

IN THE SUPREME COURT OF THE STATE OF NEVADA


JERRY LEE STOCKWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46640

FILED

OCT 17 2006

ORDER OF AFFIRMANCE

WANEETE M. BLOOM
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge. The district court sentenced appellant Jerry Lee Stockwell to a prison term of 19 to 48 months.

Stockwell first challenges the jury instructions regarding the element of intent. Our review of the record reveals, however, that the jury was properly instructed.¹ Specifically, the jury instructions stated that Stockwell's intent could be inferred by illegal entry into the hotel room, but that the jury was not required to make any inference and that any fact had to be proven beyond a reasonable doubt.

To the extent that Stockwell argues that insufficient evidence of his intent was adduced at trial, we disagree.² The only element disputed at trial was Stockwell's intent upon unlawfully entering the

¹See Hollis v. State, 96 Nev. 207, 209, 606 P.2d 534, 536 (1980), modified on other grounds by Thompson v. State, 108 Nev. 749, 838 P.2d 452 (1992).

²See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

occupied hotel room. There was evidence that Stockwell engaged the security latch on the door after he entered, and that when he was confronted, he fled.

The jury could reasonably infer from the evidence presented that Stockwell entered the room with the intent to commit either a sexual assault or a larceny, despite the fact that nothing was actually taken and the room's occupants were not sexually assaulted. 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.³

Stockwell next contends that the jury heard improper victim impact testimony. Specifically, Stockwell argues that one of the victims testified that she was frightened during and immediately after the crime, and that testimony was irrelevant, prejudicial and constituted improper victim impact testimony. District courts are vested with wide discretion in determining the relevance and admissibility of evidence.⁴ The district court's determination will not be disturbed on appeal absent a clear abuse of that discretion.⁵ The testimony in question was admitted as part of the victim's explanation of what happened during the crime and to rebut Stockwell's claim that the victim signed a no-prosecution form. To the extent that Stockwell relies on NRS 51.105, such reliance is misplaced,

³See 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).

⁴Castillo v. State, 114 Nev 271, 277, 956 P.2d 103, 107 (1998).

⁵Atkins v. State, 112 Nev. 1122, 1127, 923 P.2d 1119, 1123 (1996).

because the testimony was not hearsay. We therefore conclude that the district court did not abuse its discretion by admitting the evidence.

Stockwell also contends that the State failed to provide notice that he had to defend against a charge of burglary with the intent to commit a battery. Stockwell's argument is based on the fact that the jury instruction defining burglary stated that the entry must be made with the intent to "commit a larceny and/or an assault and/or a battery and/or a felony therein." Stockwell failed to object to the instruction in question. Failure to raise an objection in the district court generally precludes appellate consideration of an issue absent plain error affecting substantial rights.⁶ Generally, a defendant must show that he was prejudiced by a particular error in order to prove that it affected substantial rights.⁷

We note that the information charged Stockwell with entering the hotel room with the intent to commit larceny and/or a sexual assault. Further, there was no evidence or argument regarding an intent to commit a battery. We therefore conclude that Stockwell has failed to demonstrate that he was prejudiced by the inclusion of the reference to battery, and that no plain error occurred.

Stockwell also contends that the prosecutor improperly introduced an oral statement of two of the victims as victim impact testimony. Stockwell failed to object to the statement of the prosecutor at sentencing. We conclude that the prosecutor's comments did not

⁶See Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001).

⁷Id.

constitute a victim impact statement and that Stockwell has failed to demonstrate prejudice.

Finally, Stockwell contends that the cumulative effect of multiple errors warrants reversal of his convictions. However, because we have concluded that Stockwell has not demonstrated error, he is not entitled to reversal based on a cumulative error theory.⁸

Having considered Stockwell's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Eighth Judicial District Court Dept. 16, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸Cf. Pertgen v. State, 110 Nev. 554, 566, 875 P.2d 361, 368 (1994), abrogated on other grounds by Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001).