

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL WINNE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36680

FILED

JAN 18 2001

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

ORDER AFFIRMING IN PART AND REMANDING IN PART TO CORRECT
JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of burglary with the intent to commit forgery (count VI) and forgery (count VIII). The district court sentenced appellant to serve a prison term of 12-48 months for count VI, and a concurrent term of 12-32 months for count VIII; appellant was ordered to pay restitution in the amount of \$7,424.00. The district court suspended appellant's sentence and placed him on probation for an indeterminate period of time not to exceed 5 years, and imposed a variety of conditions.

First, appellant contends that a State witness improperly commented on his Fifth Amendment right to remain silent. Appellant correctly argues that the prosecution is forbidden to comment at trial about a defendant's right to remain silent after arrest; in this case, however, our review of the trial transcript reveals that appellant's Fifth Amendment rights were not violated and we disagree with his contention.

The allegedly improper statement was made by a police detective in answer to a question posed by appellant's own counsel on re-cross examination. As the district court noted after denying appellant's motion for a mistrial, appellant's counsel actually "triggered the answer given by the officer." Furthermore, the district court sustained the contemporaneous defense objection and ordered the comment struck from the record. Appellant has not demonstrated that he was prejudiced by the statement made by the detective, or that the jury did not follow

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the instructions of the district court judge.¹ We therefore conclude that appellant's contention is without merit.

Second, appellant contends the State adduced insufficient evidence to support his conviction. More specifically, appellant argues that the State failed to establish that he forged any document, or that he ever had the opportunity to commit the offense. We disagree.

When reviewing a claim of insufficient evidence, the relevant inquiry is "'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.'"² Furthermore, "it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses."³ In other words, a jury "verdict will not be disturbed upon appeal if there is evidence to support it. The evidence cannot be weighed by this court."⁴

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.⁵ In particular, we note that State witnesses testified that appellant (1) had the opportunity to forge the document in question; (2) showed the forged document to a witness; (3) presented the forged document in an effort to pass it on as an original; and (4) after accused of stealing, took affirmative action to conceal the crime. We therefore conclude that the State adduced sufficient evidence to

¹See Lisle v. State, 113 Nev. 540, 558, 937 P.2d 473, 484 (1997) ("There is a presumption that jurors follow jury instructions."), clarified on other grounds, 114 Nev. 221, 954 P.2d 744 (1998).

²Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)) (emphasis in original omitted).

³McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

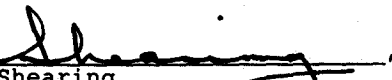
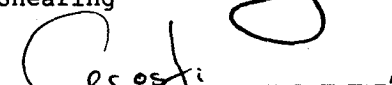
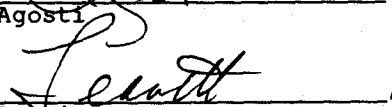
⁴Azbill v. State, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972); see also Nev. Const. art. 6, § 4; NRS 177.025.

⁵See Origel-Candido, 114 Nev. at 378, 956 P.2d at 1378.

sustain appellant's conviction, and that appellant's contention is without merit.⁶

Having considered appellant's contentions and concluded that they are without merit, we affirm the judgment of conviction. Our review of the judgment of conviction, however, revealed a clerical error. The judgment of conviction states that appellant was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. Accordingly, we remand this matter to the district court for the limited purpose of entering a corrected judgment of conviction.

It is so ORDERED.

 _____ Shearing	J.
 _____ Agosti	J.
 _____ Leavitt	J.

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
David M. Schieck
Clark County Clerk

⁶See McNair, 108 Nev. at 56, 61, 825 P.2d at 573, 576.