



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DESTINY CHIRIBOGA-SALGADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 91181-COA

ORDER OF AFFIRMANCE

Destiny Chiriboga-Salgado appeals from a judgment of conviction, entered pursuant to a jury verdict, of residential burglary, first offense, and attempted grand larceny of a motor vehicle, first offense. Second Judicial District Court, Washoe County; Hon. Scott N. Freeman, Judge.

On appeal, Chiriboga-Salgado argues there is insufficient evidence to support her convictions for residential burglary and attempted grand larceny of a motor vehicle. In particular, Chiriboga-Salgado contends the State failed to prove that she entered a “dwelling” and that she intended to commit larceny. When reviewing a challenge to the sufficiency of the evidence, we view 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).

To obtain a conviction for residential burglary, the State had to prove that Chiriboga-Salgado unlawfully entered a “[d]welling with intent to

commit grand or petit larceny.”¹ NRS 205.060(1)(a). A “dwelling” includes “any structure, building, [or] house . . . [i]n which any person lives; or . . . which is customarily used by a person for overnight accommodations, regardless of whether the person is inside at the time of the offense.”² NRS 205.060(6)(b). A person commits larceny if they intentionally steal, take, and carry or drive away personal goods or property owned by another person with the specific intent to permanently deprive the owner of their property. *See* NRS 205.220(1)(a); NRS 205.240(1)(a); *Harvey v. State*, 78 Nev. 417, 419, 375 P.2d 225, 226 (1962); *see also* NRS 205.228(1) (defining grand larceny of a motor vehicle).

The evidence adduced at trial established that Christine Miller owned and lived in a house in a residential neighborhood in Reno, Nevada for several years before her passing in November 2022. Jeffrey Williams—Miller’s nephew and the executor of her estate—testified that after Miller’s passing he provided house keys to two of Miller’s neighbors so they could monitor the house since he lived in Henderson, Nevada. Williams testified that the house was fully furnished and that there was a van in the garage. Although no one was living in the house after Miller’s passing, Williams testified that he continued to pay the utility bills after Miller’s passing, that he came up to Reno twice after Miller’s passing to check on the house (including in early January 2023), and that he stayed at the house during his visits.

¹The State did not allege that Chiriboga-Salgado entered a dwelling “with the intent to commit . . . assault or battery on any person or any felony, or to obtain money or property by false pretenses.” NRS 205.060(1)(a).

²We note that an attached garage also constitutes part of a dwelling for the purposes of NRS 205.060. *See Austin v. State*, 142 Nev., Adv. Op. 12, 587 P.3d 826, 830 (Ct. App. 2026).

Chiriboga-Salgado testified that she conducted research online to find a vacant and abandoned property that she could acquire title to through adverse possession, which resulted in her finding Miller's house. Chiriboga-Salgado testified that she took several actions in her effort to adversely possess the house, including: (1) putting the power under her name and attempting to put the water under her name; (2) having the homeowners' association put her name on the call box; and (3) changing the locks on some of the doors. Regarding the locks, Chiriboga-Salgado testified that around January 17, 2023, she entered the home through a back window and installed new locking mechanisms on the front door and the door in the garage leading into the house.

The evidence presented indicated that Chiriboga-Salgado attempted to move into the property on January 26, 2023. Chiriboga-Salgado testified that three people went with her to the house to help her move in, and that after she gained entry to the house, she asked one of those people, Jeffrey Sutterfield, to help her move the van out of the garage. Chiriboga-Salgado testified that she intended to move her property into the garage, pack up the belongings in the house, move her property into the house, and then move the boxed-up items into the garage.

One of the neighbors, Cindy Wright, testified that she saw Chiriboga-Salgado and Sutterfield as they were trying to move the van. Wright testified that she walked over, Chiriboga-Salgado approached her, and Chiriboga-Salgado informed her that she was Miller's niece and that she was there to help Miller's family get things in order. Chiriboga-Salgado testified that she lied to Wright. Wright testified that she found the situation strange and informed Williams, who then called the police. Although Chiriboga-Salgado testified that she intended to move the van into the driveway, she

informed the police that she intended to take the van to her house and had planned to keep it there until Williams reached out to her. Williams testified that he did not know who Chiriboga-Salgado was, that she had never reached out to him, and that he did not give her permission to enter the house. The van was in the street blocking a neighbor's driveway when the police arrived and arrested Chiriboga-Salgado. Upon being interviewed, Chiriboga-Salgado lied to the police about her relationship to Miller and other matters.

Considering the totality of this evidence, we conclude a rational juror could find beyond a reasonable doubt that Miller's house constituted a "dwelling" for the purposes of NRS 205.060.³ Moreover, we conclude a rational juror could find beyond a reasonable doubt that Chiriboga-Salgado entered the house with the intent to commit larceny, particularly in light of Chiriboga-Salgado's testimony that she replaced some of the existing locking mechanisms, intended to pack up the belongings in the house, and informed the police that she intended to take the van to her house.⁴ *See Moore v. State*, 122 Nev. 27, 36, 126 P.3d 508, 513 (2006) ("[I]ntent need not be proved by positive or direct evidence, but may be inferred from the conduct of the parties

³Having so concluded, we further conclude the district court did not abuse its discretion in refusing to instruct the jury to acquit Chiriboga-Salgado of burglary for this same reason. *See Middleton v. State*, 114 Nev. 1089, 1105, 968 P.2d 296, 307-08 (1998) (holding a district court did not abuse its discretion in denying a motion for an acquittal instruction because there was sufficient evidence to support the convictions).

⁴Chiriboga-Salgado's testimony that she intended to contact a family member of the owner at some point and return the van and the furniture does not alter this conclusion. *See McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (stating "it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses"); *see also Mitchell*, 124 Nev. at 816, 192 P.3d at 727 (stating the evidence must be viewed in the light most favorable to the prosecution).

and the other facts and circumstances disclosed by the evidence.” (quotation marks omitted)). We likewise conclude that a rational juror could reasonably infer from the evidence presented that Chiriboga-Salgado attempted to take the van with the specific intent to permanently deprive the rightful owner of that property. Therefore, there was sufficient evidence to support Chiriboga-Salgado’s convictions for residential burglary and attempted grand larceny of a motor vehicle, and we conclude Chiriboga-Salgado is not entitled to relief on this claim.

Chiriboga-Salgado also argues the district court abused its discretion by precluding her from discussing the concept of adverse possession in her opening statement. “An opening statement outlines what evidence will be presented, to make it easier for the jurors to understand what is to follow, and to relate parts of the evidence and testimony to the whole; it is not an occasion for argument.” *Watters v. State*, 129 Nev. 886, 889-90, 313 P.3d 243, 247 (2013) (internal quotation marks omitted). We review challenges to an opening statement for an abuse of discretion. *See id.* at 891-92, 313 P.3d at 248.

Prior to trial, Chiriboga-Salgado noticed her intent to call an expert witness in the field of adverse possession law. The district court held a *Hallmark*⁵ hearing, after which the court qualified the witness as an expert but deferred ruling on the admissibility of the expert’s testimony until a foundation had been laid for such testimony. Because the district court deferred ruling on the admissibility of the expert’s testimony, and defense counsel did not indicate that he had a good faith belief Chiriboga-Salgado was going to testify so as to provide a foundation for this evidence, we conclude the

⁵*Hallmark v. Eldridge*, 124 Nev. 492, 189 P.3d 646 (2008).

district court did not abuse its discretion in limiting defense counsel's opening statement. *See Watters*, 129 Nev. at 890, 313 P.3d at 247 (stating "[t]he prosecutor's opening statement should be confined to . . . the evidence the prosecutor intends to offer which the prosecutor believes in good faith will be available and admissible" (quotation marks omitted)).

Nonetheless, even assuming the district court erred in limiting defense counsel's opening statement, we conclude any such error was harmless. *See* NRS 178.598. Although defense counsel did not reference adverse possession during his opening statement, he did state that Chiriboga-Salgado tried to move into a house that she believed was vacant and abandoned, that Chiriboga-Salgado did not intend to steal anything, and that Chiriboga-Salgado started taking responsibility for the property. Moreover, Chiriboga-Salgado testified at length as to her intention to lawfully acquire title to the property through adverse possession, and the aforementioned expert testified at trial regarding the requirements to acquire title to a property through adverse possession and how some of Chiriboga-Salgado's actions bore upon those requirements. In light of the foregoing, the district court's decision to limit defense counsel's opening statement did not have a substantial and injurious effect on the jury's verdict, *see Knipes v. State*, 124 Nev. 927, 935, 192 P.3d 1178, 1183 (2008), and we conclude Chiriboga-Salgado is not entitled to relief on this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Scott N. Freeman, District Judge
Attorney General/Carson City
Washoe County District Attorney
Washoe County Public Defender
Second District Court Clerk