IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRYL RODNEY EDWARDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39427

FILED

JUL 22 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of burglary and grand larceny. The district court sentenced appellant Darryl Rodney Edwards to serve two concurrent prison terms of 12-30 months. Edwards was given credit for 261 days time served.

First, Edwards contends that the State adduced insufficient evidence at trial to sustain his conviction for burglary. More specifically, Edwards argues that the State did not demonstrate that he entered the building in question, a Wal-Mart store, with the requisite intent to commit grand larceny.[1] We disagree with Edwards' contention.

When reviewing a claim of insufficient evidence, the relevant inquiry is "'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'"[2] Further, "it is the

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[1]See NRS 205.060(1); see also Carr v. Sheriff, 95 Nev. 688, 689-90, 601 P.2d 422, 423 (1979).

[2]Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)) (emphasis in original omitted).

jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses."[3] In other words, a jury "verdict will not be disturbed upon appeal if there is evidence to support it. The evidence cannot be weighed by this court."[4]

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. A person is guilty of burglary if he or she "enters any . . . shop, warehouse, store . . . or other building . . . with the intent to commit grand or petit larceny . . . or any felony."[5] In this case, testimony at trial revealed that Edwards was spotted by the store manager taking the sensormatic tags off of boxes of expensive high-tech equipment -- DVD players -- and placing the boxes in a shopping cart. Edwards proceeded to exit the store without attempting to pay for the DVD players. After being confronted by the store manager, a struggle ensued and Edwards ran away without the stolen items. When he was eventually caught and taken into custody, a search by a police officer revealed that Edwards did not possess any money or means to pay for the DVD players. And finally, a loss prevention associate for Wal-Mart testified that when asked, "the defendant said he came to the store to get four or five DVDs, that he sells the DVDs for money on the street." Therefore, we conclude that Edwards' contention is without merit.

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[3]McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

[4]Azbill v. State, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972); see also Nev. Const. art. 6, § 4; NRS 177.025.

[5]NRS 205.060(1).

Second, Edwards contends that the district court erred in denying his motion for a new trial based on juror misconduct. In his motion, Edwards included affidavits from defense counsel relating information provided by a juror who told them that although she voted to convict, she never believed that Edwards was, in fact, guilty of burglary. According to the affidavits of counsel, the juror would have repudiated the verdict had the jury been polled. After conducting a hearing on the matter, the district court denied Edwards' motion. We conclude that the district court did not err.

At the end of the reading of the verdict by the district court, the following exchange took place:

> THE COURT: . . . Ladies and gentlemen of the jury, so say you one so say you all are these your verdicts as read?
>
> THE JURY: Yes.
>
> THE COURT: Do either side wish the jury polled?
>
> PROSECUTOR: No, your Honor.
>
> DEFENSE COUNSEL: No, your Honor.

While the jury was not individually polled, the juror was clearly given an opportunity by the district court to change her verdict at the appropriate time, and she remained silent. This court has stated that "[a]s a general rule, jurors may not impeach their own verdict."[6] Further, NRS 50.065(2), "prohibits consideration of affidavits or testimony of jurors concerning their mental processes or state of mind in reaching the verdict."[7]

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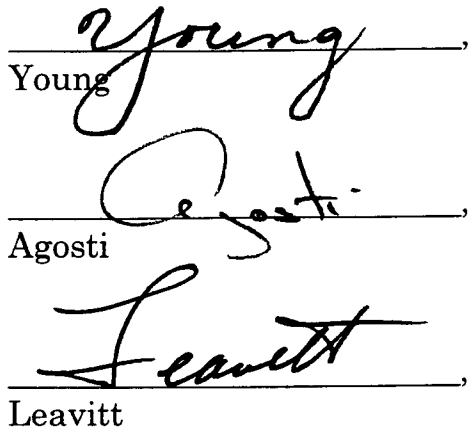
[6]Tinch v. State, 113 Nev. 1170, 1174-75, 946 P.2d 1061, 1064 (1997); Pinana v. State, 76 Nev. 274, 288, 352 P.2d 824, 832 (1960).

[7]Echavarria v. State, 108 Nev. 734, 741-42, 839 P.2d 589, 594 (1992).

Therefore, we conclude that the district court did not err in denying Edwards' motion for a new trial based on juror misconduct.[8]

Having considered Edwards' contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. John S. McGroarty, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk

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[8]See McDonald v. Pless, 238 U.S. 264, 269 (1915) ("[T]here is nothing in the nature of the present case warranting a departure from what is unquestionably the general rule, that the losing party cannot, in order to secure a new trial, use the testimony of jurors to impeach their verdict.").