IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH W. HATLEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59281

FILED

SEP 13 2012

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 burglary. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge. Appellant Kenneth W. Hatlen raises four issues on appeal.

First, Hatlen contends that insufficient evidence was adduced to support the jury's verdict. Specifically, Hatlen argues that the jury's verdict was not based on the evidence but on unsupported inferences or assumptions. We disagree 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), and circumstantial evidence alone may sustain a conviction, Cunningham v. State, 113 Nev. 897, 909, 944 P.2d 261, 268 (1997). A window on the Good Shepherd Church was broken and electronic equipment was stolen from the church. The blinds covering the broken window were disheveled and had blood on them—blood that matched Hatlen's DNA. The janitor testified that he had cleaned the church the day before and the window was intact and there was no blood

on the blinds. Based on this evidence, we conclude that Hatlen's contention is without merit.[1]

Next, Hatlen argues that the district court violated his right to testify on his own behalf when the court ruled that the State could use a prior burglary conviction to impeach him if he were to testify at trial. We conclude that Hatlen did not preserve this issue for appeal, as he did not make an offer of proof to the district court outlining his intended testimony, and it is not clear from the record that he would have testified but for the district court's ruling. See Warren v. State, 121 Nev. 886, 894-95, 124 P.3d 522, 528 (2005).

Third, citing to the dissent in State v. Thompson, 31 Nev. 209, 101 P. 557 (1909), Hatlen contends that the district court erred by refusing to give his proposed instruction on circumstantial evidence. We disagree. "We generally review a district court's refusal to give a jury instruction for an abuse of discretion or judicial error." Nay v. State, 123 Nev. 326, 330, 167 P.3d 430, 433 (2007). Hatlen has failed to provide us with the actual jury instruction but has merely summarized the instruction in his brief, NRAP 30(b)(3) (appellant must include "portions of the record essential to determination of [the] issues raised"). Nevertheless, based on the record and his summary, we are able to review his contention and conclude that he has failed to establish that the district court erred by rejecting his proposed jury instruction. Hatlen wanted an instruction explaining that

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[1]To the extent that Hatlen attempts to incorporate by reference that the district court erred by denying his motion to set aside the verdict, this is not permissible under this court's rules. NRAP 28(e)(2). Moreover, Hatlen's sufficiency argument on appeal is nearly identical to the argument raised in his motion to set aside the verdict.

the jury must determine that the circumstantial evidence is consistent and rules out every verdict except guilt. It was proper to refuse to give this instruction where, as here, the district court properly instructed the jury on the standard for reasonable doubt. See Bails v. State, 92 Nev. 95, 96-98, 545 P.2d 1155, 1155-56 (1976).

Having considered Hatlen's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.

Gibbons, J.

Parraguirre, J.

cc: Hon. Elissa F. Cadish, District Judge
Herbert Sachs
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk