IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TYLER JENEE ASKEW,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88790-COA

ORDER OF AFFIRMANCE

Tyler Jenee Askew appeals from a judgment of conviction, entered pursuant to a jury verdict, of theft. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Askew argues insufficient evidence supports her conviction because the State failed to prove beyond a reasonable doubt that she transferred money from the victim's financial accounts to her own accounts without the victim's consent. Askew points to the fact that the victim admitted to authorizing at least one of the transfers and claims the State failed to prove that the other transfers were unauthorized or otherwise done illegally. She contends the State did not establish what happened surrounding the transfers from the victim's financial accounts and thus she cannot be convicted of theft.

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).

Here, the State presented evidence that multiple financial transfers totaling more than $5,000 were made from the victim's financial accounts to Askew within a period of less than an hour. Among those, there were multiple transfers from the victim's Venmo account to Askew's Venmo account which occurred within six minutes of each other, with the final transfer occurring just minutes before Askew left the hotel. Prior to these transfers, the victim met Askew in a hotel bar and the two went to the victim's hotel room approximately ten minutes later. The victim remembered going to his room with Askew, having a few drinks, chatting, listening to music, and going to the bathroom before "things got very fuzzy." The next thing he remembered was waking up the next afternoon face down on the hotel room bed feeling groggy. The victim noted that his sleeping position was unusual and opined that he had been drugged. His phone, which could be unlocked by scanning his face, was across the room from him when he woke up, a fact that the victim also noted was unusual. The applications that had been used to transfer money from the victim's financial accounts had been deleted from the phone. Finally, the victim explained that, while he did not remember, he may have authorized the first transfer from his phone to Askew in the amount of $650 but vehemently

denied authorizing any of the remaining transfers.[1] Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find beyond a reasonable doubt that Askew committed theft by unlawfully transferring money from the victim's financial accounts to herself. *See* NRS 205.0832 (defining the actions which constitute theft). Accordingly, we conclude Askew is not entitled to relief based on this claim.

Askew also argues the district court vindictively sentenced her. Askew contends the district court improperly enhanced her sentence based on the fact she exercised her constitutional right to a jury trial as evidenced by its comment that Askew "coerce[d] the matter to go to trial, and, you know, usually we give lesser sentences when people cut deals, things of that nature."

"It is well established that a sentencing court may not punish a defendant for exercising his [or her] constitutional rights and that vindictiveness must play no part in the sentencing of a defendant." *Mitchell v. Slate*, 114 Nev. 1417, 1428, 971 P.2d 813, 820 (1998), *overruled on other grounds by Sharma v. State*, 118 Nev. 648, 655, 56 P.3d 868, 872 (2002), *and Rosky v. State*, 121 Nev. 184, 190-91, 111 P.3d 690, 694 (2005). "The defendant has the burden to provide evidence that the district court sentenced him [or her] vindictively." *Id.*

We conclude Askew failed to meet her burden of demonstrating error. The district court had to be reminded at the outset of the sentencing

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[1]We note that even omitting this transfer of $650, the amount of the total transfers exceeded the $5,000 charged.

hearing that Askew had gone to trial. This weighs against the notion that the court was focusing on the fact that Askew exercised her right to a jury trial. Further, the challenged comment occurred after the district court imposed Askew's sentence and the sentence does not support the notion that the district court acted vindictively. Askew sought probation without asking for any particular underlying sentence or probation term length with Askew's counsel stating, "I'm going to submit at your discretion in terms of the suspended sentence because I think she's going to be successful in whatever you give her in terms of probation." And the district court imposed probation after considering Askew's lack of prior criminal record, her allocution, and her individual circumstances.

While the district court imposed the maximum possible underlying sentence and probation term, it imposed no jail time, house arrest, or community service as a condition of probation. Further, the district court explained it was imposing the "highest underlying sentence" to encourage Askew's compliance with the terms of her probation: "So if you screw up once you will go to prison for a long time, you understand?" Although the district court's subsequent comment appears improper in isolation, having reviewed the record in context, we conclude the court was not seeking to punish Askew for going to trial, but rather intended to deter Askew from any future misconduct while on probation, particularly in light of Askew's allocution statements seeking leniency and asking for the opportunity to show the court that she could obey the law and stay out of trouble. *See Whatley v. State*, No. 89087, 2025 WL 511500 (Nev. Feb. 14, 2025) (Order of Affirmance) (considering the record in context to determine

whether the district court's comment at sentencing demonstrated vindictive sentencing). For these reasons, Askew failed to prove the district court vindictively sentenced her because she exercised her constitutional right to a jury trial. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Susan Johnson, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk