

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES PAUL SELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54339

FILED

JAN 13 2011

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count each of larceny from the person, unlawful taking of a vehicle, burglary, malicious injury to a vehicle, and indecent exposure. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Sufficiency of the evidence

Appellant Charles Paul Sell contends that the evidence adduced at trial was insufficient to sustain his conviction for burglary because it did not establish his intent at the time he entered the bus. We review the evidence in the light most favorable to the prosecution and determine whether any rational juror 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). Here, a bus driver testified that she observed Sell walking down the street completely naked and, when he began heading in her direction, she locked the bus door and started the engine. Sell ran up to the bus, banged on the window, and yelled, "Give me the keys, give me the keys, let me in, let me in, I'm taking your bus." Sell broke a window with his hands, entered the bus through the broken window, and took the bus. The jury also saw a video recording of the

incident, which had been recorded by the bus's video camera system. We conclude that a rational juror could reasonably infer from this evidence that Sell entered the bus with the intent to commit a larceny or a felony. See NRS 193.200 (intent); NRS 205.060(1); Sharma v. State, 118 Nev. 648, 659, 56 P.3d 868, 874 (2002) (observing that “intent can rarely be proven by direct evidence of a defendant’s state of mind, but instead is inferred by the jury from the individualized, external circumstances of the crime, which are capable of proof at trial”). 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, sufficient evidence supports the verdict. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Other bad acts evidence

Sell contends that the district court erred by allowing the State to admit other bad acts evidence, specifically, that he attempted to enter two other vehicles before entering the bus. We review the district court’s decision to admit or exclude evidence of other bad acts for an abuse of discretion and will not reverse absent manifest error. Ledbetter v. State, 122 Nev. 252, 259, 129 P.3d 671, 676 (2006). The evidence was not admissible under the res gestae doctrine because the witnesses could describe the charged offense without referring to the other bad acts. See NRS 48.035(3); Weber v. State, 121 Nev. 554, 574, 119 P.3d 107, 121 (2005) (limiting the admission of evidence under NRS 48.035(3) to the statute’s express provisions). And the district court did not hold a hearing to determine whether the evidence could be admitted for other purposes. See NRS 48.045(2); Petrocelli v. State, 101 Nev. 46, 51-52, 692 P.2d 503, 507-08 (1985), modified on other grounds by Sonner v. State, 112 Nev. 1328, 1334, 930 P.2d 707, 711-12 (1996). Therefore, the district court

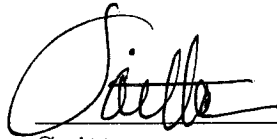
erred by admitting the evidence. However, given the other evidence of intent presented at the trial, we conclude that the result would have been the same if the evidence had not been admitted and the error is harmless. See NRS 178.598; Qualls v. State, 114 Nev. 900, 903, 961 P.2d 765, 767 (1998).

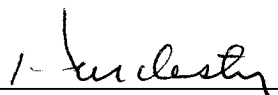
Constitutionality of NRS 201.220

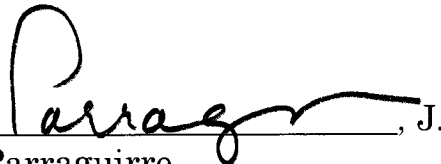
Sell contends that NRS 201.220 is unconstitutionally vague and overbroad because it fails to provide the ordinary person with sufficient notice as to what is prohibited, authorizes and encourages arbitrary and discriminatory enforcement, has a chilling effect on free speech, and lacks a specific intent element. This claim lacks merit. See State v. Castaneda, 126 Nev. ___, ___, ___ P.3d ___, ___ (Adv. Op. No. 45, November 24, 2010) (holding that NRS 201.220 is not unconstitutionally vague or overbroad).

Having considered Sell's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

 _____, J.
Saitta

 _____, J.
Hardesty

 _____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk