IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CANDACE ALDERMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71702

ORDER OF AFFIRMANCE

Candace Alderman appeals from a judgment of conviction, pursuant to a jury verdict, of insurance fraud. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

A few hours after midnight on May 19, 2014, appellant Candace Alderman's vehicle was found on fire in a deserted area near North Las Vegas.[1] Alderman and her estranged boyfriend, Brian Howard, were both financially responsible for the vehicle, but only Howard was on the insurance policy. After returning home from work that afternoon, Alderman reported the vehicle stolen. Alderman told police that she had left for work at 7:00 a.m. and had last seen her car on the side of her house the night before. The police officer assigned to the case, a State Farm Insurance agent, and a fire captain thereafter began a fraud investigation.

Alderman was charged with arson with intent to commit insurance fraud, third degree arson, and insurance fraud. After a four-day trial, the jury found her not guilty of the first two counts but guilty of

[1]We do not recount the facts except as necessary to our disposition.

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insurance fraud. The district court sentenced Alderman to 12-36 months in prison, suspended, placed her on probation for four years, and ordered her to pay restitution.

Alderman now appeals arguing that (1) the verdict was the product of an unnoticed and legally deficient prosecutorial theory; (2) the factual findings for the lone conviction was not supported by sufficient evidence; and (3) prosecutorial misconduct substantially affected her rights. Although framed as separate grounds, the first and second grounds overlap because Alderman alleges that she was only given notice of a prosecution theory that she was not convicted of, and that she was not given proper notice of the prosecution theory on which she was actually convicted. However, as discussed below, we conclude that sufficient evidence supported her conviction for the theory actually noticed and therefore we affirm.[2]

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[2]Alderman's notice argument is that the State improperly changed its theory of the case during its closing and, therefore, she did not have sufficient notice under the information. However, this argument fails because the State may change its theory of the case. *See, e.g., Dettloff v. State*, 120 Nev. 588, 591, 97 P.3d 586, 596 (2004) (conviction affirmed despite defense complaint regarding the prosecutor's "changes in position during the case" when prosecutor abandoned reliance upon certain evidence previously used to obtain indictment after receiving information on the eve of trial that undermined its validity). And second, this argument suggests that this court should assume the jury rejected the facts associated with the arson simply because it found Alderman not guilty on the first two counts. But consistent verdicts on separate counts are not required. *See Burks v. State*, 92 Nev. 670, 557 P.2d 711 (1976) (citing *Dunn v. United States*, 284 U.S. 390 (1932)); *see also Bollinger v. State*, 111 Nev. 1110, 1116-17, 901 P.2d 671, 675-76 (1995) (suggesting that inconsistent verdicts may have resulted from the jury's decision to extend a form of clemency). And where a jury returns inconsistent

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Alderman was charged with violating NRS 686A.2815(4)[3] and NRS 686A.291, Nevada's insurance fraud statutes. The information stated: "Defendant did direct and/or participate in the burning of her 2011 Hyundai Sonata with the intent of having the insured, Brian Howard, report the vehicle as stolen to State Farm Insurance and with the intent of receiving a settlement which would cover the cost of the vehicle." Viewing the evidence in the light most favorable to the prosecution, a rational jury could have found that Alderman "direct[ed] and/or participat[ed]" in the burning of the vehicle, the act supporting the count of insurance fraud.

Reviewing a challenge to the sufficiency of evidence supporting a criminal conviction, this court considers "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The jury weighs the evidence and the credibility of the witnesses and

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verdicts, review for sufficiency of the evidence protects a defendant "against jury irrationality or error." *United States v. Powell*, 469 U.S. 57, 67 (1984). Here, as discussed herein, there was sufficient evidence to support the count as described in the information, so we need not address Alderman's argument on the sufficiency of the information or inconsistent verdicts.

[3]In 2015, the Legislature amended NRS 686A.2815. 2015 Nev. Stat., ch. 80, § 1. The statute's substance did not change, pertinent to this appeal, only the numbering of subsections. Alderman was charged under the earlier version, which is the same as the current NRS 686A.2815(1)(d).

determines whether these are sufficient to meet the elements of the crime, and this court will not disturb a verdict that is supported by substantial evidence. *Id.*

The jury heard the following evidence: Alderman's mother, Kathy Metcalf, testified that Alderman told her in a phone call that Alderman's new boyfriend, Jose Lara, had a way of getting rid of the vehicle. Metcalf also testified that, during another phone call, Alderman claimed to be in a car following Lara to drop off the Sonata at a location to make it disappear. Alderman was financially strained at the time, including her responsibility for the Sonata. Moreover, she was last in possession of the vehicle and had one of three existing keys without which the car could not be driven. Finally, Alderman reported the car missing and told Howard he should contact his insurance company. Thus, we find that a rational jury could connect the above facts to the fact that the car was set on fire and thus conclude that she "direct[ed] and/or participat[ed]" in burning her vehicle with the intent of receiving a benefit from the insurance payout. Because sufficient evidence supported Alderman's conviction, reversal is not warranted.

Next, we consider whether prosecutorial misconduct substantially affected Alderman's right to a fair trial. Prosecutorial misconduct can present cause for a retrial. *See Neal v. State*, 106 Nev. 23, 25, 787 P.2d 764, 765 (1990). "'A criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone,' and the alleged improper remarks must be read in context." *Butler v. State*, 120 Nev. 879, 896, 102 P.3d 71, 83 (2004) (quoting *Hernandez v. State*, 118 Nev. 513, 525, 50 P.3d 1100, 1108 (2002)). But here, we review for plain error because, as Alderman concedes on appeal, she failed to object

below to any of the prosecutor's alleged misconduct. *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) ("When an error has not been preserved, this court employs plain-error review."); *see also Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (stating that in reviewing for plain error we must determine whether there was error and whether the error was plain from the record). Finally "an error that is plain from a review of the record does not require reversal unless the defendant demonstrates that the error affected his or her substantial rights, by causing actual prejudice or a miscarriage of justice." *Valdez,* 124 Nev. at 1190, 196 P.3d at 477.

Alderman argues that the prosecutor engaged in misconduct because of a *Brady*[4] violation, by shifting the burden of proof to Alderman, by implying impropriety by the defense, and by making an improper socio-economic class arguments. Alderman also argues cumulative error warrants reversal. *Rose v. State*, 123 Nev. 194, 211, 163 P.3d 408, 419 (2007) (holding this court will not reverse the district court based on cumulative error unless there is a showing that the cumulative effect of errors violated the defendant's right to a fair trial). But we conclude that none of the statements made by the State during its closing require reversal as they were not plainly erroneous. Even if error were present, Alderman fails to show she was prejudiced by the statements or that her rights were substantially affected. Finally, there was not cumulative error. Although the issue of guilt is close and the gravity of the crime

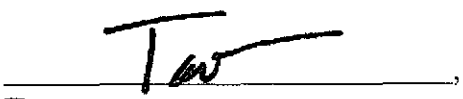
[4]*Brady v. Maryland*, 373 U.S. 83 (1963).

charged is low, the quantity and character of any error does not support reversal. *Id.* Therefore, we conclude reversal is not warranted.

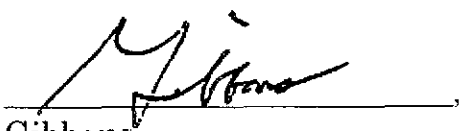
In light of the foregoing reasoning we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Silver



_____, J.
Tao



_____, J.
Gibbons

cc: Hon. Kathleen E. Delaney, District Judge
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