

IN THE SUPREME COURT OF THE STATE OF NEVADA

TROY ANTHONY MORROW,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 63552

**FILED**

**FEB 13 2014**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *L. Malone*  
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; Rob Bare, Judge.

Appellant entered a Walmart in Las Vegas with three packages of pencils. He obtained a yellow sticker from an employee who wrote "3" on the sticker, indicating that the pencils were return items. Appellant walked to the electronics department and placed a home entertainment system, a DVD player, and a DVD in a cart and stuck the yellow sticker on the home entertainment system. In time, appellant walked past the cash registers without paying for the items and was stopped by an asset protection agent, who called the police. During questioning by Police Officer Matthew Carter, appellant told Officer Carter that he was working with a police detective to obtain firearms for the detective. Officer Carter called Detective Dale Anderson, who confirmed that appellant was working with him as a confidential informant in an operation targeting ex-felons selling firearms and individuals in possession of dynamite grenades. At Detective Anderson's request, appellant was released at that time and arrested for the instant


offenses several months later. Appellant submitted a proposed instruction regarding the public authority defense, which the district court gave to the jury: “If you find that Mr. Morrow was acting or reasonably believed he was acting on behalf of a law enforcement agency or officer when he engaged in the conduct charged in counts one and two of the indictment, they you must acquit him of these charges.” *See United States v. Jumah*, 493 F.3d 868, 875 (7th Cir. 2007) (explaining the public authority defense).

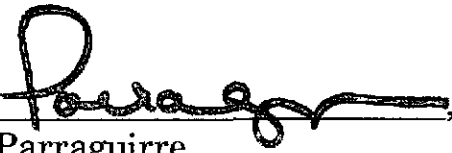
Appellant argues that the district court erred by failing to instruct on the necessary burden of proof for the public authority defense and therefore the verdict is unreliable because the jury was not informed which party had the burden of proof or the standard of proof—beyond a reasonable doubt or preponderance of the evidence. *See Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (“The district court has broad discretion to settle jury instructions, and this court reviews the district court’s decision for an abuse of that discretion or judicial error.”). Even assuming that Nevada recognizes the public authority defense, we conclude that no prejudice resulted from the deficiencies in the instruction appellant identifies considering the substantial evidence supporting appellant’s convictions.


In addition to the evidence described above, the jury viewed the video surveillance of the event and heard testimony that appellant told the asset protection officer that he would not go to jail because he knew too many people. And appellant told Officer Carter that he came to Walmart that day because he “was going to teach a Hispanic male how to steal large-ticket items” and he described to Officer Carter the manner in which he would steal items, which was consistent with his actions that day. Further, Detective Anderson testified that he never instructed

appellant to commit a burglary or theft at Walmart as part of appellant's work as a confidential informant. We also note that while appellant suggested to the jury that the prosecution bore the burden of proving the public authority defense beyond a reasonable doubt, appellant did not dispute the prosecutor's contention during a subsequent bench conference that the common-law defense of public authority was an affirmative defense that the defense must be prove by a preponderance of the evidence. After the bench conference, the prosecutor was allowed to argue to the jury that appellant bore the burden of proving the public authority defense by a preponderance of the evidence. *See United States v. Doe*, 705 F.3d 1134, 1146 (9th Cir. 2013) (concluding that the defendant bore the burden of proving the common-law defense of public authority by a preponderance of the evidence); *Jumah*, 493 F.3d at 875 (same as *Doe*). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Pickering

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

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Rob Bare, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk