’s claim that no reasonable juror could have acquitted him of assault and convicted him of robbery is without merit. See Dunn v. United States, 284 U.S. 390, 393-94 (1932) (explaining that “each count in an indictment is regarded as if it was a separate indictment” and refusing to reverse inconsistent verdicts based on speculation as to whether the verdicts were a result of a compromise or mistake on the part of the jury); see also Bollinger v. State, 111 Nev. 1110, 1117, 901 P.2d 671, 675-76 (1995) (agreeing with this rationale). The jury’s verdict will not be disturbed on appeal where, as here, sufficient evidence supports the conviction. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003) (circumstantial evidence alone may sustain a conviction); McNair, 108 Nev. at 56, 825 P.2d at 573 (“[I]t is the jury’s function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses.”).

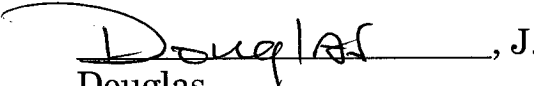
Third, Battle contends that the district court erroneously instructed the jury on burglary and conspiracy. We disagree. This court reviews the district court’s decision as to jury instructions for an abuse of discretion or judicial error. Grey v. State, 124 Nev. 110, 122, 178 P.3d

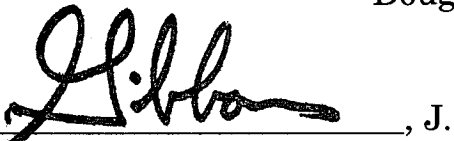
154, 163 (2008). However, we employ plain-error review when an error has not been preserved for appeal. Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003). Battle objected to instruction number 8. He did not, however, object to instructions 5, 6, and 14. Regardless, all four jury instructions were correct statements of the law, see Moore v. State, 122 Nev. 27, 35-36, 126 P.3d 508, 513 (2006); Garner v. State, 116 Nev. 770, 780, 786-87, 6 P.3d 1013, 1020, 1024 (2000) overruled on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002); Thomas v. State, 114 Nev. 1127, 1143, 967 P.2d 1111, 1122 (1998); Walker v. State, 113 Nev. 853, 869, 944 P.2d 762, 773 (1997); Foss v. State, 92 Nev. 163, 167, 547 P.2d 688, 691 (1976), and we conclude that the district court did not err.

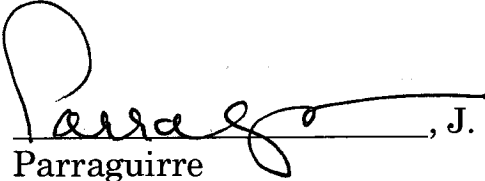
Fourth, Battle contends that the district court impermissibly burdened his right to testify by ruling that certain prior bad acts evidence could be admitted if he testified. This contention is belied by the record. The district court minutes indicate that the district court ruled that the probative value of this evidence was outweighed by the danger of unfair prejudice and denied the State's motion to admit the evidence without prejudice. The ruling was not contingent on whether Battle testified. Therefore, we conclude that Battle's contention lacks merit.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Valorie J. Vega, District Judge
Hon. Lee Gates, Senior Judge
The Almase Law Group LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk