IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN DANIEL HIGUERA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51493

FILED

FEB 03 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of grand larceny of a motor vehicle valued under $2,500. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court adjudicated appellant Steven Higuera a habitual criminal and sentenced him to a term of life in prison with the possibility of parole after 10 years.

Testimony at trial established that Higuera was friends with the victim's uncle, Arnold Olmo. Higuera went to Olmo's house, when Olmo was not home, to drop off some furniture. Upon entering the house, Higuera found that it had been ransacked. Higuera proceeded to take the victim's motorcycle, as well as other items from Olmo's residence, back to Higuera's house, ostensibly for safekeeping.

Higuera contends on appeal that the evidence presented at trial was insufficient to support the jury's finding of guilt. Specifically, Higuera argues that because no evidence was presented to show that Olmo, who was in possession of the motorcycle, objected to Higuera's taking of the motorcycle, no evidence was presented to demonstrate that the taking was unlawful. Higuera also contends that the prosecution

failed to present sufficient evidence to show that he took the motorcycle with the intent to permanently deprive the owner.

In a criminal case, the standard of review 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.'" McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)). Moreover, "it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses." Id. And "circumstantial evidence alone may support a conviction." Hernandez v. State, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002).

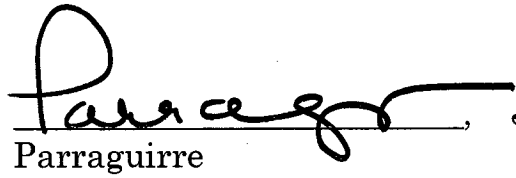
A person is guilty of grand larceny of a motor vehicle if he "intentionally steals, takes and carries away, drives away or otherwise removes a motor vehicle owned by another person." NRS 205.228(1). The law requires only that the motor vehicle be taken from the owner; there is no requirement that the owner be in actual possession of the motor vehicle at the time of the taking. The victim testified that he purchased the motorcycle from a friend and possessed the title. Accordingly, we conclude that sufficient evidence was presented to the jury to show that Higuera took and carried away the motorcycle owned by the victim.

Further, although Higuera argued that he lacked the necessary intent to commit grand larceny by explaining that he took the motorcycle and other items for safekeeping, the jury was free to weigh this argument against the conflicting evidence. Our review of the record reveals that it was reasonable for the jury to conclude that Higuera intended to permanently deprive the victim of the motorcycle based on the fact that Higuera did not inform the victim or Olmo that he took the

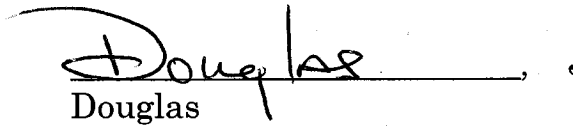
motorcycle and he gave conflicting stories about why he took the motorcycle to his residence. See Grant v. State, 117 Nev. 427, 435, 24 P.3d 761, 766 (2001) (holding that "[i]ntent need not be proven by direct evidence but can be inferred from conduct and circumstantial evidence").

Having considered Higuera's claims and concluded that they lack merit, we

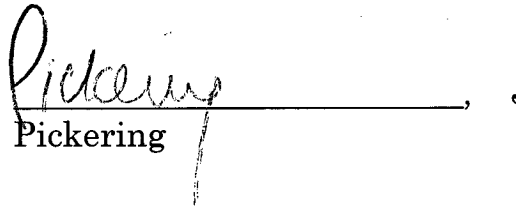
ORDER the judgment of conviction AFFIRMED.[1]



_____, J.
Parraguirre



_____, J.
Douglas



_____, J.
Pickering

cc: Hon. Stewart L. Bell, 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

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[1]We note that the judgment of conviction states that Higuera was "adjudged guilty . . . under the Large Habitual Criminal Statute as set forth in the jury's verdict," when in fact the jury's verdict does not mention the Large Habitual Criminal Statute. Accordingly, we direct the district court to remove the language "as set forth in the jury's verdict" from the judgment of conviction.