

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEAN ESTELLA A/K/A GENE
ESTELLA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42967

FILED

NOV 04 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary. Seventh Judicial District Court, Eureka County; Steve L. Dobrescu, Judge. The district court sentenced appellant Jean Estella to a prison term of 12 to 48 months, but then suspended execution of the sentence and placed Estella on probation for a time period not to exceed 3 years.

Estella first contends that there is insufficient evidence in support of his conviction. Specifically, Estella contends that there was no evidence that he entered Ruby Hill Mine with the intent to steal because when he placed the property at issue in his truck he believed it was going to be thrown away. 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.¹

In particular, Mike Protani, a mine superintendent, testified that on September 26, 2002, he went to the Ruby Hill Mine at night to pick up some equipment. Protani observed a vehicle drive through the front gate of the property and then pull up to the back door of the office building. After Protani heard the sound of items being loaded into the

¹See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980).

back of a pickup truck, he decided to investigate. Protani approached the office and observed Estella standing beside his truck. Estella was a mine employee who had been recently informed that he was going to be laid off due to the mine's slated closure. Protani observed a wheelbarrow and cutsaw, owned by Barrick Mining Company, in the bed of the truck. Protani asked Estella what he was doing there, and Estella replied he was just "snooping around." Protani then asked Estella about the items in the truck. Estella first claimed the equipment was his, but when Protani responded that he did not believe him, Estella asked if he could just put the equipment back. Protani responded that the incident was more serious than that and called the police.

After he was arrested, Estella gave an audiotaped statement to the police, which was admitted into evidence at trial. In the statement, Estella explained that he and a female companion were in the area exploring old mines, when he saw the wheelbarrow and cutsaw in an open office building and decided to take them. In the statement, Estella made no mention of his purported belief that the items were going to be discarded, but instead stated that he could not explain why he took the equipment. In contrast, at trial, Estella testified that: (1) he went to the mine to "snoop around"; (2) he had no intent to steal; (3) he regularly observed mine employees taking equipment which was going to be discarded; and (4) he took the wheelbarrow and saw because he believed they were going to be thrown away when the mine closed. Two Barrick employees, however, testified that the company never gave away equipment to its employees.

Although Estella argues that he did not intend to steal, we conclude that the jury could reasonably infer from the evidence presented at trial that Estella entered the mine property with the intent to take the

mining company's property. 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.²

Estella also contends that reversal of his conviction is warranted because the jury was given an improper burglary instruction. Jury instruction number 15 provided that: "To prove an entry in establishing the crime of Burglary, the prosecution need only show an entry without the consent of the possessor of the building. Force or 'breaking' as such is not a necessary element of the crime." Estella argues that the instruction contains an inaccurate statement of Nevada law because the burglary statute does not necessarily require that the State show that the entry took place without the consent of the owner.

At trial, Estella neither objected to the allegedly erroneous jury instruction nor proffered an alternative one. It is well settled that the failure to object to a jury instruction generally precludes appellate review absent plain or constitutional error.³ No such error occurred in this case. Jury instruction number 15 did not contain an incorrect statement of Nevada law. In fact, when an individual enters a public building with the intent to steal, the entry is nonconsensual as a matter of law because the consent to enter extends only to those persons "who enter with a purpose consistent with the reason the building is open."⁴ Moreover, jury

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

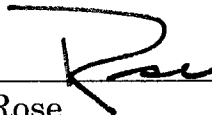
³See Bonacci v. State, 96 Nev. 894, 899, 620 P.2d 1244, 1247 (1980).

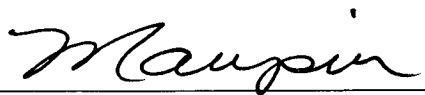
⁴State v. Adams, 94 Nev. 503, 505, 581 P.2d 868, 869 (1978) (citations omitted).


instruction number 14 properly required the jury to find the elements of burglary beyond a reasonable doubt, providing in relevant part that: "1. The Defendant did willfully and unlawfully 2. enter a building by day or by night 3. with the intent to commit larceny therein."⁵ Accordingly, reversal of Estella's conviction is not warranted.

Having considered Estella's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Steve L. Dobrescu, District Judge
Steve E. Evenson
Attorney General Brian Sandoval/Carson City
Eureka County District Attorney
Eureka County Clerk

⁵See NRS 205.060(1).