

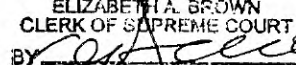
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID LOWELL DEARING,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 84653-COA

FILED

SEP 4 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

David Lowell Dearing appeals from a judgment of conviction, entered pursuant to a jury verdict, of burglary of a business, grand larceny, conspiracy to commit grand larceny, and willful injury to or destruction of property. Fourth Judicial District Court, Elko County; Mason E. Simons, Judge.

Dearing argues the State failed to produce sufficient evidence to demonstrate he was the one who committed the crimes. He argues that his identification was based solely on the testimony of a detective who admitted the surveillance videos were not perfect and his identification was based on the “totality of everything.” Further, he argues that only the one detective identified him at trial and that several other officers who also probably had prior contact with him did not testify or identify him at trial. Finally, he claimed no rational juror would believe that a person with a tattoo on his leg would commit a crime while wearing shorts.

When reviewing a challenge to the sufficiency of the evidence, we review 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). “[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness.” *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975). And circumstantial evidence is enough to support a conviction. *Washington v. State*, 132 Nev. 655, 661, 376 P.3d 802, 807 (2016).

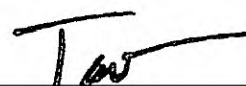
At trial, the State presented several surveillance videos and photos of the suspects stealing an ATM. Thus, the jury was able to view the crime and make its own determination as to whether Dearing was one of the people involved. Further, the police detective testified that he had several interactions with Dearing prior to the burglary and he recognized Dearing based on his unique facial features and the unique way that he walked. The detective also testified that the shorts and socks Dearing was wearing would have covered the tattoo on his calf. Finally, the State presented testimony from a witness to whom Dearing stated he committed the crime. Dearing described his involvement to the witness, and it matched what occurred in the video surveillance footage. Further, the witness testified that Dearing gave her several \$20 bills that he claimed were proceeds from the burglary. The ATM only contained \$20 bills.

The jury could have reasonably inferred from the evidence presented that Dearing was the person who committed burglary of a business, grand larceny, conspiracy to commit grand larceny, and willful injury to or destruction of property. Further, Dearing failed to demonstrate

that the State was required to produce more than one witness who could visually identify Dearing, especially here where there was substantial evidence presented of his involvement. Therefore, we conclude that Dearing is not entitled to relief. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Mason E. Simons, District Judge  
Lockie & Macfarlan, Ltd.  
Attorney General/Carson City  
Elko County District Attorney  
Elko County Clerk