

IN THE SUPREME COURT OF THE STATE OF NEVADA

TONYA WALKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56584

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 three counts of theft—obtaining money in excess of \$2,500 and one count of theft—obtaining money in excess of \$250. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

First, appellant Tonya Walker 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 Walker created fraudulent claims on behalf of her husband (Prentice Lamar Walker), mother (Ernestine Hunter), stepfather (Frank Nolton), and a fourth individual (Kimberly Morris), in her official capacity as a claims compensation officer with the Nevada Victims of Crime Program. All four of the false claim files created by Walker contained numerous fraudulent documents. As a result, VOC improperly paid out more than \$40,000 in monetary benefits

to which Prentice Lamar Walker, Hunter, Nolton, and Morris were not entitled.¹

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)(b); 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). Additionally, circumstantial evidence alone may sustain a conviction. See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

Second, Walker contends that the district court erred by denying her motion to dismiss based on an alleged Brady violation. See Brady v. Maryland, 373 U.S. 83, 87 (1963) (announcing a trial right to discovery of exculpatory information). We disagree. Walker joined an oral motion made by codefendant Prentice Lamar Walker after it was alleged that the State failed to provide counsel with a statement made by one of the witnesses who had already testified. The State disputed the claim and noted that the witness' statement was provided to prior counsel. At the State's suggestion, the district court struck the witness' entire testimony and instructed the jury to disregard it. Counsel for the three codefendants, including Walker's, agreed that striking the testimony was a proper remedy and codefendant Prentice Lamar Walker withdrew his motion to dismiss and/or for a mistrial. The district court then inquired and the remaining codefendants, including Walker, chose not to renew the

¹Walker's husband and mother were tried with her and convicted of aiding and abetting theft—obtaining money in excess of \$2,500 by material misrepresentation.

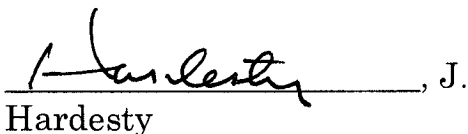
motion to dismiss and/or for a mistrial. We conclude that Walker has failed to demonstrate that the State improperly withheld exculpatory information in violation of Brady. Additionally, because Walker consented to the district court's remedy for the alleged Brady violation and acquiesced to the withdrawal of the motion by her codefendant, we conclude that she is estopped from raising the issue now. See Rhyne v. State, 118 Nev. 1, 9, 38 P.3d 163, 168 (2002); Jones v. State, 95 Nev. 613, 618, 600 P.2d 247, 250 (1979).

Third, Walker contends that the prosecutor committed misconduct during rebuttal closing argument by referring to facts not in evidence. Specifically, Walker objected to the prosecutor's statement that there was no evidence that Prentice Lamar Walker filed a claim with VOC after the death of his brother. The district court overruled Walker's objection and we conclude that, considered in context, the prosecutor's comment was not improper. See Knight v. State, 116 Nev. 140, 144-45, 993 P.2d 67, 71 (2000) ("A prosecutor's comments should be viewed in context, and 'a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone.'" (quoting United States v. Young, 470 U.S. 1, 11 (1985))). Accordingly, we

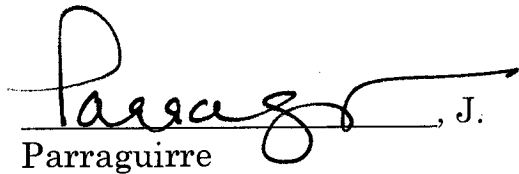
ORDER the judgment of conviction AFFIRMED.



_____, J.
Saitta



_____, J.
Hardesty



_____, J.
Parraguirre

cc: Hon. Michael Villani, District Judge
Potter Law Offices
Attorney General/Carson City
Attorney General/Consumer Protection Bureau/Las Vegas
Attorney General/Las Vegas
Clark County District Attorney
Eighth District Court Clerk