IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY ALLEN MURRAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51196

FILED

SEP 25 2009

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of four counts of attempted murder with the use of a deadly weapon and one count of discharging a weapon at a vehicle. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. The district court sentenced appellant Jeffrey Allen Murray to serve various concurrent and consecutive prison terms totaling 8 to 20 years.

First, Murray contends that the district court abused its discretion by denying his motion for a new trial. Murray asserts that counsel interviewed an unidentified male juror after the verdict was entered and that the juror said "that he had figured out that this was a gang related event because the blue bandana was left as some type of message that it was from a particular gang."[1] Murray claims that "the juror's unique purported knowledge" constitutes juror misconduct, he was prejudiced by this misconduct, and the district court failed to properly evaluate this misconduct before denying his motion.

[1]We note that the jury heard testimony that a blue bandana was found at the crime scene.

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"Before a defendant can prevail on a motion for a new trial based on juror misconduct, the defendant must present admissible evidence sufficient to establish: (1) the occurrence of juror misconduct, and (2) a showing that the misconduct was prejudicial." Meyer v. State, 119 Nev. 554, 563-64, 80 P.3d 447, 455 (2003). The defendant can only prove the misconduct using "objective facts and not the state of mind or deliberative process of the jury." Id. at 563, 80 P.3d at 454. "A juror who has specialized knowledge or expertise may convey their opinion based upon such knowledge to fellow jurors. The opinion, even if based upon information not admitted into evidence, is not extrinsic evidence and does not constitute juror misconduct." Id. at 571, 80 P.3d at 459. Based on this authority, Murray has failed to demonstrate the occurrence of juror misconduct and we conclude that the district court did not abuse its discretion by denying his motion for a new trial.

Second, Murray contends that the district court erred by improperly instructing the jury on self-defense. Quoting Runion v. State, 116 Nev. 1041, 1052, 13 P.3d 52, 59 (2000), Murray asserts that the district court failed to instruct the jury that

> [i]f evidence of self-defense is present, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. If you find that the State has failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, you must find the defendant not guilty.

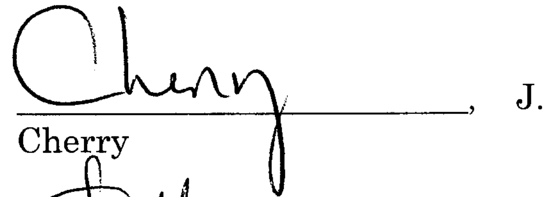
However, the record on appeal reveals that this instruction was given to the jury verbatim. We note that the instruction accurately reflects Nevada law and we conclude that the district court did not improperly instruct the jury on self-defense.

Third, Murray contends that, "coupled with the lower court's failure to properly instruct the jury," insufficient evidence was adduced at

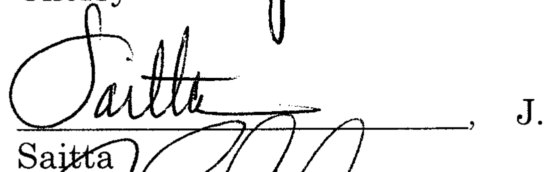
trial to support his convictions. However, our review of the record on appeal reveals sufficient evidence to establish Murray's guilt beyond a reasonable doubt as determined by a rational trier of fact. See McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). In particular, we note that the jury was properly instructed on self-defense and that several percipient witnesses testified that they heard seven or eight shots and observed Murray shooting into the back of the victims' car as it was leaving his location. We conclude that a rational juror could infer from the witnesses' testimony that Murray was not acting in self-defense when he shot into the car in an attempt to kill its occupants. See NRS 193.165(1); NRS 193.330(1); NRS 200.010(1); NRS 202.285(1). 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. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

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

ORDER the judgment of conviction AFFIRMED.



_______________, J.
Cherry



_______________, J.
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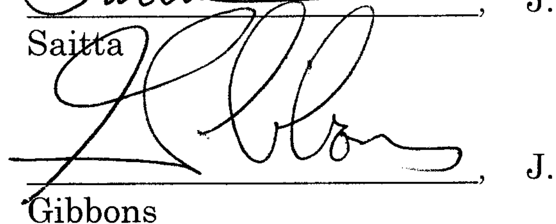

_______________, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Gibson & Kuehn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk