IN THE COURT OF APPEALS OF THE STATE OF ALASKA

SUZZETTE AMELIA MARIE JARMAN, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-13739 Trial Court No. 3AN-18-12416 CR SUMMARY DISPOSITION No. 0308 — February 8, 2023

Appeal from the Superior Court, Third Judicial District, Anchorage, Erin B. Marston, Judge.

Appearances: Elizabeth D. Friedman, Law Office of Elizabeth D. Friedman, Prineville, Oregon, under contract with the Office of Public Advocacy, Anchorage, for the Appellant. Diane L. Wendlandt, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Harbison and Terrell, Judges.

Suzzette Amelia Marie Jarman was found guilty, following a jury trial, of one count of second-degree theft and two counts of felony fraudulent use of an access device based on allegations that she knowingly possessed a stolen credit card and used

it to purchase unauthorized items at two different Anchorage stores.[1] Jarman now appeals, raising two claims of error.

First, Jarman argues that the evidence presented at trial was legally insufficient to support the jury's guilty verdicts. When we review a claim of insufficient evidence, we are required to view the evidence — and all reasonable inferences that can be drawn from the evidence — in the light most favorable to upholding the jury's verdict.[2] We then determine whether, viewing the evidence in this manner, a reasonable juror could conclude beyond a reasonable doubt that the defendant committed the crime.[3]

To prove Jarman guilty of second-degree theft of an access device, the State was required to prove that, with the intent to deprive another of property or to appropriate property of another to oneself or a third person, Jarman obtained a credit card belonging to another person.[4] To prove Jarman guilty of felony fraudulent use of an access device, the State was required to prove that, with intent to defraud, Jarman used a credit card to obtain property or services with the knowledge that the credit card was stolen,[5] and that Jarman obtained property or services worth between $750 and $25,000.[6]

Here, the evidence at trial showed that Jarman and her domestic partner, Menes Weightman, spent two nights at the Alyeska Resort in Girdwood in

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[1] AS 11.46.130(a)(7) and AS 11.46.285(a)(1) & former AS 11.46.285(b)(2) (2018), respectively. At sentencing, Jarman received a suspended imposition of sentence. *See* AS 12.55.085.

[2] *Iyapana v. State*, 284 P.3d 841, 848-49 (Alaska App. 2012).

[3] *Id.*

[4] AS 11.46.130(a)(7); AS 11.46.100(1).

[5] AS 11.46.285(a)(1).

[6] Former AS 11.46.285(b)(2) (2018).

November 2018. On their second night, tourists Qing Qing Hua and Yunton Wang checked into the hotel. There was surveillance video footage that showed Weightman walking by the tourists' car. Although Hua and Wang were standing outside the car, Weightman did not acknowledge them or otherwise indicate that he was acquainted with them. A different surveillance video showed Hua at the front desk with a white bag containing Hua's wallet and other items. A short time later, surveillance footage showed Weightman leaving an area where guests are not permitted with a white bag that looked like Hua's bag.

Later that night, Jarman was caught on security video using Hua's credit card at a Walmart and a Best Buy in Anchorage. Jarman purchased items valuing $797.92 at Walmart and $829.96 at Best Buy. The purchases included a computer, a printer, a DVD player, a rainbow tea set, and a "Baby Cece" doll. The next day, a surveillance video showed Jarman, Weightman, and a child leaving the Alyeska Resort together.

Viewing this evidence in the light most favorable to upholding the verdicts, we conclude that a reasonable juror could find Jarman guilty of second-degree theft and felony fraudulent use of an access device beyond a reasonable doubt.

Jarman's second claim of error on appeal relates to her post-trial motion work. After her trial was over, Jarman moved for a judgment of acquittal or, in the alternative, a new trial, arguing that the guilty verdicts were contrary to the weight of the evidence. The superior court denied Jarman's motions, ruling that "[t]here was enough evidence presented [to] the jury [for] reasonable, fair-minded persons to find that the State proved each element of the charges beyond a reasonable doubt." The superior court also found that the jury's guilty verdicts were neither unreasonable nor unjust.

On appeal, Jarman argues that we should remand her case to the superior court for reconsideration of her motion for a new trial based on this Court's decision in

Phornsavanh v. State,[7] which Jarman asserts establishes a new rule of law that should be applied retroactively. We find no merit to this claim. As we explained in *Whisenhunt v. State*, our decision in *Phornsavanh* merely clarified existing law; it did not create a new rule of law.[8] Moreover, the clarification provided by *Phornsavanh* is only relevant to "those extremely rare cases . . . where the trial judge has affirmatively expressed significant concern about the fairness of the verdict but has potentially resolved those concerns solely based on the fact that the jury's verdict is not 'plainly unreasonable.'"[9] Here, the superior court expressed no concerns about the jury's guilty verdicts and specifically found that they were not unjust. A remand for reconsideration of the motion for a new trial is therefore not warranted.

The judgment of the superior court is AFFIRMED.

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[7] *Phornsavanh v. State*, 481 P.3d 1145 (Alaska App. 2021).

[8] *Whisenhunt v. State*, 504 P.3d 268, 270-75 (Alaska App. 2022). In response to Jarman's new trial argument on appeal, the State contends that *Phornsavanh* created a new rule of law, but argues that it is not retroactive. In *Whisenhunt*, we held that, to the extent *Phornsavanh* could be interpreted as creating a new rule of law, that rule of law would be retroactive at least with regard to cases still on direct review at the time it was decided. *See id.* at 275-76.

[9] *Id.* at 276.