IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY D. SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59984

FILED

DEC 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
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ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit larceny from the person and robbery. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. Appellant Larry D. Smith raises two issues on appeal.

Smith contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. 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. See Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980); see also Jackson v. Virginia, 443 U.S. 307, 319 (1979); Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998). Here, the victim testified that he was gambling at a Las Vegas casino. He decided to leave and placed his winnings in the breast pocket of his shirt. While in the restroom, Smith approached the victim, said a few words, and hugged the victim. The codefendant watched Smith take the victim's winnings. After the hug, the victim noticed that his winnings were missing. He left the restroom, saw Smith, and confronted him about taking his winnings. Smith denied taking them and walked away from the victim. The victim went after Smith and tried to stop him. Smith ducked underneath the victim's arm

and tried to punch him. The codefendant did something that caused the victim to look over his shoulder and, when the victim turned back around, Smith punched him in his nose. Smith then ran out the casino door. During the altercation, Smith dropped his winnings and the codefendant put them in his pocket. As the codefendant was walking toward the front door, the victim's girlfriend identified him for the police. The codefendant approached the police officer and denied knowing anything about the robbery. The officer asked to search the codefendant, he consented, and the officer found the victim's winnings in the codefendant's pocket. We conclude that a rational juror could reasonably infer from this testimony that Smith was guilty of conspiracy to commit larceny from the person and robbery. See NRS 199.480; NRS 200.380(1); NRS 205.270(1); see also Thomas v. State, 114 Nev. 1127, 1143, 967 P.2d 1111, 1112 (1998) (defining conspiracy and noting that it "is seldom susceptible of direct proof and is usually established by inference from the conduct of the parties"). It is for the jury to determine the weight and credibility to give 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); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Smith also contends that his sentence for robbery constitutes cruel and unusual punishment because it is disproportionate to the underlying offense and his prior criminal history. The district court sentenced Smith to a prison term of 10 to 25 years pursuant to the habitual criminal statute after considering Smith's prior criminal history, which included seven prior felony convictions. See NRS 207.010(1)(b)(3). Smith has not alleged that the district court relied solely on impalpable or

highly suspect evidence or demonstrated that the sentencing statute is unconstitutional. See Chavez v. State, 125 Nev. 328, 348, 213 P.3d 476, 489-90 (2009). And the sentence is not so unreasonably disproportionate to the gravity of the offenses and his history of recidivism as to shock the conscience. See Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979); see also Ewing v. California, 538 U.S. 11, 29 (2003) (plurality opinion); Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion). We conclude that the sentence does not constitute cruel and unusual punishment and, therefore, the district court did not abuse its discretion at sentencing. Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

Having considered Smith's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Saitta

_____, J.
Pickering

_____, J.
Hardesty

cc: Chief Judge, Eighth Judicial District Court
Eichhorn & Hoo LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk