IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL PHILLIP PULIZZANO,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35323

FILED

FEB 16 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 guilty of felony possession of stolen property. The district court sentenced appellant to twelve to thirty-six months in the Nevada State Prison.

First, appellant contends the evidence presented at trial was insufficient to support the jury's finding of guilt. Specifically, he asserts the State failed to produce evidence appellant knew the property was stolen. Our review of the record on appeal, 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).

In particular, we note that NRS 205.275 provides, in pertinent part, "[a] person commits an offense involving stolen property if the person . . . for his own gain . . . possesses . . . property: (a) Knowing that it is stolen property; or (b) Under such circumstances as should have caused a reasonable person to know that is it stolen property." See Gray v. State, 100 Nev. 556, 558, 688 P.2d 313, 314 (1984) (where the circumstances are such as to put a reasonable person on notice

as to the stolen nature of the goods he possesses, that person may be found guilty of possession of stolen property).

In this matter there was testimony an unknown number of sewing machines were stolen from Bally's Casino during a convention. Testimony indicated appellant was a Teamster's member who had worked at the convention. Further, testimony revealed appellant, at a later date, contacted a third party offering to sell sewing machines. When the third party went over to appellant's residence, there were four or five other sewing machines in boxes aside from the two that the third party was to purchase. Testimony also established the retail value of the two sewing machines sold to the third party was approximately $4,200.00. Finally, testimony established appellant sold the two sewing machines to the third party for $500.00.

The jury could reasonably infer from the evidence presented that appellant committed the crime of possession of stolen property. 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, 624 P.2d 20 (1981). Therefore, we conclude this contention is without merit.

Second, appellant asserts the district court erred by refusing his proposed jury instruction advising acquittal. Issuance of an advisory instruction on acquittal rests within the discretion of the district court. Milton v. State, 111 Nev. 1487, 1492-1493, 908 P.2d 684, 688 (1995). We will not disturb the district court's decision in the absence of an abuse of discretion. Id.

Appellant fails to cite to any portion of the record demonstrating that the district court abused its discretion in

denying his request for an acquittal jury instruction, and our independent review of the record fails to disclose any abuse of discretion. Accordingly, we conclude this contention is without merit.

Third, appellant asserts the district court abused its discretion by denying his proposed jury instruction on his theory of the case. However, aside from his assertion that he was entitled an acquittal, appellant fails to specify his theory of the case. Further, he fails to cite to any portion of the record indicating he requested a jury instruction on his theory of the case. Thus, appellant has failed to show the district court abused its discretion in instructing the jury.

Having concluded appellant's contentions lack merit, we

ORDER this appeal dismissed.

Maupin, J.

Shearing, J.

Becker, J.

cc: Hon. Kathy A. Hardcastle, District Judge
Attorney General
Clark County District Attorney
Potter Law Offices
Clark County Clerk