IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLOS RUIZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48828

FILED

JUL 14 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART, VACATING IN PART, AND REMANDING

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count each of first-degree murder with the use of a deadly weapon, burglary with the use of a deadly weapon, battery with a deadly weapon causing substantial bodily harm, and battery with a deadly weapon. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant Carlos Ruiz to serve various concurrent and consecutive terms of imprisonment, amounting to 40 to 100 years.

First, Ruiz contends that insufficient evidence was adduced at trial to support his conviction for burglary. Ruiz specifically claims that no evidence was presented that he drove his codefendants to the victims' residence with the specific intent to commit a battery. Ruiz further argues that if his burglary conviction is reversed, his first-degree murder

conviction must also be reversed because it was based on the felony murder rule.

"[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness."[1] Accordingly, the standard of review for a challenge to the sufficiency of the evidence is "'whether, after viewing the evidence in the light most favorable to the prosecution, any rational [juror] could have found the essential elements of the crime beyond a reasonable doubt.'"[2] Circumstantial evidence is enough to support a conviction.[3]

Here, the jury heard testimony that Brian Snapp entered Ruiz's room very upset.[4] He told Ruiz that his friends had "turned on him," "beat him up," and "kicked him out" of their apartment. Snapp further told Ruiz that he wanted to "get them back," "fight with them," and "do something about the situation." Initially, Ruiz declined to help and suggested that Snapp ask someone else. However, Ruiz later agreed to drive Snapp, Alex Marquez, and Eduardo Camacho to the victims'

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[1]Walker v. State, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975).

[2]McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

[3]Lisle v. State, 113 Nev. 679, 691-92, 941 P.2d 459, 467 (1997).

[4]Because counsel failed to provide this court with a supplemental appendix that contained the transcripts necessary for the resolution of this appeal, we relied upon the transcripts filed in Docket No. 48935 (Snapp v. State) when resolving this appeal.

apartment. Snapp, Marquez, and Camacho were armed with a claw hammer and two baseball bats. The bats came from Ruiz's apartment. Snapp, Marquez, and Camacho jumped out of Ruiz's car before it was parked. Ruiz parked the car and waited for them to return. A few minutes later, Marquez and Camacho returned without Snapp. Ruiz drove around the block looking for Snapp before returning to his apartment.

We conclude from this testimony that a rational juror could infer that Ruiz knew that Snapp, Marquez, and Camacho intended to commit battery in the victims' residence and that he drove them to the victims' residence with the specific intent that the battery be committed.[5] The jury's verdict will not be disturbed where, as here, it is supported by substantial evidence.[6]

Second, Ruiz contends that "[t]he district court abused its discretion by denying [his] motion to sever." However, the record on appeal does not include Ruiz's motion to sever and the district court's

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[5]See Sharma v. State, 118 Nev. 648, 659, 56 P.3d 868, 874 (2002) ("intent can rarely be proven by direct evidence of a defendant's state of mind, but instead is inferred by the jury from the individualized, external circumstances of the crime, which are capable of proof at trial"); see also NRS 193.200.

[6]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981).

order denying the motion.[7] And Ruiz has not presented a cogent argument, cited to relevant portions of the record, or offered legal authority in support of his contention.[8] Under these circumstances, we decline to address this claim.

Third, Ruiz contends that the district court violated his constitutional right to confront his accusers by admitting the pretrial confessions of three codefendants. Ruiz specifically claims that (1) the codefendants' confessions were testimonial in nature, (2) the codefendants were not available to testify, and (3) he did not have a prior opportunity to cross-examine the codefendants.

The Confrontation Clause of the Sixth Amendment states, "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him."[9] In Bruton v. United States, the United States Supreme Court held that a defendant is deprived of his rights under the Confrontation Clause when his nontestifying codefendant's confession facially or expressly implicates him as a participant in a crime and is introduced at their joint trial, even if the jury

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[7]See Jacobs v. State, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975) ("It is the appellant's responsibility to provide the materials necessary for this court's review.").

[8]See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

[9]U.S. Const. amend. VI.

is instructed to consider the statement only in relation to the codefendant.[10] In Richardson v. Marsh, the Court held "that the Confrontation Clause is not violated by the admission of a nontestifying codefendant's confession with a proper limiting instruction when . . . the confession is redacted to eliminate not only the defendant's name, but any reference to his or her existence."[11] In Crawford v. Washington, the Court held that extrajudicial testimonial statements by a witness that are offered against a defendant are barred under the Confrontation Clause unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness.[12]

Here, the State presented the testimony of the police detectives who interviewed codefendants Snapp, Marquez, and Camacho. The district court instructed the jury that it could consider the statements attributed to a particular defendant only as they pertain to that defendant and not as they pertain to any of the other defendants. The statements attributed to Snapp, Marquez, and Camacho did not mention Ruiz by name, make any reference to his existence, or otherwise implicate him as a participant in the alleged crimes. Under these circumstances, we conclude that admission of Snapp's, Marquez's, and Camacho's

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[10]391 U.S. 123, 126 (1968).

[11]481 U.S. 200, 211 (1987).

[12]541 U.S. 36, 68 (2004).

extrajudicial confessions did not violate Ruiz's Sixth Amendment confrontation rights.

Fourth, Ruiz contends that the district court erred by denying his proposed jury instruction on multiple hypotheses. Ruiz claims that his proposed instruction correctly instructed the jury on the conclusions that may be drawn from circumstantial evidence and was critical to the fairness of his trial because it instructed the jury how to address multiple hypotheses when determining whether he had the specific intent to commit burglary.[13] Ruiz argues that the district court's failure to give this instruction was reversible error.

The district court is ultimately responsible for ensuring that the jury is fully and correctly instructed.[14] If requested, the district court must provide instructions on the significance of findings that are relative to the defense's theory of the case.[15] "'If [a] proposed [defense] instruction is poorly drafted, a district court has an affirmative obligation to cooperate with the defendant to correct the proposed instruction or to incorporate

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[13]Ruiz cites to Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003) (providing that circumstantial evidence will sustain a criminal conviction if it is sufficient to exclude all other reasonable hypotheses).

[14]Crawford v. State, 121 Nev. 744, 754-55, 121 P.3d 582, 589 (2005).

[15]Carter v. State, 121 Nev. 759, 767, 121 P.3d 592, 597 (2005); Crawford, 121 Nev. at 753-54, 121 P.3d at 588-89.

the substance of such an instruction in one drafted by the court.'"[16] The defense is not entitled to instructions that are "misleading, inaccurate, or duplicitous."[17]

Here, the district court refused Ruiz's proposed instruction after finding that "despite its inclusion in a volume entitled 'Judicial Council Readable Instructions,' that the instruction is not readable and, particularly, that the sentence on lines 12 through 17 of the instruction makes no sense and that the jury is otherwise sufficiently instructed by the instructions the Court will give." We have reviewed the district court's jury instructions and conclude that they adequately incorporate the substance of Ruiz's proposed instruction.[18] Accordingly, the district court did not err by rejecting Ruiz's proposed instruction.

Although we have determined that Ruiz's contentions are without merit or not appropriately presented for our review, our review of

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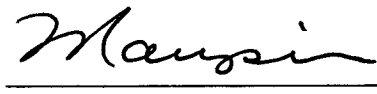
[16]Carter, 121 Nev. at 765, 121 P.3d at 596 (quoting Honeycutt v. State, 118 Nev. 660, 677-78, 56 P.3d 362, 373-74 (2002) (Rose, J., dissenting)).

[17]Id.; Crawford, 121 Nev. at 754, 121 P.3d at 589.

[18]See generally Deveroux v. State, 96 Nev. 388, 391-92, 610 P.2d 722, 724 (1980); Bailey v. State, 94 Nev. 323, 326, 579 P.2d 1247, 1249 (1978) (the district court did not err in refusing a proposed jury instruction regarding circumstantial evidence where the jury was properly instructed on reasonable doubt and there was no indication that the other instructions were inadequate).

the record reveals that the district court improperly enhanced his sentence for burglary with a deadly weapon enhancement.[19] Accordingly, we

ORDER the judgment of conviction AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court with instructions to vacate the deadly weapon enhancement on the burglary count and enter a corrected judgment of conviction.[20]



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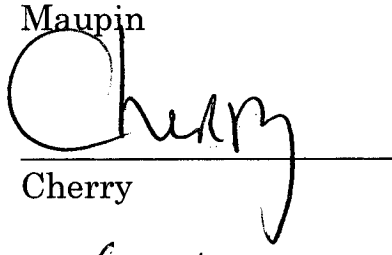

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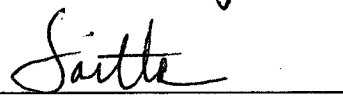

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[19]See NRS 205.060(4); Carr v. Sheriff, 95 Nev. 688, 601 P.2d 422 (1979).

[20]Because Ruiz 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, we shall take no action and shall not consider the proper person documents that he has submitted to this court in this matter.

cc: Hon. Brent T. Adams, District Judge
John P. Calvert
Carlos Ruiz
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk