IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO AMPER ORPIADA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43966

FILED

MAR 04 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT THE JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of attempted murder with use of a deadly weapon, two counts of assault with a deadly weapon, six counts of resisting a police officer with a dangerous weapon, and one count of eluding a police officer. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant Antonio Amper Orpiada to serve two consecutive prison terms of 84 to 240 months for the attempted murder counts, with equal and consecutive terms for the use of a deadly weapon, two consecutive prison terms of 28 to 72 months for the assault counts, and seven consecutive prison terms of 19 to 48 months for the resisting and eluding counts.

Orpiada first contends that there was insufficient evidence to support his convictions for the attempted murders of Nevada State Highway Troopers Lewis and Giurlani. Specifically, Orpiada contends that neither trooper observed Orpiada aiming at them when he fired his gun, and it is possible that he was "simply attempting to scare [them] away." Orpiada also contends that there was insufficient evidence to support his convictions for resisting a public officer with a dangerous weapon. In particular, Orpiada argues that there was no evidence

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presented that he actually heard the troopers' verbal commands. Additionally, with respect to the counts involving Troopers Edgell and Brandt, Orpiada argues that the evidence proved that he actually followed their instructions. We conclude that Orpiada'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 that Orpiada attempted to kill Troopers Lewis and Giurlani with the use of a firearm and, also, resisted the troopers present during the shootout with a dangerous weapon.[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]

Orpiada also contends that the district court abused its discretion in admitting evidence that he had the numbers "187" on the sides of his vehicle because the evidence was irrelevant and speculative.[4] We disagree.

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[1]See 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).

[2]See NRS 200.010; NRS 193.330(1); NRS 193.165(1); NRS 199.280(1).

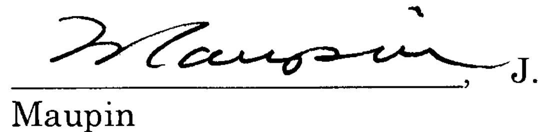
[3]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

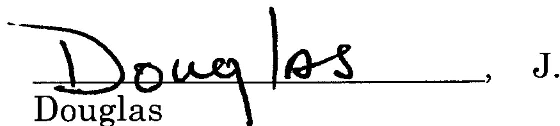
[4]The numbers represent the section of the California Penal Code defining homicide, and are used in graffiti to indicate that a person is going to be killed.

After conducting a Petrocelli hearing[5] and considering the three factors set forth in Tinch v. State,[6] the district court ruled that the evidence was admissible to prove intent to kill. We conclude that the district court did not commit manifest error in so ruling.[7]

Having considered Orpiada's contentions and concluded that they lack merit, we affirm the judgment of conviction. However, our review of the judgment of conviction reveals a clerical error. The judgment of conviction states that Orpiada was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. Accordingly, we

ORDER the judgment of the district court AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.


_______________________, J.
Maupin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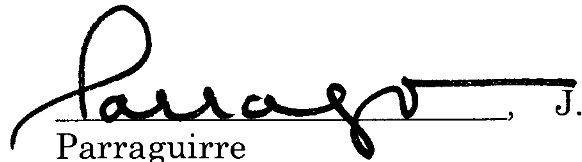
_______________________, J.
Parraguirre

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[5]Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), modified on other grounds by Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996).

[6]113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

[7]See Qualls v. State, 114 Nev. 900, 903, 961 P.2d 765, 767 (1998) ("The trial court's determination to admit or exclude evidence is to be given great deference and will not be reversed absent manifest error.").

cc: Hon. Brent T. Adams, District Judge
Bruce D. Voorhees
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk