

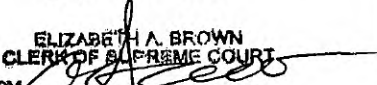
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY CHRIS ROBERT
MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83754-COA

FILED

SEP 09 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Anthony Chris Robert Martinez appeals from a judgment of conviction, pursuant to a jury verdict, of attempted murder with the use of a deadly weapon, eluding a police officer in a manner posing danger to persons or property, and second-degree kidnapping with the use of a deadly weapon. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

Martinez first argues that there was insufficient evidence to support two of his convictions. 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); accord *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). And circumstantial evidence is enough to support a conviction. *Washington v. State*, 132 Nev. 655, 662, 376 P.3d 802, 807 (2016). It is for the jury to determine the weight and credibility to give conflicting testimony. See *Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

First, Martinez argues there was insufficient evidence to support his conviction of attempted murder with the use of a deadly weapon. Martinez claims there was insufficient evidence to show he had the intent to kill Officer Pantelakis. The intent to kill is an element of attempted murder. *Jackson v. State*, 128 Nev. 598, 607, 291 P.3d 1274, 1280 (2012).

Officer Pantelakis testified that he tried to pull over Martinez's vehicle but Martinez failed to stop. Martinez crashed, exited the vehicle, and began shooting in Officer Pantelakis' direction. Officer Pantelakis and a bystander who witnessed the events testified that Martinez fired first. At the crime scene, investigators found a pistol with Martinez's DNA on it and 11 shell casings consistent with the pistol's caliber. Based on this evidence, any rational juror could reasonably find Martinez shot at Officer Pantelakis with the intent to kill him. See NRS 193.200 (explaining how intent is manifested); *Grant v. State*, 117 Nev. 427, 435, 24 P.3d 761, 766 (2001) ("Intent need not be proven by direct evidence but can be inferred from conduct and circumstantial evidence."); *Sharma v. State*, 118 Nev. 648, 659, 56 P.3d 868, 874-75 (2002) ("Intent to kill . . . may be ascertained or deduced from the facts and circumstances . . . such as use of a weapon calculated to produce death, the manner of use, and the attendant circumstances." (alteration and internal quotation marks omitted)). Therefore, we conclude Martinez failed to demonstrate there was insufficient evidence to support this charge.

Second, Martinez argues there was insufficient evidence to support his conviction of second-degree kidnapping with the use of a deadly weapon. Martinez does not contend that the State produced insufficient evidence of elements of the crime. Rather, he contends that pursuant to *Mendoza v. State*, 122 Nev. 267, 130 P.3d 176 (2006), the kidnapping was

incidental to the underlying offenses of battery with the use of a deadly weapon and assault with the use of a deadly weapon. In *Mendoza*, the Nevada Supreme Court set out the limited circumstances in which a person could be convicted of both kidnapping and an underlying offense where they arose from the same course of conduct. 122 Nev. at 275, 130 P.3d at 181. Martinez was not convicted of the underlying offenses,¹ and accordingly, he is not entitled to relief pursuant to *Mendoza*. Therefore, we conclude Martinez failed to demonstrate there was insufficient evidence to support this charge, and he is not entitled to relief on these claims.

Martinez next argues the district court erred by denying his request to have the jury instructed that law enforcement was grossly negligent for failing to gather surveillance video. Martinez contends the surveillance video was material to his claim that insufficient evidence supported his kidnapping conviction because it could have shown if the victim's movement was incidental to the underlying offenses of battery and assault. For the reasons discussed above, Martinez fails to demonstrate the surveillance video was material. See *Daniels v. State*, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998) (providing that materiality means "a reasonable probability that, had the evidence been available to the defense, the result of the proceedings would have been different"). Therefore, we conclude Martinez is not entitled to relief on this claim.

Finally, Martinez argues the district court abused its discretion at sentencing by considering Officer Sanchez a victim despite Martinez having been acquitted of his attempted murder. The district court recognized Martinez's acquittal and that Officer Sanchez did not meet the

¹The counts alleging those offenses were dismissed when the district court granted Martinez's motion for a new trial as to those counts.

statutory definition of a victim. Therefore, we conclude Martinez failed to demonstrate the district court abused its discretion in sentencing him and he is not entitled to relief on this claim.

For the foregoing reasons, 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