

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND L. FORD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43788

FILED

MAR 04 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of carrying a concealed weapon. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant Raymond L. Ford to a prison term of 12 to 48 months and then suspended execution of the sentence, placing him on probation for a time period not to exceed 3 years.

Ford first contends that there was insufficient evidence in support of his conviction for carrying a concealed weapon. In particular, Ford argues that the gun was discernible by ordinary observation because the victim testified that Ford raised his shirt to show him that he had a gun in his waistband. Additionally, Ford argues that the conviction "is against the weight of the evidence" because both he and an eyewitness testified that Ford was carrying the gun in plain view outside his clothing in a holster. We conclude that Ford's contentions lack merit.

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.¹ The jury could reasonably infer from the evidence presented,

¹See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

including the testimony of the victim and the arresting officers, that Ford carried a weapon concealed under his clothing in a manner not discernible by ordinary observation.² It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.³

Ford next argues that the jury's verdicts are inconsistent because he was acquitted of assault with a deadly weapon and aiming a firearm at a human being. In particular, Ford states that "in order to find [him] not guilty on the other charges, the jury had to believe that the [victim] was not being truthful. Since the [victim] was the only person who testified that the gun was under [Ford's] shirt, it seems the verdicts are inconsistent." We disagree with Ford that the verdicts are inconsistent. Nonetheless, even assuming the verdicts are inconsistent, this court has held that inconsistent verdicts are permissible under Nevada law.⁴

Finally, Ford contends that the sentence imposed constitutes cruel and unusual punishment. In particular, Ford argues that "[i]t seems disproportionate for it to be a felony to carry a concealed weapon that is a

²See NRS 202.350(7)(a).

³See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

⁴See, e.g., Bollinger v. State, 111 Nev. 1110, 1116-17, 901 P.2d 671, 675-76 (1995); Brinkman v. State, 95 Nev. 220, 224, 592 P.2d 163, 165 (1979); accord United States v. Powell, 469 U.S. 57 (1984) (holding that inconsistent verdicts may be the result of mistake, compromise, or lenity and that reversal is not required simply because the verdicts are inconsistent).

firearm that is properly registered while it is a gross misdemeanor to take that same firearm and point it at someone." We conclude that Ford's contention lacks merit.

The Eighth Amendment does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.⁵ Regardless of its severity, a sentence that is within the statutory limits is not "cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience."⁶

This court has consistently afforded the district court wide discretion in its sentencing decision.⁷ This court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."⁸

In the instant case, Ford does not allege that the district court relied on impalpable or highly suspect evidence, and we disagree with his contention that the sentencing statutes are unconstitutional. Further, we

⁵Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

⁶Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

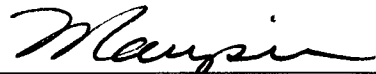
⁷See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

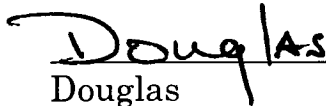
⁸Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

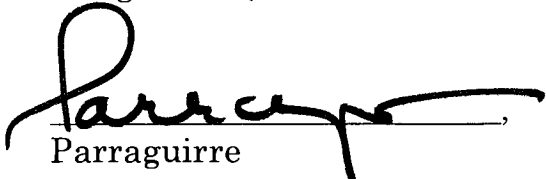
note that the sentence imposed was within the parameters provided by the relevant statutes.⁹ Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

Having considered Ford's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

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

⁹See NRS 202.350(2)(b); NRS 193.130(2)(c) (providing for a prison sentence of 1 to 5 years).