IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN FERGASON A/K/A BRYAN MICHAEL FERGASON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52877

FILED

AUG 04 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of conspiracy to possess stolen property and/or to commit burglary, ten counts of possession of stolen property with a value of $250 or more (category C felony), and fifteen counts of possession of stolen property with a value of $2,500 or more (category B felony). Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

Appellant Bryan Fergason and an accomplice, Daimon Monroe, 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's and Trevarthen's bank accounts and safety deposit boxes. The searches revealed large quantities of stolen property. Fergason, Monroe, and a third co-conspirator were tried separately. The State reduced charges against Trevarthen in exchange for her guilty plea and testimony against the other conspirators.

On appeal Fergason challenges the sufficiency of evidence to sustain his indictment and subsequent conviction as: (1) impermissibly based on uncorroborated accomplice testimony; (2) insufficient to establish his possession of certain items of stolen property; and (3) inadequate to

establish value. Fergason also challenges the legality of his pre-arrest detention.[1] We conclude that his arguments lack merit and affirm.

Accomplice testimony

NRS 175.291(1) provides that a defendant cannot be convicted based on accomplice testimony not "corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense." (Emphasis added.) NRS 175.291(1) applies at the grand jury stage, Sheriff v. Horner, 96 Nev. 312, 313-14, 608 P.2d 1106, 1106-07 (1980). Fergason challenges the district court's refusal to grant his pretrial petition for habeas corpus and motion to dismiss the indictment. He argues that the evidence presented to the grand jury on the conspiracy count was based solely on the uncorroborated testimony of his alleged accomplice, Trevarthan. He also claims there was insufficient evidence to indict him for possession of stolen property because the State did not produce evidence showing he had control over the property.

Corroborating evidence "need not in itself be sufficient to establish guilt, and it will satisfy [NRS 175.291] if it merely tends to connect the accused to the offense." Cheatham v. State, 104 Nev. 500, 504-05, 761 P.2d 419, 422 (1988). "Corroboration evidence need not be found in a single fact or circumstance and can, instead, be taken from the circumstances and evidence as a whole." Id. at 504, 761 P.2d at 422.

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[1]Fergason also challenges the district court's order allowing the State to amend the indictment shortly before trial, its admission of bad acts evidence, and his sentencing under Nevada's large habitual felon statute. We have considered these arguments and conclude they lack merit.

The record shows that the grand jury received independent evidence beyond Trevarthan's account. This evidence included testimony that police found stolen items in Fergason's storage unit and gallery tags linking Fergason to stolen artwork in his home. The State also presented the grand jury with evidence from which it could have concluded that Fergason was liable for his co-conspirators' possession of stolen property.[2] Thus, we conclude that the trial court did not err in denying Fergason's pretrial challenge to the indictment.

Fergason also challenges the evidence at trial as impermissibly based on uncorroborated accomplice testimony. See Cheatham, 104 Nev. at 504-05, 761 at 422. But the State presented extensive evidence at trial that corroborated Trevarthan's testimony. An arresting officer testified about the circumstances of Fergason's and Monroe's arrests. The officers who executed search warrants on Fergason's storage units, apartment, bank accounts, and safety deposit box also testified. These searches resulted in the discovery of evidence that directly or inferentially linked Fergason to the crimes of burglary and/or possession of stolen property. In addition, testimony established that police found stolen items from single burglaries in multiple locations under the direct control of different co-conspirators, including Fergason. From this evidence the jury could have concluded Fergason conspired with all three of his alleged accomplices to commit burglary and/or possess stolen property. Thus, Fergason's accomplice testimony argument fails.

Sufficiency of evidence supporting possession of stolen property

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[2]We have reviewed Fergason's additional claims that the grand jury proceedings were defective, and conclude they are without merit.

NRS 205.275(1) defines possession of stolen property as an offense where "the person, for his . . . own gain or to prevent the owner from again possessing [his] property, buys, receives, possesses or withholds property: (a) [k]nowing that it is stolen property." Fergason maintains this statute does not apply to him since the evidence didn't establish that he had direct control over the stolen property. However, the State presented evidence and argument that as a member of the conspiracy, Fergason was liable for the acts of the other members, including possession of stolen property. This evidence, together with Trevarthan's extensive testimony detailing the operations and activities of the conspiracy and Fergason's central role in it, sufficiently supports his conviction for possession of stolen property.

Sufficiency of evidence of the value of the stolen property

Fergason next challenges the evidence establishing the value of the stolen property. 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 standard equates to "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 and internal quotation marks omitted).

According to Fergason, the State improperly based its proof of value on testimony from the property owners rather than experts. Fergason 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). Elko's holding, while arising out of a case involving the condemnation of real property in a civil action, is consistent with the holdings of the majority of courts in both civil and criminal cases. See e.g., M.C. Dransfield, Admissibility of opinion of nonexpert owner as to value of chattel, 37 A.L.R.2d 967 (1954) ("the right of the owner of a chattel to testify as to its value, although he may not possess sufficient knowledge or skill to testify as an expert on the subject, is generally recognized, the theory of such recognition being that he has such familiarity with his property that he may generally be presumed to know what it is worth"); Berryman v. Moore, 619 F. Supp. 853, 857 (E.D. Va. 1985) (an owner's testimony is competent evidence as to the value of stolen property); State v. Eiland, 633 S.W.2d 302 (Mo. Ct. App. 1982) (same).

None of Nevada's statutes which "make criminal penalties proportionate to the value of the property affected," Romero v. State, 116 Nev. 344, 348, 996 P.2d 894, 897 (2000), nor our cases interpreting them indicate that an expert must establish value or that an owner's testimony is not sufficient to do so. Our cases, rather, focus first on whether the fair market value can be reasonably determined. Bryant v. State, 114 Nev. 626, 630, 959 P.2d 964, 966 (1998). If not, other evidence of value can be considered as long as the prosecution has laid "a foundation for the admission of valuations that are not based on a traditional fair market value analysis." Romero, 116 Nev. at 347 n.3, 996 P.2d at 897 n.3. Nevada's statutes and the case law interpreting them thus provide no basis for us to diverge from the majority rule that under the circumstances present here a dispossessed owner's testimony is competent to establish

the value of her stolen property. Each instance where Fergason challenges an owner's testimony as to value, that testimony was either adequately supported as to fair market value, or an adequate foundation was laid for the admission of an alternative valuation. Thus, we conclude that value was sufficiently established here.

Pre-arrest detention

Last, Fergason challenges his initial arrest as the unlawful result of an unreasonable search or seizure. U.S. Const. amend. IV; Brown v. Texas, 443 U.S. 47, 50 (1979); Mapp v. Ohio, 367 U.S. 643 (1961). Since his arrest was unlawful, Fergason argues, the evidence seized as the result of his arrest should have been suppressed, and without that evidence, his convictions fail. Steagald v. United States, 451 U.S. 204, 215-16 (1981).

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 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.

NRS 171.123(1), (3), and (4).

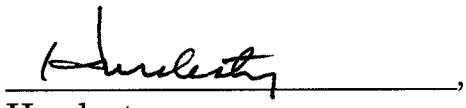
Investigative stops are also governed as a matter of constitutional law by Terry v. Ohio, 392 U.S. 1 (1968), and its progeny.

State v. Lisenbee, 116 Nev. 1124, 1127, 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) (internal citations and quotations omitted) (alteration in original). "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 (citing Terry, 392 U.S. at 21-22) (internal quotation marks omitted).

The police initially stopped Fergason and Monroe on suspicion of burglary of a nearby dentist's office. Fergason 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 knew there had been a suspected burglary at the nearby Anku Crystal Palace and were awaiting the arrival of another investigative unit. Under these circumstances, the officers were justified in detaining Fergason and Monroe until the officers responding to Anku Crystal Palace had 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 Fergason and Monroe to have burglarized Anku Crystal Palace before

burglarizing the dentist's office. Thus, we conclude that Fergason's pre-arrest detention was lawful. For these reasons, we

ORDER the judgment of the district court AFFIRMED.



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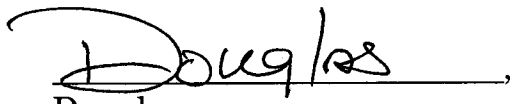

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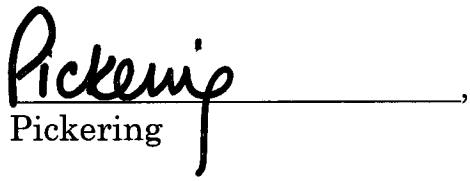

_____, J.
Pickering

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