

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANI LYNN CURIE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74452

FILED

OCT 22 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Dani Lynn Curie appeals from a judgment of conviction, pursuant to a jury verdict, of embezzlement. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

While working as an assistant manager at a restaurant in Lyon County, Curie was charged with embezzling over \$3,500, a Category B felony.¹ See NRS 205.222(3); NRS 205.300(1). Prior to trial, Curie filed a motion in limine seeking to exclude statements she and the restaurant's manager, Leona Lightner, made during conversations about missing bank deposits that Curie was supposed to make on behalf of the restaurant. During those conversations, Lightner questioned Curie about the missing deposits, Curie admitted that she took the funds, and Lightner offered to help Curie by using her own money to repay the missing funds. However, upon learning the full extent of the amount taken, Lightner informed Curie that she would not be able to help. Curie argued that these conversations constituted inadmissible compromise negotiations under NRS 48.105, but the district court disagreed and denied her motion. On appeal, Curie argues that the district court erred.

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

Curie argues that, as the general manager, Lightner reasonably appeared to be someone who could settle a claim on behalf of the restaurant, and thus discussions with her were compromise negotiations.² The State counters that there was no actual dispute between the parties as required for the discussions to constitute compromise negotiations, and Curie's crime—a felony—was ineligible for civil compromise. We agree with the State.

This court generally reviews a district court's decision to admit or exclude evidence for an abuse of discretion, but "to the extent the evidentiary ruling rests on a legal interpretation of the evidence code, de novo review obtains." *Davis v. Beling*, 128 Nev. 301, 311, 278 P.3d 501, 508 (2012) (quoting *Stephans v. State*, 127 Nev. 712, 716, 262 P.3d 727, 730 (2011)).

Under NRS 48.105, if offered to prove liability for or the amount of "a claim which was disputed as to either validity or amount," the district court must exclude evidence of "[f]urnishing or offering or promising to furnish" or "[a]ccepting or offering or promising to accept . . . a valuable consideration in compromising or attempting to compromise" the claim. An offer of compromise is "an offer by one party to settle a claim where an actual dispute or a difference of opinion exists at the time the offer is made." *Davis*, 128 Nev. at 311, 278 P.3d at 509 (internal quotation marks omitted). An individual is not engaged in compromise negotiations unless he or she reasonably believes that he or she is engaged in such discussions. *Cf. McKenna v. State*, 114 Nev. 1044, 1054, 968 P.2d 739, 746 (1998) (holding that discussions between a defendant and a detective were not inadmissible

²In her motion before the district court, Curie framed the discussions as "negotiations to avoid any criminal liability."


compromise negotiations under NRS 48.105 because the detective told the defendant he could not make any promises and thus the defendant “could not have reasonably believed that he was going to negotiate a plea with [the detective]”).


Here, we conclude that the discussions between Curie and Lightner were not compromise negotiations. Because Lightner did not know where the missing money was when the two began speaking, the ensuing conversation is more fairly described as an investigation into the whereabouts of the missing money than as a negotiation intended to resolve some pre-existing disagreement between Lightner and Curie. Furthermore, there was no actual dispute or difference of opinion between Curie and Lightner as to the validity or amount of any claim at the time of their discussions; Lightner initially lacked any knowledge as to the amount of money missing, and thus she and Curie did not have conflicting opinions on the matter. Moreover, Curie never offered to furnish any valuable consideration, and Lightner never asked for any; Lightner merely suggested a way, entirely gratuitously, for Curie to avoid negative consequences. *See Consideration, Black’s Law Dictionary* (10th ed. 2014) (defining “consideration” as “[s]omething (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee”). Finally, Curie’s confession was not offered at trial to prove the validity or amount of any civil claim that the restaurant may have had. Instead, it was offered to prove Curie’s liability for the charged felony offense, which only the State could compromise, and the State was not a party to any of the supposed negotiations Curie identifies on appeal. *See NRS 178.564-.568* (stating that only certain misdemeanors for which the person injured by the conduct constituting the offense has a civil remedy may be compromised by

the defendant and the victim); *Cairns v. Sheriff*, 89 Nev. 113, 115, 508 P.2d 1015, 1017 (1973) ("The matter of the prosecution of any criminal case is within the entire control of the district attorney . . ."). Accordingly, we conclude that the district court properly denied Curie's motion.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. John Schlegelmilch, District Judge
Mouritsen Law
Attorney General/Carson City
Lyon County District Attorney
Third District Court Clerk