

IN THE SUPREME COURT OF THE STATE OF NEVADA

EUGENE HOLLIS NUNNERY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53707

**FILED**

**DEC 03 2009**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count each of burglary while in possession of a firearm and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. The district court sentenced appellant Eugene Hollis Nunnery to serve consecutive prison terms totaling 16 to 40 years.

Nunnery's sole claim on appeal is that the evidence adduced at trial was insufficient to support his conviction for burglary while in possession of a firearm. In particular, he challenges the sufficiency of the evidence supporting the intent element of the burglary charge. We conclude that this contention lacks merit.

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." 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.

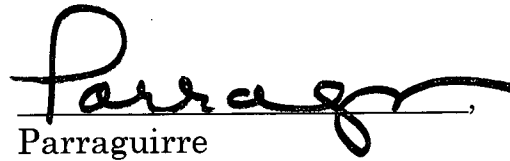
A person who enters any building with the intent to commit a felony therein is guilty of burglary. NRS 205.060(1). The gravamen of the intent element is the time at which the person possesses the requisite intent to commit larceny. State v. Adams, 94 Nev. 503, 505, 581 P.2d 868, 869 (1978). If the criminal intent is not formed until after entry, no burglary has been committed. Id. Intent need not be demonstrated by direct evidence, but “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.

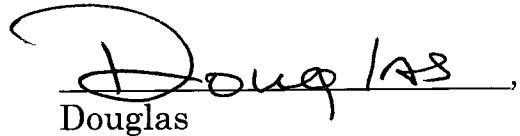
Here, the State produced evidence that Nunnery entered the grocery store with a gun. Nunnery told detectives that he was dressed as a “nerd” so that he would appear unassuming. Upon entering the store, Nunnery observed the gaming area, then went into the gaming area and poured himself a cup of coffee while he continued to look the area over. As he was pouring the coffee, the gaming attendant approached him. Nunnery immediately pulled his firearm on the clerk and proceeded to rob him.

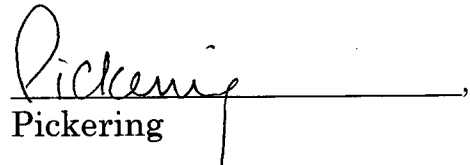
From this evidence, a reasonable jury could have concluded, beyond a reasonable doubt, that Nunnery possessed the intent to commit a

felony when he entered the store. See NRS 205.060(1). Accordingly, we conclude that Nunnery's contention is without merit and we

ORDER the judgment of conviction AFFIRMED.

 J.  
Parraguirre

 J.  
Douglas

 J.  
Pickering

cc: Hon. Michelle Leavitt, District Judge  
Special Public Defender David M. Schieck  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk