

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDDIE SAMARIA MARTIN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42685

**FILED**

**AUG 27 2004**

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary. Eighth Judicial District Court, Clark County; David Wall, Judge. The district court sentenced appellant to a prison term of 18 to 60 months.

Appellant first contends that jury instruction numbers 7 and 8 improperly shifted the burden of proof. Jury instruction number 7 read: "The intention with which entry was made is a question of fact which may be inferred from the defendant's conduct and all other circumstances disclosed by the evidence."

Jury instruction number 8 read:

Every person who unlawfully enters any building may reasonably be inferred to have entered it with the intent to commit larceny therein, unless the unlawful entry is explained by evidence satisfactory to the jury to have been made without criminal intent.

The law does not require the jury to reach this inference. Intent must, on all the evidence be proved beyond a reasonable doubt.

NRS 205.065 provides for an inference of burglarious intent as set forth in jury instruction number 8. NRS 205.065 does not provide for a mandatory presumption or inference of intent; rather NRS 206.065 provides for a permissive inference of intent. This court has held that "[i]nstructions phrased in the form of permissible inferences may satisfy

NRS 47.230.”<sup>1</sup> Jury instruction number 8 did not relieve the State of its burden to prove that appellant unlawfully entered the protected structure.

Appellant next contends that the State amended the information without leave of the district court. Although the criminal complaint did not specify that appellant had previously been convicted of burglary, there was discussion of this fact at the preliminary hearing. The information subsequently filed in the district court charged appellant with second offense burglary. Appellant did not challenge the information, and we conclude that appellant's argument is without merit.

Appellant also contends that the district court erred by not requiring the State to prove his prior burglary conviction prior to sentencing. However, the prior burglary conviction was described in the presentence investigation report, and at sentencing, counsel for appellant informed the court that appellant was not contesting the fact that there was a prior conviction. We therefore conclude that appellant waived proof of the conviction by the State.<sup>2</sup>

Finally, appellant contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.<sup>3</sup>

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<sup>1</sup>Hollis v. State, 96 Nev. 207, 209, 606 P.2d 534, 536 (1980), modified on other grounds by Thompson v. State, 108 Nev. 749, 838 P.2d 452 (1993). NRS 47.230 sets forth the general guidelines regarding presumptions against defendants in criminal cases.

<sup>2</sup>See e.g., Krauss v. State, 116 Nev 307, 310-11, 998 P.2d 163, 165 (2000) (holding that a defendant may waive proof of prior DUI convictions for the purpose of enhancing subsequent convictions).


<sup>3</sup>See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).


In particular, we note evidence was adduced at trial that appellant entered the victim's home without permission. After entry, appellant showered, shaved, dressed himself in the victim's clothes, rearranged the furniture, cooked himself some food, and upon the victim's return, fled with a carton of cigarettes, a baseball bat, and a valuable bracelet.

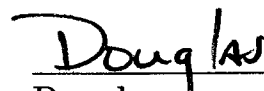
The jury could reasonably infer from the evidence presented that appellant entered the victim's home with the intent to steal. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.<sup>4</sup>

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

ORDER the judgment of conviction AFFIRMED.

 \_\_\_\_\_, J.  
Rose

 \_\_\_\_\_, J.  
Maupin

 \_\_\_\_\_, J.  
Douglas

cc: Hon. David Wall, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>4</sup>See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).