

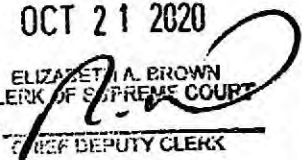
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEFF ANDREW STOEBNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80010-COA

FILED

OCT 21 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Jeff Andrew Stoebner appeals from a judgment of conviction, pursuant to a jury verdict, of burglary and possession of burglary tools. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

On the day trial was to begin, Stoebner requested permission to watch a video from a body camera worn by one of the police officers who arrested him.¹ The State had previously offered to arrange for Stoebner's counsel to view the video on three separate occasions before trial, but his counsel was unable to do so. Responding to Stoebner's request, the district court ordered the State to make the video accessible to Stoebner, which the State did, but due to some technical difficulty, Stoebner viewed only a portion of the video before trial and then requested a continuance of the trial so that he could view the rest of the video. The district court denied the request. Stoebner viewed the rest of the video after the trial ended for the day, which at that point, only consisted of jury selection.

During the trial, a Costco loss prevention agent testified that he saw Stoebner pick up a Bose speaker and a package of reading glasses in the store and conceal them in a hole in the lining of his jacket. Another employee testified that he saw Stoebner walk past the register and leave

¹We do not recount the facts except as necessary to our disposition.

the store without paying for the items. The same employee said he followed Stoebner to the parking lot and saw him unloading the items into a car and changing clothes. The employee testified that when Stoebner started to reenter the store, police officers detained him. Officers testified that a search of Stoebner revealed two concealed scissors and a jacket with a large hole cut into the lining, and that in their experience it is common for thieves to use scissors to cut off price tags and to wear jackets with large holes in which to conceal stolen items. Another officer testified that he searched the car Stoebner had loaded items into and found the two items taken from the store. The jury convicted Stoebner of both counts and the district court sentenced him to serve a prison term of 16-60 months for burglary and a concurrent jail term of 364 days for possession of burglary tools.

On appeal, Stoebner argues that the district court abused its discretion by denying his oral motion to continue and that substantial evidence does not support his burglary conviction because the State failed to prove specific intent to commit larceny beyond a reasonable doubt.

We review a district court's denial of a motion to continue for an abuse of discretion. *Rose v. State*, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007). A denial of a motion to continue is an abuse of discretion if it leaves the defense with inadequate time to prepare for trial. *See Zessman v. State*, 94 Nev. 28, 31-32, 573 P.2d 1174, 1177 (1978). "However, if a defendant fails to demonstrate that he was prejudiced by the denial of the continuance, then the district court's decision to deny the continuance is not an abuse of discretion." *Higgs v. State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010).

We conclude the district court did not abuse its discretion by denying Stoebner's motion to continue because a review of the record demonstrates Stoebner had adequate time to prepare for trial. The State

offered Stoebner three separate dates during any of which he could have viewed the video well before trial began, but his counsel was apparently occupied with other matters on those dates. He offered no other reason why he waited until minutes before trial was scheduled to start before attempting to view the video for the first time. Further, Stoebner failed to demonstrate how the denial prejudiced his case; for example, he offers no reason why watching the rest of the video before, rather than after jury selection, might have made a difference to his defense. Furthermore, he identifies no portion of the video that was exculpatory. Accordingly, the district court did not abuse its discretion by denying the motion to continue.

Stoebner next argues that the trial evidence was insufficient to support his conviction for burglary. If substantial evidence supports the jury's verdict, we will not reverse it on appeal. *Moore v. State*, 122 Nev. 27, 35, 126 P.3d 508, 513 (2006). "There is sufficient evidence if the evidence, viewed in the light most favorable to the prosecution, would allow any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt." *Leonard v. State*, 114 Nev. 1196, 1209-10, 969 P.2d 288, 297 (1998). "The jury determines the weight and credibility of conflicting testimony, and we will not disturb the jury's verdict where substantial evidence supports the jury's findings." *Guitron v. State*, 131 Nev. 215, 221, 350 P.3d 93, 97 (Ct. App. 2015).

Our review of the record reveals that substantial evidence supports the jury's verdict. An eyewitness testified to seeing Stoebner put items into the lining of his jacket, leave the store without paying for the items, and put the items into a car. NRS 205.060. In addition, an officer testified that he searched the car and discovered the stolen items in the car, and an employee confirmed the items were from the store. Officers searched

Stoebner's person and found scissors and a jacket with a hole in it that could be used to conceal items like the type he was observed taking. The location of the hole was also consistent with where the eyewitness observed Stoebner placing items into his jacket. Therefore, we conclude that substantial evidence supports the jury's verdict.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Benjamin Durham Law Firm
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk