

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM MICHAEL BUSCH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42044

FILED

APR 26 2004

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

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
THE JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to a bench trial, of one count of attempted murder with the use of a deadly weapon. The district court sentenced appellant William Michael Busch to serve two consecutive prison terms of 24-96 months and ordered him to pay \$13,194.00 in restitution.

Busch contends that the evidence presented at trial was insufficient to support the district court judge's finding that he was guilty beyond a reasonable doubt of attempted murder with the use of a deadly weapon. Busch argues that the State failed to demonstrate that he possessed the intent to kill; Busch claims instead that he was "very drunk," and after he struck the victim in the side of the head with a glass wine bottle, he "immediately took steps to stop the bleeding which probably preserved [the victim's] life." Busch states that he did not even intend to hurt the victim. We disagree.

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.¹ In particular, we note that the victim testified at trial that Busch became angry at him after he took a sip of another friend's wine. Busch broke a wine bottle against a wall, and then charged at the victim, striking him in the side of the head and along the throat with the sharp jagged edge of the broken bottle. The victim fell backwards and hit his head against a table, rendering him unconscious for a short period of time.

A witness to the attack testified that Busch first hit the victim with his fists, knocking him out of his chair, and then Busch grabbed the wine bottle, broke it, and slashed the victim's throat with the jagged edge. The witness stated that the victim never provoked Busch, but that Busch was upset because of problems he was having with his girlfriend. A second witness corroborated the story. Las Vegas Metropolitan Police Officer Timothy Stovall testified that, based on his eleven years of experience as an emergency medical technician, the victim's injury was life-threatening, and therefore he rode with the victim in the ambulance in order to record any dying declarations. The victim ultimately spent three days in the hospital, and at the time of the trial, stated that he had ringing and no feeling in his ear.

At trial, Busch testified that he saw the victim bothering an elderly man in his apartment and drinking the man's wine, and that when he told the victim to leave the man alone, the victim swore at and eventually attacked him, punching Busch in the head. Busch also claimed

¹See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

that the victim put his thumb in Busch's eye. Busch stated that he tried to take the bottle of wine away from the victim as they struggled, and somehow the bottle "hit[] [the victim] across the ear and the face. It blew up. The bottle of wine exploded."

Based on the above, we conclude that the district court could reasonably infer from the evidence presented that Busch committed the crime of attempted murder with the use of a deadly weapon.² In this case, it is for the district court to determine the weight and credibility to give conflicting testimony, and the district court's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict.³ We also note that circumstantial evidence alone may sustain a conviction.⁴ Therefore, we conclude that the State presented sufficient evidence to sustain the conviction.

Having considered Busch's contention and concluded that it is without merit, we affirm the judgment of conviction. Our review of the judgment of conviction, however, reveals a clerical error. The judgment of conviction incorrectly states that Busch was convicted pursuant to a jury trial. The judgment of conviction should have stated that Busch was convicted pursuant to a bench trial. We therefore conclude that this


²See NRS 200.010; NRS 200.030; NRS 193.330; NRS 193.165(5).


³See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).


⁴See Buchanan v. State, 119 Nev. ___, ___, 69 P.3d 694, 705 (2003).

matter should be remanded to the district court for the correction of the judgment of conviction. Accordingly, we

ORDER the judgment of the district court AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

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