IN THE SUPREME COURT OF THE STATE OF NEVADA

CORNELL ALTON KELLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45138

FILED

JAN 11 2006

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 battery constituting domestic violence and one count of burglary. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Cornell Alton Keller to serve a prison term of 24 to 60 months for the battery and a concurrent term of 24 to 72 months for the burglary, and it ordered Keller to pay a fine in the amount of $2,000.00.

First, Keller contends that NRS 205.060 is unconstitutionally vague because a person of ordinary intelligence would not understand that the unplanned act of reaching through a door, into a home, and striking the occupant would result in a charge of burglary. Keller specifically claims that, "[a] person of ordinary intelligence would not understand that the briefest of intrusions by only a portion of a forearm would qualify as entering a home" because the burglary statute fails to define "enters."

The term "enters," as used in the burglary statute, is defined by statute.[1] NRS 193.0145 states that the term

> "[e]nter," when constituting an element or part of a crime, includes the entrance of the offender, or the insertion of any part of his body, or of any instrument or weapon held in his hand and used or intended to be used to threaten or intimidate a person, or to detach or remove property.

We conclude that this statutory definition, when read together with the burglary statute, adequately warns a person of ordinary intelligence that if he inserts any part of his body into a home to commit battery on a person he has "entered" the home and may be found guilty of burglary.

Second, Keller contends that insufficient evidence was adduced at trial to show that he had formed the intent to batter the victim at the time his arm entered the house. The standard of review for a challenge to the sufficiency of the evidence to support a criminal conviction is "'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'"[2]

Here, Barbara Fraser testified that Keller opened the screen door and then pushed on the house door. As she and Daryn Potter

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[1]See NRS 193.010 (stating that the definitions provided in NRS 193.011 to 193.0245 apply to the words and terms used in subsequent sections of Title 15); NRS 193.0145 (defining "enter"); NRS 205.060(1) (defining burglary).

[2]McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

attempted to shut the house door, Keller hit her on the face. She did not believe it was "an accident, because there was a moment when [she] looked at him and he looked at [her], and he hesitated for a minute, and then apparently reached through the door" and hit her on the face. Potter testified that when Fraser attempted to push the door shut, Keller kicked the door and his fist came through the door and clipped Fraser on her glasses. As Keller's fist came through the door, Potter could see from his expression that he was extremely angry. Potter did not believe that Keller accidentally struck Fraser. Based on this testimony, we conclude that a rational juror could reasonably infer that Keller had formed the intent to batter Fraser at the time his arm entered the house. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturb on appeal where, as here, substantial evidence supports the verdict.[3]

Third, Keller contends that he was denied his right to a fair trial when the prosecutor engaged in misconduct during her closing argument. Keller specifically claims that the prosecutor disparaged legitimate defense tactics, mislead the jury by misstating evidence, intimated that she was in possession of evidence not presented to the jury, and appealed to the passions and prejudices of the jury. However, Keller failed to object to the prosecutor's alleged misconduct at trial, and he has

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[3]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

not demonstrated that prosecutor's remarks were patently prejudicial.[4]

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

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Steven P. Elliott, District Judge
Washoe County Public Defender
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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[4]Riker v. State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (holding that when appellant fails to object below, this court reviews alleged prosecutorial misconduct only if it constitutes plain error, i.e., if it is shown to be patently prejudicial).