IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRYL L. JONES A/K/A DARRYLE LEE JONES A/K/A ABBUL LATEEF,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55508

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of five counts of burglary, one count of attempted theft, five counts of obtaining and using the personal identification information of another, four counts of theft, two counts of grand larceny auto, two counts of obtaining property under false pretenses, and one count of possession or sale of a document or personal identifying information to establish false status or identity. Eighth Judicial District Court, Clark County; Doug Smith, Judge.

Motion to suppress

Appellant Darryl L. Jones contends that the district court erred by denying his motion to suppress evidence seized as the result of an illegal search, specifically, his valid driver's license "which the State used as evidence at trial." We review the district court's factual findings regarding suppression issues for clear error and review the legal consequences of those findings de novo. Somee v. State, 124 Nev. 434, 441, 187 P.3d 152, 157-58 (2008). Here, testimony indicated that Jones voluntarily consented to the search. More importantly, the State did not

introduce Jones' valid driver's license into evidence at trial. Therefore, regardless of the district court's decision, Jones cannot demonstrate that any perceived error requires the reversal of his conviction.

Motion for a new trial

Jones contends that the district court erred by denying his motion for a new trial after he discovered that a juror's vote to convict was influenced by overhearing a police officer from Los Angeles allegedly refer to his criminal history. See NRS 176.515. A district court's denial of a motion for a new trial based on alleged juror misconduct is reviewed for an abuse of discretion. Zana v. State, 125 Nev. ___, ___, 216 P.3d 244, 248 (2009). Here, the district court heard arguments from counsel, noted the overwhelming evidence of Jones' guilt, and denied his motion. Further, Jones failed to demonstrate that the juror in question was actually exposed to prejudicial extrinsic evidence. Therefore, we conclude that the district court did not abuse its discretion by denying Jones' motion for a new trial. See Meyer v. State, 119 Nev. 554, 563-64, 80 P.3d 447, 455 (2003) (in order to "prevail on a motion for a new trial based on juror misconduct, the defendant must present admissible evidence sufficient to establish: (1) the occurrence of juror misconduct, and (2) a showing that the misconduct was prejudicial").

Cruel and unusual punishment

Jones contends that the district court abused its discretion by imposing an excessive sentence constituting cruel and unusual punishment because it is disproportionate to the offenses and based on "incomplete and inaccurate" information contained in the presentence investigation report. See U.S. Const. amend. VIII. 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). Jones has neither demonstrated that the district court relied on impalpable or highly suspect evidence nor alleged that the relevant sentencing 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). Further, the sentence was not "so unreasonably disproportionate to the offense as to shock the conscience," Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979); Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion), and it was within the district court's discretion to order the prison terms for all twenty-five counts to run consecutively. See NRS 176.035(1); see generally Warden v. Peters, 83 Nev. 298, 302-03, 429 P.2d 549, 552 (1967). Therefore, we conclude that the district court did not abuse its discretion at sentencing and the sentence imposed does not constitute cruel and unusual punishment.

Lay witness testimony

Jones contends that the district court erred by allowing the identity theft victim to testify about the differences in the forged signatures and his own. "We review a district court's decision to admit or exclude evidence for an abuse of discretion." Mclellan v. State, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). Here, the State argued that "a lay witness is allowed to give their opinion as to facts of which they're aware" and the district court overruled Jones' objection. See NRS 50.265(1). The victim's testimony helped the jury to determine a fact in issue—whether the documents were forged. See NRS 50.265(2). The victim testified as a percipient witness and, pursuant to NRS 52.035, "[n]onexpert opinion as to the genuineness of handwriting is sufficient for authentication or

identification if it is based upon familiarity not acquired for purposes of litigation." Therefore, we conclude that the district court did not abuse its discretion by allowing the victim to testify as a lay witness.

Redundant convictions

First, Jones contends that his convictions on counts 15 (obtaining property under false pretenses), 16 (theft), and 17 (grand larceny auto, GMC Yukon) were based on the same illegal act and thus impermissibly redundant. Jones also contends that his convictions on counts 22 (obtaining property under false pretenses), 23 (theft), and 24 (grand larceny auto, Cadillac Escalade) were based on the same illegal act and impermissibly redundant. The State concedes error and we agree. Therefore, we reverse Jones' conviction on counts 15, 16, 22, and 23 and direct the district court to vacate his sentence on those counts. See Salazar v. State, 119 Nev. 224, 227-28, 70 P.3d 749, 751 (2003) (two or more convictions are impermissibly redundant and must be vacated if the charges involve a single act so that "the material or significant part of each charge is the same") (quotation marks omitted).

Second, Jones contends that counts 4, 8, 12, and 25, and also counts 18 and 26, were based on the same illegal acts and impermissibly redundant. Our review of the record reveals that these counts punish separate criminal acts and, therefore, no error occurred. See Bedard v. State, 118 Nev. 410, 413, 48 P.3d 46, 48 (2002) ("Offenses are . . . not multiplicitous when they occur at different times and different places, because they cannot then be said to arise out of a single wrongful act." (quotation marks omitted)).

Having considered Jones' contentions, we

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Doug Smith, District Judge
Attorney General/Carson City
Bush & Levy, LLC
Clark County District Attorney
Eighth District Court Clerk