

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DERRELL LEE CHRISTY, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72486

FILED

MAY 15 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Derrell Lee Christy, Jr., appeals from a judgment of conviction entered pursuant to a jury verdict of attempted murder with the use of a deadly weapon; attempted invasion of a home with the use of a deadly weapon; attempted burglary while in possession of a firearm; battery with the use of a deadly weapon resulting in substantial bodily harm; discharging a firearm at or into an occupied structure, vehicle, aircraft, or watercraft; and ownership or possession of a firearm by a prohibited person. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Christy claims insufficient evidence supports his convictions because the State failed to prove he (1) was at the scene of the crime when the crimes were committed, (2) had the requisite intent to commit the crimes, and (3) was not acting in self-defense. We review the evidence in the light most favorable to the prosecution and determine whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

The jury heard testimony that Tyrone Golden lived in an apartment with his fiancé, Christina Slinger, their three children, Slinger’s brother, Reuben Behrend, and Behrend’s girlfriend, Marcella Henderson. Golden was sitting outside of his apartment, with his two-year-old son and

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Christopher Behrend, when Deon Smalley approached and asked to speak to Henderson. Smalley became angry when Golden asked Christopher to close the apartment's security door. Smalley and Golden argued briefly, and then Golden took his son inside and told Slinger about the encounter.

Shortly thereafter, Antonio Behrend, Reuben, Golden, Slinger, and Henderson became aware of a gray Dodge Charger that was circling the block. The movement of the Charger was strange because it faced their apartment with its lights on, parked in the middle of the street, and sat there for a few minutes before taking off. Antonio and Golden were followed by the Charger when they drove to a Jack in the Box restaurant. Golden saw Smalley sitting in the passenger seat, a man with dreadlocks sitting in the driver's seat, and a third person sitting in the Charger. He recorded the Charger's license plate number because he thought it was suspicious.

While Golden and his family were dining, they heard someone banging on their security door. Golden looked through the peep hole and saw Smalley kicking the door while holding a gun. Golden retrieved a rifle from his bedroom while his family hid in the closet. Golden began shooting when Smalley kicked the apartment door open. Two other men ran up and shot Golden. One of the two men had dreadlocks. Golden was shot seven times and fell to the ground.

Police Officer Ryan LeBaron found Golden laying in the middle of the living room floor. Golden was still conscious and repeatedly said that it was a gray Dodge Charger license plate number 640018. Officer LeBaron did not get a hit when he typed 640018 into the DMV database, so he assumed the license plate number was a newer one with two numbers followed by a letter and then three numbers. He tried license plate number 64D018, because Ds are easily mistaken for Os, and the database showed the license plate number belonged to a Dodge Charger registered to Derrell Christy, Jr.

Golden underwent three surgeries for bullet wounds to his back, abdomen, and hip. He identified Christy as one of the shooters from photo lineup with 50 percent certainty, and he positively identified Christy as one of the shooters in the courtroom during the trial. Christy's 2008 judgment of conviction for burglary was entered into evidence. And the jury heard recordings of the 911 calls that were made after Golden was shot.

We conclude a rational juror could reasonably infer from this evidence that Christy was present, acted intentionally, and did not act in self-defense when he committed the crimes of attempted murder with the use of a deadly weapon, attempted invasion of a home with the use of a deadly weapon, attempted burglary while in possession of a firearm, battery with the use of a deadly weapon resulting in substantial bodily harm, discharging a firearm at or into an occupied structure, and possession of a firearm by a prohibited person. *See* NRS 193.165(1); NRS 193.330(1); NRS 193.200; NRS 200.010; NRS 200.200; NRS 200.481(1)(a); NRS 202.285(1); NRS 202.360(1)(b); NRS 205.060(1), (4); NRS 205.067(1); *see also* *Sharma v. State*, 118 Nev. 648, 659, 56 P.3d 868, 874 (2002) (“[I]ntent can rarely be proven by direct evidence of a defendant’s state of mind, but instead is inferred by the jury from the individualized, external circumstances of the crime, which are capable of proof at trial.”); *Hernandez v. State*, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002) (circumstantial evidence is enough to support a conviction); *Runion v. State*, 116 Nev. 1041, 1051, 13 P.3d 52, 59 (2000) (“The right of self-defense is not available to an original aggressor.”). 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, sufficient evidence supports its verdict. *See* *Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Christy also claims the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose a surveillance video from the Jack in

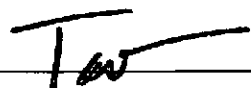
the Box restaurant. He argues the video could have been used to impeach the State's witness, it might have shown that he was not in the gray Charger, and it may even have shown the gray Charger was parked in the Jack in the Box parking lot at the time of the crimes.

To prove a *Brady* violation, an accused must demonstrate "the evidence at issue is favorable to the accused; the evidence was withheld by the state, either intentionally or inadvertently; and prejudice ensued, i.e., the evidence was material." *Mazzan v. Warden*, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000). Evidence that was not requested, or was requested generally, "is material [only] if there is a reasonable probability that the result would have been different if the evidence had been disclosed." *Id.* at 66, 993 P.2d at 36.

The record demonstrates the State did not impound the surveillance video, there is no record as to what was depicted on the video, and the defense was able to impeach the State witnesses' Jack-in-the-Box testimonies without the video. Given this record, we conclude Christy has not demonstrated that the State violated *Brady*.

Having concluded Christy is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Valerie Adair, District Judge
Law Office of Benjamin Nadig, Chtd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk