IN THE SUPREME COURT OF THE STATE OF NEVADA

ALQUANDRE TURNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47722

FILED

APR 06 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of conspiracy to commit robbery, one count of robbery with the use of a deadly weapon, one count of burglary while in possession of a firearm, and one count of sexual assault while in possession of a deadly weapon. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Appellant Alquandre Turner first contends that the sentencing enhancements for possession of a gun should not have been imposed. In particular, Turner argues that the State failed to prove that an actual gun was used in the commission of the crimes, and that even if the State proved the use of a gun, the State failed to prove that Turner was in possession of the gun.

As to Turner's first argument, our review of the record on appeal reveals sufficient evidence to establish the use of a gun beyond a reasonable doubt as determined by a rational trier of fact.[1] In particular, we note that the victim testified that Turner's accomplice had a gun.

[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).

Turner himself testified that his accomplice had a gun and Turner was afraid his accomplice would shoot him if he did not participate in the robbery.

The jury could reasonably infer from the evidence presented that the weapon used in the robbery was an actual firearm and not a toy gun. The jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.[2]

Turning next to Turner's second argument, the evidence adduced at trial showed that while the accomplice held the gun, Turner handcuffed the victim, ordered her to open the cash register, taped her nose, mouth, and ankles, and pushed her to the floor. "When one of two robbers holds a victim at bay with a gun and the other relieves the victim of his properties . . . the unarmed offender benefits from the use of the other robber's weapon, adopting derivatively its lethal potential."[3] We conclude that in this case, there was sufficient evidence that Turner was in constructive possession of the gun, and the enhancements for possession of a firearm were properly applied.

Turner next contends that the deadly weapon enhancement to his sentence constitutes cruel and unusual punishment in violation of the United States. We disagree.

The Eighth Amendment does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is

---

[2]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).

[3]Anderson v. State, 95 Nev. 625, 630, 600 P.2d 241, 244 (1979).

grossly disproportionate to the crime.[4] 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.'"[5]

This court has consistently afforded the district court wide discretion in its sentencing decision.[6] 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."[7]

In the instant case, appellant does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.[8] Accordingly, we conclude that the sentence imposed does not constitute cruel and unusual punishment.

---

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

[5]Blume 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).

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

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

[8]See NRS 193.165; NRS 200.380; NRS 200.366; NRS 205.060 (4).

Turner also contends that the evidence presented at trial was insufficient to support the jury's finding of guilt regarding the charges of conspiracy and sexual assault. Our review of the record on appeal, however, reveals sufficient evidence as to those charges to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.[9]

In particular, we note that the victim testified that Turner actively participated in the robbery without any instruction or guidance from his accomplice. Although Turner testified that he was forced to participate in the robbery by the accomplice, Turner did not subsequently report the crimes to police, and the victim's credit card was found at Turner's residence. Further, the victim testified that during the robbery, Turner placed his hand down the front of her pants and digitally penetrated her vagina.

The jury could reasonably infer from the evidence presented that Turner conspired to commit the robbery and sexually assaulted the victim. 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.[10]

Finally, Turner contends that the district court erred by admitting the recording of the 911 call made by the victim after the robbery. Turner argues that his due process rights were violated because he was never actually provided with a copy of the tape, and although he

---

[9]See Wilkins, 96 Nev. 367, 609 P.2d 309; see also Origel-Candido, 114 Nev. at 381, 956 P.2d at 1380.

[10]See Bolden, 97 Nev. 71, 624 P.2d 20; see also McNair, 108 Nev. at 56, 825 P.2d at 573.

received a transcript of the tape, the State did not provide the transcript until a week before trial.

In his opening brief, Turner concedes that the tape was not prejudicial, and even informs this court that "the point here is not to seriously suggest this case should be overturned based on admission of the 9-1-1 tape which if anything was helpful to Turner." Under these circumstances, this court declines to review the discovery policies of the Clark County District Attorney. Where Turner concedes that he has suffered no prejudice, such a review would amount to an advisory opinion.[11] Turner's argument that his due process rights were violated is without merit.

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

ORDER the judgment of conviction AFFIRMED.

Parraguirre, J.
Parraguirre

Hardesty, J.
Hardesty

Douglas, J.
Douglas

---

[11]See Applebaum v. Applebaum, 97 Nev. 11, 12, 621 P.2d 1110, 1110 (1981) (holding that this court will not render advisory opinions on abstract questions); see also Nev. Const. art. 6, § 4.

cc: Hon. Kenneth C. Cory, District Judge
Kenneth G. Frizzell III
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk