

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRELL CLARK,
Appellant,
v.
THE STATE OF NEVADA,
Respondent.

Electronically Filed
Mar 07 2022 02:13 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 83303

RESPONDENT'S ANSWERING BRIEF

**Appeal From Denial of Petition for Writ of Habeas Corpus (Post-Conviction)
Eighth Judicial District Court, Clark County**

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**Appeal from Denial of Petition for Writ of Habeas Corpus (Post-Conviction)
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STATEMENT OF THE ISSUES

- I. Whether Sufficient Evidence was Presented to Convict Clark of the Crimes
Related to the June 15th Crimes
 - A. Sufficiency of the Evidence Standard of Review and Applicable
Law
 - B. Sufficient Evidence was Presented to Convict Clark of Conspiracy
to Commit Larceny and Conspiracy to Commit Burglary (Counts 19
and 20)
 - C. Sufficient Evidence was Presented to Convict Clark of Residential
Burglary (Count 21)

D. Sufficient Evidence was Presented to Convict Clark of Invasion of the Home (Count 22)

E. Sufficient Evidence was Presented to Convict Clark of Theft (Count 23)

F. Sufficient Evidence was Presented to Convict Clark of Robbery (Count 24)

G. Sufficient Evidence was Presented to Convict Clark of Coercion (Count 25)

PROCEDURAL HISTORY

On October 22, 2020, Darrell Clark (“Clark”) and Oliver Veneshia Oliver (“Oliver”) were jointly charged by way of Indictment with 39 crimes. 1 Appellant’s Appendix (“AA”) at 1-18. On October 29, 2020, Clark and Oliver were jointly charged by way of Superseding indictment with 46 crimes. 1 AA at 37-56.

On April 13, 2021, Clark was charged by way of Second Amended Superseding Indictment¹ with: five counts of Conspiracy to Commit Larceny (Counts 1, 9, 19, 26, 31); five counts of Conspiracy to Commit Burglary; (Counts 2, 10, 20, 27, 32); five counts of Residential Burglary (Counts 3, 11, 21, 28, 33); five counts of Invasion of the Home (Counts 4, 12, 22, 29, 34); four counts of Theft

¹ Clark’s Amended Judgment of Conviction, Second Amended Superseding Indictment, and Third Amended Superseding Indictment were not in Appellant’s Appendix.

(Counts 13, 23, 30, 35); two counts of Burglary of a Business (Counts 5, 6); two counts of Fraudulent Use of a Credit Card (Counts 7, 8); one count of Robbery (Count 24); one count of Coercion (Count 25); and one count of Carrying a Concealed Firearm or Other Deadly Weapon (Count 38)².

On April 20, 2021, Clark was charged by way of Third Amended Superseding Indictment with one bifurcated count of Ownership or Possession of a Firearm by Prohibited Person. That same day, Clark pled guilty to that count and stipulated to a sentence of nineteen (19) to forty-eight (48) months in the Nevada Department of Corrections.

Following a jury trial, on July 1, 2021, Clark was found guilty on all counts and sentenced to the Nevada Department of Corrections to the aggregate total sentence of eight hundred seventy-six (876) months maximum with a minimum of two hundred four (204) months. 1 AA at 218-231.

On July 30, 2021, Clark's Amended Judgment of Conviction was filed, amending a clerical error that stated Clark was sentenced on three counts in error.

On July 27, 2021, Clark filed a Notice of Appeal. 1 AA at 232-233. Clark filed the instant Appellant's Opening Brief on January 12, 2022. The State's Respondent's Brief now follows.

² Oliver was charged with seven crimes individually in the same indictment.

STATEMENT OF RELEVANT FACTS

Between the months of June and August 2020, Clark along with Oliver committed five residential burglaries of rooms at multiple casino hotels on the Las Vegas Strip³.

June 15, 2020, Clark and Oliver broke into Esther Chae's ("Esther") hotel room at Harrah's Hotel and Casino while she was out, by prying her door open. 3 AA at 575, 610; 4 AA 829-830⁴. When Esther came back to the room, Clark and Oliver were still there. 4 AA at 845. Esther overheard them talking in the room and called the front desk. Id. While on the phone, Clark came out of the room, grabbed her by the neck, shoved her against the wall, and took her phone before running to the elevator. 4 AA at 846-847. Then, Oliver came out of the room next and asked Esther why she was screaming, as she ran to the elevator with Clark to escape. 4 AA at 848. They stole two laptops, chargers, clothes, and Esther's wallet. 4 AA at 848-849.

On August 6, 2020, Clark and Oliver broke into the hotel room of Bertha Gerdeau and Latoya Gustus, also at Harrah's Hotel and Casino. 4 AA at 869-874.

³ The crimes were committed on June 15th, August 6th, August 16th, August 21st, and August 23rd. The citations contained in the Statement of Facts will be cited to in chronological order unless referencing a specific date.

⁴ Appellant's Appendix is out of order in violation of NRAP 30(c)(1). However, Respondent's citations are to the correct portions of the trial transcript within Appellant's Appendix.

They broke into their room while they were out, by prying the door open. 3 AA at 575, 610; 4 AA at 870-871. Clark and Oliver took sunglasses, a diamond necklace, a watch, shoes, two pocketbooks, and belt bags. 4 AA at 872-874.

On August 16, 2020, Clark and Oliver broke into Gary Krusinski's room at the Paris Hotel and Casino while he was out of the room. 4 AA at 829-837. They broke into the room by prying the door open. 3 AA at 575, 4 AA at 829-830. They stole valuables such as headphones, sunglasses, earbuds, and Mr. Krusinski's wallet containing his credit cards. 4 AA at 831. After they took his credit cards, they used his cards at a 7-eleven convenient store. 4 AA at 835-837.

On August 21, 2020, Clark and Oliver broke into Rebecca Finger and Brooke Bargholtz's room, which was also at the Paris Hotel and Casino. 3 AA at 561-562, 575. They broke into their room when they were out of the room, by damaging the lock. 3 AA at 564. They took valuables such as headphones, an apple watch, a phone charger, and a backpack containing a credit and debit card. 3 AA at 565-566. They then attempted to use Ms. Bargholtz's credit card at a Target store. 4 AA at 883-893.

On August 23, 2020, Clark and Oliver broke into Jewell Love and Patricia Williams' hotel room, again at Harrah's Hotel and Casino. 4 AA at 770. They broke in while Love and Williams were out of the room by prying the door open. 3 AA at 575, 4 AA at 770-773. They stole a Louis Vutton backpack, another backpack

containing a Dell computer, Apple AirPods, and a wallet containing \$200 in cash and credit cards. 4 AA at 771-772; 818-821.

In each burglary, Clark and Oliver broke into the room by prying the door open with a prying device while the guests were out. 3 AA at 546-565, 575, 610, 749, 4 AA at 772-773, 795, 829-830, 5 AA at 1133. Then, Clark and Oliver entered the room and took anything valuable such as wallets with credit and debit cards, laptops, watches, sunglasses, expensive bags, and headphones. 3 AA at 565-567, 575, 610, 4 AA at 771, 799-800, 819, 848-849, 870-878. Lastly, all of these burglaries occurred at either Harrah's Hotel and Casino or the Paris Hotel and Casino on the Las Vegas Strip during the Summer of 2020.

SUMMARY OF THE ARGUMENT

Clark claims there was insufficient evidence to demonstrate that he was guilty of the "crimes charged in relation to June 15." Appellant's Opening Brief ("AOB") at 5-6. The crimes charged relating to June 15th are Counts 19 (Conspiracy to Commit Larceny), Count 20 (Conspiracy to Commit Burglary), Count 21 (Residential Burglary), Count 22 (Invasion of the Home), Count 23 (Theft), Count 24 (Robbery), Count 25 (Coercion). However, this claim is belied by the record. There was sufficient evidence presented at trial to convict Clark of all crimes related to June 15th, 2020, viewed in a light most favorable to the Prosecution. At trial, Esther clearly detailed the facts of the crimes committed on June 15th, 2020 and

identified Clark at trial. Those facts satisfied all elements of each crime committed that day. Furthermore, there was evidence Clark committed five burglaries total. All of which were committed in various hotel rooms with Oliver. All the burglaries had the same modus operandi and three of them were committed within days of each other. Therefore, sufficient evidence was presented to permit a rational trier of fact, viewing the evidence in the light most favorable to the prosecution, to convict Clark of all the crimes related to June 15th, and this Court should affirm the Judgment of Conviction.

ARGUMENT

I. THERE WAS SUFFICIENT EVIDENCE TO CONVICT CLARK OF THE CRIMES RELATED TO THE JUNE 15TH CRIMES

A. Sufficiency of the Evidence Standard of Review and Applicable Law

The standard of review for sufficiency of the evidence upon appeal is whether the jury, acting reasonably, could have been convinced of the defendant's guilt beyond a reasonable doubt. Edwards v. State, 90 Nev. 255, 258-259, 524 P.2d 328, 331 (1974). In reviewing a claim of insufficient evidence, the relevant inquiry is “whether, after reviewing 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.” Origel-Candid v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998), (quoting Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984)); See also Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789 (1979). “Where

there is substantial evidence to support a jury verdict, it [the verdict] will not be disturbed on appeal.” Smith v. State, 112 Nev. 1269, 927 P.2d 14, 20 (1996); Kazalyn v. State, 108 Nev. 67, 71, 825 P.2d 578, 581 (1992); Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Moreover, “it is the jury’s function, not that of the court, to assess the weight of the evidence and determine the credibility of the witnesses.” Origel-Candido, 114 Nev. 378, 381, 956 P.2d 1378, 1380. (quoting McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); see also Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221 (1979) (Court held it is the function of the jury to weigh the credibility of the identifying witnesses); Azbill v. Stet, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972) (In all criminal proceedings, the weight and sufficiency of the evidence are questions for the jury; its verdict will not be disturbed if there is evidence to support it and the evidence will not be weighed by an Appellate Court), cert. denied, 429 U.S. 895, 97 S.Ct. 257 (1976). This does not require this Court to decide whether “it believes that the evidence at the trial established guilt beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. at 319-20, 99 S.Ct. at 2789 (quoting Woodby v. INS, 385 U.S. 895, 87 S.Ct. 483, 486 (1966)). This standard thus preserves the fact finder’s role and responsibility “[to fairly] resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” Id. at 319, 99 S.Ct. at 2789.

A jury is free to rely on both direct and circumstantial evidence in returning its verdict. Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980). Also, the Nevada Supreme Court has consistently held that circumstantial evidence alone may sustain a conviction. Deveroux v. State, 96 Nev. 388, 391, 610 P.2d 722, 724 (1980) (citing Crawford v. State, 92 Nev. 456, 552 P.2d 1378 (1976)).

B. Sufficient Evidence was Presented to Convict Clark of Conspiracy to Commit Larceny and Conspiracy to Commit Burglary

Two of the crimes related to June 15th were Count 19 and Count 20, Conspiracy to Commit Larceny and Conspiracy to Commit Burglary. NRS 199.480 states a person will be guilty of a category B felony wherever two or more persons conspire to commit robbery or conspire to cheat or defraud another out of any property by unlawful or fraudulent means. NRS 199.480 (1), (3)(d). Burglary is defined as a person who, by day or night, enters any house, room apartment, or other building, with the intent to commit grand or petit larceny, assault, or any felony, to obtain money or property by false pretenses, is guilty of burglary. NRS 205.060(1). Larceny is defined as a person who intentionally steals, takes, and carries away personal goods or property, with a value of \$650 or more, owned by another person. NRS 205.220(1)(a).

Clark claims there was insufficient evidence to convict him of Conspiracy to Commit Larceny because the “State did not provide the jury with any evidence regarding acts done by Mr. Clark in relation to the June 15th robbery.” AOB at 6.

However, this claim is belied by the record. In a light most favorable to the prosecution, the jury could have found defendant guilty beyond a reasonable doubt.

Here, there was sufficient evidence of Conspiracy to Commit Larceny and Conspiracy to Commit Burglary. At trial, Esther testified that she overheard Clark and Oliver speaking in the hotel room. 4 AA at 845. They both were committing the larceny, in the same room, at the same time, conversing with each other. Next, Clark grabbed Esther by the throat and threatened her while Oliver escaped with a bag containing all of the items they stole out of the room. 4 AA at 846-848. Clark and Oliver left together. Id.

Additionally, at trial, a crime scene analyst testified that Oliver placed wrappers on the peephole of the hotel room across from Esther's hotel room to block the view. 5 AA at 1147. These wrappers only tested positive for the Oliver's DNA. Id. However, evidence at trial showed Clark and Oliver committed each of the five burglaries together, in the exact same course. Furthermore, Esther heard them in the room together, and watched them leave together. 4 AA at 845-848. Thus, there was sufficient evidence that he and Oliver committed the burglary together and conspired to do so. This cumulative evidence is sufficient evidence of Conspiracy, especially viewing the evidence in a light most favorable to the prosecution.

Furthermore, Clark claims Esther's identification of Clark at trial created reasonable doubt that he committed the offenses on June 15th, 2020. AOB at 5.

Esther, while over the phone with the officer, picked Clark out of a photo lineup and stated she was 50% certain he was one of the burglars. 3 AA at 579. However, she explained that the only reason she did not identify him at first was because she did not closely look at the photos. 4 AA at 859. A likely reason for not looking closely at the photos was because she was being interviewed on the phone by police simultaneously. Id. Furthermore, she clearly identified him at trial during her testimony and stated multiple times she recognized his facial features. 3 AA at 579; 4 AA at 856-857. Viewing the evidence in a light most favorable to the prosecution, Esther's identification in the photo lineup coupled with her identification at trial was sufficient to identify Clark.

Therefore, viewing the evidence in a light most favorable to the prosecution, there is sufficient evidence of Conspiracy to Commit Larceny and Conspiracy to Commit Burglary.

C. Sufficient Evidence was Presented to Convict Clark of Residential Burglary

Count 21, Residential Burglary, was one of the crimes related to June 15th.

NRS 205.060(1) states:

A person who, by day or night, unlawfully enters or unlawfully remains in any (a) dwelling with the intent to commit grand or petit larceny, assault or battery or any felony is guilty of burglary of a business, (c) motor vehicle, or any part thereof, with the intent to commit grand or petit larceny, assault or battery on any person or any felony is guilty of burglary of a motor vehicle, (d) structure other than a dwelling, business structure or motor

vehicle with the intent to commit grand or petit larceny, assault or battery on any person or any felony is guilty of burglary of a structure.

Clark claims there was insufficient evidence presented at trial to convict Clark of Residential Burglary. However, viewing the evidence in a light most favorable to the prosecution, Clark's claim is meritless.

As stated above, the evidence of Esther's identification presented at trial was sufficient. There was sufficient evidence Clark entered a dwelling with the intent to commit larceny. A hotel room is considered a dwelling when establishing the elements for Residential Burglary. NRS 205.060(6)(b); Jones v. State, 95 Nev. 613, 600 P.2d 247 (1979). Prior to entering Esther's hotel room, Clark and Oliver placed wrappers over the peephole of the hotel room across the hallway. 4 AA at 951. Then, Clark entered Esther's hotel room and stole laptops, clothes, chargers, and Esther's wallet containing her credit cards. 4 AA at 849. When Clark exited the room, he grabbed Esther by the neck, pushed her against the wall, and took her phone that she was holding so that she could not speak with authorities. 4 AA at 845-847. All of this evidence was sufficiently presented at trial.

Therefore, there was sufficient evidence to convict Clark of Burglary at trial. His claim should be denied because it is directly belied by the record.

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D. Sufficient Evidence was Presented to Convict Clark of Invasion of the Home

At trial, Clark was convicted of Count 22, Invasion of the Home. NRS 205.067 states, “A person who, by day or night, forcibly enters a dwelling without permission of the owner, resident or lawful occupant, whether or not a person is present at the time of the entry, is guilty of invasion of the home.” “Dwelling” has the meaning ascribed to it in NRS 205.060. NRS 205.067(5). As noted above, a hotel room qualifies as a “dwelling.” NRS 205.060(6)(b); Jones v. State, 95 Nev. 613, 600 P.2d 247 (1979).

Clark claims there was insufficient evidence presented at trial to convict Clark of Invasion of the Home. However, viewing the evidence in a light most favorable to the prosecution, Clark’s claim is belied by the record.

At trial, Esther testified that when she returned to her hotel room, she heard voices, later evidenced to be Clark and Oliver, coming from the inside of her hotel room. 4 AA at 845. It was clear they forcibly entered the room without permission of the owner because there was evidence the door was pried open namely damage to her hotel room’s door and lock. 4 AA at 610, 749. When Clark came out, he pushed her against the wall, grabbed her by the throat, and took her phone, presumably so she could not call the authorities. 4 AA at 846. Esther never testified that she gave Clark permission or allowed him into her hotel room. His conduct evidences the elements of Invasion of the Home.

Therefore, viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence presented at trial to convict Clark of Invasion of the Home.

E. Sufficient Evidence was Presented of Theft

Clark was also convicted of Count 23, Theft, and that Count was related to June 15th. NRS 205.0832(1)(a) states a person commits Theft if the person knowingly controls any property of another person with the intent to deprive that person of the property. The value of the property determines the range of punishment for the theft. NRS 205.0835.

Here, there was sufficient evidence of theft. First, when Clark exited the hotel room, he took Esther's phone away from her. 4 AA at 846. This in itself would constitute a theft. Additionally, the State presented evidence at trial that Clark and Oliver stole and placed in a bag two laptops, chargers, clothes, and Esther's wallet out of Esther's hotel room. 4 AA at 849. Esther saw Oliver carrying the bag out of her room on the day of the crime. 4 AA at 848. Esther testified that the approximate total value of the items taken was between \$4,500-\$5,200. NRS 205.0835(2)(b-c).

Therefore, there was sufficient evidence presented at trial to convict Clark of Theft.

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F. Sufficient Evidence was Presented to Convict Clark of Robbery

Clark claims there was insufficient evidence presented at trial to prove he committed Robbery on June 15th, 2020. However, this claim is belied by the record.

NRS 200.380 defines Robbery as the unlawful taking of personal property from the person of another, against her will, by means of force or violence or fear of injury to her person at the time of the robbery. At trial, Esther testified that Clark and Oliver took two laptop computers and her wallet out of her hotel room. 4 AA at 848-849. Then, when he saw her outside of the room, Clark pushed her up against the wall, grabbed her by the throat, and took her phone out of her hands as she was calling security. 4 AA at 845-846. Esther said she was so scared she could not breathe. Id. These facts presented at trial constitute a robbery because there was a taking of Esther's personal property by force, violence, and fear.

Therefore, there was sufficient evidence presented at trial to convict Clark of Robbery.

G. Sufficient Evidence was Presented at Trial to Convict Clark of Coercion

Clark claims there was insufficient evidence presented at trial to convict him of Coercion. This claim is belied by the record.

NRS 207.190(1)(a, c) states coercion is when a person intends to compel another to do or abstain from doing an act which the other person has a right to do

or abstain from doing, by using violence or inflict injury upon the other person or attempting to intimidate that person by threat of force.

Here, Clark exited Esther's hotel room and prevented her from calling the front desk by pushing her against the wall, grabbing her by the throat, and taking her phone away. 4 AA at 845-846. By forcing her against the wall and taking her phone away, Clark prevented Esther from speaking on the phone with security and calling the police, which she had a right to do. These facts satisfy the elements of Coercion. Therefore, viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence presented at trial to convict Clark of Coercion.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this court affirm the Judgment of Conviction.

Dated this 7th day of March, 2022.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points or more, contains 3,554 words and 16 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 7th day of March, 2022.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 7th day of March, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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