

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM EMERY FODOR A/K/A BILL  
EMERY FODOR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52869

**FILED**

**MAR 11 2010**

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count of possession of stolen property and one count of possession of burglary tools. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court adjudicated appellant William Emery Fodor a habitual criminal and sentenced him to serve a prison term of 96 to 240 months and a concurrent jail term of 12 months.

First, Fodor contends that the district court erred by sua sponte amending the possession of stolen property count to include property wrongfully taken from a Rite Aid store. The district court may not sua sponte amend a criminal information. Parsons v. District Court, 110 Nev. 1239, 1244, 885 P.2d 1316, 1320 (1994), overruled on other grounds by Parsons v. State, 116 Nev. 928, 10 P.3d 836 (2000). Here, the district court merely informed the State that it could amend the possession of stolen property count, the State subsequently filed a timely amended information, the State did not charge an additional or different offense, and the amended information did not prejudice Fodor's

substantial rights. See NRS 173.095(1). Under these circumstances, Fodor has not demonstrated that the district court erred.

Second, Fodor contends that insufficient evidence was adduced at trial to support his convictions. We review “the evidence in the light most favorable to the prosecution” and determine whether “any rational [juror] could have found the essential elements of the crime beyond a reasonable doubt.” McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1984)). Here, the jury heard testimony that police officers responding to a 911 call discovered Fodor on top of Rite Aid’s roof and inside an air conditioning vent with various hand tools. Fodor told the police that he was making repairs to the air conditioner. However, Fodor was not employed by the company that Rite Aid contracted with to service its air conditioners. Testimony established that parts had been removed from one of the air conditioners. A search of the van that Fodor was using revealed copper tubing consistent with the tubing found in air conditioners and copper wire consistent with the wire used in street lights. The police learned that wire had been stolen from several city street lights earlier that day and the amount of wire stolen was consistent with the amount of wire found in Fodor’s possession. A City of Las Vegas electrician inspected the wire found in the van; noted that the wire’s gauge, insulation color, and THW stamp were consistent with the wire used by the city; noted that the replacement cost was approximately \$1,800; and opined that the wire in Fodor’s possession came from the City’s light poles. The jury also heard testimony regarding tools found in the van and how they could be used to steal wire. Based on this testimony, we conclude that a rational juror could have found beyond a reasonable doubt that Fodor was in possession

of stolen property and burglary tools. See NRS 205.080(1); NRS 205.275(1); Hernandez v. State, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002) (circumstantial evidence is enough to support a conviction). The jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Third, Fodor contends that his due process rights were violated when the State released evidence to the City of Las Vegas, thereby rendering it unavailable for examination by his expert witness and violating the disclosure requirements of Brady v. Maryland, 373 U.S. 83 (1963). "Loss or destruction of evidence by the State violates due process 'only if the defendant shows either that the State acted in bad faith or that the defendant suffered undue prejudice and the exculpatory value of the evidence was apparent before it was lost or destroyed.'" Daniel v. State, 119 Nev. 498, 520, 78 P.3d 890, 905 (2003) (quoting Leonard v. State, 117 Nev. 53, 68, 17 P.3d 397, 407 (2001)); see also Mazzan v. Warden, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000) (identifying the components of a Brady violation). The record does not indicate that the State acted in bad faith by releasing the wire to the City, that it was apparent that the wire had exculpatory value at the time it was released, or that the State failed to disclose the wire's existence. Accordingly, we conclude that Fodor has not demonstrated that his due process rights were violated by the release of this evidence.

Fourth, Fodor contends that the district court abused its discretion at sentencing and imposed a sentence that constitutes cruel and unusual punishment. This court will not disturb a district court's sentencing determination absent an abuse of discretion. Randell v. State,

109 Nev. 5, 8, 846 P.2d 278, 280 (1993). Fodor has not alleged that the district court relied on impalpable or highly suspect evidence, nor has he alleged that the relevant statutes are unconstitutional. See Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996); Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). We note that Fodor's sentence falls within the parameters provided by the relevant statutes, see NRS 193.140; NRS 205.080(1); NRS 207.010(1)(a), and we conclude that the sentence does not constitute cruel and unusual punishment and the district court did not abuse its discretion by imposing this sentence.

Having considered Fodor's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

J. Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Eighth Judicial District Court Dept. 7, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk