

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER EARL WELSH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68268

FILED

DEC 29 2015

TRACIE A. LINDEMAN
CLERK OF SUPREME COURT
Tracie A. Lindeman
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary and grand larceny. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

First, appellant Christopher Earl Welsh argues the State committed prosecutorial misconduct during its opening statement by asserting the trial was a waste of time. Welsh did not object to this statement during trial, and thus, we review for plain error. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). Under the plain error standard, we determine “whether there was an error, whether the error was plain or clear, and whether the error affected the defendant’s substantial rights.” *Anderson v. State*, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005) (internal quotation marks omitted).

We have reviewed the prosecutor’s statement and conclude it does not constitute error, let alone plain error. *See Valdez*, 124 Nev. at 1188-89, 196 P.3d at 476-77 (explaining the test for prosecutorial misconduct). The challenged comment was actually a quote from Welsh’s own testimony at the preliminary hearing, where Welsh apologized for wasting time and admitted taking the merchandise from the store. It is

clear from the record the State did not present its own opinion that the trial proceedings were a waste of time. Therefore, Welsh fails to demonstrate plain error affecting his substantial rights.

Second, Welsh argues the evidence presented at trial was insufficient to support the jury's finding of guilt of grand larceny because the State failed to prove the value of the items taken amounted to more than \$650. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. *See Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

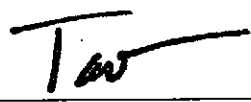
The evidence produced at trial demonstrates Welsh stole multiple items of clothing from the Men's Warehouse and the employees of that store calculated the value of those items to be more than \$2,000. One employee testified she possessed knowledge regarding the price of the clothing Welsh stole, she watched Welsh collect multiple items of clothing, and then viewed him run from the store without paying for those items. She testified she did not keep an exact tally of the items as Welsh collected them, but had noted Welsh collected the most expensive clothing items and explained she had a reasonable estimate of the number of items he took. She then helped the assistant manager create a receipt listing the clothing prices and an estimated total value of the stolen merchandise. The district court admitted that receipt into evidence. *See Stephens v. State*, 127 Nev. 712, 720, 262 P.3d 727, 733 (2011) (providing an example of a generated register receipt to establish the value of stolen goods).

Based on the evidence presented at trial, we conclude the jury could reasonably find Welsh committed grand larceny by taking clothing

valued at more than \$650. See NRS 205.220(1)(a). 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, 624 P.2d 20 (1981); see also *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

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