


IN THE SUPREME COURT OF THE STATE OF NEVADA

AURELIO PEREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55426

FILED

SEP 09 2010

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 each of making false statements or representations to obtain benefits and theft. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

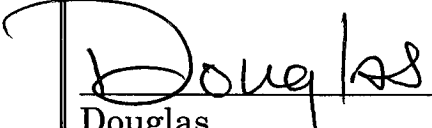
Appellant Aurelio Perez claims that insufficient evidence was adduced at trial to support his convictions. This claim lacks merit because the evidence, when viewed in the light most favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Mitchell v. State, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

Here, the jury heard evidence that during a six-month period, Perez certified to the industrial insurance carrier that his disability prevented him from returning to any type of employment and represented to his physicians that he had severe back pain, needed pain medication to perform routine daily activities, had very limited strength, mobility and range of motion, required a cane to walk, and was able to sit and stand for only 10 to 25 minutes at a time. Based on his representations, Perez continued to qualify for the benefits and received six disability checks

during the period. Investigators testified that during that same period they observed and videotaped Perez walking easily without a cane for extended periods, bending, twisting and lifting with ease, and performing strenuous physical activities while repairing his roof for over two hours without a break. The videotapes were played for the jury. Perez's physicians testified that based on the videos his functional physical capabilities were far in excess of what he had represented and, had they been aware, Perez would no longer have been deemed eligible for permanent total disability benefits. We conclude that a rational juror could reasonably infer that Perez knowingly made false statements or concealed material facts regarding his physical capabilities for the purpose of obtaining benefit payments, see NRS 616D.300, and that he knowingly obtained benefit payments by material representations with intent to deprive the industrial insurance carrier of those payments, see NRS 205.0832(1)(c). 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, substantial evidence supports the verdict. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Michael Villani, District Judge
Clark County Public Defender
Attorney General/Carson City
Attorney General/Las Vegas
Clark County District Attorney
Eighth District Court Clerk