IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY WILLUHM,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35224

FILED

JUL 26 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary and resisting a public officer. The district court adjudicated appellant a habitual criminal pursuant to NRS 207.010(1) and sentenced him to 25 years in prison, with the possibility of parole after 10 years. For resisting a police officer, the district court sentenced appellant to a concurrent term of 30 days in the Clark County Detention Center.

First, appellant contends the district court erred by denying his motion for a mistrial based on his absence from trial, and for resuming the trial in his absence. We disagree.

NRS 178.388(1) provides that a defendant has a right to be present at every stage of the trial. However, NRS 178.388(2)(a) provides that if the defendant's absence is voluntary, such absence "must not prevent continuing the trial to and including the return of the verdict." See also Hanley

00-12935

v. State, 83 Nev. 461, 466-67, 434 P.2d 440, 443-44 (1967). On appeal, a trial court's findings of fact will be given great deference and will not be overturned unless they are not supported by substantial evidence. Steese v. State, 114 Nev. 479, 495, 960 P.2d 321, 332 (1998).

After jury selection, the district court took a recess and upon returning from the recess noted appellant's absence. Appellant's counsel asked the district court to waive the absence for the remainder of the afternoon. The prosecutor made his opening statement and the district court adjourned the trial for the day. The next morning appellant was again absent. His counsel moved for a mistrial. The district court denied the motion finding that appellant was voluntarily absent from trial and ordered the trial to resume. The jury eventually returned a guilty verdict. Appellant was apprehended on August 19, 1999, and was sentenced on November 3, 1999. Neither appellant, nor his counsel, ever provided an explanation to refute the finding that appellant's absence was voluntary. After review of the record, we conclude the district court did not err. Therefore, appellant's contention is without merit.

Next, appellant contends the evidence presented at trial was insufficient to convict him of burglary. Specifically, appellant asserts there was insufficient evidence for the jury to conclude appellant entered the victim's home with the intent to commit a felony therein. Our review of the

record, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980).

NRS 205.060(1) provides that "[a] person who, by . . . night, enters any house . . . with the intent to commit grand or petit larceny . . . is guilty of burglary." Further, NRS 205.065 creates a rebuttable presumption that a person who unlawfully enters a house does so with the intent to commit grand or petit larceny therein.

The victim testified she awoke at night to discover an unknown intruder in her home. She then escaped from the house and telephoned the police from a neighbor's home. The police arrived minutes later and accompanied the victim back to her home. The police and the victim saw the unknown intruder still inside. An officer tried to arrest the intruder, who then tried to escape. After a short chase and a brief scuffle the officer subdued and apprehended the intruder, who was identified as appellant. Appellant's fingerprints were found in the victim's home and numerous items had been gathered into a pile to be taken.

We conclude the jury could reasonably infer from the evidence presented that appellant entered the house with the intent to commit grand or petit larceny. 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, 624 P.2d 20 (1981).

Having considered appellant's contentions and concluded that they are without merit, we

ORDER this appeal dismissed.

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
James L. Buchanan, II
Clark County Clerk