IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN PAUL SNAPP,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48935

FILED

JUL 11 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, attempted robbery with the use of a deadly weapon, burglary with the use of a deadly weapon, battery with the use of a deadly weapon causing substantial bodily harm, and battery with the use of a deadly weapon. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant Brian Paul Snapp to serve various concurrent and consecutive terms of imprisonment, amounting to life with the possibility of parole.

First, Snapp contends that there was insufficient evidence to support his convictions for burglary and attempted robbery because the State failed to prove that he possessed the requisite intent to commit these crimes. Snapp claims that the evidence presented to the jury clearly showed that he was intoxicated. Snapp argues that a reasonable jury would have found that his voluntary intoxication interfered with his ability to form the specific intent necessary to commit burglary and attempted robbery. Snapp further argues that if his burglary and

attempted robbery convictions are 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 Snapp was drinking, but seemed to be "normal" while he was in the victims' residence. Snapp was ejected from the residence, he threatened to return and kill everyone, and he got in his car and left. The police arrived a short time later and they were given information about Snapp's car in hopes that they could get him to a safe place where he could sober up.

Snapp went to the apartment where Carlos Ruiz and Alex Marquez lived. He entered Ruiz's room very upset. He told Ruiz that his friends had "turned on him," "beat him up," and "kicked him out" of their apartment. Snapp also told Ruiz that he wanted to "get them back," "fight with them," and "do something about the situation." Initially, Ruiz

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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).

declined to help and suggested that Snapp ask someone else. Snapp talked with the other men in the apartment, trying to get them to go with him and informing them about a safe that contained marijuana. Snapp returned to Ruiz's room and asked Ruiz to drive him to the victims' residence. Ultimately, Ruiz agreed to be the driver. Upon arriving at the victims' residence, Snapp, Marquez, and Eduardo Camacho knocked on the door, kicked in the door, and attacked the victims with baseball bats, a claw hammer, and a knife.

Later, Snapp told Police Detective David Jenkins that he had had a disagreement with the victims earlier in the evening, they had disrespected him, they had drugs and money in their safe, and he went back to their residence "to kick some ass and get the money and the drugs out of the safe."

We conclude from this testimony that a rational juror could infer that Snapp had the specific intent to commit burglary and attempted robbery.[4] We note that the jury was properly instructed on the possible effect of intoxication on the formation of criminal intent and nonetheless found that Snapp was guilty of burglary and attempted robbery.[5] The

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[4]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.

[5]See NRS 193.220; Vincent v. State, 97 Nev. 169, 625 P.2d 1172 (1981).

jury's verdict will not be disturbed where, as here, it is supported by substantial evidence.[6]

Second, Snapp contends that the district court abused its discretion at sentencing by failing to run all of his sentences concurrently. Snapp argues that his case provides this court with an opportunity "to reconsider its refusal to review criminal sentences for excessiveness and to provide criminal defendants with the opportunity to have the most important aspect of their criminal cases examined on appeal."[7]

We have consistently afforded the district court wide discretion in its sentencing decision.[8] We 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."[9] A sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.[10]

Here, Snapp does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statutes are

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

[7]Santana v. State, 122 Nev. 1458, 1465, 148 P.3d 741, 746 (2006) (Rose, J., concurring).

[8]See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

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

[10]Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996).

unconstitutional. We note that the sentence imposed is within the parameters provided by the relevant statutes[11] and that the district court has discretion to impose consecutive sentences.[12] And we conclude that Snapp's contention is without merit. However, our review of the record reveals that the district court improperly enhanced Snapp's sentence for burglary with a deadly weapon enhancement.[13] 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.

_____, J.
Maupin

_____, J.
Cherry

_____, J.
Saitta

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[11]See 1995 Nev. Stat., ch. 455, § 1, at 1431 (NRS 193.165(1)); NRS 193.330(1)(a)(2); NRS 200.030(4)(b)(2); NRS 200.380(2); NRS 200.481(2)(e); NRS 205.060(4).

[12]See NRS 176.035(1).

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

cc: Hon. Brent T. Adams, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk