

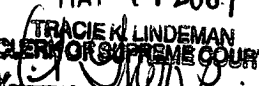
IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LEWIS LOWNIK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52449

FILED

ORDER OF AFFIRMANCE

MAY 11 2009
TRACIE K. LINDEMAN
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; Douglas W. Herndon, Judge. Appellant Michael Lownik was sentenced to serve a prison term of 19 to 48 months.

Lownik contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Specifically, Lownik argues that the evidence is insufficient to support his conviction because police officers gave conflicting testimony regarding statements Lownik made at the time of his arrest. We disagree.

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 the witnesses." Id.

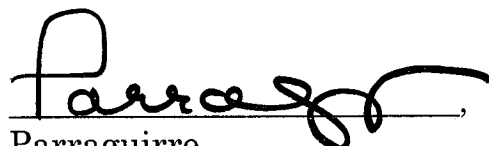
And “circumstantial evidence alone may support a conviction.” Hernandez v. State, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002).

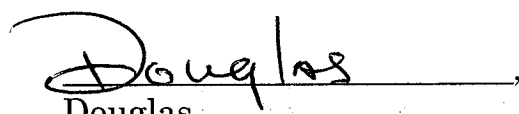
As an initial matter, we note that Lownik’s contention that police officers gave conflicting testimony at trial is belied by the record. Officer Stieb testified that, upon questioning, Lownik explained that an acquaintance asked him to move things from the victim’s residence, and that the acquaintance agreed to pay Lownik for this service. Officer Blum testified that he heard Lownik make this statement to Officer Stieb. Officer Blum also testified that Lownik confessed to prying open the door to the residence and stealing items. Contrary to Lownik’s assertion, the officers’ testimony showed that Lownik made inconsistent statements to the police, not that the officers gave testimony inconsistent with one another.

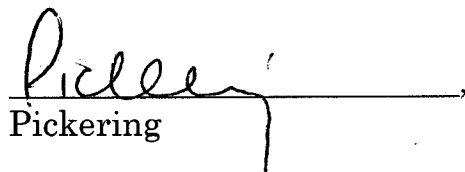
Further, after reviewing the evidence in the light most favorable to the prosecution, we conclude that the evidence adduced at trial sufficiently supported Lownik’s conviction beyond a reasonable doubt. Richard Lacey, the victim’s next door neighbor, testified that he witnessed Lownik make a prying motion after which the door of the residence “popped open.” Mr. Lacey, Officer Stieb and Officer Blum all testified that they observed Lownik removing boxes from the victim’s residence and placing them in his car. As mentioned above, Officer Blum testified that Lownik confessed to prying open the door to the residence and stealing items. Finally, the victim testified that she did not know Lownik, did not give him permission to enter her residence or remove items therefrom, and that the pry marks around the door were not present on the day prior to the burglary. From that evidence, a rational juror could have found

Lownik guilty of burglary beyond a reasonable doubt. Accordingly, we conclude that Lownik's contention lacks merit, and we

ORDER the judgment of conviction AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Douglas W. Herndon, 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