

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARCUS LAVELL BURRELL, A/K/A
MARCUS N DA CUT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69924

FILED

FEB 27 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Marcus Lavell Burrell appeals from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit robbery, two counts of first-degree kidnapping, and two counts of robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Burrell claims insufficient evidence supports his convictions for first-degree kidnapping. He further asserts that, even if the evidence was sufficient, any movement of the victims was incidental to the robbery and did not substantially increase the risk of harm to the victims and, therefore, his dual convictions for first-degree kidnapping and robbery cannot stand.

When reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the prosecution and determine whether “*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). A person is guilty of first-degree kidnapping if

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he “willfully . . . inveigles, entices . . . or carries away a person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person . . . for the purpose of committing . . . robbery.” NRS 200.310(1).

[T]o sustain convictions for both robbery and kidnapping arising from the same course of conduct, any movement or restraint must stand alone with independent significance from the act of robbery itself, create a risk of danger to the victim substantially exceeding that necessarily present in the crime of robbery, or involve movement, seizure or restraint substantially in excess of that necessary to its completion.

Mendoza v. State, 122 Nev. 267, 275, 130 P.3d 176, 181 (2006). “Whether the movement of the victim is incidental to the associated offense and whether the risk of harm is substantially increased thereby are questions of fact to be determined by the trier of fact in all but the clearest cases.” *Curtis D. v. State*, 98 Nev. 272, 274, 646 P.2d 547, 548 (1982).

The evidence at trial established that Troy Hashimoto listed shoes for sale on Facebook. Burrell inquired about purchasing the shoes and Hashimoto and Burrell sent several messages to each other on Facebook regarding the purchase of the shoes. The next day, Burrell and Hashimoto communicated through text messages and decided on a place to meet to effectuate the sale. Hashimoto ultimately agreed to meet Burrell on J Street in front of some apartments. Hashimoto and his girlfriend Alyssa arrived at the meeting place at approximately 3:00 p.m. Hashimoto parked outside the apartment gates and Burrell and Larry Hardnett walked through the gate. When Burrell approached, Hashimoto exited his car and retrieved the shoes from the back seat. After Hashimoto showed the shoes to Burrell, Burrell pointed a 9mm

semiautomatic pistol at Hashimoto's chest, took the shoes, and told Hashimoto to hand over his wallet and cell phone. Hashimoto complied. Hardnett, who was standing behind Burrell, also had a gun and he was pointing it at Alyssa, who was still in the front passenger seat of the car. Burrell directed Alyssa to give him her phone and she complied. After taking the shoes, wallet, and phones, Burrell and Hardnett jogged away.


The State charged Burrell by information with first-degree kidnapping with the use of a deadly weapon against Hashimoto and Alyssa by luring them to the crime scene under the false pretense of purchasing shoes and, once they were at the location, he and Hardnett pointed guns at them and took their property. The record indicates the jury was instructed on the requirements for a dual conviction of kidnapping and robbery.

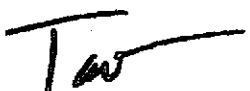
Based on the evidence presented, the jury could have found, beyond a reasonable doubt, Burrell inveigled or enticed Hashimoto and Alyssa to J Street for the purpose of robbing them. The jury also could have found the kidnappings were not incidental to the robbery because Burrell's intent was robbery and the victims were lured to the J Street location for that purpose. *See Pascua v. State*, 122 Nev. 1001, 1006, 145 P.3d 1031, 1034 (2006) (foreseeing a situation where movement would not be incidental and could substantially exceed that required to commit a murder, thereby allowing dual convictions for murder and kidnapping to stand, "where the object is murder and the victim is kidnapped for that purpose"). Finding the kidnappings incidental to the robbery under the facts presented here would contravene the plain language of NRS 200.310(1), invalidating the portion of the statute that defines kidnapping based on inveigling or enticing. While the kidnappings clearly facilitated

the robbery, the kidnappings were separate offenses and were complete before the robbery occurred. Any perceived injustice by this reading of the statute is a matter more properly addressed at the Legislature.

Therefore, we conclude the evidence was sufficient to support the convictions for first-degree kidnapping. See NRS 200.310(1); see also *Brass v. State*, 128 Nev. 748, 755, 291 P.3d 145, 150 (2012) (finding evidence sufficient to support kidnapping conviction where evidence suggested the defendant had a specific plan to lure the victim outside of the house for the purpose of killing him); *Bridges v. State*, 116 Nev. 752, 765, 6 P.3d 1000, 1009 (2000) (finding evidence sufficient to support conviction for first-degree kidnapping where "Bridges used a ruse to lure [the victim] to a remote location for the purpose of killing him"). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michael Villani, District Judge
Aisen Gill & Associates LLP
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk