

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM EDWARD WORKMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55824

FILED

FEB 09 2011

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. Second Judicial District Court, Washoe County; Robert H. Perry, Judge. Appellant William Edward Workman raises two issues on appeal.

First, Workman challenges the sufficiency of the evidence to support his burglary conviction. The evidence presented showed that while returning home one evening, the victim noticed lights on in a home that he was renovating. The victim observed the lights going on and off in different rooms in the house and a broken window in the back of the house. After calling 9-1-1, the victim noticed a man open the back door of the house, peer outside, and retreat back inside the house. The lights continued to go on and off throughout the house. Shortly after the police arrived, Workman emerged from the house on his own accord and was arrested. He immediately denied having been in the house. The victim described a number of valuable items in the house, including copper wire, tools, motorcycle parts, electrical materials, and two player pianos; however, no property was recovered from Workman's person. We conclude that the evidence was sufficient for a rational jury to find Workman guilty of burglary, see Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378,

1380 (1998); Jackson v. Virginia, 443 U.S. 307, 319 (1979); NRS 200.060, despite his explanation that he broke a window and entered the house merely to get out of the rain and find a warm, dry place to stay. See Gaxiola v. State, 121 Nev. 638, 650, 119 P.3d 1225, 1233 (2005) (“The jury determines the weight and credibility to give conflicting testimony.”); Watkins v. State, 93 Nev. 100, 101, 560 P.2d 921, 921 (1977) (noting that inconsistencies in testimony raise credibility questions to be determined by jury).

Second, Workman challenges the instruction regarding the inference of burglarious intent based on an unlawful breaking and entering as provided in NRS 205.065.¹ Because Workman did not object to the instruction, we review for plain error. Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003). He argues that the instruction impermissibly shifted the burden of proof to the defense and failed to advise the jury that the presumed fact must still be proved beyond a reasonable doubt. We conclude that Workman failed to demonstrate plain error. NRS 205.065 provides for a permissible rather than a mandatory presumption or inference of intent. We have held that “[i]nstructions phrased in the form of permissible inferences may satisfy NRS 47.230,” which sets forth the

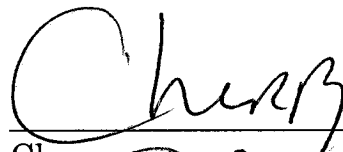
¹The jury was instructed as follows:


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

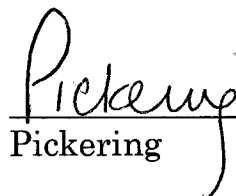
general guidelines regarding presumptions against defendants in criminal cases, see Hollis v. State, 96 Nev. 207, 209, 606 P.2d 534, 536 (1980), modified on other grounds by Thompson v. State, 108 Nev. 749, 838 P.2d 452 (1993), overruled by Collman v. State, 116 Nev. 687, 722, 7 P.3d 426, 449 (2000), and did not relieve the State of its burden to prove each element of the offense. And the jury was instructed at least twice that the State must prove each element of the charged crime beyond a reasonable doubt and specifically that the State must prove beyond a reasonable doubt that Workman intended to commit larceny when he entered the victim's house.

Having considered Workman's arguments and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


Cherry, J.


Gibbons, J.


Pickering, J.

cc: Hon. Robert H. Perry, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk