

IN THE SUPREME COURT OF THE STATE OF NEVADA

DIANA MARIE COURY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 36765

**FILED**

FEB 21 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of 18 counts of drawing and passing a check without sufficient funds with intent to defraud, in violation of NRS 205.130. The district court sentenced appellant to 18 concurrent prison terms of 12 to 48 months. The district court suspended the sentence and placed appellant on probation for a period not to exceed 5 years. The district court further ordered appellant to pay restitution in the amount of \$131,070.00.

Appellant first contends that she should not have been convicted of a violation of NRS 205.130. As to this contention, appellant first argues that a defendant cannot be convicted of drawing and passing a check without sufficient funds with the intent to defraud where the defendant informed the payee that the check is not good. Appellant's argument is, in essence, that there was insufficient evidence presented that she intended to defraud the victim in this case. 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.<sup>1</sup>

In particular, we note that appellant had previously provided bank account information to the victim, in support of her application for credit. At the time appellant executed the markers in question, she knew that she had previously closed the

<sup>1</sup>See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980).

bank account, a fact which she did not reveal to the victim. NRS 205.132(1) provides, in part, that the intent to defraud is presumed to exist where an instrument is drawn on an account which does not exist.

Moreover, evidence was adduced at trial that appellant refused to pay the amount she owed in outstanding markers. The jury could reasonably infer from the evidence presented that appellant intended to defraud the victim at the time she executed the markers. 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.<sup>2</sup>

Appellant next argues that the prosecution must prove that the markers are "checks" and therefore within the purview of NRS 205.130. This court has previously considered this exact issue, and held that such markers, as a matter of law, are "checks" within the meaning of NRS 205.130(1).<sup>3</sup> This argument is therefore without merit.

Appellant next argues that a defendant cannot be convicted of a violation of NRS 205.130, where the payee has agreed to hold the check for a period of time. This court recently rejected this very argument.<sup>4</sup> As in Nguyen, the markers in this case were not post-dated, but bore the date upon which they were executed. We therefore conclude that this argument is without merit.

Appellant also contends that her conviction violates the Nevada Constitution. Specifically, appellant argues that the State's policy of declining to prosecute individuals who subsequently redeem bounced checks, regardless of any criminal intent, violates the constitutional provision prohibiting

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<sup>2</sup>See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981).

<sup>3</sup>Nguyen v. State, 116 Nev. \_\_\_, \_\_\_, 14 P.3d 515, 517-18 (2000) (rehearing pending).

<sup>4</sup>Id. at \_\_\_, 14 P.3d at 518-19 & n.6.

imprisonment for debt. The provision in question provides, in part, that "there shall be no imprisonment for debt, except in cases of fraud."<sup>5</sup> The State certainly has the discretion to decline to prosecute in a case where, although there may have been fraudulent intent, there was no injury to the victim. Such is not the case here, where there was evidence that appellant possessed the intent to defraud the victim and the victim suffered a loss of over \$120,000.00. We therefore conclude that this contention is without merit.

Finally, appellant contends that the district court erred by refusing to allow appellant to testify regarding remarks made to her by employees of the victim. Specifically, appellant argues that the district court erroneously found that the testimony constituted inadmissible hearsay. Appellant is correct that the proffered testimony did not constitute hearsay. However, the testimony was not relevant to appellant's intent at the time she executed the markers, and the district court did not err by refusing to admit it.<sup>6</sup>

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

Young, J.  
Young  
Rose, J.  
Rose  
Becker, J.  
Becker

cc: Hon. Jack Lehman, District Judge  
Attorney General  
Clark County District Attorney  
William L. McGimsey  
Clark County Clerk

<sup>5</sup>Nev. Const. art. 1, § 14 (emphasis added).

<sup>6</sup>See generally *Hotel Riviera, Inc. v. Torres*, 97 Nev. 399, 632 P.2d 1155 (1981) (where lower court's decision was otherwise correct, error will not be found despite the fact that court gave wrong reasons in support of its decision).