

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARQUION SULLIVAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58958

FILED

FEB 09 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of robbery and first-degree kidnapping with the use of a deadly weapon, conspiring to rob, and burglary while possessing a firearm. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

The victim drove to an ATM, deposited some money, and withdrew \$40. A dark-colored Toyota Camry pulled up and two men got out and approached her vehicle. One man drew a firearm, reached through her open car window, and put the gun to the victim's head. He demanded that she open her car doors. The victim complied and the gunman and an accomplice got into her car and demanded money. She gave her attacker \$40. The attackers then ordered the victim to follow the Camry through the shopping center's parking lot and twenty feet down a poorly-lit side street. Her attackers grabbed her keys, got into the Camry, and drove away.

The victim called the police, who found the suspects at a nearby convenience store. Police officers attempted to apprehend them, but they left the car and fled to a friend's apartment. Only three conspirators made it there. Upon arriving, they discussed how they had "lost Marquion" and "how they robbed a lady at the ATM for \$40." Police

officers found the three conspirators and apprehended them at the apartment. Sometime later, the police identified appellant Marquion Sullivan as the fourth suspect. He was arrested and confessed to police detectives. Sullivan argues that his convictions rest on insufficient evidence and that his sentence was excessive. We disagree.

First, Sullivan contends that insufficient evidence supports his conviction for kidnapping because forcing the victim to drive her car away from the scene of the robbery was incidental to the robbery and did not “substantially increase[]” her risk of harm. Garcia v. State, 121 Nev. 327, 336, 113 P.3d 836, 842 (2005). After the victim gave the robbers \$40, the robbery was complete. Yet, they forced the victim—at gunpoint—to drive away from the ATM, through a shopping center parking lot, and twenty feet down a poorly-lit side street. We conclude that sufficient evidence supports Sullivan’s kidnapping conviction. See Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (stating review standard for sufficiency of evidence).

Sullivan also argues that insufficient evidence supports his remaining convictions because the State presented nothing but police testimony connecting him to the other crimes. This claim is belied by the record. In addition to Sullivan’s confession to robbing the victim with his codefendants, the evidence revealed that Sullivan and his codefendants held the victim at gunpoint, took \$40 from the victim, and forced the victim into her car and to drive them some distance away from the ATM. And, after Sullivan and his codefendants fled the scene, they told a friend that they had “lost Marquion” and “robbed a lady at an ATM for \$40.” We conclude that a rational jury could find Sullivan’s guilt beyond a reasonable doubt as to the offenses of robbery (NRS 200.380), conspiracy

to rob (NRS 199.480), and burglary while possessing a firearm (NRS 205.060). Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

Finally, Sullivan contends that the district court erred by imposing a disproportionately greater sentence than was imposed on his codefendants. There is no legal requirement that codefendants receive identical punishment. Nobles v. Warden, 106 Nev. 67, 68, 787 P.2d 390, 391 (1990). His sentences, while lengthy, are well within the proscribed statutory range for each offense, see NRS 199.480; NRS 200.380; NRS 193.165; NRS 200.320; and NRS 205.060, and they are not so harsh as to shock the conscience. Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996). Accordingly, the district court did not abuse its discretion at sentencing. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Stefany Miley, District Judge
Edward B. Hughes
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk