

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM CHARLES MERRITT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53002

**FILED**

MAR 11 2010

TRICIE A. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of second-degree kidnapping, sexual assault, and possession of a firearm by an ex-felon. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge. Merritt raises four issues on appeal.

First, Merritt argues that the district court erred in denying his motion to suppress evidence seized during a search of an automobile parked at his residence. We conclude that this claim lacks merit. A warrant to search Merritt's home authorized the police to search the car parked in the driveway. State v. Harnisch, 113 Nev. 214, 219, 931 P.2d 1359, 1363 (1997) ("It is an established rule that '[a] search warrant authorizing a search of a certain premises generally includes any vehicles located within its curtilage if the objects of the search might be located therein.'" (alteration in original) (quoting U.S. v. Gottschalk, 915 F.2d 1459, 1461 (10th Cir. 1990))), clarified on denial of rehearing by State v. Harnisch, 114 Nev. 225, 954 P.2d 1180 (1998); see also Keese v. State, 110 Nev. 997, 1004-05, 879 P.2d 63, 68 (1994) (providing that warrant to search premises permits officers to search any building within curtilage of that residence).

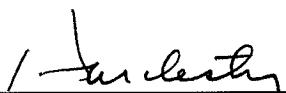
Second, Merritt argues that the district court abused its discretion in denying his motion for a new trial based on conflicting evidence supporting his convictions for second-degree kidnapping and sexual assault. We disagree. See Zana v. State, 125 Nev. \_\_\_, \_\_\_, 216 P.3d 244, 248 (2009). While some of the evidence may have been conflicting and testimony inconsistent, it was not so at odds with the verdict that the “totality of evidence fail[ed] to prove the defendant guilty beyond a reasonable doubt.” State v. Walker, 109 Nev. 683, 685-86, 857 P.2d 1, 2 (1993).

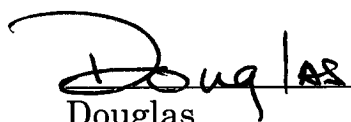
Third, Merritt argues that the district court erred in refusing to give his proffered jury instructions. We discern no abuse of discretion. Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). The given instructions were sufficient to instruct the jury on the elements of the offenses and deadly weapon enhancement, the burden of proof, and the presumption of innocence. See Vallery v. State, 118 Nev. 357, 372, 46 P.3d 66, 77 (2002) (providing that the district court may “refuse a jury instruction on the defendant’s theory of the case that is substantially covered by other instructions”).

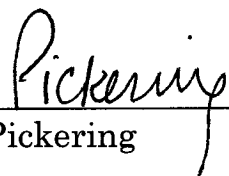
Fourth, Merritt argues that the district court erred in denying his motion to strike the habitual criminal enhancement and adjudicating him a habitual criminal. The State’s notice to seek habitual criminal treatment alleges sufficient felony convictions for habitual criminal treatment. Further, Merritt does not argue that there were not sufficient prior convictions, merely that habitual criminal adjudication is not appropriate in this case based on the nature of the prior convictions and punishments he had received for those crimes. However, he failed to include a transcript of the sentencing hearing. See NRAP 9(a); Riggins v.

State, 107 Nev. 178, 182, 808 P.2d 535, 538 (1991) (providing that when appellant fails to provide necessary materials for this court's review, this court presumes missing portions support district court's decision), rev'd on other grounds, 504 U.S. 127 (1992). Based on the record before us, we discern no abuse of discretion in sentencing Merritt. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

 \_\_\_\_\_, J.  
Pickering

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Draskovich & Oronoz, P.C.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk