

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASEY ALAN JOHNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
May 02 2022 12:51 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 83064

RESPONDENT'S ANSWERING BRIEF

On Direct Appeal from Judgment of Conviction After Jury Verdict
in Case Number 20-10DC-0552 from the
Tenth Judicial District Court, Churchill County, State of Nevada,
by the Honorable Thomas L. Stockard, District Judge

Priscilla Baker
Deputy District Attorney
Nevada Bar No. 13449
Churchill County District Attorney
165 North Ada Street
Fallon, NV 89406
(775)423-6561
Attorney for Respondent

Victoria T. Oldenburg, Esq.
Oldenburg Law Office
Nevada Bar No. 4770
P. O. Box 17422
Reno, NV 89511
(775)971-4245
Attorney for Appellant

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<u>Caption</u>	<u>Page Number</u>
Table of Contents	<i>ii</i>
Table of Authorities	<i>iii</i>
Routing Statement	1
Statement of the Issues	1
Statement of the Facts	1
Summary of the Argument	4
Standard of Review	4
Arguments and Authorities	5
A. There was Sufficient Evidence to Support Appellant’s Conviction of Count 1 of the Amended Information, Burglary with Possession of a Firearm or Deadly Weapon, in violation of NRS 205.060	5
B. There was Sufficient Evidence to Support Appellant’s Conviction of Count 3 of the Amended Information, Battery by a Prisoner in Lawful Custody or Confinement, in violation of NRS 200.482(2)(F)	8
C. The District Court Imposed a Lawful Sentence Under the Statutory Guidelines	10
Conclusion	
Attorney’s Certificate	
Certificate of Service	

TABLE OF AUTHORITIES

Cases Cited

Page Number

Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996).....10

Bolden v. State, 121, Nev. 908, 915-16, 214 P.3d 196 (2005)5

Chavez v. State, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009) 10

Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1079) 10

Dunham v. State, 134 Nev. 563, 569, 426 P.3d 11, (2018) 10

Hobbs v. State, 127 Nev. 234, 237-39, 251 P.3d 177, 179-80 (2011)..... 8-9

Jackson v. Virginia, 443 U.S. 307, 319 (1979).....4

Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984).....4

McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 5734

Moore v. State, 122 Nev. 27, 36, 126 P.3d 508, 513 (2006)6

Nevius v. State, 101 Nev. 238, 249, 669 P.2d 1053, 1060 (1985)6

Nix v. State, 91 Nev. 613, 614, 541 P.2d 1, 2 (1975).....5

Parrish v. State, 116 Nev. 982, 988–89, 12 P.3d 953, 957 (2000).....5

Rubio v. State, 124 Nev. 1032,1034, n. 5, 194 P.3d 1224, 1226, n. 5 (2008) ...9

Sanders v. State, 90 Nev. 433, 434, 529 P.2d 206. 207 (1997)5

Sharma v. State, 118 Nev. 648, 659, 56 P.3d 868, 874 (2002).....6

Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)..... 10

Walker v. State, 91 Nev. 724, 726, 542 P.2d 438, 438-39 (1975) 4-5

Warren v. State, 121 Nev. 886, 892 124 P.3d 522, 526 (2005).....9

Nevada Revised Statutes Cited

NRS 193.2005

NRS 193.2206

NRS 200.481(2)(F) 1

NRS 205.060 1

NRS 205.060(1)5

1 NRS 205.060(4)5
2 **Nevada Rules of Appellate Procedure**
3 NRAP 17(b)(2).....1
4 **United States Constitution**
5 Eight Amendment1
6 **Nevada Constitution**
7 Art. 1 § 6.....1

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 block the doorway and told Appellant “not here dude” to prevent Appellant from
2 entering the room. 2 AA 311:2-8. Appellant continued to walk by but looked
3 inside as he went by the room. *Id.* Malone then proceeded back inside the hotel
4 room to watch Douglas continue to pack. 2 AA 311:19-20. Malone then heard
5 some banging and then something that sounded “like a door being slammed
6 shut.” *Id.*; 2 AA 312:8-10.

7 The Budget Inn’s surveillance video explained all the noise. Appellant
8 was seen taking the screen off the window to room 132. 4 AA 563:8-24, 564:1-
9 2. Appellant had a knife in his hand with the blade out; Appellant hit the
10 window with the knife. *Id.*; 4 AA 564:1-2. The knife was described as a folding
11 pocketknife with a four-inch blade and a leather lanyard. 4 AA 532:1-2, 538:9-
12 13. The surveillance then showed Appellant kicking in the door to room 132 and
13 entering the room. 4 AA 565:17-24, 566:1. After leaving the room, Appellant
14 walked up and down the walkway with the knife, blade out, still in his hand. 4
15 AA 566:3-7, 567:5-13. Detective Sergeant John Frandsen (“Frandsen”) testified,
16 at this point in the surveillance, that he observed blood dripping from
17 Appellant’s hand and that Appellant must have injured his hand when hitting the
18 window with the knife. *Id.*; 4 AA 566:14-21.

19 A few minutes later through the window, Malone saw Appellant coming
20 back towards their hotel room. 2 AA 312:13-19. When Malone noticed
21 Appellant, Malone tried to close their door. 2 AA 312:17-24. Before Malone
22 could shut the door, Appellant placed his foot inside the room. *Id.* When
23 Douglas noticed Appellant, she saw “[s]omething in [Appellant’s] eyes” and
24 went on guard. 2 AA 277:16-20. Douglas asked Appellant to leave. 2 AA 278:
25 12-13. Ignoring her request to leave, Appellant looked back and forth for
26 someone named “Corey” and told Douglas and Malone to “let her come out.” 2
27 AA 278:14-16. Douglas grabbed her knife as she went on the defensive. 2 AA
28 280.

1 Malone tried to keep Appellant from coming further into the room by
2 putting his hands up with open palms and saying “dude, dude” and blocking
3 Appellant from further entering the room. 2 AA 315:3-8, 315:16-17. Malone
4 also put his body between Appellant and Douglas to protect Douglas. 2 AA
5 316:4-13. Malone turned his head to look behind himself to see if there was
6 anything to trip over, anticipating that things were going to get physical. 2 AA
7 316:19-24, 317:1. At this point, Appellant sliced Malone’s right hand with the
8 knife. 2 AA 317:4-23. Due to the “[r]idiculous” amount of blood going
9 everywhere, Douglas wrapped Malone’s hand with a towel. 2 AA 281-282:1-5,
10 318:22-24. Sometime during the altercation, Appellant asked Douglas to let
11 “Corey” come out or Appellant “was going to slit [Douglas’] throat.” 2 AA
12 284:1-24, 285:5-9, 297:3-7. Appellant eventually exited the room, and Douglas
13 called 911. 2 AA 282:19-24, 283:1-3, 298:17-19; 319:2-3.

14 Fallon Police Officers were dispatched to the Budget Inn. 3 AA 438:15-
15 20. Officer Kevin Grimes (“Grimes”) arrived at the Budget Inn and located
16 Appellant outside of room 135. 3 AA 440:11-14. Grimes immediately
17 identified Appellant. 3 AA 439:1-14.

18 Officers noticed blood droplets along the sidewalk portion of the hotel and
19 a large pooling of blood in the doorway to room 135. 3 AA 440:24, 441:1-4; 4
20 AA 531:19-22; 4 AA 532:16-24. Grimes entered room 135 and found Malone
21 and Douglas. *Id.*; 3 AA 442:7-12. Malone was sitting on the bed with a towel
22 wrapped around his right hand, soaked in blood. 3 AA 442:7-12. Malone’s hand
23 was sliced approximately six centimeters long and down to the bone, cutting a
24 vein and causing nerve damage 3 AA 369:13-19, 371:1-20; 4 AA 495:22-24,
25 496:1-7, 500:1-5.

26 Officers detained Appellant, placing him in handcuffs and sat him on a
27 log. 3 AA 443:1-4. Eventually a decision was made to make an arrest; Grimes
28 advised Appellant that he was being placed under arrest. 3 AA 444:1-6; 446:4.

1 Officers then attempted to stand Appellant up to escort him to the patrol vehicle
2 when Appellant started kicking his feet and twisting his body to resist being
3 escorted to the patrol vehicle. 3 AA 447:11-13, 454:19-23, 455:14-24, 456:1-8.
4 During this altercation, Appellant kicked Grimes in the left shin, leaving a shoe
5 imprint on the officer's pants. 3 AA 456:12-17. Although Grimes did not feel
6 the exact kick when it occurred, Grimes testified that he felt contact all over
7 because he was wrestling with Appellant. 4 AA 515:14-24, 516:1-3. Grimes
8 further testified that when the kick occurred, Grimes was concentrating on
9 controlling Appellant and not paying attention to himself. 3 AA 457:6-10.
10 Photographs of Appellant's shoe tread and Grimes' pant leg with the shoe
11 impression were admitted into evidence for comparison. 3 AA 459:20-24,
12 460:1-10. 464:7-21.

13 **IV. SUMMARY OF THE ARGUMENT**

14 After being presented sufficient evidence at trial, the jury found Appellant
15 guilty of Count 1 and 3. Therefore, the Court should affirm the convictions.
16 Additionally, the district court lawfully used its discretion and sentenced
17 Appellant within the statutory guidelines for the violent crimes committed three
18 days after being released on his own recognizance. Therefore, the Court should
19 affirm the sentence imposed.

20 **V. STANDARD OF REVIEW**

21 In a criminal case, the standard of review is ““whether, after viewing the
22 evidence in the light most favorable to the prosecution, *any* rational trier of fact
23 could have found the essential elements of the crime beyond a reasonable
24 doubt.”” *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (*quoting Jackson*
25 *v. Virginia*, 443 U.S. 307, 319 (1979); *Koza v. State*, 100 Nev. 245, 250, 681
26 P.2d 44, 47 (1984)) (emphasis in original). The jury's function is to assess the
27 weight of the evidence and determine the credibility of witnesses. *Id.* (*citing*
28 *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 438-39 (1975)). Thus, if there

1 is substantial evidence to support a guilty verdict, the reviewing court will not
2 disturb the conviction. *Id.* (citing *Nix v. State*, 91 Nev. 613, 614, 541 P.2d 1, 2
3 (1975); *Sanders v. State*, 90 Nev. 433, 434, 529 P.2d 206, 207 (1997)).

4 Additionally, district courts are given wide discretion when imposing a
5 sentence on a defendant. *Parrish v. State*, 116 Nev. 982, 988–89, 12 P.3d 953,
6 957 (2000) (noting that “judges spend much of their professional lives
7 separating the wheat from the chaff and have extensive experience
8 in sentencing, along with the legal training necessary to determine an
9 appropriate sentence”). An appellate court will not disturb a sentence imposed
10 by a trial judge absent a showing of an abuse of discretion. *Id.* 116 Nev. at 89,
11 12 P.3d at 957.

12 VI. ARGUMENTS AND AUTHORITIES

13 A. There was Sufficient Evidence to Support Appellant’s Conviction of 14 Count 1 of the Amended Information, Burglary with Possession of a 15 Firearm or Deadly Weapon, in violation of NRS 205.060.

16 The jury found Appellant guilty of Burglary with Possession of a Firearm
17 or Deadly Weapon after hearing the evidence presented by the State, showing
18 that Appellant by day or night, entered any house or room with the intent to
19 commit grand or petit larceny, assault or battery on any person or any felony, or
20 to obtain money or property by false pretenses, who had in his possession or
21 gained possession of any firearm or deadly weapon at any time during the
22 commission of the crime, at any time before leaving the structure or upon
23 leaving the structure. NRS 205.060(1), 205.060(4) (2017).

24 Burglary is a specific intent crime. *Bolden v. State*, 121, Nev. 908, 915-
25 16, 214 P.3d 196 (2005). NRS 193.200 provides that intent “is manifested by
26 the circumstances connected with the perpetration of the offense, and the sound
27 mind and discretion of the person accused.” “These provisions implicitly
28 acknowledge that intent can rarely be proven by direct evidence of a defendant's

1 state of mind, but instead is inferred by the jury from the individualized, external
2 circumstances of the crime, which are capable of proof at trial.” *Sharma v. State*,
3 118 Nev. 648, 659, 56 P.3d 868, 874 (2002). “As in any other case where
4 the intent is material, the intent need not be proved by positive or direct
5 evidence, but may be inferred from the conduct of the parties and the other facts
6 and circumstances disclosed by the evidence.” *Moore v. State*, 122 Nev. 27, 36,
7 126 P.3d 508, 513 (2006) (finding that a defendant behavior of selecting items
8 “without . . . rhyme or reason” was consistent with fraudulent use of a credit
9 card, and concluding that this circumstantial evidence was sufficient for the jury
10 to determine intent existed to commit the crime of burglary).

11 The jury heard evidence of Appellants actions on April 16, 2020.
12 Appellant had in his hand, a folding pocketknife, with the blade out and ready
13 for use. 2 AA 317:4-23; 4 AA 564:1-2, 566:3-7. After being told by Malone,
14 “not here, Dude” to prevent him from entering room 135, and Malone re-
15 directing him onward, Appellant proceeded to room 132. 2 AA 311:2-8; 4 AA
16 563:8-24, 5645:1-2. Appellant then used his extended pocketknife to hit the
17 window, causing him to bleed from his hand. 4 AA 566:14-21; 4 AA 564:1-2.
18 Appellant then proceeded to forcibly kick in the door to room 132. 4 AA 565:17-
19 24, 566:1. Appellant returned to room 135 even after being told by Malone he
20 was not welcome there just moments before. 2 AA 312:13-19. Appellant
21 entered room 135 with his pocketknife still extended and ready for use. After
22 being told to leave by Douglas, Appellant ignored the request and called for
23 “Corey”. 2 AA 278: 12-13, 2 AA 278:14-16. Not taking no for an answer,
24 Appellant sliced Malone’s hand across the palm. 2 AA 317:4-23. If “Corey”
25 was there, she could have come out. Based on Appellants actions when entering
26 room 135, Douglas went on guard, grabbing her knife, and Malone prepared for
27 things to get physical. 2 AA 277:16-20, 2 AA 316:19-24, 317:1. Appellant then
28 threatened Douglas to let Corey out or he would slit her throat. 2 AA 284:1-24,

1 285:5-9, 297:3-7. It is undisputed that Appellant's pocketknife was considered a
2 deadly weapon.

3 Appellant was on a mission with a knife out and ready to go; nothing
4 stood in his way. Appellant threatened Douglas if she did not let "Corey" out
5 that he would cut her throat. After Malone blocked the way from Appellant
6 entering the room, Appellant responded with slicing Malone's hand. Based on
7 Appellant's actions kicking in the door at the other room, threats, and his actions
8 within the room, this demonstrated Appellant's violent intentions, which was
9 heard by the jury.

10 NRS 193.220 states that if someone is voluntarily intoxicated, that
11 person's action shall not be deemed less criminal; however, "the actual existence
12 of any particular purpose, motive or intent is a necessary element to constitute a
13 particular species or degree of crime, the fact of the person's intoxication may be
14 taken into consideration in determining the purpose, motive or intent." In *Nevius*
15 *v. State*, 101 Nev. 238, 249, 669 P.2d 1053, 1060 (1985), this Court held "for a
16 defendant to obtain an instruction on voluntary intoxication as negating specific
17 intent, the evidence must show not only the defendant's consumption of
18 intoxicants, but also the intoxicating effect of the substances imbibed and the
19 resultant effect on the mental state pertinent to the proceedings." Although
20 Officer Grimes testified that Appellant may have been on a stimulant, Appellant
21 was "very coherent" and was able to provide hospital staff answers to their
22 questions and indicated his refusal to receive a shot. 3 AA 445:9-17; 4 AA
23 517:11-24, 518:1-6.

24 The jury reviewed all the evidence, considered all the events that took
25 place on April 16, 2020, evaluated Appellant's actions, and determined the
26 credibility of the witnesses. Based on the totality of circumstances, the jury
27 found Appellant had the intent to commit assault, battery, or a felony when he
28 entered room 135 due to the substantial evidence presented.

1 Therefore, the Court should affirm the conviction as there was sufficient
2 evidence to support conviction of the Burglary with Possession of a Firearm or
3 Deadly Weapon.

4 **B. There was Sufficient Evidence to Support Appellant's Conviction of**
5 **Count 3 of the Amended Information, Battery by a Prisoner in**
6 **Lawful Custody or Confinement, in violation of NRS 200.481(2)(F).**

7 The jury found Appellant guilty of Battery by a Prisoner in Lawful
8 Custody or Confinement after hearing the evidence presented by the State,
9 showing Appellant willfully and unlawfully used force or violence upon the
10 person of another. It is undisputed that Appellant was in lawful custody at the
11 time of the battery. “[O]nly a slight unprivileged touching is needed to satisfy
12 the force requirement of a criminal battery.” *Hobbs v. State*, 127 Nev. 234, 237-
13 39, 251 P.3d 177, 179-80 (2011) (holding that spitting on another person
14 constitutes the use of force or violence necessary to support a conviction for
15 battery). Any force against another person is enough to constitute a battery. *Id.*
16 The touching “need not be violent or severe, it need not cause bodily harm or
17 even pain, and it need not leave any mark. *Id.* at 238-39, 251 P.3d at 179.

18 The jury heard evidence of Appellants actions on April 16, 2020, when he
19 was taken into custody. After notifying Appellant of his arrest, officers
20 attempted to stand Appellant up to escort him to the patrol vehicle. 3 AA
21 447:11-13, 454:19-23, 455:14-24, 456:1-8. Thereafter, Appellant kicked his feet
22 and twisting his body to resist being escorted to the patrol vehicle. 3 AA 447:11-
23 13, 454:19-23, 455:14-24, 456:1-8. Appellant ended up kicking Grimes in the
24 left shin, leaving a shoe imprint on the officer's pants. 3 AA 456:12-17.
25 Although Grimes did not feel the exact kick when it occurred, Grimes testified
26 that he felt contact all over because he was wrestling with Appellant. 4 AA
27 515:14-24, 516:1-3. Officers have a lot on their minds when a prisoner starts to
28 resist. The Jury reviewed the photographs of Appellant's shoe tread and Grimes'

1 pant leg with the similar shoe impression. The jury considered and evaluated
2 how much force would be needed to make such a shoe impression on Grimes'
3 pant leg. There was no need under the law for Grimes to have a mark on his leg
4 or an injury. *Hobbs v. State*, 127 Nev. at 237-39, 251 P.3d at 179-80.

5 Appellant argues that “[g]iven the struggle, Appellant’s foot could have
6 easily, and accidentally and inadvertently, come into contact with Officer Grimes
7 . . .” Opening Brief, Pages 16-17. The jury reviewed the “dusty footprint” on
8 Grimes’ pant leg. It was not smeared but a clear shoe print similar to
9 Appellant’s shoe tread. Further, to make such a print, some force was needed to
10 create the shoe print.

11 Additionally, prior to trial, the State filed a Motion in Limine to Admit
12 Prior Bad Acts. 1 RA 001. The motion requested that if Appellant claimed
13 mistake, the State would be able to introduce a Judgment of Conviction in the
14 Tenth Judicial District Court Case Number 16-10DC-1158. 1 RA 004. In that
15 case, Appellant was resisting when officers were trying to get him into a hospital
16 bed, resulting in an ER nurse being kicked. *Id.* The district court found clear
17 and convincing evidence of this prior bad act but denied the State’s Motion as
18 premature. 1 RA 016. However, the district court ruled that if Appellant raises
19 the issue that the battery was a mistake, the State could re-new its Motion. *Id.*
20 Appellant did not raise the issue of mistake during trial, for strategic reasons.
21 Because the issue of mistake was not raised in the trial court for strategic reasons
22 as Appellants prior bad act would likely be introduced, it should not be
23 considered in this appeal. See *Rubio v. State*, 124 Nev. 1032,1034, n. 5, 194
24 P.3d 1224, 1226, n. 5 (2008) (declining to consider an issue that was not
25 properly raised in the district court from an order denying post-conviction
26 motion to withdraw a guilty plea); see also *Warren v. State*, 121 Nev. 886, 892
27 124 P.3d 522, 526 (2005) (holding that if “an affirmative defense is not raised in
28 the district court, argument pertaining to that defense is waived on appeal.”).

1 Although mistake is not an affirmative defense, the State argues that it is unfair
2 to raise this argument for the first time on appeal without the trier of fact
3 considering the prior bad act in relation to the kick being a mistake or accident.

4 Regardless, the jury reviewed all the evidence, considered all the events
5 that took place on April 16, 2020, evaluated Appellant's actions, and determined
6 the credibility of the witnesses. Based on their review, the jury found Appellant
7 guilty of Battery by a Prisoner in Lawful Custody or Confinement.

8 Therefore, the Court should affirm the conviction as there was sufficient
9 evidence to support the conviction of Battery by a Prisoner in Lawful Custody or
10 Confinement.

11 **C. The District Court Imposed a Lawful Sentence Under the**
12 **Statutory Guidelines.**

13 The district court has broad discretion in its decision regarding sentencing.
14 *Dunham v. State*, 134 Nev. 563, 569, 426 P.3d 11, (2018). "A sentence within
15 the statutory limits is not 'cruel and unusual punishment unless the statute fixing
16 punishment is unconstitutional or the sentence is so unreasonably
17 disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112
18 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev.
19 433, 435, 596 P.2d 220, 221-22 (1079)). This court has ruled that it will not
20 interfere with a sentence imposed if "the record does not demonstrate prejudice
21 resulting from consideration of information or accusations founded on facts
22 supported only by impalpable or highly suspect evidence.'" *Chavez v. State*, 125
23 Nev. 328, 348, 213 P.3d 476, 490 (2009) (quoting *Silks v. State*, 92 Nev. 91, 94,
24 545 P.2d 1159, 1161 (1976)).

25 It is undisputed that the sentence imposed for each of the crimes is within
26 the statutory scheme. Appellant only argues that there are mitigating
27 circumstances to consider. Opening Brief, pages 18-19. The State argues that
28 the court considered the mitigating circumstances and considered the arguments

1 at sentencing by the State. On April 13, 2020, Appellant was released on his
2 own recognizance in the Tenth Judicial District Court Case Number 20-10DC-
3 0186, facing an Attempted Burglary charge. 5 AA 762:2-6, 764:5-9. Three days
4 later, Appellant committed these violent crimes. 5 AA 763:4-7. Although
5 Appellant may have been on a controlled substance, Appellant was coherent and
6 committed these violent crimes, with multiple victims. Although the occupant of
7 room 132 was not inside the room, she was victimized by someone breaking
8 down the door and entering her hotel room. Douglas was scared and reacted by
9 grabbing a knife for protection. Malone braced himself for a physical altercation
10 and sustained a substantial injury, resulting in nerve damage that may be
11 permanent. Another victim had her credit cards stolen. Finally, Grimes and the
12 other officers and any spectators were put in danger based on Appellant's actions
13 of resisting and kicking Grimes after being placed in custody. In reviewing
14 Appellant's criminal history, the State pointed out that it got progressively
15 violent. 5 AA 763:10-12.

16 The district court sentenced Appellant within the statutory guidelines. In
17 considering the goals of sentencing: retribution, rehabilitation, deterrence, and
18 incapacitation. The sentence imposed satisfies retribution as the various victims
19 that were affected by Appellant's actions received justice. Deterrence is satisfied
20 as both the public and Appellant are shown that there are consequences for these
21 violent actions. Next, society is being protected or safeguarded due to
22 Appellant's incapacitation. Finally, Appellant has the ability to be rehabilitated
23 during the term of his sentence.

24 The sentence is not unreasonably disproportionate to the offenses as to
25 shock the conscience based on the totality of the circumstances. Finally, the
26 record does not demonstrate prejudice from the district court considering all of
27 information provided to the court during the trial or at sentencing.

28 ///

