IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND PAUL ROSAS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36447

FILED

MAY 29 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of first-degree murder with the use of a deadly weapon, first-degree kidnapping with the use of a deadly weapon, and conspiracy to commit murder. The district court sentenced appellant to serve four consecutive terms of life in prison without the possibility of parole and a consecutive term of 48 to 120 months in prison. Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

Appellant's sole contention is that the State adduced insufficient evidence to support the jury's verdict on the first-degree murder charge. In particular, appellant argues that he accidentally shot the victim, and therefore the facts are more consistent with voluntary manslaughter or second-degree murder than first-degree murder. We disagree.

When reviewing a claim of insufficient evidence, the relevant inquiry is "'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'"[1] Furthermore, "it is the

[1]Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)) (emphasis in original omitted).

jury's function, not that of the court to assess the weight of the evidence and determine the credibility of witnesses."[2]

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. Appellant rented a room in the home of the victim, Homer Mitchell Stockmann during August and September of 1999. Over the Labor Day weekend, appellant had a party at the house. During that party, appellant and two other individuals, Edward McQueen and Cecele Linton, discussed a plan to kill Stockmann. McQueen testified that the discussion was just a joke; appellant and Linton did not give similar testimony. The plan involved appellant sitting behind Stockmann in his vehicle and stabbing Stockmann in the neck. Although the plan originally involved McQueen, he became intoxicated and fell asleep before the plan could be carried out.

Appellant used a ruse to get Stockmann to leave the house. The prior week, Stockmann's truck had been stolen. Unknown to Stockmann, appellant and some friends had stolen the truck, driven it to Frenchman's Lake, vandalized it, and attempted to set it on fire. After arranging for another friend, Brad Kimes, to provide Stockmann with information regarding the location of the truck, appellant and Linton agreed to accompany Stockmann on the evening of September 4, 1999, as he drove toward Frenchman's Lake in search of his truck. Appellant sat behind Stockmann, who was driving. Although appellant had a knife with him, he did not stab Stockmann during the drive. Appellant testified that he got too scared to stab Stockmann.

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[2]McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Stockmann eventually stopped the car to get out and look for his truck. Appellant accompanied him, while Linton waited in the car. According to appellant, Stockmann took a shotgun out of the trunk of the car because he was afraid that the person who stole the truck might be in the area. Appellant and Stockmann walked away from the vehicle into the dark. Appellant asked Stockmann if the shotgun worked. Stockmann said that it did and fired a shot into the air. When appellant asked to look at the shotgun, Stockmann put the safety on and handed the gun to appellant. Appellant, who had prior military training, turned the safety off and, while walking behind Stockmann, shot him in the back. Appellant returned to the car and informed Linton that "he was done." Linton, however, observed Stockmann's head moving and told appellant to shoot Stockmann in the head. Appellant did so. Appellant and Linton then dragged Stockmann's body away from the dirt road.[3]

Appellant eventually returned to Stockmann's home later that evening and bragged to McQueen that he had shot Stockmann in the back and the head. Appellant also contacted Kimes and told him that Stockmann had been taken care of. Appellant later contacted Kimes a second time and eventually gave the shotgun to Kimes, telling Kimes that he had shot Stockmann in the back and the head.

Stockmann's body was discovered on September 6, 1999. He had died of gunshot wounds to the back and head.

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[3]Linton pleaded guilty to first-degree murder and testified against appellant. In exchange for her guilty plea, the State dismissed the weapon enhancement and kidnapping and conspiracy charges and agreed to recommend a sentence of life in prison. McQueen also testified against appellant; however, he was never charged in connection with Stockmann's murder and received no deals for his testimony.

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When interviewed by police, appellant gave several different stories. Appellant first claimed that he had no involvement in Stockmann's death, then claimed that he was present when an unidentified black man shot Stockmann. Later, appellant claimed that Stockmann asked him to accompany him into the mountains and shoot him. Appellant eventually admitted that he shot Stockmann in the back and head after luring him into the mountains to search for his truck; however, appellant claimed that the first shot was an accident. At the time of his arrest, appellant was living in Stockmann's home and wearing Stockmann's clothes.

Appellant's testimony at trial was similar to the final version of events that he recounted during the police interview. Appellant testified that he accidentally shot Stockmann in the back. Appellant explained that he was pointing the gun forward and looking down at it when Stockmann, who had been standing next to him, walked in front of him. Appellant further testified that Linton instructed him to shoot Stockmann in the head, but he did not know why he did so. Appellant also testified that he had grown to dislike Stockmann because of the way he disrespected appellant and treated Stockmann's girlfriend, which reminded appellant of his father, who had physically abused appellant and his mother.[4]

The jury could reasonably infer from the evidence presented that appellant killed Stockmann with malice aforethought and that the killing was willful, deliberate and premeditated or was committed in the perpetration of a

[4]Appellant was nineteen years old at the time of the killing. He testified that he had been physically abused by his father from a very young age. Appellant did not testify that Stockmann ever physically abused him.

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kidnapping. 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.[5]

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

Young, J.

Leavitt, J.

Becker, J.

cc: Hon. Brent T. Adams, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk

[5]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981).

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