

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOY WINSTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51864

FILED

JUN 03 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from an amended judgment of conviction, pursuant to a jury verdict, of one count of burglary. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court adjudicated appellant Joy Winston a habitual criminal and sentenced her to a term of life in prison with the possibility of parole after 10 years.

Winston's sole claim on appeal is that the evidence adduced at trial was insufficient to support her conviction for burglary. In particular, she challenges the sufficiency of the evidence supporting the intent element of the burglary charge. We agree there was insufficient evidence of intent.

The standard of review for sufficiency of the evidence 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." Mitchell v. State, 124 Nev. ___, ___, 192 P.3d 721, 727 (2008) (internal quotations and citations omitted). "This court will not disturb a jury verdict where there is substantial evidence to support it, and circumstantial evidence alone may support a conviction." Hernandez v. State, 118 Nev. 513, 531, 50 P.3d

1100, 1112 (2002). Furthermore, “[t]his court will not reweigh the evidence or evaluate the credibility of witnesses because that is the responsibility of the trier of fact.” Mitchell, 124 Nev. at ___, 192 P.3d at 727.

Burglary in this case is the entry into a building with the specific intent to commit larceny therein. See NRS 205.060(1); see also Bolden v. State, 121 Nev. 908, 911, 124 P.3d 191, 193 (2005), overruled on other grounds by Cortinas v. State, 124 Nev. ___, ___, 195 P.3d 315, 317 (2008). The gravamen of the intent element is the time at which the person possesses the requisite intent to commit larceny. If the criminal intent is not formed until after entry, no burglary has been committed. Adams v. State, 94 Nev. 503, 505, 581 P.2d 868, 869 (1978). Intent “may be inferred from the conduct of the parties and the other facts and circumstances disclosed by the evidence.” Moore v. State, 122 Nev. 27, 36, 126 P.3d 508, 513 (2006) (quoting Larsen v. State, 86 Nev. 451, 453, 470 P.2d 417, 418 (1970)); see also NRS 193.200 (“Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused.”).

Here, Winston was first observed by a Wal-Mart loss-prevention employee when she and the codefendant began placing DVD boxed sets and a CD (collectively, “media”) in their shopping cart. One or both of them placed a shirt over the media, then took turns pushing the cart to the stationery section. Once there, they both pulled various large items from the shelves, including a paper shredder, a file box, and a security box. Ultimately, all but the security box were returned to the shelves. The pair moved to the furniture department where Winston watched as the codefendant removed the security box from its packaging,

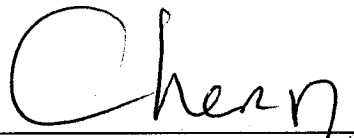
placed the media in the box and locked it, and then resealed the box. Winston pushed the cart and the pair made their way to the self-checkout aisle. Once there, Winston handed the security box to the codefendant, and he scanned the box and some crackers and deli meat, but not the media hidden inside the box. At some point, Winston assisted the codefendant in pushing options on the check-out screen. They paid for the scanned merchandise and left, with the codefendant carrying the security box and Winston carrying the grocery items. The loss-prevention employee testified that it was common practice for thieves to secret media in large items such as file boxes or paper shredders.


While the evidence adduced may allow a rational trier of fact to infer that Winston at some point formed an intent to commit larceny, it does not speak to the timing of that intent. Winston was not observed entering the store, and no evidence was presented of her actions prior to or during her entry into the store. Further, no other evidence was presented of the time lapse or Winston's actions between her entering the store and when the Wal-Mart loss-prevention employee first noticed her and the codefendant in the store's electronics department selecting media. Only one piece of evidence was adduced at trial that was possibly relevant to the timeframe prior to the loss-prevention employee first noticing Winston: When Winston was observed in the electronics department, her shopping cart already contained crackers and deli meat. However, the significance of this evidence is speculative, and there is nothing therein

from which a rational trier of fact could infer that Winston entered the Wal-Mart with the intent to commit larceny.¹

Based on the foregoing discussion, we conclude that the evidence was insufficient to support Winston's conviction for burglary. We therefore

ORDER the judgment of conviction REVERSED.

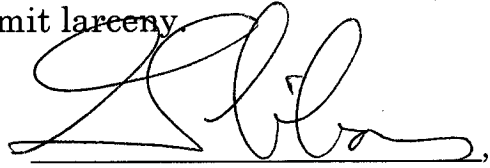

_____, J.
Cherry


_____, J.
Saitta

¹In contrast, other burglary convictions upheld by this court have contained some evidence that links the defendant's intent with entry into the structure. See, e.g., Moore v. State, 122 Nev. 27, 30, 126 P.3d 508, 510 (2006) (intent inferred where defendant entered store with stolen credit card that he then attempted to use); Chappell v. State, 114 Nev. 1403, 1409, 972 P.2d 838, 841 (1998) (intent inferred where defendant had history of domestic violence against victim when he entered her home through a window and murdered her); Flynn v. State, 93 Nev. 247, 250, 562 P.2d 1135, 1136 (1977) (intent inferred from short time span between entry and rape); Thomas v. State, 114 Nev. 1127, 1143, 967 P.2d 1111, 1121-22 (1998) (intent inferred in part from short time span between entry and thrusting gun in employee's face and demanding money).

GIBBONS, J., dissenting:

I dissent because I conclude that a rational juror could find based on the circumstantial evidence presented that Winston entered the Wal-Mart with the intent to commit larceny.


Gibbons, J.

cc: Eighth Judicial District Court Dept. 7, 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