IN THE SUPREME COURT OF THE STATE OF NEVADA

DAIMON MONROE A/K/A DAIMON DEVI HOYT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52788

FILED

JUL 30 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to possess stolen property and/or to commit burglary and 26 counts of possession of stolen property. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

Appellant Daimon Monroe and accomplice Bryan Fergason were arrested for burglarizing Anku Crystal Palace. Officers subsequently executed search warrants on Monroe's home and storage units rented by Fergason, Monroe, and Monroe's girlfriend, Tonya Trevarthen. They also searched Fergason and Trevarthen's bank accounts and safety deposit boxes. The searches revealed large quantities of stolen property.

On appeal, Monroe argues that (1) his pre-arrest detention was illegal, (2) the search warrants violated his Fourth Amendment rights because they were not supported by probable cause and lacked particularity, and (3) there is insufficient evidence relating to the value of the stolen items to support his conviction.[1] While we conclude that count

[1]Monroe also argues that (1) the district court erred by allowing the State to amend the indictment shortly before trial, which resulted in the

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11 of Monroe's conviction must be reversed because there is insufficient evidence of value to support his conviction of possession of stolen property with a value of $2,500 or more (a category B felony), we affirm Monroe's conviction in all other respects.

Pre-arrest detention

Monroe contends that his initial arrest was unlawful because it occurred as the result of an unreasonable search or seizure. See U.S. Const. amend. IV; Brown v. Texas, 443 U.S. 47, 50 (1979); Mapp v. Ohio, 367 U.S. 643 (1961). From this premise he reasons that, since his arrest was unlawful, the evidence seized as the result of his arrest should have been suppressed, and that the district court abused its discretion in not doing so. See Steagald v. United States, 451 U.S. 204, 215-16 (1981). We disagree.

NRS 171.123 governs investigative stops, and states, in relevant part:

> (1) Any peace officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime.
>
> . . .
>
> (3) The officer may detain the person pursuant to this section only to ascertain [his] identity and the

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admission of inadmissible bad acts evidence; and (2) his sentencing under Nevada's large habitual felon statute constitutes cruel and unusual punishment. We have considered these arguments and conclude that they lack merit.

> suspicious circumstances surrounding [his] presence abroad. . . .
>
> (4) A person must not be detained longer than is reasonably necessary to effect the purposes of this section, and in no event longer than 60 minutes.

Investigative stops are also governed as a matter of constitutional law by Terry v. Ohio, 392 U.S. 1 (1968), and its progeny. See State v. Lisenbee, 116 Nev. 1124, 1127-28, 13 P.3d 947, 949 (2000). Any stop by an officer must be "'"justified at its inception, and . . . reasonably related in scope to the circumstances which justified the interference in the first place."'" Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty., 542 U.S. 177, 185 (2004) (alteration in original) (quoting United States v. Sharpe, 470 U.S. 675, 682 (1985) (quoting Terry, 392 U.S. at 20)). "The 'reasonable, articulable suspicion' necessary for a Terry stop is more than an 'inchoate and unparticularized suspicion or "hunch."' Rather, there must be some objective justification for detaining a person." Lisenbee, 116 Nev. at 1128, 13 P.3d at 949 (quoting Terry, 392 U.S. at 27).

The police initially stopped Monroe and Fergason for suspicion of burglary of a nearby dentist's office. Monroe claims that the detention became unlawful once police learned that the dentist's office showed no signs of forced entry or missing property. This argument, however, ignores the fact that the detaining officers were aware of the suspected burglary at Anku Crystal Palace and were awaiting the arrival of another investigative unit. Under these circumstances, the officers were justified in detaining Monroe and Fergason until the officers responding to Anku Crystal Palace had investigated there and reported back their findings. The suspected break-ins were similar (entry through the front door), their locations were close to one another, and the timing would have enabled

Monroe and Fergason to have burglarized Anku Crystal Palace before burglarizing the dentist's office.

Accordingly, we conclude that Monroe's arrest did not result from an unreasonable search or seizure and thus reject his argument that the district court abused its discretion by not suppressing the evidence seized as the result of his arrest.

Search warrants

Monroe contends that the search warrants violated his Fourth Amendment rights because they were not based on probable cause and lacked particularity. We disagree.

The burden of proving that a search warrant is invalid is on the defendant by a preponderance of the evidence, see U.S. v. Richardson, 943 F.2d 547, 548 (5th Cir. 1991), and this court will pay great deference to a lower court's finding of probable cause. See Illinois v. Gates, 462 U.S. 213, 236 (1983).

All search warrants must be based on probable cause. See U.S. Const. amend. IV; Mapp v. Ohio, 367 U.S. 643, 646 n.4 (1961); Keesee v. State, 110 Nev. 997, 1002, 879 P.2d 63, 66-67 (1994). "'Probable cause' requires . . . trustworthy facts and circumstances which would cause a person of reasonable caution to believe that it is more likely than not that the specific items to be searched for are: [subject to] seiz[ure] and will be found in the place to be searched." Keesee, 110 Nev. at 1002, 879 P.2d at 66.

Additionally, all search warrants must describe the items to be seized with particularity. See U.S. Const. amend. IV. While the descriptions must be specific enough to allow the person conducting the search to reasonably identify the things authorized to be seized, a search

warrant that describes generic categories of items will not be deemed invalid if a more specific description of an item is not possible. See United States v. Spilotro, 800 F.2d 959, 963 (9th Cir. 1986).

Here, we conclude that the phone calls between Monroe and his accomplices, the ensuing investigation, and Monroe's extensive criminal history sufficiently established probable cause for the issuance of the warrants. Throughout a series of recorded jailhouse phone calls, Monroe repeatedly referenced burglary tools, alluded to future burglaries he wished to commit, and expressed concern about the police searching his house and finding the stolen property. Additionally, detectives discovered that Monroe had rented a storage unit under a fake name. Finally, Monroe had a long record of prior felony convictions, many of which were for burglaries.

We also conclude that the warrants at issue described the items to be seized with sufficient particularity. The warrants authorized the seizure of "[b]urglary tools[,]" "[i]tems of property that are used to make burglary tools[,]" "[i]tems of property . . . which contain specific identifiable descriptions and/or serial numbers" that would allow officers to confirm the items as stolen, and "[a]rticles of personal property which would tend to establish the identity of persons in control of said premises . . . ." Moreover, the search warrants provided examples of each type of item to be seized.

Accordingly, we conclude that the district court did not err in refusing to suppress the evidence gathered as a result of the searches of Monroe's property.[2]

Sufficiency of the evidence

Monroe contends that the State failed to introduce sufficient evidence of value to support his conviction of 26 counts of possession of stolen property. With the exception of count 11, as discussed below, we conclude that the evidence was sufficient to support Monroe's convictions.

The record indicates that the State did not introduce sufficient evidence of value to support Monroe's conviction of count 11. In count 11, Monroe was charged with possession of stolen property with a value over $2,500—a category B felony per NRS 205.275(2)(c). However, testimony at trial established that the stolen property was worth only $2,310, which does not meet the $2,500 threshold required for conviction of category B felony possession of stolen property.[3]

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[2]Because we reject Monroe's argument that the searches violated his Fourth Amendment rights, we similarly reject his dependant argument that there is insufficient evidence to support his convictions if the evidence from the searches is disallowed.

[3]Monroe argues that the State improperly based the value of the stolen property on testimony from the property owners rather than experts. Monroe's argument, however, ignores the general rule "that an owner, because of his ownership, is presumed to have special knowledge of the property and may testify as to its value." City of Elko v. Zillich, 100 Nev. 366, 371, 683 P.2d 5, 8 (1984) (holding that a real property owner's testimony as to the value of his property is admissible).

Moreover, NRS 205.275(6) states that "the value of the property involved shall be deemed to be the highest value attributable to the property by any reasonable standard." This court has defined that

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Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART and REMAND this matter for entry of an amended judgment of conviction consistent with this order.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Eighth Judicial District Court Dept. 7, District Judge
Law Offices of Martin Hart, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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standard as "the fair market value of the property at the time and place it was stolen . . . [but] where such market value cannot be reasonably determined other evidence of value may be received such as replacement cost or purchase price." Bain v. Sheriff, 88 Nev. 699, 701, 504 P.2d 695, 696 (1972) (citations, emphasis, and internal quotation marks omitted). Accordingly, Monroe's challenge to the value testimony fails.