

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD A. BARRIENTOS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37459

FILED

AUG 21 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction of first degree murder with use of a deadly weapon and one count of attempted murder with use of a deadly weapon. On appeal, appellant Richard Barrientos makes several arguments.

First, Barrientos argues that there was insufficient evidence adduced at trial to support the jury's determination that he was guilty of first degree murder for shooting and killing Linzy and guilty of attempted murder for shooting and injuring Figueroa. We disagree.

Although conflicting evidence was presented at trial, it was within the exclusive province of the jury to decide questions of credibility and the weight to be attached to the evidence.¹ Therefore, in viewing the evidence supporting guilt in a light most favorable to the prosecution, we conclude that a jury, acting reasonably, could have been convinced of Barrientos' guilt beyond a reasonable doubt.² Accordingly, we conclude

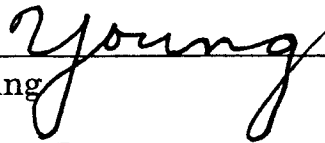
¹Azbill v. State, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972).

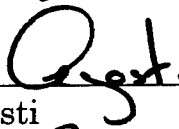
²McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

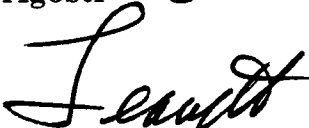
that there is sufficient evidence to support Barrientos' conviction of murder and attempted murder and the verdict will not be disturbed.³

Second, Barrientos argues that the district court should have granted his motion for a new trial because three of the jurors engaged in misconduct that contaminated the jury with undue prejudice. We disagree. We conclude that the district court did not abuse its discretion in denying Barrientos' motion for a new trial because the issue of innocence or guilt was not close and the character of the error does not weigh in favor of a finding that Barrientos was prejudiced.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

³Id.

⁴Canada v. State, 113 Nev. 938, 941, 944 P.2d 781, 783 (1997).

⁵Barrientos also argues that a new trial is warranted because the prosecutor improperly introduced evidence of prior bad acts and because of prejudicial cumulative error. After careful consideration, we conclude that these arguments lack merit.

cc: Hon. Kathy A. Hardcastle, District Judge
Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk