

IN THE SUPREME COURT OF THE STATE OF NEVADA

VIRGINIA PULLUM,

No. 36288

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

DEC 05 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a conviction of embezzlement, pursuant to a jury verdict.

Appellant Virginia Pullum asserts that because she had the constitutional right to be present at trial, the State should have been prohibited from impeaching her credibility as a witness by suggesting to the jury that her presence at trial permitted her the opportunity to tailor her testimony on the witness stand. We disagree.

"The criminally accused have a fundamental right to be present at their trial and to confront witnesses against them. This right derives from the common law and is required by our sense of natural justice."¹ It is "embodied in the sixth and fourteenth amendments to the United States Constitution and in article 1, section 8 of the Nevada Constitution, which provides that 'the party accused shall be allowed to appear and defend in person.'"²

It is clear that the defendant has a constitutional right to be present at trial. But we disagree with appellant that her constitutional right excludes being subject to credibility attacks concerning her testimony. It is a time-honored "rule that when a defendant takes the stand, [her] credibility may be impeached and [her] testimony assailed

¹Riggins v. State, 107 Nev. 178, 188, 808 P.2d 535, 542 (1991).

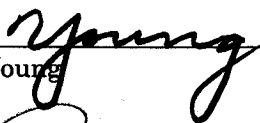
²Id. (quoting Nev. Const. art. 1, § 8). See also NRS 178.388 (providing that except for certain exceptional circumstances, a "defendant must be present at the arraignment, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence").

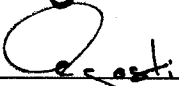
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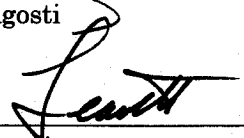
like that of any other witness.”³ Moreover, “[w]hen [a defendant] assumes the role of a witness, the rules that generally apply to other witnesses – rules that serve the truth-seeking function of the trial - are generally applicable to [her] as well.”⁴

In this instance, the prosecution did nothing more than state the obvious: Pullum was the last to testify. Therefore, she had the opportunity to shape her testimony in accordance with prior testimony. The jury, without the prosecution’s encouragement, could have just as easily come to the same conclusion on its own. Having considered appellant’s arguments, we conclude that the prosecutor in this case did not overstep the bounds of permissible argument when he commented on her presence in the courtroom during the earlier testimony of other witnesses. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Mark W. Gibbons, District Judge
Attorney General
Clark County District Attorney
Special Public Defender
Clark County Clerk

³Portuondo v. Agard, 529 U.S. 61, 69 (2000) (quoting Brown v. United States, 356 U.S. 148, 154 (1958)).

⁴Id. (quoting Perry v. Leeke, 488 U.S. 272, 282 (1895) (alteration in original)).