

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER DUNCAN A/K/A
CURTIS DUNCAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42098

FILED

FEB 12 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 jury verdict, of one count of second-degree murder with the use of a deadly weapon. The district court sentenced appellant Christopher Duncan to serve a prison term of 10-25 years plus an equal and consecutive prison term for the deadly weapon enhancement. Duncan was also ordered to pay \$1,845.00 in restitution and \$1,875.47 in extradition fees.

First, Duncan contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Duncan admits to moving the victim's dead body from his apartment and tossing it into a nearby dumpster; however, he argues that no evidence offered by the State proves beyond a reasonable doubt that he did the actual killing. The victim had been living with Duncan. Duncan also admits to leaving Las Vegas for Texas after the discovery of the victim's body, but explains that his "'flight' in and of itself is not sufficient to establish guilt." Finally, Duncan argues that the damaging and conflicting testimony of Christina Colston "is not of that clear and convincing quality required to sustain a conviction." Our review of the record on appeal, however, reveals

sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.¹

In particular, we note the following evidence presented by the State at trial. A witness testified to having seen Duncan, with another man, carrying a large green bag from his apartment to a nearby dumpster. It was soon discovered that the bag contained the victim's dead body. After seeing police officers investigating the murder at the apartment complex, Duncan fled to Texas. Duncan was soon arrested in Texas, and he volunteered to police that he knew that a woman had been strangled and murdered. Part of the telephone cord used to strangle the victim was later found in Duncan's apartment.

Christina Colston, pregnant with Duncan's child, fled with him from Las Vegas and ended up in Los Angeles. Las Vegas Metropolitan Police Department Detective Hardy testified at trial that on two consecutive days, Colston voluntarily appeared at a Los Angeles police precinct and informed officers that Duncan had told her that he committed the murder. Colston claimed to have seen the victim with her hands and feet tied together and with a telephone cord around her neck. Colston informed the police officers that it was Duncan's idea to flee from Las Vegas. At trial, Colston was a reluctant witness for the State, and although she admitted to making the damaging statements about Duncan and the murder to authorities on two occasions in Los Angeles, she now claimed that she was lying. At the conclusion of her direct examination by

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)).

the State, Colston stated that she remained in contact with Duncan, that he was the father of her unborn child, and that she was in love with him.

Based on the above, we conclude that the jury could reasonably infer from the evidence presented that Duncan committed second-degree murder with the use of a deadly weapon.² 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 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.

Finally, Duncan contends that the statutory reasonable doubt jury instruction, given in the instant case, is unconstitutional. Accordingly, defense counsel objected to the instruction. Duncan argues that instructing the jury pursuant to NRS 175.211(1),⁵ "does not provide the jury with meaningful principles or standards to guide it in evaluating the evidence." We disagree with Duncan's contention. This court has repeatedly rejected such challenges to the constitutionality of the reasonable doubt instruction and upheld the statutory definition where, as

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

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).


⁵NRS 175.211(2) states that "[n]o other definition of reasonable doubt may be given by the court to juries in criminal actions in this state."


here, the jury also received instructions on the presumption of innocence and the State's burden of proof.⁶

Having considered Duncan's contentions and concluded that they are 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 Duncan was convicted pursuant to a guilty plea. The judgment of conviction should have stated that Duncan was convicted pursuant to a jury verdict. We therefore conclude that this 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

⁶See, e.g., Bollinger v. State, 111 Nev. 1110, 1114-15, 901 P.2d 671, 674 (1995); see also Ramirez v. Hatcher, 136 F.3d 1209 (9th Cir. 1998) (concluding that a similar instruction left the jury with a constitutionally accurate impression of the government's burden of proof).

cc: Hon. Joseph T. Bonaventure, District Judge
Special Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk