

IN THE SUPREME COURT OF THE STATE OF NEVADA

BILLY RAY JONES A/K/A CHRIS
WASHINGTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59611

FILED

NOV 15 2012

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of burglary while in the possession of a deadly weapon, three counts of robbery with the use of a deadly weapon, and carrying a concealed firearm or other deadly weapon and, pursuant to a guilty plea, of felon in possession of a firearm. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Billy Ray Jones contends that insufficient evidence supports his convictions for burglary and one of the three robbery counts because the State failed to prove that he entered the Sinclair Gas Station with criminal intent and that victim Brian Daugherty had constructive possession over the beer at the time it was taken. We review the evidence in the light most favorable to the prosecution and determine whether any rational juror could have found the essential elements of the crime beyond a reasonable doubt. McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

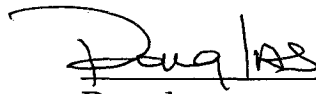
The jury heard testimony that employees Daugherty, Deborah Wilde, and Eric Payne were present when Jones and a male companion entered the gas station with their hoods on. Daugherty's floor shift had

ended and he was counting the money in his cash register drawer and completing his end-of-shift paperwork. Wilde and Payne were manning the floor. The gas station door had a sign telling patrons to remove their hoods. Wilde told Jones and his companion to remove their hoods, and she had to tell Jones twice before he complied. Jones grabbed an 18-pack of beer and headed towards the door. When it was clear that Jones was going to leave without paying for the beer, Wilde grabbed the beer and told him to leave. Jones reacted by drawing a pistol from under his hoodie, chambering a round, and waving the pistol at the gas station employees before leaving with the beer. The jury also saw video surveillance recordings depicting the entire incident.

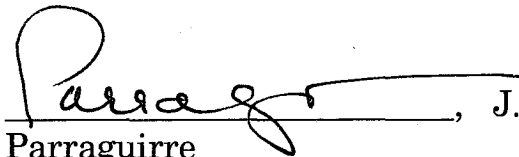
We conclude that a rational juror could reasonably infer from this evidence that Jones entered the gas station with the intent to commit a larceny or a felony, see NRS 193.200 (intent); NRS 205.060(1) (burglary); Sharma v. State, 118 Nev. 648, 659, 56 P.3d 868, 874 (2002) (observing that “intent can rarely be proven by direct evidence of a defendant’s state of mind, but instead is inferred by the jury from the individualized, external circumstances of the crime, which are capable of proof at trial”), and Daugherty was on duty and had a sufficient possessory interest in his employer’s property to be a victim of the robbery, see NRS 200.380(1) (robbery); People v. Scott, 200 P.3d 837, 843 (Cal. 2009) (regardless of their particular duties, “employees of a business constructively possess the business owner’s property during a robbery.” (quoting People v. Jones, 98 Cal. Rptr. 2d 329, 331 (Cal. Ct. App. 2000))); see generally Klein v. State, 105 Nev. 880, 884-85, 784 P.2d 970, 973-74 (1989). 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, sufficient

evidence supports the verdict. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Sanft Law, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk