

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH JOHN WRIGHT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43675

FILED

NOV 28 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a direct appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On June 23, 2004, the district court convicted appellant Joseph John Wright of second-degree murder with the use of a deadly weapon, robbery, grand larceny auto, and two counts of grand larceny.¹ The district court sentenced Wright to life in prison with the possibility of parole in ten years plus an equal and consecutive term for the deadly weapon enhancement. Wright was also sentenced to several consecutive definite terms for the remaining offenses.

Wright was convicted of murdering his live-in girlfriend, Christine Pajak, by shooting her in the neck. After the shooting, Wright drove away in Pajak's Corvette and with the assistance of his friend, Kelvin Macher, concealed the car behind an office building. Also with

¹At Wright's first trial, the jury found him guilty of robbery, grand larceny auto, and grand larceny, but was unable to reach a verdict respecting the murder charge. At Wright's second trial, the jury found him guilty of second-degree murder with the use of a deadly weapon.

Macher's help, Wright obtained money from Pajak's bank account, purchased a bus ticket, and fled Las Vegas.

Wright argues on appeal that the evidence is insufficient to support his convictions for grand larceny auto and second-degree murder. "In reviewing evidence supporting a jury's verdict, this court must determine whether the jury, acting reasonably, could have been convinced beyond a reasonable doubt of the defendant's guilt by the competent evidence."² Evidence is sufficient to sustain a conviction if, viewed 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

Wright contends that the evidence supporting his grand larceny auto conviction is insufficient in that it fails to establish that he intended to permanently deprive Pajak's estate of her Corvette because he abandoned it near a friend's apartment, "knowing it would surely be found," and he had permission to drive it on previous occasions. We disagree.

To be convicted of larceny, a defendant must have possessed the requisite intent to permanently deprive the owner of the property.⁴ "Intent need not be proven by direct evidence but can be inferred from

²Braunstein v. State, 118 Nev. 68, 79, 40 P.3d 413, 421 (2002) (citing Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980)).

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

⁴See Grant v. State, 117 Nev. 427, 435, 24 P.3d 761, 766 (2001).

conduct and circumstantial evidence."⁵ The evidence adduced at trial shows that after the shooting upon arriving at Macher's apartment in Pajak's Corvette, Wright told Macher that he wanted to "get rid of it." The two men then hid the Corvette behind a building not far from Macher's apartment. Wright gave Macher the keys to the Corvette and instructed him not to touch it. Wright also told Macher that he had "wiped down" the Corvette to remove any fingerprints. Wright then fled Las Vegas. Although Wright presented evidence that he had driven Pajak's Corvette on previous occasions, there was no evidence indicating that Wright had permission to do so after the shooting, and obviously Pajak was unable to grant permission after her death.

Based on the record before us, we conclude that a reasonable jury could have been convinced beyond a reasonable doubt that Wright stole Pajak's Corvette.

Next Wright argues that the evidence is insufficient to support his second-degree murder conviction because the State failed to rebut his claim that an intoxicated Pajak attempted suicide and that he attempted to stop her, resulting in an accidental shooting. We disagree. The evidence adduced at trial shows that Pajak and Wright shared a turbulent and violent relationship. Several witnesses testified respecting three instances where Wright beat Pajak, resulting in Wright's arrest on one occasion. In the hours preceding the shooting, witnesses observed Wright and Pajak arguing at a bar and Wright pushing Pajak, nearly knocking her off of a barstool.

⁵Id.

Dr. Sheldon Green, who performed Pajak's autopsy, concluded that Pajak was a victim of homicide for two reasons. First, he stated that lack of blood spatter on Pajak's right hand "pretty much eliminate[d] the possibility of her holding the weapon" because of the presence of blood back spatter "coming across her shoulder and upper breast." Had Pajak, who was right-handed, been holding the weapon in her right hand, it should have been covered in blood. Dr. Green further testified that Pajak did not fire the gun with the left hand because the location of the wound made a left-handed shot too awkward. Second, he dismissed suicide because of the location of the wound: in his vast experience he had never "seen a well-documented provable suicide in this location," nor had he ever examined a suicide wound in this location.

Additionally, Wright testified at his second trial and demonstrated the struggle between him and Pajak in the seconds before the shooting. However, the State's blood spatter expert testified that Wright's demonstration was inconsistent with the blood spatter evidence. Also, the State presented evidence that Wright shaved off his head and facial hair after the shooting and hours later left Las Vegas on a bus. Additionally, Wright disposed of the murder weapon behind a soda machine in a parking garage near the bus station. The police discovered the gun only after Wright alerted them to its location.

Wright presented evidence that Pajak drank too much and had talked about suicide on several occasions. He explained to the jury that he delayed reporting Pajak's death, changed his physical appearance, and fled Las Vegas because he was afraid of Pajak's family in light of

death threats he had received from Pajak's nephew after Wright had beaten Pajak and Pajak's family connection to law enforcement.

After hearing all the evidence, the jury apparently disbelieved Wright's explanation of the events surrounding Pajak's death and concluded that he murdered her. "The trier of fact determines the weight and credibility to give conflicting testimony, and on appeal this court will not disturb a verdict which is supported by sufficient evidence."⁶ Based on the record before us, we conclude that the evidence is sufficient to support Wright's second-degree murder conviction.

Finally, Wright argues that the district court erred in not allowing him to refute the State's evidence and corroborate his theory of the case. Specifically, Wright sought to introduce the testimony of LVMPD Officer C. Archer, who would have testified respecting an encounter he had with Wright and Pajak. Archer would have testified that he came upon Wright and Pajak in the desert shooting a pistol and that he was prepared to issue a citation. Pajak became belligerent and combative, and Archer arrested her for battery of a police officer and obstructing a police officer. The police report indicated that Pajak was intoxicated at the time.

Wright contends that Archer's testimony was necessary to refute the State's cross-examination of defense witness Rodney Brown, Pajak's former boyfriend. Brown acknowledged on cross-examination that on one occasion he observed Pajak threaten suicide by holding a knife to

⁶Mulder v. State, 116 Nev. 1, 15, 992 P.2d 845, 853-54 (2000) (citing Bolden v. State, 97 Nev. 71, 72-73, 624 P.2d 20, 20 (1981)).

her wrist. He also acknowledged that Pajak owned a gun, that he had seen it, that she had never pointed it at him or threatened him with it, and that she had never hit, pushed, or kicked him.

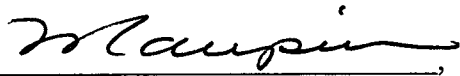
Wright asserts that the State's cross-examination of Brown extended beyond exploring the defense theory that Pajak was suicidal, but rather elicited evidence of Pajak's general character, *i.e.*, whether she was violent or aggressive. Wright claims that the State opened the door to investigation of Pajak's character by eliciting this evidence, but the record shows that the State was responding on rebuttal to Wright's testimony that Pajak assaulted him on various occasions. Wright further contends that Archer's testimony was critical for two reasons. First, this testimony contradicted the "false impression allowed by the State's cross-examination" of Brown. Second, it supported the defense's theory that Pajak was violent toward others and herself when she was intoxicated.

We conclude that the district court acted within its discretion in excluding this evidence. Wright's theory of defense was that he attempted to prevent Pajak from committing suicide when the gun went off accidentally. Archer's testimony was irrelevant to demonstrate any propensity for suicide Pajak may have exhibited. Moreover, the jury heard evidence that on several occasions Pajak talked about suicide and on one occasion threatened to cut her wrist with a knife. Additionally, Wright testified that Pajak kicked, punched, or pushed him during some of their physical altercations. And Pajak's former husband and her sister testified that Pajak could become loud and belligerent when she was intoxicated. Thus, there was evidence before the jury of Pajak's volatile behavior when she was intoxicated.

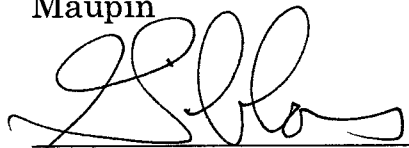
"District courts are vested with considerable discretion in determining the relevance and admissibility of evidence."⁷ Based on the record, we conclude that the district court did not abuse its discretion in refusing to admit Archer's testimony.

Having considered Wright's claims and concluded that they lack merit, we

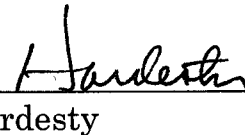
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Michelle Leavitt, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General
Clark County District Attorney David J. Roger
Clark County Clerk

⁷Castillo v. State, 114 Nev. 271, 277, 956 P.2d 103, 107-08 (1998).