IN THE SUPREME COURT OF THE STATE OF NEVADA

AUBREY T. GRANT, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 42869
GREGORY DEVELL WARD, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 42933

FILED

SEP 23 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from judgments of conviction pursuant to a jury trial at which each appellant was found guilty of two counts of conspiracy to commit robbery, eight counts of robbery with the use of a deadly weapon, and one count of attempted robbery with the use of the deadly weapon. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellants Aubrey T. Grant and Gregory Devell Ward assert a number of errors on appeal. We conclude that none entitles them to relief. We first summarize the evidence presented at their trial.

In the early morning of May 2, 2003, seven men were denied entrance into Wild J's, a strip club in Las Vegas, because they had beers in hand. They walked around to the parking lot to drink the beers. The men had come from Ohio for a bachelor party. One of the men, Gurjit Grewal, was an Ohio state trooper. He and a second man saw an older white, two-door car backing into a space in the parking lot, noticing it in part because its windows were so darkly tinted. The car looked like a Chevrolet Monte Carlo to Grewal and an Impala to the second man. Grewal and a third

man went behind the building to urinate. The third man had returned to the group when a male assailant threatened the men with a handgun, ordered them to lie down, and began to take their wallets, money, and credit cards. The magazine of the robber's semiautomatic gun fell to the pavement, and he retrieved it. Grewal turned the corner of the building and realized what was happening. The robber's gun appeared to be a Glock to Grewal. The robber ordered Grewal to the ground, but he fled back behind the building. Grewal then made his way through the building, came out the front, and saw the car he had noticed speeding away. He made out the three numbers of its license plate, and a cab driver parked in front of the club gave him the full license number—769 PVE. Grewal phoned 911 and reported the crime.

A little later that morning around 2:00 a.m., three men left another Las Vegas strip club, Strip Tease, and walked to their car. As they got to the car, two men with guns confronted them and demanded money. The first robber ran up to the driver, who resisted and ran away. The second robber took money from the two remaining men on the passenger side of the car. The two robbers then got into an older white, two-door car that looked like a Monte Carlo. A security guard from the club grabbed the robber in the front passenger seat but then retreated when the driver pointed a gun at him. The guard thought that a third person might be in the car. The car then turned north on Valley View and sped away.

Officer Jeremy Krogh and a fellow Las Vegas Metropolitan Police Department officer were checking license plate numbers at an auto repair shop next to the Strip Tease. The officers noticed a commotion at the club and drove over in their patrol cars. The security guard told them of the robbery and described the getaway car and its route. Officer Krogh drove north on Valley View to the intersection of Spring Mountain where

he noticed a white car traveling east on Spring Mountain weaving through traffic at high speed. He caught up to the car as it turned north onto Interstate 15. Its license plate number was 769 PVE.

After Krogh's fellow officer joined in the pursuit, they pulled the car over. Appellant Grant was driving, and appellant Ward was the passenger. The two were found to have $633.00 in cash between them, but no items such as wallets or credit cards were found. Victims from both robberies were brought. The victims from Wild J's identified Ward as their assailant, and the victims from Strip Tease identified Ward as the second of the two robbers. Victims of both robberies recognized Grant's car as the getaway car. No one was able to identify Grant. The car was a 1981 Buick Regal, registered to Grant and another person. (The State presented evidence that the Regal and the Monte Carlo were quite similar models.) Grant and Ward were read their Miranda[1] rights. Grant told police that no one else had driven his car that day. He gave the police consent to search the car and told them they could break open the glove box, which was locked. After an officer pried the glove box open, Officer Krogh observed a handgun under a slightly lifted vent cover in the dashboard. The police seized the car and searched it later pursuant to a search warrant. The handgun was a Glock 10 millimeter semiautomatic. It was unloaded and did not have a magazine, and no magazine or ammunition was found in the vehicle. Nor were fingerprints found on the gun.

After a joint jury trial was held, Grant and Ward were each found guilty of two counts of conspiracy to commit robbery, eight counts of robbery with use of a deadly weapon, and one count of attempted robbery

---

[1]Miranda v. Arizona, 384 U.S. 436 (1966).

with use of a deadly weapon. Grant was sentenced to a number of consecutive and concurrent prison terms on the various counts, amounting to a minimum term of 10 years 11 months and a maximum term of 47 years. Ward's overall sentence was more severe, amounting to a minimum prison term of 16 years 9 months and a maximum term of 73 years.

First, Grant contends that there was insufficient evidence to support his conviction, and Ward argues similarly that there was insufficient evidence to support his own conviction on two counts of conspiracy to commit robbery. The record reveals ample evidence supporting the conviction of each appellant on all counts.

In reviewing the evidence supporting a jury's verdict, this court need not be convinced of the defendant's guilt beyond a reasonable doubt; it must instead determine whether the jury, acting reasonably, could have been so convinced by the competent evidence.[2] "The relevant inquiry for this Court is '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.'"[3] "Conspiracy is an agreement between two or more persons for an unlawful purpose."[4] Conspiracy is seldom demonstrated by direct proof and is usually established by inference from the parties' conduct.[5] Evidence of a

---

[2]Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980).

[3]Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

[4]Thomas v. State, 114 Nev. 1127, 1143, 967 P.2d 1111, 1122 (1998).

[5]Id.

coordinated series of acts furthering the underlying offense is sufficient to infer the existence of an agreement and support a conspiracy conviction.[6]

Though no victim could identify Grant, the circumstantial evidence was more than sufficient for jurors to reasonably infer that Grant drove the getaway car—which he owned and was driving immediately after the second set of robberies and which, according to his own statement, no one else had driven that day—from both crime scenes and that he was the first, unidentified robber to approach the victims at the second crime scene. The evidence was also more than enough for jurors to reasonably infer that Grant and Ward conspired to carry out the crimes. As discussed, the circumstantial evidence showed that Grant participated in both sets of crimes, and both circumstantial and direct evidence established Ward's participation. Both men were apprehended in the same car immediately after the second set of crimes. We conclude that Grant's guilt generally and conspiracy by both men specifically were proved beyond a reasonable doubt.

Ward also contends that the district court improperly refused to instruct the jury on his theory of defense by rejecting his proposed instruction regarding conspiracy. He includes the alleged proposed instruction in his appendix on appeal; however, he provides no reference to the record showing that he submitted the instruction to the district court, and our review does not reveal that he did. Therefore, Ward must establish that failing to give the instruction was plain error that affected his substantial rights, i.e., was prejudicial.[7]

---

[6]Id.

[7]See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."); Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001).

The instruction in question states in relevant part that "mere association, knowledge of, acquiescence in, or approval of [the purpose of a conspiracy] does not make one a party to conspiracy and is insufficient to support a charge of conspiracy." This is a correct statement of the law,[8] and contrary to the State's argument, the other instructions on conspiracy given to the jury did not substantially cover it. But the instructions on conspiracy that were given were correct and consistent with Ward's instruction. We conclude that absent a request by Ward to give his instruction, the district court did not err in failing to give it. Nor has Ward established that he was prejudiced by the failure to give the instruction. He argues that the lack of eyewitness identification of Grant means that there was insufficient evidence that he and Grant conspired. But as we have discussed, the circumstantial evidence that the two conspired was more than enough for the jury to find conspiracy beyond a reasonable doubt.

Finally, Grant challenges the lawfulness of the search of his car that occurred before the police obtained a warrant. He does not claim, nor does the record reflect, that he raised this challenge with the district court. Therefore, he must establish that the district court committed plain error in admitting evidence from the search.[9] Grant fails to do so. He contends that no exigent circumstances existed to support the "dashboard removal." He cites State v. Harnisch for the proposition that a warrantless search of a car requires both probable cause and exigent

---

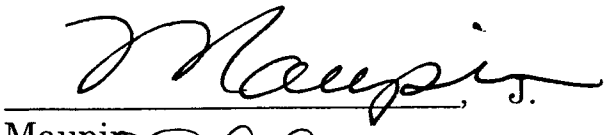
[8]See Doyle v. State, 112 Nev. 879, 894, 921 P.2d 901, 911 (1996), overruled on other grounds by Kaczmarek v. State, 120 Nev. 314, 91 P.3d 16 (2004).

[9]See NRS 178.602.

circumstances.[10] Harnisch does not apply here, however, because Grant consented to the search. A search pursuant to consent is lawful if the State shows that the consent was voluntary.[11] The State presented testimony that Grant consented to the search when asked and expressly permitted police to break open the glove box. The record is devoid of any evidence of duress or coercion. Grant suggests that because the police did not have him sign a written consent form, this court should remand to the district court for determination of whether his consent was valid. He cites no authority for this suggestion. We conclude that no error occurred in admitting evidence from the search.

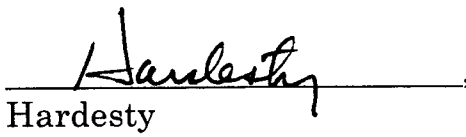
Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Maupin

_____, J.
Gibbons



_____, J.
Hardesty

cc: Honorable Jackie Glass, District Judge
Clark County Public Defender Philip J. Kohn
Longabaugh Law Offices
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

---

[10]114 Nev. 225, 228-29, 954 P.2d 1180, 1183 (1998).

[11]McMorran v. State, 118 Nev. 379, 383, 46 P.3d 81, 83 (2002).