IN THE SUPREME COURT OF THE STATE OF NEVADA

ART M. LAMBERT A/K/A ART MIKAEL LAMBERT A/K/A ART MICHELLE LAMBERT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43013

FILED

DEC 02 2004

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of burglary and grand larceny. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge. The district court sentenced appellant Art M. Lambert to serve concurrent prison terms of 16-72 months and 12-72 months.

First, Lambert contends that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt. More specifically, Lambert argues that the State failed to establish that the stolen property was valued at or greater than the statutory felony minimum of $250.00.[1] Lambert claims that the value placed on the goods by the State's expert was "suspect" because he was "armed with pictures alone" and never physically inspected the stereo, guitar, or computer monitor. We disagree with Lambert's contention.

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational

[1]See NRS 205.220(1)(a) ("a person commits grand larceny if the person . . . [i]ntentionally steals . . . [p]ersonal goods or property, with a value of $250 or more, owned by another person").

trier of fact.[2] The State moved to qualify a pawn shop store manager as an expert in the area of value.[3] The witness testified that in his capacity at the pawn shop, he often determined the fair market value of goods, including the same type involved in the instant case. After voir dire by defense counsel, the following exchange took place:

> DEFENSE COUNSEL: I'm going to object to him being qualified as an expert. I don't know that he's an expert in this because he can look up the prices on the Internet. I think he can testify to what he found. I don't think I'm going to object to that.
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> THE COURT: Well I tend to agree with you. I think he's qualified [as an] expert in the sense that he uses the computer base to set prices, but he also testified previously if it's not in the computer base, he uses his best judgment which also factors such factors as age, appearance, condition of item . . . .
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> And three years of experience I think that's sufficient. So we'll accept him.
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> . . .
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> And we'll explain to the jury later on in the jury instruction what use you can make of this evidence.

Based on Internet research, photographs provided by the district attorney's office, and the police record listing the model/serial numbers,

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[2]See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

[3]NRS 50.275 (a qualified expert's testimony may be admitted if "scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue"); see also Townsend v. State, 103 Nev. 113, 117, 734 P.2d 705, 708 (1987).

the witness estimated the value of the goods to be between $350.00 to $360.00. On cross-examination, the witness admitted that in determining the fair market value of the items, he chose an "average" selling price because he was not able to physically inspect the items. We also note that the victim testified prior to the expert witness and stated that the stereo, guitar, and computer monitor were in working condition at the time of the burglary.

Based on all of the above, we conclude that the jury could reasonably infer from the evidence presented that the stolen goods exceeded the felony minimum of $250.00 for grand larceny. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict.[4] We also note that circumstantial evidence alone may sustain a conviction.[5] Therefore, we conclude that the State presented sufficient evidence to sustain the felony conviction.

Second, Lambert contends that the district court erred in determining that a witness, Lastly Poch, who testified at his first trial, was unavailable at his second trial and that his testimony from the first trial could be read to the jury. We disagree with Lambert's contention.

The State provided the district court with an affidavit detailing their efforts to provide an interpreter for Poch at Lambert's second trial, and orally moved to read Poch's testimony from the first trial to the jury. According to the affidavit, Poch speaks "the Chuukese dialect

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[4]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

[5]See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

of Micronesian," and the court interpreter's office, along with Poch and his girlfriend, were unable to locate the same or another interpreter for the second trial. Lambert objected, arguing that the State had the burden to find a qualified interpreter, and on appeal, claims that "neither statute nor precedent" allows for such a procedure when the witness was actually present in the courtroom. The district court determined that although Poch was physically present, he was nevertheless "unavailable" because an interpreter could not be located to translate for him.

We conclude that the district court did not err in determining that Poch was unavailable to testify at Lambert's second trial. NRS 51.325 provides:

> Testimony given as a witness at another hearing of the same or a different proceeding . . . is not inadmissible under the hearsay rule if:
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> 1. The declarant is unavailable as a witness; and
>
> 2. If the proceeding was different, the party against whom the former testimony is offered was a party or is in privity with one of the former parties and the issues are substantially the same.

Emphasis added. Although Poch was physically present at the second trial, he was unavailable because he was incapable of testifying without an interpreter. In other words, his testimony as a witness was not available at the second trial.[6] As noted above, the State exercised due diligence in attempting to locate an interpreter for Poch at Lambert's

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[6]Cf. Byford v. State, 116 Nev. 215, 225-26, 994 P.2d 700, 708 (2000) (holding that although declarant was present in the courtroom, he was unavailable to testify due to the invocation of his constitutional right not to testify); Thomas v. State, 114 Nev. 1127, 967 P.2d 1111 (1998); Funches v. State, 113 Nev. 916, 944 P.2d 775 (1997).

second trial, but without success.[7] Further, at Lambert's first trial, Poch testified under oath and was cross-examined by the defense. Accordingly, we conclude that the district court properly allowed Poch's testimony from Lambert's first trial to be read to the jury at his second trial.

Having considered Lambert's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Rose

_____, J.
Maupin

_____, J.
Douglas

cc: Hon. John S. McGroarty, District Judge
Clark County Public Defender Philip J. Kohn
Craig D. Creel
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[7]Cf. Quillen v. State, 112 Nev. 1369, 1374-76, 929 P.2d 893, 896-98 (1996).