

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRAVESS WAYNE CORTEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79146-COA

**FILED**

**JUN 10 2020**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Travess Wayne Cortez appeals a judgment of conviction, pursuant to a jury verdict, of two counts of battery by a prisoner who is in lawful custody or confinement. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

Cortez was an inmate at the Elko County Jail. In September 2018, video surveillance showed an inmate, later identified as Cortez, speaking with another inmate in the bathroom area of a cellblock. The inmate and Cortez spoke for several minutes. During their conversation, Cortez moved closer and closer to the other inmate, and the inmate looked down at the ground. Cortez then spontaneously punched the inmate. The inmate staggered and touched his face. The inmate did not retaliate, but crouched down on the bathroom floor. Cortez left the bathroom area.

Approximately 20 minutes later, surveillance video showed Cortez speaking with a different inmate who was laying on the top bunk of a bunkbed. Cortez stepped forward and punched the inmate. The inmate attempted to dodge, and the video surveillance did not provide a clean image showing Cortez made contact. The inmate did not retaliate but did throw his arms in the air in an exasperated manner. After Cortez left the area, the inmate obtained toilet paper and placed it on his face apparently

attending to a wound. The State charged Cortez with two counts of battery by a prisoner while in lawful custody.

Prior to trial, the State and Cortez stipulated that he was lawfully held in the Elko County Jail. At trial, the State only called one witness, Sergeant Joshua Oldham of the Elko County Sheriff's Department. Oldham testified that he knew Cortez since 2014 and had at least 100 interactions with Cortez at the jail. Oldham further testified that he was familiar with the way Cortez carried himself and walked. The district court admitted the video surveillance videos, and Oldham identified Cortez as the inmate who struck the two other inmates from viewing the video recordings. The jury convicted Cortez of both counts.

On appeal, Cortez argues that there was insufficient evidence to convict him of the battery charges because the jury would need to engage in speculation to identify him and to know if the physical contact was unwanted. We disagree.

When reviewing a challenge to the sufficiency of evidence supporting a criminal conviction, we consider "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Stewart v. State*, 133 Nev. 142, 144, 393 P.3d 685, 687 (2017) (emphasis in original) (internal quotation omitted). "[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." *Rose v. State*, 123 Nev. 194, 202-03, 163 P.3d 408, 414 (2007) (alteration in original) (internal quotation omitted). We will not disturb a verdict supported by substantial evidence. *Stewart*, 133 Nev. at 144-45, 393 P.3d at 687.

A battery is committed when there is “any willful and unlawful use of force or violence upon the person of another.” NRS 200.481(1)(a). “If the battery is committed by . . . a prisoner who is in lawful custody or confinement . . . without the use of a deadly weapon, whether or not substantial bodily harm results,” that person is guilty of a category B felony. NRS 200.481(2)(f). The supreme court has “interpreted battery broadly to be the intentional and unwanted exertion of force upon another, however slight.” *Byars v. State*, 130 Nev. 848, 863, 336 P.3d 939, 949 (2014) (emphasis omitted) (internal quotation omitted). Battery is a general intent crime and “the prosecutor need only prove that the defendant actually intended to commit a willful and unlawful use of force or violence upon the person of another.” *Id.* (internal quotation omitted).


Here, there was sufficient evidence for a jury to convict Cortez of the two battery charges. Video surveillance showed an inmate strike two other inmates.<sup>1</sup> Oldham testified that he knew Cortez since 2014 and had at least 100 interactions with him. Based on these interactions, Oldham testified that he knew how Cortez carried himself and how he walked. Per this experience and knowledge, Oldham identified Cortez as the batterer. A jury could have found this testimony credible. Additionally, nothing from the video footage suggests the inmates consented to being punched by Cortez; both inmates appeared surprised and one of them was very agitated


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<sup>1</sup>We note that the video of the second battery did not provide the clearest image of Cortez making contact. However, after the incident, the video showed the victim applying toilet paper to his face apparently tending to a wound implying a battery had occurred.

after being struck by Cortez.<sup>2</sup> Finally, the district court admitted an audio recording where Cortez stated that he “rolled two of them out” and “kicked those two guys out Saturday.” Oldham further testified that “rolling people out” was slang to mean removing people from the jail block. Thus, there was sufficient evidence for a rational jury to conclude that Cortez unlawfully used force against two other inmates and find him guilty of both counts of battery. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Alvin R. Kacin, District Judge  
Elko County Public Defender  
Attorney General/Carson City  
Elko County District Attorney  
Elko County Clerk

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<sup>2</sup>Based on his experience working at the jail, Oldham testified that inmate victims are reluctant to cooperate in a battery investigation due to retaliation concerns.