IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CASEY ALAN JOHNS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83064-COA

ORDER OF AFFIRMANCE

Casey Alan Johns appeals from a judgment of conviction entered pursuant to a jury verdict of burglary with the possession of a firearm or deadly weapon, battery with the use of a deadly weapon causing substantial bodily harm, battery by a prisoner in lawful custody or confinement, home invasion with the possession of a firearm or deadly weapon, and obtaining or possessing credit card or debit card or identifying description of credit card, card account, or debit card without consent. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

First, Johns argues there was insufficient evidence produced at trial to support the jury's finding of guilt for burglary with the possession of a firearm or deadly weapon. Johns contends the State failed to prove that he had the intent to commit a battery when he entered the residence because his mental state may have been impaired. 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. *See Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

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The evidence and testimony at trial revealed the following. Johns appeared near a female witness's motel room and announced that he was looking for his girlfriend. Johns looked very agitated and upset. The male victim and the female witness both informed Johns that the person he was looking for was not in their room. Despite their statements, Johns acted as if he believed his girlfriend was inside of their room, and he approached the door to that room. A surveillance video recording depicted Johns with a knife in his hand when he was outside of the relevant room. When Johns attempted to enter the room, the male victim tried to shut the door to stop Johns. However, Johns forced his way through the door and entered the room. The male victim held out his hands in an effort to dissuade Johns from entering further and noticed Johns was holding an object. Johns then used a knife to slash the male victim's hand, and the slash caused a deep cut. Johns also threatened to slit the female witness's throat because he believed that she was detaining his girlfriend. Johns subsequently exited the room and was later arrested by the police.

Given the evidence and testimony, the jury could reasonably find that Johns had the intent to commit battery when he entered the room, *see Grant v. State*, 117 Nev. 427, 435, 24 P.3d 761, 766 (2001) (stating intent "can be inferred from conduct and circumstantial evidence"), and that he was guilty of burglary with the possession of a firearm or deadly weapon. *See* 2013 Nev. Stat., ch. 488, § 1, at 2987-88 (former NRS 205.060). While Johns contends he did not form the necessary intent to commit the crime because he was acting under the influence of a controlled substance, 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, substantial evidence supports the verdict. *See Bolden v. State*, 97 Nev.

71, 73, 624 P.2d 20, 20 (1981). Therefore, Johns is not entitled to relief based on this claim.

Second, Johns argues there was insufficient evidence produced at trial to support the jury's finding of guilt for battery by a prisoner in lawful custody or confinement. Johns contends the State failed to prove that he willfully kicked the officer. 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. *See Origel-Candido*, 114 Nev. at 381, 956 P.2d at 1380; *see also Jackson*, 443 U.S. at 319.

The evidence and testimony at trial produced the following information. Officers arrived at the motel after receiving a report of the incident involving Johns and the victim in this matter. After investigating the incident, the officers decided to arrest Johns. The officers placed Johns in restraints and attempted to move him to their vehicle. However, Johns started to kick out violently with his legs. An officer stated he felt Johns kicking out with his legs but was unsure exactly when Johns struck him with the kicks during their attempt to place Johns in the vehicle. The officers subsequently placed Johns in their vehicle, and an officer noticed that he had a shoe print on his pants. A photograph depicting the shoe print was presented at trial. And Johns' shoes matched the shoe print.

Given the evidence and testimony, the jury could reasonably find that Johns committed battery by a prisoner in lawful custody or confinement. *See* NRS 200.481(1), (2)(f); *see also Dumaine v. State*, 103 Nev. 121, 125, 734 P.2d 1230, 1233 (1987) ("A prisoner is defined as a person deprived of his liberty and kept under involuntary restraint, confinement or custody."). While Johns contends that his contact with the officer may have been inadvertent, 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, substantial evidence supports the verdict. *See Bolden*, 97 Nev. at 73, 624 P.2d at 20. Therefore, Johns is not entitled to relief based on this claim.

Third, Johns argues that his sentence constitutes cruel and unusual punishment. Johns contends that his terms should have been imposed concurrently and the total amount of time he must serve in prison is unduly harsh.

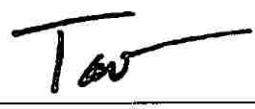
Regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 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 the 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 Johns to serve 24 to 60 months in prison for burglary with the possession of a firearm or deadly weapon, 72 to 180 months in prison for battery with the use of a deadly weapon causing substantial bodily harm, 12 to 32 months in prison for battery by a prisoner in lawful custody or confinement, 32 to 96 months in prison for home invasion with the possession of a firearm or deadly weapon, and 12 to 32 months in prison for obtaining or possessing credit card or debit card or identifying description of credit card, card account, or debit card without consent. The sentences imposed are within the parameters provided by the

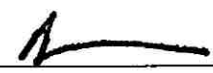
relevant statutes, *see* NRS 193.130(2)(d); NRS 200.481(2)(e)(2), (2)(f); 2013 Nev. Stat., ch. 488, § 1, at 2987-88 (former NRS 205.060); NRS 205.067(4); NRS 205.690(1), and Johns does not allege that those statutes are unconstitutional. Moreover, NRS 176.035(1) plainly gives the district court discretion to run subsequent sentences consecutively, *Pitmon v. State*, 131 Nev. 123, 128-29, 352 P.3d 655, 659 (Ct. App. 2015), and Johns fails to demonstrate the district court improperly sentenced him to serve consecutive terms. We conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment. Therefore, Johns is not entitled to relief based on this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao



_____, J.
Bulla

cc: Hon. Thomas L. Stockard, District Judge
Oldenburg Law Office
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk