

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDUARDO GONZALEZ A/K/A FIDEL
CASTRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49295

FILED

JAN 08 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count of burglary, four counts of robbery with the use of a deadly weapon, one count of attempted murder with the use of a deadly weapon, and one count of resisting a public official. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge. The district court sentenced appellant Eduardo Gonzalez to serve various concurrent and consecutive prison terms amounting to 211 to 528 months.

Gonzalez contends that insufficient evidence was adduced at trial to support his convictions for multiple counts of robbery with the use of a deadly weapon. Gonzalez specifically claims that he did not take any money from employee Brittany Sikorak or her assigned store register and that he did not focus his attention on duty manager Ermetra Harris, point his gun at her, demand money from her, or even speak to her.¹ However,

¹Gonzalez cites to Phillips v. State, 99 Nev. 693, 669 P.2d 706 (1983) (reversing a conviction for robbery where the victim did not have a possessory interest in the property taken).

our review of the record on appeal reveals sufficient evidence to establish Gonzalez's guilt beyond a reasonable doubt as determined by a rational trier of fact.²

The jury heard testimony that Marshall's department store employed Ermetra Harris as a manager and Rebecca Villareal, Magdalena Smus, and Brittany Sikorak as cashiers. Sikorak's duties included cashiering, checking prices, and merchandise recovery. On August 9, 2006, Gonzalez entered Marshall's and appeared to be shopping. Harris was standing just behind Villareal and was talking on the telephone to a contractor. Gonzalez took some merchandise to the counter where Smus was working and, when she began to ring-up and bag his purchases, he produced a handgun and demanded money. Smus was scared and got down behind her cash register, whereupon Gonzalez pointed his handgun at Sikorak and ordered her to open her cash register. Sikorak stepped back from her cash register and stated that it was her first day and she did not know what she was doing. So Gonzalez moved on to Villareal, pointing his handgun at her and demanding money. After Villareal gave Gonzalez the money from her cash register, he returned to Smus's counter and again ordered Smus to open her cash register. When Smus froze, Harris signaled Villareal to hit the suspend button so that the cash register would open. Villareal opened Smus's cash register and gave

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

Gonzalez the money it contained. Gonzalez took the money and the bagged merchandise and left the store.

We conclude that a rational juror could reasonably infer from this testimony that Marshall's employees Harris, Villareal, Smus, and Sikorak were all present and subjected to fear when Gonzalez used a handgun to steal their employer's property,³ and that all four employees had a representative capacity to Marshall's and a sufficient possessory interest in their employer's property to be victims of the robbery.⁴ 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.⁵

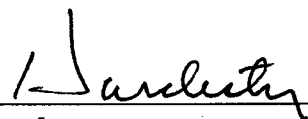
³See NRS 200.380(1); Robertson v. Sheriff, 93 Nev. 300, 302, 565 P.2d 647, 648 (1977) (holding that "[a] thing is in the presence of a person, in respect to robbery, which is so within his reach, inspection, observation or control, that he could, if not overcome by violence or prevented by fear, retain his possession of it") (quoting Commonwealth v. Homer, 127 N.E. 517, 520 (Mass. 1920)).

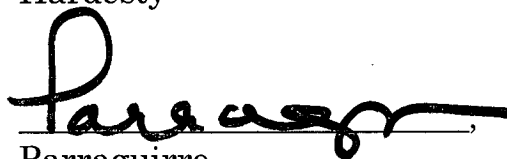
⁴See People v. Jones, 98 Cal. Rptr. 2d 329, 332 (2000) (holding that business employees, regardless of their function, "have sufficient representative capacity to their employer so as to be in possession of property stolen from the business owner"); cf. People v. Frazer, 131 Cal. Rptr. 2d 319, 325 (2003) (holding that the circumstances must indicate that "the employee has sufficient representative capacity with respect to the owner of the property, so as to have express or implied authority over the property"). See generally Klein v. State, 105 Nev. 880, 884-85, 784 P.2d 970, 973-74 (1989).

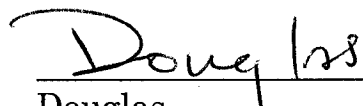
⁵See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

Having considered Gonzalez's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Lee A. Gates, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk