

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THERESA MARIE MOSLEY, A/K/A
TERRY MARIE MOSLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68615

FILED

MAR 16 2016

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 theft. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Theresa Mosley claims the district court erred by denying her motion in limine. In her motion, she requested the victim in this case to be judicially estopped from arguing the value of his property was worth more than \$2000. Mosley argued the victim had valued his personal property in his bankruptcy case to be \$2000 and, therefore, he should not be allowed to argue the value of the property in his rental house was worth more than \$2000.

Whether or not judicial estoppel applies is a question of law this court reviews de novo. *NOLM, LLC v. County of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004). There are five elements that must be met before judicial estoppel applies. *Marcuse v. Del Webb Cmtys., Inc.*, 123 Nev. 278, 287, 163 P.3d 462, 468-69 (2007). One of those elements is that

the *same* party has taken two positions. *See id.* In this case, the victim is not a party to the prosecution of Mosley. Further, the State was not a party in the victim's bankruptcy. Therefore, the elements of judicial estoppel were not met and the district court did not err in denying Mosley's motion in limine.

Next, Mosley argues the district court abused its discretion by not issuing an advisory verdict. Mosley claims evidence was presented at trial that a police officer did not preserve potentially exculpatory evidence from the storage unit. Specifically, Mosley claims the officer should have impounded two computers found in the storage unit that the victim stated were not his and were likely Mosley's. Mosley claims she had scanned receipts on the computer which would have shown she bought the furniture in the storage unit.


We conclude the district court did not abuse its discretion by refusing to issue an advisory verdict. NRS 175.381(1) only allows for an advisory verdict when the district court deems the evidence insufficient to warrant a conviction. Mosley did not argue the evidence was insufficient; only that the police did not preserve potentially exculpatory evidence. Therefore, the district court appropriately denied the motion.¹


Finally, Mosley argues cumulative error deprived her of a fair trial and warrants reversal of her conviction. However, because Mosley

¹To the extent Mosley cites to law regarding a motion for judgment notwithstanding the verdict, it does not appear from the record Mosley filed any post-verdict motions challenging the verdict.

fails to demonstrate any error, we conclude she was not deprived of a fair trial due to cumulative error.

Having concluded Mosley is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Michael Villani, District Judge
Aisen Gill & Associates LLP
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk