IN THE SUPREME COURT OF THE STATE OF NEVADA

OSCAR STANLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39775

FILED

NOV 04 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richard
CHIEF 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 one count of attempted robbery, larceny from the person, battery with a deadly weapon with substantial bodily harm, mayhem, and two counts of robbery. Appellant Oscar Stanley was sentenced, as a habitual criminal, to two terms of life without the possibility of parole, a maximum term of 180 months, two maximum terms of 120 months, and a maximum term of 48 months. All terms are to be served consecutively.

On October 25, 2001, Stanley committed multiple crimes. First, Stanley took Billy Barba's wallet and car. Second, Stanley squirted gasoline on Diane Baptist, threw a lit match at her, and set her on fire. Baptist suffered second and third degree burns on her upper body. During her burn treatment, she developed clotting from a catheter inserted in her groin artery. As a result, she underwent a below-the-knee amputation. Next, Stanley took cash and traveler's checks from a Budget Inn Hotel. Lastly, Stanley attempted to take Carl Williams' car.

While the amended information charged Stanley with larceny from the person, specifically, taking Barba's wallet and lawful money, the jury instruction which Stanley agreed to stated that any person who takes any money, property or thing of value from another person is guilty of

larceny from the person. During closing and rebuttal argument, the State argued that the taking of Barba's wallet by itself was sufficient to convict Stanley of larceny from the person and that it did not need to prove that he actually stole any money. In response to a jury question during deliberations, the district court instructed the jury that it was not necessary for Stanley to have taken both the wallet and money to convict him of larceny from the person.

On the first day of jury selection, prospective juror Venetia Hymes arrived approximately fifteen minutes late. Before she arrived, the district court conducted roll call, the State reviewed the nature of the charges and the list of witnesses it proposed calling, and the prospective jury panel was sworn in. When she arrived, the district court dismissed her.

During voir dire examination, prospective juror Pina Washington, a legal secretary, indicated that her brother had served a sentence for robbery in Nevada, then escaped, and was currently serving time as a result of his escape, which she considered unfair. She further indicated, although she was aware that the State may be the same office responsible for her brother's prison time, she had no hard feelings about it. Upon exercising a peremptory challenge, the State provided these race-neutral reasons for Washington's dismissal: (1) her legal employment, and (2) her expression of how distastefully she felt her brother's situation has been handled by the judicial system.

Stanley first argues the district court erred in responding to the jury question regarding larceny from the person. He contends the district court improperly rewrote the amended information.

In this case, while it is disputed whether Stanley took any money from Barba, Stanley clearly took Barba's wallet. The district court's response to the jury was a correct statement of law, i.e., the State only needed to prove beyond a reasonable doubt that Stanley took property–Barba's wallet alone was sufficient.[1] Based on the statute, we conclude the district court did not err in its response to the jury question.

Next, Stanley argues the district court erred in denying his Batson v. Kentucky[2] challenge regarding the State's use of a peremptory challenge to dismiss a prospective black juror.

Batson, and its related progeny, set forth a three-step process for evaluating race-based objections to peremptory challenges: (1) the opponent of the peremptory challenge must make a prima facie showing of racial discrimination; (2) the burden of production then shifts to the proponent of the strike to come forward with a race-neutral explanation; and (3) if a race-neutral explanation is tendered, the trial court must decide whether the opponent of the strike has proved that the proffered race-neutral explanation is merely a pretext for purposeful racial discrimination.[3]

In this case, Stanley has failed to offer any proof in support of his allegation that Washington was dismissed based on race. Thus, we conclude that Stanley has failed to make a prima facie showing of racial

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[1]See NRS 205.270(1) and NRS 205.2195.

[2]476 U.S. 79 (1986).

[3]Doyle v. State, 112 Nev. 879, 887, 921 P.2d 901, 907 (1996) (citing Purkett v. Elem, 514 U.S. 765, 767-69 (1995)); Batson v. Kentucky, 476 U.S. 79, 91-99 (1986).

discrimination. Even if Stanley had satisfied the first prong of Batson, the State's given reasons are race-neutral under Purkett, which requires only reasons that are "facially neutral" and not necessarily "persuasive, or even plausible."[4] Accordingly, we conclude the district court did not err in denying Stanley's Batson challenge.

Stanley also argues the district court erred in dismissing prospective juror Hymes. Considering that Hymes arrived approximately fifteen minutes late causing her to miss essential introductory information, including the swearing in of the jury panel, we conclude the district court did not err in dismissing her.

Next, Stanley argues that insufficient evidence was adduced to support his conviction of mayhem because Baptist's leg was amputated as a result of an infection brought about by a catheter placed in her groin, not the burns.

"[W]hen the sufficiency of the evidence is challenged on appeal in a criminal case, '[t]he relevant inquiry for this Court 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[s] beyond a reasonable doubt."'"[5] Moreover, it is for the jury to determine what weight, credibility and credence to give to witness

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[4]Purkett, 514 U.S. at 768.

[5]Hutchins v. State, 110 Nev. 103, 107-08, 867 P.2d 1136, 1139 (1994) (quoting Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984)); see also Jackson v. Virginia, 443 U.S. 307, 319 (1979).

testimony and other trial evidence.[6] Finally, circumstantial evidence alone may sustain a conviction.[7]

The crime of mayhem is defined as "unlawfully depriving a human being of a member of his body, or disfiguring or rendering it useless."[8] While malice or malicious intent is required, the specific intent to disfigure is not a required element of the crime of mayhem.[9] The malicious intent to maim may be presumed from the circumstances connected with the commission of the act.[10] Such an intent may be proven by presuming that one intends the natural and probable consequences of one's act.[11]

Here, Stanley squirted gasoline on Baptist's back and upper chest, threw a lit match at her, and set her on fire, resulting in second and third degree burns to her face, neck, chest, arms, and back. A natural and probable consequence of setting someone on fire with gasoline is the dismemberment or disfigurement of some portion of that person's body. We conclude malicious intent to maim may be presumed under the circumstances of Stanley's actions. We further conclude sufficient evidence was adduced from which the jury, acting reasonably and

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[6]Hutchins, 110 Nev. at 107, 867 P.2d at 1139.

[7]McNair v. State, 108 Nev. 53, 61, 825 P.2d 571, 576 (1992).

[8]NRS 200.280.

[9]See Crawford v. State, 100 Nev. 617, 618, 691 P.2d 433, 434 (1984).

[10]Lamb v. Cree, 86 Nev. 179, 182, 466 P.2d 660, 662 (1970).

[11]See id.

rationally, could have found the elements of mayhem beyond a reasonable doubt.

Finally, Stanley argues that his convictions of battery with use of a deadly weapon with substantial bodily harm and mayhem are one offense for purposes of double jeopardy. In light of our recent decision in Salazar v. State,[12] we consider Stanley's issue in correlation with whether his convictions are redundant.

In Salazar, the defendant was convicted of battery with use of a deadly weapon with substantial bodily harm and mayhem for his actions where he cut someone with a box cutter. Although this court concluded that the crimes were separate offenses for purposes of double jeopardy, it determined, under the specific facts of the case, that Salazar's convictions for battery and mayhem were redundant.[13] This court concluded that both convictions arose from and punished the same illegal act – cutting an individual with a box cutter.[14]

While the State may bring multiple charges based upon a single incident, this court will reverse "'redundant convictions that do not comport with legislative intent.'"[15] In considering whether convictions are redundant, this court has stated:

> The issue . . . is whether the gravamen of the charged offenses is the same such that it can

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[12]119 Nev. ____, 70 P.3d 749 (2003).

[13]Id., at 751-52.

[14]Id., at 752.

[15]State v. Koseck, 113 Nev. 477, 479, 936 P.2d 836, 837 (1997) (quoting Albitre v. State, 103 Nev. 281, 283, 738 P.2d 1307, 1309 (1987)).

> be said that the legislature did not intend multiple convictions. "[R]edundancy does not, of necessity, arise when a defendant is convicted of numerous charges arising from a single act." Skiba v. State, 114 Nev. 612, 616 n.4, 959 P.2d 959, 961 n.4 (1998). The question is whether the material or significant part of each charge is the same even if the offenses are not the same. Thus, where a defendant is convicted of two offenses that, as charged, punish the exact same illegal act, the convictions are redundant.[16]

In this case, the gravamen of Stanley's battery offense, as charged, is that he set Baptist on fire, causing her to suffer substantial bodily harm – second and third degree burns to her upper body. The gravamen of Stanley's mayhem offense, as charged, is that he set her on fire – depriving, destroying, or rendering her left lower leg and foot useless. We conclude the gravamen of the charged offenses both arise from and punish the same illegal act, i.e., squirting gasoline on Baptist, throwing a lit match at her, and setting her on fire.[17] We conclude Stanley's conviction of battery with use of a deadly weapon with substantial bodily harm should be reversed and remanded to the district court to amend the judgment. Accordingly, we

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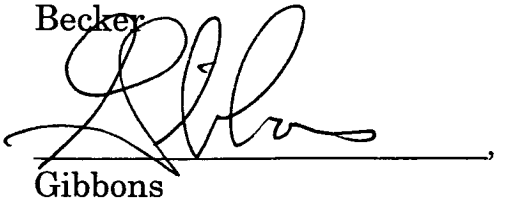
[16]State of Nevada v. Dist. Ct., 116 Nev. 127, 136, 994 P.2d 692, 698 (2000).

[17]See also Skiba, 114 Nev. 612, 959 P.2d 959 (redundant convictions for battery with a deadly weapon and battery with substantial harm when the convictions arose from a single act of hitting victim with broken beer bottle).

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[18]

Shearing, J.

Becker, J.



Gibbons, J.

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

[18]Having reviewed Stanley's other arguments regarding the district court's denial of his motion to suppress a statement he made to police and the district court's practice of limiting counsel to only ask follow-up questions during voir dire, we conclude they are without merit.