

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY TURNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54529

FILED

JUN 09 2010

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of burglary and conspiracy to commit larceny. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

Insufficient Evidence

Appellant Larry Turner contends that the evidence presented at trial was insufficient to support his convictions because the evidence established that Turner was merely a passenger in the vehicle, and there was no evidence that he participated in criminal activity.

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). The jury heard testimony from various law enforcement officials that (a) wire intercepts revealed that Turner was told to bring a van because the "items were large;" (b) during the early morning hours, the van—in which Turner was one of three occupants—pulled up to various businesses for a brief period of time; (c) wire intercepts between the co-defendants revealed that they

aborted burglarizing the first two establishments because there were security cameras and a helicopter was heard overhead; and (d) the van pulled up to the third business, which was burglarized by a co-defendant. The jury could reasonably infer from the evidence presented that Turner aided and abetted his co-defendants in the burglary, and thus was a principal to the burglary, and conspired with his co-defendants to commit larceny. See NRS 195.020 (defining principal); NRS 205.060(1) (defining burglary); NRS 205.220 (defining grand larceny); NRS 199.480(3)(a) (conspiracy); Bolden v. State, 121 Nev. 908, 912-13, 124 P.3d 191, 194 (2005) (a conspiracy occurs when two or more people agree to work towards an unlawful objective), overruled on other grounds by Cortinas v. State, 124 Nev. ____, 195 P.3d 315 (2008), cert. denied, 558 U.S. ____, 130 S. Ct. 416 (2009); see also Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003) (circumstantial evidence is enough to support a conviction). 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); Walker v. State, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975).

Jury Instruction

Turner contends that Instruction 15, which defined reasonable doubt as required by NRS 175.211(1), diluted the State's burden of proof in violation of due process. We have repeatedly rejected this argument and we decline to reconsider this issue. See Chambers v. State, 113 Nev. 974, 982-83, 944 P.2d 805, 810 (1997). Accordingly, we conclude this claim lacks merit.

Cruel and Unusual Punishment

Turner asserts that his sentence constitutes cruel and unusual punishment because it was manifestly disproportionate to the seriousness of his offense. We will not disturb a district court's sentencing determination "absent a showing of abuse of discretion." Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). The sentences imposed are within the statutory guidelines. See NRS 205.060(2); NRS 199.480(3); NRS 205.220; NRS 193.140. Additionally, the sentences are not "so unreasonably disproportionate to the offense as to shock the conscience." Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)). Finally, Turner does not assert that the relevant statutes are unconstitutional, see id., or that the district court relied on impalpable or highly suspect evidence, see Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Therefore, we conclude that the sentence imposed did not constitute cruel and unusual punishment and the district court did not abuse its discretion when imposing sentence.

Having considered Turner's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Eighth Judicial District Court Dept. 8, District Judge
Edward B. Hughes
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk