IN THE SUPREME COURT OF THE STATE OF NEVADA

QUAVAS JAMAL WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60639

FILED

JAN 16 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of battery with the use of a deadly weapon resulting in substantial bodily harm, one count of mayhem with the use of a deadly weapon, and one count of discharging a firearm at or into a structure. Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

First, appellant Quavas Williams argues that there was insufficient evidence to support his battery and mayhem convictions because he was not the shooter and there was no evidence that he planned to shoot anyone, directed someone else to shoot anyone, picked out the targets, had a dispute with anyone, or participated in the argument prior to the shooting. We review the evidence in the light most favorable to the prosecution and determine whether any rational juror could have found the essential elements of the crimes beyond a reasonable doubt. See

13-01786

Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Williams was charged with battery and mayhem under the theory of aiding and abetting an unidentified co-conspirator. Under Nevada law, an aider or abettor to a crime is equally as culpable as the actual perpetrator of the crime. Sharma v. State, 118 Nev. 648, 652, 56 P.3d 868, 870 (2002); NRS 195.020. This court has defined a person who "aids and abets the commission of a crime" as someone who "aids, promotes, encourages or instigates, by act or advice, the commission of such crime with the intention that the crime be committed." Bolden v. State, 121 Nev. 908, 914, 124 P.3d 191, 195 (2005), receded from on other grounds by Cortinas v. State, 124 Nev. 1013, 1016, 195 P.3d 315, 317 (2008).

Here, the jury heard testimony that Edward Mills and his cousin Crissie Mills were in front of Crissie's house when a group of women across the street initiated a verbal altercation and made references to the Bloods street gang. Soon after, a group of men, including Williams, appeared across the street with the women and some of the men joined in the argument. Williams passed a gun to another man, "Yum-Yum," and flashed a gang sign, and Yum-Yum fired several gunshots toward Crissie's house. Edward, who was standing on the porch, was shot in the abdomen and hand, resulting in a finger being amputated, and his cousin Keonte Carter, who was standing near the front door, was shot in the elbow. Several witnesses testified that, immediately after the shots were fired, Williams took the gun from the shooter and got into a car and drove away.

Williams testified in his defense and admitted to being a member of the Bloods gang and to being present during part of the verbal altercation, but asserted that he left the group and walked home before the shooting occurred.

We conclude that a rational juror could infer from these circumstances that Williams gave the gun to the shooter with the intent for the shooter to use the gun during the altercation. Thus, there was sufficient evidence that Williams aided and abetted in the commission of battery with the use of a deadly weapon resulting in substantial bodily harm and mayhem with the use of a deadly weapon. See NRS 200.481(1)(a), 2(e)(2); NRS 200.280; NRS 193.165; see also Hernandez v. State, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002) ("[C]ircumstantial evidence alone may support a conviction."); McNair, 108 Nev. at 56, 825 P.2d at 573 ("It is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses.").

Second, Williams contends that the district court erred by admitting evidence of gang affiliation at trial because the evidence was prejudicial and not relevant, given that he was not charged with a gang enhancement. We conclude that the district court did not abuse its discretion in admitting gang-affiliation evidence against Williams because this evidence was relevant to prove identity and motive and to "provide the common thread that connected the story of events." See Butler v. State, 120 Nev. 879, 889, 102 P.3d 71, 79 (2004); see also Tinch v. State, 113 Nev. 1170, 1175-76, 946 P.2d 1061, 1064-65 (1997).

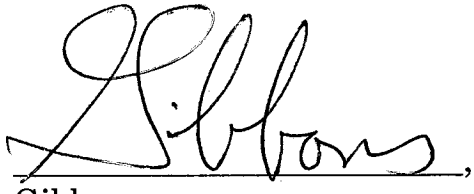
Third, Williams argues that there was insufficient evidence to support his conviction for discharging a firearm into a structure because no evidence was presented to show that he discharged the firearm. We agree. The information charged Williams as a principal for this count and did not specifically allege that Williams aided and abetted. See Barren v. State, 99 Nev. 661, 668, 669 P.2d 725, 729 (1983). Because the evidence at trial did not show that Williams actually fired the gun, he could not be convicted of this count as charged. Therefore, we reverse Williams' conviction on Count 7 for discharging a firearm at or into a structure.

Finally, Williams argues that his convictions violate the Double Jeopardy Clause because they punish the same act of providing a gun to the shooter. Although Williams phrases his argument as one challenging the Double Jeopardy Clause, he really makes a redundancy argument, as his contention is not that the offenses are the same, but that they punish the exact same conduct. However, in Jackson v. State, 128 Nev. ___, ___ P.3d ___ (Adv. Op. No. 55, December 6, 2012), this court rejected the application of a fact-based "same conduct" test for determining whether cumulative punishment is permissible. Rather, the proper focus is on whether the Legislature has authorized cumulative punishment. Id. This court concluded that mayhem and battery causing substantial bodily injury are not authorized by the Legislature for cumulative punishment, and thus convictions for both based on a single act cannot stand. Id. Here, Williams' mayhem conviction was based on the same act and injury as one of his convictions for battery with the use of a deadly weapon resulting in substantial bodily harm. In light of

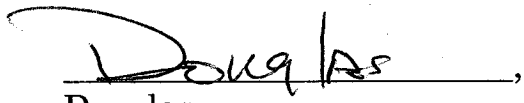
Jackson, we reverse Williams' conviction on Count 4 for mayhem with the use of a deadly weapon.

Having considered Williams' contentions, we

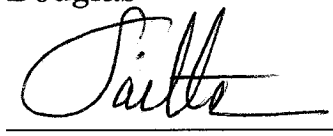
ORDER the judgment of conviction REVERSED as to the count of discharging a firearm at or into a structure and the count of mayhem with the use of a deadly weapon and AFFIRMED in all other respects and REMAND this matter to the district court for the entry of an amended judgment of conviction consistent with this order.



_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Saitta

cc: Hon. Abbi Silver, District Judge
Eichhorn & Hoo LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk