



IN THE SUPREME COURT OF THE STATE OF NEVADA

MOJGAN YEKATAMEHR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 91452

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of theft of property of a value of \$100,000 or more. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.

Appellant Mojgan Yekatamehr dated John Fickewirth for nine months, until Fickewirth died unexpectedly, of natural causes, on December 21, 2021. Yekatamehr continued to stay in Fickewirth's home for two weeks after his death. In February 2022, Fickewirth's butler, James Hogg, reported to police that property normally stored in a safe in Fickewirth's home was missing. The State charged Yekatamehr under alternative theories of criminal liability, alleging she stole property belonging to Fickewirth's estate directly, pursuant to a conspiracy, or by aiding and abetting the theft. A jury found Yekatamehr guilty and the district court imposed a 24-to-60-month prison sentence and ordered \$493,254.88 in restitution. Yekatamehr raises six issues on appeal.

Sufficient evidence supports the theft conviction

Yekatamehr argues that insufficient evidence was adduced at trial to support the theft conviction because the State presented only circumstantial evidence of her guilt. Evidence is sufficient to support a criminal conviction 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.” *Belcher v. State*, 136 Nev. 261, 275, 464 P.3d 1013, 1029 (2020) (citation modified). It is the jury’s role to determine the weight to give the evidence, and circumstantial evidence alone may sustain a conviction. *Buchanan v. State*, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

Hogg testified at trial that the safe was stored in a locked room, which could only be entered with one of two keys—one held by Fickewirth and the other by Hogg. The safe could be opened using either of two access codes, also assigned only to Fickewirth and Hogg. Testimony by both Hogg and Fickewirth’s son, Danis Fickewirth, established that on December 24, 2021, the items normally stored in the safe were present, including gold bullion, gold and silver coins, cufflinks, and watches. Hogg testified that these items were gone when he accessed the safe in February 2022. Danis, the executor of his father’s estate, confirmed the property was never recovered.

The State also presented data from the safe’s electronic log, showing it was opened using Fickewirth’s access code on January 1, 2022. This appeared to be the only time after Fickewirth’s death that the safe remained open long enough for several heavy “monster boxes” of coins to be removed. The State also presented phone location data, which placed Yekatamehr in the vicinity of Fickewirth’s home during the 90 minutes the safe remained open. Cell phone data indicated that Fickewirth’s access code was saved or modified in the Notes app on Yekatamehr’s phone on the same day. Yekatamehr also used her phone to perform searches relating to the value of monster boxes of silver coins, the price of gold, luxury watches, and how much weight could be loaded into a Toyota. Additionally, a key to the safe room and paperwork

previously affixed to a box of silver held in the safe were later discovered amongst Yekatamehr's personal items.

Multiple witnesses testified that, due to a recent surgery, it would have been difficult for Yekatamehr to lift heavy boxes of silver on her own. The State presented evidence that Yekatamehr called her uncle, Soroush Akhavan, shortly after the safe was opened, at which time Akhavan was driving into Fickewirth's gated community. Akhavan's cell phone remained at Fickewirth's home for approximately 30 minutes. Seven minutes after Akhavan left, the safe was closed. A law enforcement witness testified that Akhavan and Yekatamehr later separately drove to a Public Storage unit rented by Yekatamehr. Given the available evidence, a rational juror could infer beyond a reasonable doubt that Yekatamehr accessed the safe and removed property with the requisite intent, either on her own or with assistance. *See* NRS 205.0832 (actions which constitute theft).

Yekatamehr nonetheless asserts that the State's central witnesses, particularly Hogg, lacked credibility, thereby undermining the sufficiency of the evidence. Yekatamehr argues that Hogg provided contradictory trial testimony and had motive and opportunity to steal the property himself. Yekatamehr thus contends that evidence entered through Hogg should be discounted. Similarly, Yekatamehr suggests that testimony by Danis's wife, Illeana Fickewirth, was unreliable because Illeana went through Yekatamehr's personal belongings without permission and without notifying police. It is the function of the jury, not the appellate courts, to assess any inconsistencies in the evidence and resolve them by weighing the credibility of the witnesses and evidence before it. *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 572, 573 (1992). Evidence affecting the reliability of Hogg's and Illeana's testimony was for the jury to evaluate and does not impact this

court's sufficiency analysis. Accordingly, we conclude that sufficient evidence supports Yekatemehr's conviction.¹

The district court did not err in settling jury instructions

Yekatamehr next challenges multiple jury instructions addressing alternative theories of criminal liability. Yekatamehr asserts that instructions 11 (aiding and abetting), 12-15 (conspiracy), and 19 (guilt of persons other than defendant) were confusing because they did not identify a specific alleged co-conspirator or principal, as appropriate. Yekatamehr did not object to these instructions or propose alternate instructions, so we review for plain error. *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003). While a conspiracy involves an agreement between two or more people for an unlawful purpose, the State is not required to prove the identity of the person or people with whom the defendant conspired. *Washington v. State*, 132 Nev. 655, 666, 376 P.3d 802, 810 (2016). Similarly, it is unnecessary to identify the principal to convict a defendant under a theory of aiding and abetting. *Hanley v. State*, 85 Nev. 154, 160-61, 451 P.2d 852, 856-57 (1969). Therefore, the failure to identify a specific accomplice or co-conspirator in the jury instructions did not constitute legal error.

¹Yekatamehr also appears to suggest that insufficient evidence supported the existence of a conspiracy involving Yekatamehr and Akhavan. Because a rational juror could have found that Yekatamehr committed the theft directly, we decline to address this claim. See *Bolden v. State*, 121 Nev. 908, 913, 124 P.3d 191, 194 (2005) ("When alternate theories of criminal liability are presented to a jury and all of the theories are legally valid, a general verdict can be affirmed even if sufficient evidence supports only one of the theories."), *receded from on other grounds by Cortinas v. State*, 124 Nev. 1013, 1026-27, 195 P.3d 315, 324 (2008).

Yekatamehr also contends that the failure to name any other theft participant was confusing and could have led the jury to believe that Yekatamehr and Hogg worked together to commit the theft. This argument fails for two reasons. First, the jury was not precluded from considering whether Yekatamehr and Hogg acted in concert simply because the defense's theory was that Hogg committed the offense alone. Second, the evidence of conspiracy and aiding and abetting presented at trial focused solely on the involvement of Akhavan. Given the absence of evidence or argument that Yekatamehr and Hogg cooperated in the commission of any offense, there is not a realistic likelihood that the challenged instructions would have caused confusion.

Additionally, Yekatamehr argues that the district court should have provided a "mere presence" instruction, despite Yekatamehr's failure to request it. Yekatamehr argues that this instruction was warranted because Akhavan could have been innocently present at Fickewirth's home to deliver lunch from his restaurant, rather than to participate in a theft. "A defendant in a criminal case is entitled, upon request, to a jury instruction on his theory of the case so long as there is some evidence, no matter how weak or incredible, to support it." *Harris v. State*, 106 Nev. 667, 670, 799 P.2d 1104, 1105-06 (1990) (citation modified). This court has approved of an instruction that a defendant's "[m]ere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted a crime." *Brooks v. State*, 103 Nev. 611, 613, 747 P.2d 893, 894 (1987). But Yekatamehr did not raise the defense that *she* was present at the scene of the crime but was simply a spectator to the theft. This court has never held that a defendant has a right to have the jury instructed on an uncharged third party's mere presence. Therefore, the district court did not

err in not sua sponte giving such an instruction. Because we discern no error in the district court's instruction of the jury, we conclude that relief is not warranted on this basis.

The district court did not abuse its discretion by limiting cross-examination of Danis Fickewirth

Yekatamehr next argues that the district court improperly prevented her from impeaching Danis with statements Danis made in a civil suit against Yekatamehr. A criminal defendant is entitled to a “full and fair opportunity to probe and expose [a witness’s] infirmities through cross-examination.” *Pantano v. State*, 122 Nev. 782, 790, 138 P.3d 477, 482 (2006) (citation modified). But this right is not unlimited; the district court retains wide latitude to place reasonable restrictions on cross-examination, such as excluding confusing or irrelevant evidence. *Brown v. State*, 138 Nev. 464, 476, 512 P.3d 269, 280 (2022).

Here, the prosecutor informed the district court that discussion of the civil suit may cause Danis to reference claims of elder abuse not charged in the criminal case. Yekatamehr maintained that the civil complaint’s characterization of Fickewirth as a person in declining mental and physical health contradicted Danis’s trial testimony that his father remained “sharp” until his death. The district court instructed defense counsel to “direct [Danis] . . . to be specific” to avoid eliciting unexpected other act testimony. Yekatamehr then resumed cross-examination, including questioning about the lawsuit. The district court’s restriction of cross-examination was narrow and targeted to prevent the introduction of evidence with limited probative value and a high potential for prejudice against Yekatamehr. *See* NRS 48.035(1). To the extent the district court limited cross-examination of Danis, it did not abuse its discretion.

Other act testimony did not affect Yekatamehr's substantial rights

Yekatamehr next argues that the district court abused its discretion by allowing two witnesses to introduce improper other act evidence. Evidence of other crimes, wrongs, or acts is not admissible to prove propensity but may be admissible for other limited purposes. NRS 48.045(2). To overcome this “presumption of inadmissibility,” *Rosky v. State*, 121 Nev. 184, 195, 111 P.3d 690, 697 (2005), the State must demonstrate that: “(1) the [other] act is relevant to the crime charged and for a purpose other than proving the defendant’s propensity, (2) the act is proven by clear and convincing evidence, and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice,” *Bigpond v. State*, 128 Nev. 108, 117, 270 P.3d 1244, 1250 (2012). Because Yekatamehr failed to object to the challenged testimony, she must show plain error affected her substantial rights to obtain relief. *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). Error is “plain” when it “is clear under current law from a casual inspection of the record,” and affects a defendant’s substantial rights “when it causes actual prejudice or a miscarriage of justice (defined as a grossly unfair outcome).” *Id.* at 50-51, 412 P.3d at 48-49.

While detailing their search of Yekatamehr’s belongings, both Illeana and Chad Lunini, Fickewirth’s personal mechanic, testified that they discovered copies of identification documents and passwords belonging to multiple men. Illeana further characterized the men as Yekatamehr’s “ex-boyfriends.” Considered alongside Yekatamehr’s internet searches for “rich men in Nevada,” this testimony could imply that Yekatamehr had a history of defrauding men she dated. Although the testimony was arguably prejudicial, Yekatamehr fails to establish that it affected her substantial rights. The testimony about the items found in Yekatamehr’s belongings was brief and was

not purposefully elicited by the State on either occasion. *See Richmond v. State*, 118 Nev. 924, 935, 59 P.3d 1249, 1256 (2002) (concluding that district court did not commit plain error by failing to sua sponte strike brief and inadvertent other act testimony). Furthermore, neither party referenced the testimony again during trial. And, as discussed above, there was extensive evidence demonstrating Yekatamehr's guilt. Because Yekatamehr has not demonstrated plain error, the admission of other act evidence does not warrant relief.

The sentence was not unconstitutional

Yekatamehr next argues that the prison sentence imposed by the district court was cruel and unusual, in violation of the Eighth Amendment to the United States Constitution. Sentencing decisions are generally reviewed for an abuse of discretion. *Cocking v. State*, 141 Nev., Adv. Op. 21, 567 P.3d 348, 354 (2025). But constitutional issues present questions of law, which we review de novo. *Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 136 Nev. 155, 161, 460 P.3d 976, 984 (2020).

Yekatamehr first asserts that the sentence of 24 to 60 months was unconstitutional because the district court increased prison time to compensate for Yekatamehr's inability to pay restitution. A sentencing court may not impose a fine or restitution and then automatically convert it to a prison sentence because a defendant is indigent and unlikely to pay. *Burke v. State*, 96 Nev. 449, 451, 611 P.2d 203, 204 (1980); *see also Bearden v. Georgia*, 461 U.S. 660, 667 (1983). But there is no indication here that Yekatamehr's financial resources influenced the district court's sentencing decision. In fact, the district court explicitly stated that it was sentencing Yekatamehr to greater than the minimum sentence authorized by statute in recognition of the

emotional impact experienced by Fickewirth's family and to convey that theft is not a trivial or victimless crime. Thus, this argument is without merit.

Yekatamehr also contends that the sentence was cruel and unusual because the district court did not consider her lack of criminal history and the nonviolent nature of the offense. "Regardless of its severity, a sentence that is within the statutory limits is not cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience." *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 489 (2009) (citation modified). The range of punishment for theft of property with a value of \$100,000 or more is 1 to 20 years. NRS 205.0835(2)(e). Yekatamehr does not assert that she was sentenced outside of these statutory limits or that the statute under which she was sentenced is unconstitutional. Moreover, Yekatamehr was convicted of stealing property worth five times the threshold value of the offense, including items that were likely irreplaceable. Therefore, the sentence of 24 to 60 months is reasonably proportionate and does not violate the Eighth Amendment.

Cumulative error does not warrant relief

Lastly, Yekatamehr argues that cumulative error requires reversal. Because Yekatamehr has identified only a single error, the admission of improper other act evidence, there is nothing to cumulate. *Belcher*, 136 Nev. at 279, 464 P.3d 1013 at 1031. Accordingly, we

ORDER the judgment of conviction AFFIRMED.



Bell, J.



Stiglich, J.



Cadish, J.

cc: Hon. Danielle K. Pieper, District Judge
SOS Injury Lawyers
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk