

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIMBERLY MARIE KAIGLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38263

FILED

FEB 12 2002

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary and two counts of possession of a credit or debit card without the cardholder's consent. The district court adjudicated appellant Kimberly Kaigler an habitual offender and sentenced her to serve three concurrent terms of 25 years in prison, with parole eligibility after 10 years.

Kaigler first contends that the district court erred in allowing the particular nature of her prior felony convictions to be disclosed to the jury. Specifically, Kaigler argues that the jury was improperly prejudiced by evidence that Kaigler had been previously convicted of burglary and attempted possession of a credit card without the cardholder's consent, which were virtually identical charges to the ones for which Kaigler was tried in this case.

The determination of whether to admit evidence is within the sound discretion of the district court, and that determination will not be disturbed unless manifestly wrong.¹ This court has also held that prior

¹Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), modified on other grounds by Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996).

convictions used to impeach a defendant who testifies should not be admitted if their probative value is substantially outweighed by the danger of unfair prejudice.² However, if the district court does admit the prior felonies, the scope of inquiry regarding them is left to the discretion of the trial judge.³

The district court held a hearing regarding this evidence outside the presence of the jury. The district court ruled that despite the possible prejudicial effect on the jury, the charges involved in the prior convictions were admissible under NRS 50.095 to impeach Kaigler if she chose to testify at trial. The district court noted that the crimes involved dishonesty and consequently were particularly relevant to Kaigler's credibility on the stand. The district court then warned Kaigler that this factor should weigh in her decision whether or not to testify. Kaigler did testify, and the State used the prior convictions, including the specific charges of which she was convicted, to impeach her. We conclude that the district court did not abuse its discretion in admitting the specific charges underlying Kaigler's previous felony convictions.

Kaigler's second contention is that there was insufficient evidence adduced at trial to convict her of unlawful possession of the credit cards because the State did not prove that she intended to circulate, use, sell, or transfer the cards.⁴ We conclude that this contention also lacks merit.

²Anderson v. State, 92 Nev. 21, 544 P.2d 1200 (1976).

³Plunkett v. State, 84 Nev. 145, 437 P.2d 92 (1968).

⁴NRS 205.690(1) provides in relevant part that "[a] person who steals, takes or removes a credit card or debit card from the person,
continued on next page . . .

“The standard of review on appeal in a criminal case for sufficiency of evidence is whether the jury, acting reasonably, could have been convinced of the defendant’s guilt beyond a reasonable doubt by the evidence that was properly before it.”⁵ A conviction will not be set aside if “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.”⁶ Moreover, the statute under which Kaigler was convicted permits the element of intent to be inferred from the fact that the accused possesses two or more credit cards issued in the name of another person.⁷ The record shows that Kaigler possessed two credit cards issued in the name of the victim. Kaigler testified that she had picked up the cards by mistake, but we conclude that a reasonable jury could have been convinced beyond a reasonable doubt that Kaigler intended to circulate, use, sell, or transfer the cards.

. . . continued

possession, custody or control of another without the cardholder’s consent . . . with the intent to circulate, use or sell it or to transfer it to a person other than the issuer or the cardholder, is guilty of a category D felony.”

⁵Lay v. State, 110 Nev. 1189, 1192, 886 P.2d 448, 450 (1994).

⁶Jackson v. Virginia, 443 U.S. 307, 319 (1979), cited in Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984).


⁷NRS 205.690(3) states that:


[a] person who has in his possession or under his control two or more credit cards or debit cards issued in the name of another person is presumed to have obtained and to possess the credit cards or debit cards with the knowledge that they have been stolen and with the intent to circulate, use, sell or transfer them with the intent to defraud.

Therefore, having considered Kaigler's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Clark County Clerk