

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL SYLVER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52876

FILED

JAN 08 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count of theft. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Insufficient evidence

Appellant Michael Sylver contends that there was insufficient evidence adduced at trial to support his conviction for theft because the State allegedly failed to demonstrate that but for Sylver's misrepresentations on the no-loss letter to obtain worker's compensation coverage, the insurance carrier would not have issued the coverage. Sylver further argues that there was insufficient evidence to support his theft conviction because he never received a financial benefit from his actions.

This claim lacks merit 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. McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); Jackson v. Virginia, 443 U.S. 307, 319 (1979). Based on the testimony of witnesses presented at trial, we conclude that a rational juror could reasonably infer that Sylver

misrepresented facts on the no-loss letter with the intent to deprive the insurance carrier of services and property and the insurance carrier would not have provided retroactive worker's compensation coverage to Amazon Natural Treasures absent Sylver's misrepresentations in the no-loss letter. See NRS 205.0832(1)(c): Lisle v. State, 113 Nev. 679, 691-92, 941 P.2d 459, 467-68 (1997) (circumstantial evidence is enough to support a conviction) holding limited on other grounds by Middleton v. State, 114 Nev. 1089, 1117 n.9, 968 P.2d 296, 315 n.9 (1998). No authority supports Sylver's theory that one's thievery must be for one's own benefit in order to be considered a theft crime in Nevada. See generally NRS 205.0832. 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. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); Walker v. State, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975).

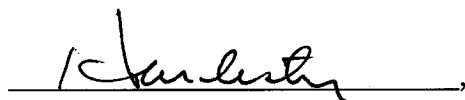
Mistrial

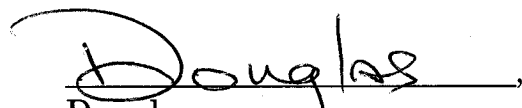
Sylver contends that the district court erred by denying his motion for a mistrial based on alleged prosecutorial misconduct in inducing testimony from two witnesses after being instructed not to by the district court. We have previously held that "[d]enial of a motion for mistrial is within the trial court's sound discretion. The court's determination will not be disturbed on appeal in the absence of a clear showing of abuse." Owens v. State, 96 Nev. 880, 883, 620 P.2d 1236, 1238 (1980). In this case, we conclude that the district court did not abuse its discretion in denying Sylver's motion for a mistrial because even if the prosecutor's actions were inappropriate, the error was harmless because the State presented overwhelming evidence of Sylver's guilt, and "where

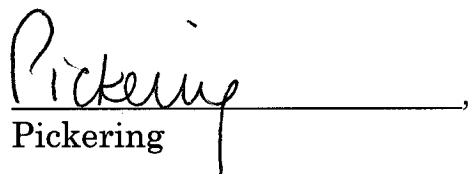
evidence of guilt is overwhelming, even aggravated prosecutorial misconduct may constitute harmless error.” King v. State, 116 Nev. 349, 356, 998 P.2d 1172, 1176 (2000).

Having considered Sylver’s contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Valerie Adair, District Judge
Thomas F. Pitaro
Attorney General/Las Vegas
Clark County District Attorney
Eighth District Court Clerk