

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Sep 01 2021 11:30 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

ANDRE GRANT SNIPES,)	SUPREME COURT NO. 82384
)	
Appellant,)	
)	
vs.)	APPEAL
)	
STATE OF NEVADA,)	
)	
Respondent.)	
)	DISTRICT COURT NO. C-19-344461-2
)	
)	

APPELLANT'S REPLY BRIEF

SANDRA L. STEWART
Attorney at Law
Nevada Bar No.: 6834
1361 Babbling Brook Court
Mesquite, Nevada 89034
(702) 526-1867
Attorneys for Appellant

TABLE OF CONTENTS

	<u>PAGE</u>
I FACTUAL INACCURACIES IN ANSWERING BRIEF.....	2
II LEGAL ARGUMENTS.....	4
A. NO EVIDENCE OF BURGLARY CHARGES	4
B. NO EVIDENCE TO SUPPORT WEAPON FOR COUNTS 3-4.....	5
III CONCLUSION.....	5
IV CERTIFICATE OF COMPLIANCE.....	6
V CERTIFICATE OF SERVICE.....	7

SNIPES offers the following by way of reply to the State's Answering Brief filed on July 19, 2021.

I

FACTUAL INACCURACIES IN ANSWERING BRIEF

On the 911 recording played in court, Mr. Laws indicated he saw the gun fall out....¹

The 911 recording is not before this Court as the State has not requested that the Court request it from the court clerk. What Mr. Laws testified to was in response to a leading question where the state said that Mr. Laws had indicated that he saw the gun "fall out;"....² However, on cross examination, where he was taken step by step through his encounter with the thieves, he at no time testified that anything "fell out."³ He testified that the heavy set man lifted his shirt up and he saw something black in his waistband under his belt loop.⁴ He never testified that he saw an entire gun. At most, he saw the handle of something that he thought was a gun.

....

....

....

¹ Ans.Br./6.
² SA/3/723-724.
³ SA/4/751-757.
⁴ SA/4/757.

In the parking garage, he stood about 25 yards away from the man brandishing the gun.⁵

This is incorrect. Mr. Laws never testified that he saw anyone “brandishing” a gun. He testified that he saw a heavy set man lift his shirt and he saw something in his waistband that was black and had a wooden handle.⁶ He never testified that the man took the item out of his waistband or that he ever saw the whole item, or that anyone waved the item at him or pointed it at him.

The inventory control system flagged the items as potentially stolen.⁷

This is incorrect. Mr. Laws testified that when he tried to process the return for Mr. Snipes, it said on the computer that it was not able to be returned.⁸ He did not testify that that meant the item was stolen. In fact, he stated, “...you can’t go off that. So I just gave them the best customer service that I could.”⁹

....

....

....

....

....

⁵ Ans.Brff./4.

⁶ SA/4/757.

⁷ Ans.Brff./4.

⁸ SA/3/712.

⁹ SA/3/712.

II

LEGAL ARGUMENTS

A. NO EVIDENCE OF BURGLARY CHARGES (COUNTS 5, 10, 15)

Snipes would reiterate that the person at the store who accepted the returns, testified that there is no way to track items stolen from other stores, and so he had no idea if the jerseys that were returned were stolen merchandise or not.¹⁰

The state argues that it was up to the jury to infer that if it believes Snipes stole items from one store, that it was completely logical for the jury to assume that when Snipes returned items, he was returning those stolen items. That is not logical, and it is not supported by the evidence. That the jury believed Snipes committed one wrong does not provide evidence that he committed another. Even if Snipes did steal items at one store, it is just as conceivable that he returned different items which he legitimately possessed. The law requires proof of a crime. Here, there was no tracking mechanism for stolen items, so there is no way to know whether or not items which Snipes returned were stolen or not, and the verdict finding him guilty of burglary for the returns (Counts 5, 10 and 15) should be reversed.

....

¹⁰ SA/03/747.

B. NO EVIDENCE TO SUPPORT WEAPON FOR COUNTS 3-4

The essence of the deadly weapon enhancement is that a “firearm or other deadly weapon” is used in the commission of a crime. In this case, there is no evidence that either thief had a weapon. At most, the witness saw a black handle which was stuck in the waistband of one of the thieves. He saw this from a distance of at least 25 yards.¹¹ Accordingly, the deadly weapon enhancements for Counts 3 and 4 should be reversed.


III

CONCLUSION

SNIPES’ convictions should be reversed (1) as to Counts 5, 10, and 15 for burglary because there was no evidence that the jerseys that SNIPES was returning to the Footlocker on those occasions were stolen , and (2) as to Counts 3 and 4 to remove the deadly weapon enhancements because there was no evidence that either perpetrator had a deadly weapon.

Respectfully submitted,

Dated this 1st day of September, 2021.



SANDRA L. STEWART, Esq.
Attorney for Appellant

¹¹ SA/4/753.

IV

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this reply brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript of appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure. I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word 14.4.3 For Mac with Times New Roman 14-point. I further certify that this reply brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because it contains only 1,113 words.

DATED: September 1, 2021



SANDRA L. STEWART, Esq.
Appellate Counsel for
ANDRE SNIPES

V

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the:

APPELLANT'S REPLY BRIEF

by mailing a copy on September 1, 2021 via first class mail, postage thereon fully prepaid, to the following:

**ANDRE GRANT SNIPES, Inm. No. 1240651
HIGH DESERT STATE PRISON
POST OFFICE BOX 650
INDIAN SPRINGS, NV 89070**

and by e-filing the original with the Nevada Supreme Court, thereby providing a copy to the following:

**JONATHAN VANBOSKERCK, ESQ.
OFFICE OF THE
CLARK COUNTY DISTRICT ATTORNEY
200 LEWIS AVENUE
LAS VEGAS, NV 89155-2212**


SANDRA L. STEWART