IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH MICHAEL BARNEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65527

FILED

OCT 1 5 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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; Jerome T. Tao, Judge.

First, appellant Keith Michael Barney contends that insufficient evidence supports his conviction. 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). Barney was discovered at night in a residence that housed donated items. Police found a large screwdriver on Barney's belt, and he was wearing black gloves. The owner of the residence testified that he did not know Barney and that Barney did not have permission to be in the residence. The owner further testified that his duffle bags, which usually held clothes and travelling items, were moved to the front door, filled with radios, stereo parts, computer parts, and food. Additionally, three boxes with new monitors had been moved to the front door. We conclude that the jury could have reasonably inferred from the evidence presented that Barney committed burglary. *See* NRS 205.060(1); *Valdez v. State*, 124 Nev. 1172, 1197, 196

P.3d 465, 481 (2008) ("[I]ntent 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." (internal quotation marks omitted)). A jury's verdict will not be disturbed on appeal where, as here, it is supported by sufficient evidence. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Next, Barney claims that his sentence is disproportionate to his codefendant's sentence and the gravity of the crime, in violation of the Eighth Amendment to the United States Constitution. "[S]entencing is an individualized process; therefore, no rule of law requires a court to sentence codefendants to identical terms," *Nobles v. Warden*, 106 Nev. 67, 68, 787 P.2d 390, 391 (1990); *Martinez v. State*, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998) (observing that the district court has discretion to consider "wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant"), and "[t]he Eighth Amendment requires that defendants be sentenced individually, taking into account the individual, as well as the charged crime," *Martinez*, 114 Nev. at 737, 961 P.2d at 145. The district court adjudicated Barney as a habitual criminal pursuant to NRS 207.010(1)(a) and sentenced him to serve 96 to 240 months in the Nevada Department of Corrections. Barney has incurred an extensive adult criminal history, and the district court was presented with eight prior felonies. We are not convinced that his sentence is so unreasonably disproportionate to the gravity of the offense and his history of recidivism as to shock the conscience. *See Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979); *see also Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion); *Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality

opinion). We discern no abuse of discretion by the district court or Eighth Amendment violation regarding sentencing.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Pickering

_____, J.
Parraguirre

_____, J.
Saitta

cc: Hon. Jerome T. Tao, District Judge
Michael R. Pandullo
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk