

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENNY HAMMONS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55801

**FILED**

SEP 14 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *H. Inge*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary and grand larceny. Eighth Judicial District Court, Clark County; James M. Bixler, Judge. Appellant Benny Hammons raises three issues on appeal.

First, Hammons argues that the State impermissibly commented on his failure to testify. Because Hammons did not object to the State's comments during closing arguments, we review for plain error. Valdez v. State, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). We conclude that a jury would not "naturally and necessarily" view the State's comments on the unexplained presence of Hammons' fingerprints at the crime scene as comments on Hammons' failure to testify. See Harkness v. State, 107 Nev. 800, 803, 820 P.2d 759, 761 (1991) (explaining the test for indirect references to a defendant's post-arrest silence during closing arguments). Therefore, we find no error.

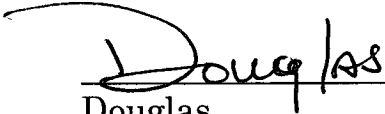
Hammons next contends that there was insufficient evidence to convict him of grand larceny and burglary. We conclude that a "rational trier of fact could have found the essential elements of the crime

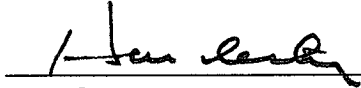
beyond a reasonable doubt.” See Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)). At trial the jury heard testimony that Hammons never entered the victim’s master bedroom and was supervised at all times during his visit. The presence of Hammons’ fingerprints on the interior of the bedroom closet door and the absence of the victim’s safe was sufficient evidence for a jury to determine that Hammons entered the house a second time with the intent to commit larceny. See Hernandez v. State, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002) (“[C]ircumstantial evidence alone may support a conviction.”).

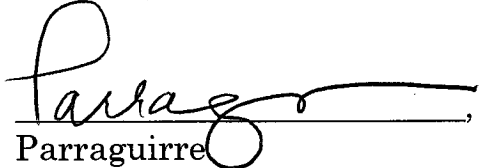
Lastly, Hammons argues that the district court abused its discretion in denying his motion to substitute counsel. We consider three factors when reviewing the district court’s denial of a motion for substitute counsel: “(1) the extent of the conflict; (2) the adequacy of the inquiry; and (3) the timeliness of the motion.” Young v. State, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004) (internal quotation marks omitted). Here, Hammons has failed to provide a transcript of the November 3 and December 1, 2009, inquiries into Hammons’ motion to substitute counsel. However, the district court minutes reveal that Hammons’ attorney adequately remedied the chief complaints of his client by providing him with complete discovery and retaining a forensic expert to examine the evidence against him. Accordingly, we do not conclude that a complete breakdown of communication occurred requiring the appointment of substitute counsel. See id. (“A defendant’s right to substitution of counsel is not without limit.”). We therefore conclude that the district court did not abuse its discretion.

Having considered Hammons' arguments and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. James M. Bixler, District Judge  
Yampolsky, Ltd.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk