

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ELIAS GARCIA-ZECENA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86802-COA

FILED
JUN 13 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Elias Garcia-Zecena appeals from a judgment of conviction, entered pursuant to a jury verdict, of grand larceny, value \$5,000 or greater but less than \$25,000. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Garcia-Zecena argues he was denied the right to a fair trial by an impartial jury because jurors committed misconduct by discussing the case on a break in proceedings. Garcia-Zecena moved for a mistrial based on the alleged juror misconduct below. The district court should grant a mistrial for juror misconduct where the defendant shows both juror misconduct and prejudice, meaning a reasonable probability or likelihood that the misconduct affected the verdict. *See Jeffries v. State*, 133 Nev. 331, 335, 397 P.3d 21, 26 (2017).

In his brief on appeal, Garcia-Zecena simply recounts the relevant facts from the proceedings below but fails to cogently argue that the jurors' actions amounted to misconduct or that he was prejudiced. *See Meyer v. State*, 119 Nev. 554, 561-567, 80 P.3d 447, 453-457 (2003)

(describing the standards for proving and evaluating different types of juror misconduct and whether prejudice resulted). Therefore, we decline to consider this claim. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (stating this court need not consider an argument that is not cogently argued or supported by relevant authority).

Garcia-Zecena also argues that insufficient evidence supports his conviction. When reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the prosecution and determine whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); accord *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). “[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness.” *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975). And circumstantial evidence is enough to support a conviction. *Washington v. State*, 132 Nev. 655, 662, 376 P.3d 802, 807 (2016). Grand larceny consists of intentionally stealing, taking, or carrying away property, owned by another, with a value of \$1200 or more. See NRS 205.220(1)(a).

The evidence produced at trial, including surveillance video footage, revealed the following. A slot machine currency can that contained over \$20,000 in bills went missing after being removed by casino employees from a slot machine at the Circus Circus casino. An investigation showed that the can had been removed from the slot machine and placed in a storage room in compliance with procedures. Two days later, Garcia-Zecena, a casino worker with over 25 years of experience, and two other

employees checked out a key to the storage room where the can had been placed. Garcia-Zecena did not use his fingerprints to check out the key and went to the storage room without a security escort, in violation of procedures. Once inside, Garcia-Zecena removed a slot machine currency can from its storage cabinet and moved it to a cabinet used to store table game cans. Garcia-Zecena then left the storage room and gave the key to another employee to return, in violation of procedures.

Days later, Garcia-Zecena returned to the storage room, removed a slot machine currency can from the table game can storage cabinet, and moved the can to a decommissioned room. Garcia-Zecena then took the can to a blind spot behind storage carts before emerging without the can. He also used storage carts to block two surveillance cameras and is depicted placing paperwork into his front pocket. Garcia-Zecena then entered a bathroom and when he came out, the paperwork was no longer visible. The paperwork associated with the missing can was never found.

The next day, Garcia-Zecena went to an affiliated casino across the street, signed out a key used to open the currency cans, and returned to the decommissioned room unescorted, in violation of procedures. There, he looked up at the security camera before rolling a cart in front of it. Garcia-Zecena then returned the key used to open the cans to the affiliated casino, returned to the decommissioned room, and disappeared behind the storage carts for approximately six minutes before leaving. Garcia-Zecena denied taking the money and neither the can nor any of the currency were ever found. Given this evidence, we conclude that the State presented sufficient circumstantial evidence such that any rational juror could have found

beyond a reasonable doubt that Garcia-Zecena intentionally stole, took, or carried away property, owned by another, with a value of \$1200 or more. Accordingly, we conclude Garcia-Zecena is not entitled to relief based on this claim, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Egan K. Walker, District Judge
Justice Law Center
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk