

IN THE SUPREME COURT OF THE STATE OF NEVADA

DION WINSTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45818

FILED

SEP 14 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of three counts of attempted murder with the use of a deadly weapon and one count of discharging a firearm at or into a structure. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant Dion Winston to serve two consecutive prison terms of 96-240 months for each of the three attempted murder counts and 24-72 months for discharging a firearm; all of the counts were ordered to run concurrently with each other.

Winston contends that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt of one of the counts of attempted murder with the use of a deadly weapon. Specifically, Winston points out that one of the victims, Robert LaBelle, testified at trial that he was shot by one of the other victims, not Winston.

A 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 In particular, we note that although LaBelle testified that he was shot by one of the other victims, numerous witnesses testified that Winston, earlier in the day had been in a fight with the other two victims, Jovan Young and Clifton Newman, and was the shooter. Evidence presented indicated that Winston was “quite upset” after his fight with the victims. A witness overheard Winston’s father telling him, “You let them disrespect you.” Winston was seen returning to the apartment complex, where he earlier fought with Young and Newman, with an unknown individual, armed with a gun. Soon after, gunshots were heard. Young testified that he saw Winston shooting at him. LaBelle was shot in the back, and at the time of the trial, was paralyzed from the chest down. Crime scene analysts found approximately 18 bullet holes in the apartment complex and bullet casings from a .45 caliber gun. Detective Brian Flatt testified that based on eyewitness accounts, Winston became a suspect, and when he was eventually located at his mother’s house, unused .45 caliber ammunition was discovered. Gunshot residue was found on the shirt Winston was wearing the night of the shooting.

Based on the above, we conclude that the jury could reasonably infer from the evidence presented that Winston committed the crime of attempted murder with the use of a deadly weapon.² It is for the jury to determine the weight and credibility to give conflicting testimony,

¹See Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

²See NRS 200.010; NRS 200.030; NRS 193.330(1); NRS 193.165; see also Sharma v. State, 118 Nev. 648, 652, 56 P.3d 868, 870 (2002).

and the jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict.³ Moreover, we note that circumstantial evidence alone may sustain a conviction.⁴ Therefore, we conclude that the State presented sufficient evidence to sustain the conviction.

Second, Winston contends that the jury was not properly instructed. Specifically, Winston argues that the district court erred by rejecting his request to combine the instruction on attempted murder⁵ with the instruction on the aiding and abetting theory of attempted murder.⁶ We disagree.

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 Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003); see also Grant v. State, 117 Nev. 427, 435, 24 P.3d 761, 766 (2001) (holding that “[i]ntent need not be proven by direct evidence but can be inferred from conduct and circumstantial evidence”).

⁵Instruction no. 4 stated: “Attempted murder is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate intention unlawfully to kill.”

⁶Instruction no. 13 stated:

All persons concerned in the commission of a crime who either directly and actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission or, whether present or not, who advise and encourage its commission, with the intent that the crime be committed, are regarded by the

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. “The district court has broad discretion to settle jury instructions, and this court reviews the district court’s decision for an abuse of that discretion or judicial error.”⁷ “[A]ll jury instructions should be tailored to the particular facts of each case.”⁸ Here, the jury was properly instructed on the two theories of liability, and Winston fails to provide this court with any cogent argument demonstrating that the jury instructions were “confusing and problematic.”⁹ Therefore, we conclude that the district court did not abuse its discretion in settling the jury instructions.

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law as principals in the crime thus committed and are equally guilty thereof.

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the commission of such crime with the intention that the crime be committed.

The State is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

To convict a person of aiding and abetting an attempted murder, the person must have aided or abetted the attempt with the specific intent to kill.

⁷Crawford v. State, 121 Nev. ___, ___, 121 P.3d 582, 585 (2005).

⁸Sharma v. State, 118 Nev. 648, 658, 56 P.3d 868, 874 (2002).

⁹Id.

Having considered Winston's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.¹⁰

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Stewart L. Bell, District Judge
Michael P. Printy
Dion Winston
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁰Because Winston is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action and shall not consider the proper person documents Winston has submitted to this court in this matter.