

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW MCCRARY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49067

**FILED**

FEB 26 2008

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count each of conspiracy to commit burglary, burglary, robbery, conspiracy to commit robbery, robbery with the use of a deadly weapon, battery with the use of a deadly weapon resulting in substantial bodily harm, and possession of a firearm with an altered serial number. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant Matthew McCrary to serve various consecutive and concurrent terms of imprisonment totaling 12 to 40 years.

First, McCrary contends that insufficient evidence was presented at trial to support his convictions. McCrary specifically claims that no evidence was adduced that (1) the Green Valley Grocery store clerk was forced or threatened with force to relinquish the store's property, (2) the robbery was a foreseeable consequence of the burglary, (3) the battery victim sustained substantial bodily harm, (4) the group of men conspired to commit robbery in Pioneer Park, and (5) he possessed the handgun found with an altered serial number. Our review of the record

on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.<sup>1</sup>

Here, the jury heard testimony that on April 16, 2006, at about 2:30 a.m., a group of about 10 men entered the Green Valley Grocery store, grabbed groceries and beer, and ran out of the store without paying. One of the men told the store clerk, "say something and I'll come back and blow your head off." The store's 16 surveillance cameras recorded the incident, and the jury was shown the video recorded by these cameras.

The jury heard testimony that later that morning, at about 3:00 a.m., a group of about 15 men went to Pioneer Park and demanded money from three people who were celebrating Lent. The group put a gun to Jose Chavez's head and took his car keys and wallet, punched and kicked Laura Bowers, and attacked Matthew Davis. When the three tried to run away, Davis was shot in the back. Davis was taken to a hospital for treatment and, during a subsequent hospital visit, a bullet was removed from his back. Davis identified McCrary in court as one of the assailants.

The jury also heard testimony that later that morning, at about 4:52 a.m., a police officer making a traffic stop observed McCrary exit the passenger side of a parked car. The police officer found a handgun in the front passenger side of the car and he found an empty cartridge case when he searched McCrary. McCrary told a police officer that he had purchased the handgun two weeks before the night of the stop. A forensic scientist testified that the bullet recovered from Davis's back came from

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<sup>1</sup>McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

McCrary's handgun, and a police officer testified that the handgun's serial number had been scratched off. The handgun was admitted into evidence.

Based on this evidence, we conclude that a rational juror could reasonably infer that McCrary committed the offenses of conspiracy to commit burglary, burglary, robbery, conspiracy to commit robbery, robbery with the use of a deadly weapon, battery with the use of a deadly weapon resulting in substantial bodily harm, and possession of a firearm with an altered serial number.<sup>2</sup> 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.<sup>3</sup>

Second, McCrary contends that his constitutional right to confront the witnesses against him was violated when the prosecutor commented during closing argument that a bullet recovered from a victim's back came from McCrary's handgun. The Sixth Amendment of the United States Constitution guarantees a criminal defendant the right to confront the witnesses against him and an opportunity to cross-examine such witnesses.<sup>4</sup>

Here, a crime scene analyst testified that he went to the hospital on the day that a bullet was removed from Davis's back and that Nurse Judy Hanson gave him the bullet. As a result of procedural error,

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<sup>2</sup>See NRS 193.165(1); NRS 199.480; NRS 200.380(1); NRS 200.481(1)(a); NRS 202.277(2); NRS 205.060(1).

<sup>3</sup>See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

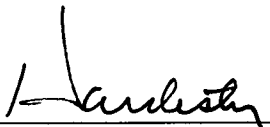
<sup>4</sup>Delaware v. Van Arsdall, 475 U.S. 673, 678 (1986).

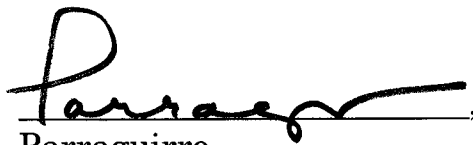
Hanson was not allowed to testify and McCrary objected to the admission of the bullet. The district court found that an adequate foundation had been laid to admit the bullet into evidence and that the jury could decide how much weight to give the bullet when it began its deliberations. During closing argument, the prosecutor argued that the bullet recovered from Davis's back came from McCrary's handgun.

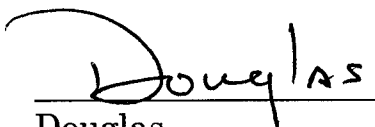
We conclude from these circumstances that McCrary was not denied his constitutional right to confront the witnesses against him, the district court did not abuse its discretion by admitting the bullet into evidence, and the prosecutor did not improperly argue that the bullet recovered from the victim's back came from McCrary's handgun.<sup>5</sup>

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

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

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<sup>5</sup>See Klein v. State, 105 Nev. 880, 884, 784 P.2d 970, 973 (1989) (providing that it is permissible for the prosecutor to argue the evidence before the jury and to suggest reasonable inferences that the jurors might draw from that evidence).

cc: Hon. Stewart L. Bell, District Judge  
Keith C. Brower  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk