

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANTINO JEROME ZANGHI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42600

FILED

AUG 18 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 robbery. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge. The district court sentenced appellant Santino Jerome Zanghi to serve a prison term of 26 to 72 months.

Zanghi's sole contention is that reversal of his conviction is warranted because the district court failed to give a jury instruction on assault as a lesser-included offense of robbery. Specifically, Zanghi contends that his conduct did not rise to the level of a "taking" contemplated by the robbery statute because as soon as Zanghi got the money into his possession "he threw it into the air -- all with the intent of having the police respond to the scene and shoot him." We conclude that Zanghi's contention lacks merit.

A defendant is entitled to a jury instruction on a lesser-included offense where: (1) a conviction for the lesser offense is consistent with the defense theory of the case; and (2) there is some evidence "no matter how weak or incredible" supporting a conviction for the lesser

offense.¹ However, a defendant is not entitled to a lesser-included offense instruction if commission of the lesser offense is contrary to the defendant's testimony.²

In this case, even assuming that assault is a lesser-included offense of robbery, Zanghi was not entitled to the instruction because a conviction for assault was inconsistent with his testimony that he robbed the convenience store. At trial, Zanghi admitted that he robbed the store, testifying that he told the convenience store clerks that he had a gun and wanted money, took the cash drawer from the counter, and exited the store. Although Zanghi also testified that he did not intend to steal, but instead intended to commit suicide, Zanghi's intent at the time of the taking is irrelevant. Robbery is a general intent crime, and a defendant's claim that he did not have the specific intent to steal does not reduce criminal culpability for the offense of robbery.³ Because a conviction for assault was inconsistent with Zanghi's testimony that he committed robbery, the district court did not err in refusing the jury instruction.

Having considered Zanghi's contention and concluded that it lacks merit, we affirm the judgment of conviction. However, our review of the judgment of conviction reveals a clerical error. The judgment of

¹Harris v. State, 106 Nev. 667, 670, 799 P.2d 1104, 1106 (1990) (quoting Williams v. State, 99 Nev. 530, 531, 665 P.2d 260, 261 (1983)); Walker v. State, 110 Nev. 571, 575, 876 P.2d 646, 649 (1994).

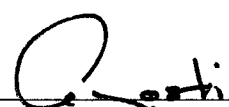
²Ruland v. State, 102 Nev. 529, 531, 728 P.2d 818, 819 (1986).

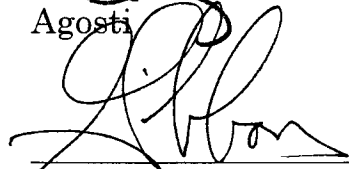
³Daniels v. State, 114 Nev. 261, 269, 956 P.2d 111, 116 (1998); see also Coats v. State, 98 Nev. 179, 180, 643 P.2d 1225, 1226 (1982) (recognizing that the intent to permanently deprive the owner of property is not an element of robbery).

conviction states that Zanghi was convicted pursuant to a guilty plea when, in fact, he 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 clerical error. 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. Lee A. Gates, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk