

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN TERAN MOMON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46514

FILED

MAY 10 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of burglary, larceny from a person 65 years of age or older, and conspiracy to commit larceny. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge. The district court sentenced appellant Sean Teran Momon to a prison term of 18 to 60 months for the burglary count, a concurrent prison term of 18 to 60 months for the larceny count, with an equal and consecutive prison term for the elderly enhancement, and a concurrent jail term of 12 months for the conspiracy count.

Momon first contends that his convictions were not supported by substantial evidence. In particular, Momon contends that there was insufficient evidence to prove that he committed burglary and larceny because there was no evidence that he entered the casino with a felonious intent and because the evidence proved that his alleged coconspirator stole the victim's wallet. Additionally, Momon contends that there was insufficient evidence of a conspiracy because there were no statements or other independent evidence establishing that a conspiracy existed. We conclude that Momon's contention lacks merit.

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

trier of fact.¹ In particular, a casino surveillance videotape showed Momon enter the casino with his coconspirator, Nicole Andrews, follow the ninety-five-year-old victim and then flank her on either side as she played at a slot machine. According to witness testimony, the videotape also showed Momon bump the victim's shoulder and then Momon and Andrews leaving in different directions.

In addition to the videotape, the victim described how a woman was sitting next to her talking to "somebody that stood over [her] head."² The man attempted to put a quarter in her slot machine; she asked him, "what the hell are you doing," and he just mumbled, pulled the quarter back, and left. A former casino slot employee testified that she observed Momon and Andrews standing around the victim. Later, she saw Andrews with the victim's wallet in her hand right above the victim's purse, and heard her say to Momon, "Let's go." A casino security officer testified that he apprehended Momon and Andrews as they attempted to drive out of the casino parking lot; the victim's wallet was found inside the vehicle.

Momon testified at trial that he did not know that Andrews took the victim's wallet and only reached over the victim to get a quarter sitting on the machine. Despite Momon's testimony, the jury could reasonably infer that Momon and Andrews entered the casino with the intent to steal and conspired to and did, in fact, take the elderly victim's

¹See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

²The victim's preliminary hearing testimony was admitted into evidence because she was unavailable at the time of trial.

wallet.³ 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, substantial evidence supports the verdict.⁴

Momon next contends that the district court abused its discretion by denying the defense motion for a mistrial based on prosecutorial misconduct. Specifically, Momon contends that he was denied his right to a fair trial when the prosecutor called him "a proven thief" in rebuttal closing argument. We conclude the district court did not abuse its discretion in denying the motion for a mistrial.⁵

This court has held that "[a] criminal conviction is not lightly overturned on the basis of a prosecutor's comments standing alone."⁶ Rather, the inquiry is whether the prosecutor's misconduct so infected the trial with unfairness as to deprive the defendant of his due process right to a fair trial. Where the evidence of guilt is overwhelming, prosecutorial misconduct will probably be considered harmless.⁷

In this case, we conclude that the prosecutorial misconduct was not prejudicial. The State presented overwhelming evidence of Momon's guilt; several eyewitnesses identified Momon as a participant in the charged crimes and his actions were recorded on videotape. Additionally, the district court took appropriate curative measures

³NRS 205.060(2); NRS 205.270; NRS 193.167.

⁴See 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).

⁵See Parker v. State, 109 Nev. 383, 388-89, 849 P.2d 1062, 1066 (1993).

⁶Runion v. State, 116 Nev. 1041, 1053, 13 P.3d 52, 60 (2000).

⁷Garner v. State, 78 Nev. 366, 374, 374 P.2d 525, 530 (1962).

immediately after the statement was made, sustaining defense counsel's objection, admonishing the prosecutor, and instructing the jurors to disregard it.⁸ Finally, the alleged instance of prosecutorial misconduct was isolated and not so prejudicial that it could not have been neutralized by the admonition to the jury.⁹ Accordingly, reversal of Momon's conviction is not warranted on the basis of prosecutorial misconduct.

Having considered Momon's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

⁸See Lisle v. State, 113 Nev. 540, 558, 937 P.2d 473, 484 (1997) ("There is a presumption that jurors follow jury instructions."), clarified on other grounds, 114 Nev. 221, 954 P.2d 744 (1998).

⁹See Greene v. State, 113 Nev. 157, 169, 931 P.2d 54, 62 (1997) ("the relevant inquiry is whether the prosecutor's statements so infected the proceedings with unfairness as to make the results a denial of due process"), modified prospectively on other grounds by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

cc: Hon. Lee A. Gates, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chinos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk