

IN THE SUPREME COURT OF THE STATE OF NEVADA


JOHN KINSTON COZY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44226

FILED

JUN 08 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of each of conspiracy to commit larceny (Count I), possession of a debit/credit card without the cardholder's consent (Count II), and grand larceny (Count III). Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court adjudicated appellant John Kinston Cozy a habitual criminal and sentenced him to serve concurrent prison terms of life with parole eligibility after 10 years for Counts II and III. The district court further sentenced Cozy to a concurrent term of 12 months in the Clark County Detention Center for Count I.

Cozy first contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.¹

¹See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

In particular, we note that Cozy was found shortly after the victim's purse was stolen, and he was in possession of the victim's driver's license, credit card and insurance card. Cozy was in a car with the two individuals who were identified by the victim as having been present when the victim's purse disappeared. A surveillance video showed those two individuals distracting the victim and taking her purse. When questioned by police, Cozy lied and told the police that the victim's driver's license belonged to a friend of his from California.

The jury could reasonably infer from the evidence presented that Cozy conspired with his co-defendants to steal the victim's purse, that he knew that the credit card was stolen and he intended to use it. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.²

Cozy next contends that his right to a fair trial was violated because he was compelled to stand trial in identifiable prison clothes.³ We disagree. Although Cozy was wearing his prison-issue blue trousers during trial, the trousers were turned inside out so that the prison stenciling could not be seen. Cozy also wore a plain, unidentifiable shirt. Although Cozy was wearing prison-issue socks and shoes, there were no visible markings that identified them as prison attire. Under the

²See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

³See Estelle v. Williams, 425 U.S. 501 (1976).

circumstances, we conclude that nothing in the record suggests that the clothes that Cozy was wearing were readily identifiable to the jurors as prison attire, and we conclude that appellant was not prejudiced.⁴

Finally, Cozy contends that the prosecutor's comments during closing argument constitute prosecutorial misconduct that warrants reversal. Cozy did not object to the prosecutor's comments, and the failure to object to alleged prosecutorial misconduct precludes appellate consideration absent plain error.⁵ We conclude that Cozy has failed to demonstrate that the prosecutor's comments affected his substantial rights or prejudiced him in any way amounting to reversible plain error.⁶

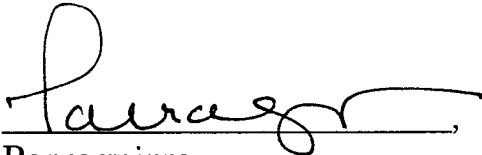
⁴See Grooms v. State, 96 Nev. 142, 144, 605 P.2d 1145, 1146 (1980) (stating that where defendant is forced to appear before jurors in "the garb of guilt," it is this court's duty to reverse a conviction "unless it is clear that the defendant was not prejudiced thereby").


⁵See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."); Parker v. State, 109 Nev. 383, 391, 849 P.2d 1062, 1067 (1993).


⁶We note that there is a clerical error in the judgment of conviction. The judgment incorrectly states that appellant was convicted pursuant to a guilty plea. In fact, appellant was convicted pursuant to a jury verdict. Following this court's issuance of its remittitur, the district court shall correct this error in the judgment of conviction. See NRS 176.565 (providing that clerical error in judgments may be corrected at any time); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (explaining that district court does not regain jurisdiction following an appeal until supreme court issues its remittitur).

Having considered Cozy's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.⁷


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Jackie Glass, District Judge
Keith C. Brower
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁷We have reviewed the document that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon that submission is warranted.