

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHNNY WILLIAM JOHNSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 64396

**FILED**

JAN 21 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracie K. Lindeman*  
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of attempted murder with the use of a deadly weapon, and one count each of battery with the use of a deadly weapon resulting in substantial bodily harm; assault with a deadly weapon; discharging a firearm at or into a structure, vehicle, aircraft, or watercraft; carrying a concealed firearm or other deadly weapon; and possession of a firearm by a felon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Johnny Johnson claims that because the victims were not credible and they contradicted each other's testimony insufficient evidence supports his convictions. We disagree.

When reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the prosecution and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). "[I]t is the function of the jury, not the appellate

court, to weigh the evidence and pass upon the credibility of the witness.”  
*Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975).

The jury heard testimony that Allen Griffin got into an argument with Johnson on April 20, 2012. Later that evening, Griffin, Marquet Polk, and Monique Traylor were sitting at a table and chairs in front of Griffin’s mother’s house, when Johnson came by, pulled out a gun and started shooting. Upon hearing the shots, Griffin dove to the ground. Traylor tried to run into the house, but was hit in the left side. Both Griffin and Traylor testified that they were afraid for their lives. Traylor’s daughter Deborah was in the house at the time of the shooting. She looked outside upon hearing the shots and saw her mom lying near the door, holding her side. Deborah reported hearing six shots with pauses between them. Griffin, Traylor, and Deborah all positively identified Johnson as the shooter. Polk testified that he could not identify the shooter and could only state that the shooter was wearing a red shirt. Traylor was transported to the hospital where she underwent surgery to remove her spleen, left kidney, and a portion of her colon. Traylor also suffered from a fractured rib and a bullet could not be removed because removal would cause more damage. Traylor testified that she has to go to the doctor for periodic checks regarding the bullet that remains in her body and she still has scarring from the surgery.

At the scene, officers observed bullet impacts on the front of the residence, on a tree, on a door frame, and on a window frame. Several cartridges were recovered from the scene, all of which were fired from a single firearm. Officers searched an apartment known to be associated with Johnson. Inside an air conditioning intake vent in the apartment, officers found both a box and tray of 9 millimeter ammunition that were

wrapped up in a shirt or blanket and, from elsewhere in the apartment, they recovered a red and white T-shirt and a manila envelope that had Johnson's name, but a different address, on it. The ammunition found in the apartment matched the manufacturer and class of cartridges that were recovered from the scene. The recovered box of ammunition had four spent cartridges in it, three of which were shot from the same gun that was used in the shooting. Evidence was also presented that Johnson did not have a carry concealed weapons permit. Officers made contact with Johnson and collected two cell phones from his person. Testimony was presented that one of the cell phones contained several images. One image, showing a male in a red and white striped shirt was taken two days before the shooting. Two other images, taken four days after the shooting, depicted a male holding a firearm taking a "selfie" and "cash fanned out." All of these images were shown to the jury.

The charge for felon in possession of a firearm was tried after the jury found Johnson guilty of all other charges. At which time, the jury was presented evidence that Johnson had previously been convicted of a felony.

The jury could reasonably infer from the evidence presented that Johnson committed two counts of attempted murder with the use of a deadly weapon, and one count each of battery with the use of a deadly weapon resulting in substantial bodily harm, assault with a deadly weapon, discharging a firearm at or into a structure, carrying a concealed firearm, and possession of a firearm by a felon. See NRS 193.330(1); NRS 193.165(1), (6); NRS 200.010; NRS 200.471(1)(a), (2)(b); NRS 200.481(1)(a), (2)(e); NRS 202.285(1); NRS 202.350(1)(d)(3); NRS 202.360(1)(a). We will not disturb the jury's verdict where, as here,

substantial evidence supports the verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); *see also McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Johnson also claims that his sentence constitutes cruel and unusual punishment. We disagree. Regardless of its severity, a sentence that is within the statutory limits is not “cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.” *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining that Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime). The district court sentenced Johnson to a term of 8-20 years for each count of attempted murder, plus a consecutive term of 4-10 years for the use of a deadly weapon, with each count to run consecutively; a consecutive term of 6-15 years for battery with the use of a deadly weapon resulting in substantial bodily harm; a concurrent term of 28-72 months for assault with a deadly weapon; a concurrent term of 28-72 months for discharging a firearm at or into a structure; a concurrent term of 24-60 months for carrying a concealed firearm; and a consecutive term of 28-72 months for possession of a firearm by a felon.

The sentence imposed is within the parameters provided by the relevant statutes, *see* NRS 193.330(1)(a)(1); NRS 193.165(1); NRS 200.030; NRS 200.471(2)(b); NRS 200.481(2)(e); NRS 202.285(1)(b); NRS 202.350(2)(b); NRS 193.130(2)(c); NRS 202.360(1), and Johnson does not

allege that those statutes are unconstitutional. We are not convinced that the sentence imposed is so grossly disproportionate to the crime as to constitute cruel and unusual punishment.

Having concluded that Johnson's claims lack merit, we  
ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_  
Silver

cc: Hon. Michelle Leavitt, District Judge  
Sanft Law, P.C.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk