

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERNESTINE HUNTER A/K/A
ERNESTINE HUNTER-WALKER,
Appellant.
vs.
THE STATE OF NEVADA,
Respondent.

No. 56624

FILED

MAY 10 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 aiding and abetting theft—obtaining money in excess of \$2,500 by material misrepresentation. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

First, appellant Ernestine Hunter contends that the district court erred by denying her the right to represent herself. We review the district court's decision to deny a motion for self-representation for an abuse of discretion. See Gallego v. State, 117 Nev. 348, 362, 23 P.3d 227, 236-37 (2001). Here, the district court heard Hunter describe an alleged confrontation with defense counsel's investigator and then denied her oral request to represent herself without conducting a canvass pursuant to Faretta v. California, 422 U.S. 806 (1975), only noting that she did not file a written motion. Hunter's oral request, however, was untimely because it came less than one week before the trial date set for her and her three codefendants and "the trial would have been undoubtedly delayed." O'Neill v. State, 123 Nev. 9, 18, 153 P.3d 38, 44 (2007). Therefore, we conclude that the district court did not abuse its discretion by denying Hunter's oral request. See O'Neill, 123 Nev. at 17-18, 153 P.3d at 44 (district court did not err by failing to conduct Faretta canvass or denying

request for self-representation because request was untimely); Lyons v. State, 106 Nev. 438, 445-46, 796 P.2d 210, 214 (1990) (district court has discretion to find self-representation request untimely if it “is not made within a reasonable time before commencement of trial or hearing and there is no showing of reasonable cause for lateness of the request”), abrogated on other grounds by Vanisi v. State, 117 Nev. 330, 22 P.3d 1164 (2001); see also Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (“If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.”).

Second, Hunter contends that insufficient evidence was adduced to support the jury’s verdict. We disagree because the evidence, when viewed in the light most favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Mitchell v. State, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).


Trial testimony indicated that a fraudulent claim in Hunter’s name was submitted to the Nevada Victims of Crime Program and, as a result, four checks totaling \$7,500 were issued to her. One of Hunter’s codefendants was her daughter, Tonya Walker, a claims compensation officer with the VOC program, and Walker was convicted of four counts of theft. Barbara Boos, Director of Operations for Cost Containment Strategies, Inc., testified that the claim in Hunter’s name did not include an application, a police report, or disability information, and therefore, she did not qualify for benefits. Compensation for lost wages was also approved although it was later determined that Hunter was retired and not working.

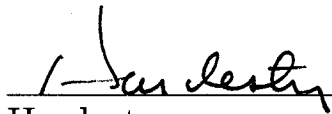
Sanford Manchester, an investigator with Bank of America, testified that an individual presented a check for cashing made out to

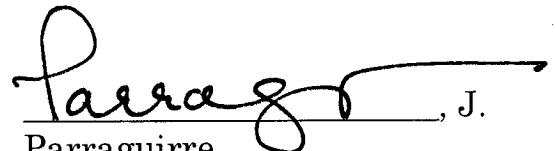
Ernestine Hunter at the Charleston Heights branch. The individual presented two forms of identification, including a driver's license. The signature endorsement on the back of the check read "Ernestine Hunter." Manchester testified that the surveillance system date- and time-stamps the videotape capturing each transaction conducted with a teller. The date- and time-stamps on the videotape and cashed check were a match. Photocopies taken from the surveillance video of the transaction and the individual involved were admitted and submitted to the jury for their consideration.

It is for the jury to determine the weight and credibility to give conflicting testimony, and a jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See NRS 205.0832(1)(c); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also NRS 195.020; Bolden v. State, 121 Nev. 908, 914, 124 P.3d 191, 195 (2005), overruled on other grounds by Cortinas v. State, 124 Nev. 1013, 195 P.3d 315 (2008). Additionally, circumstantial evidence alone may sustain a conviction. See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Michael Villani, District Judge
Wentworth Law Office
Attorney General/Carson City
Attorney General/Consumer Protection Bureau/Las Vegas
Attorney General/Las Vegas
Eighth District Court Clerk