

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESSE RAYMOND VOSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45046

FILED

MAR 28 2007

ORDER AFFIRMING AND REMANDING

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, upon jury verdict, of one count of possession of stolen property, three counts of possession of a forged instrument, and an adjudication of habitual criminality. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant Jesse Voss challenges his conviction and habitual criminal adjudication. The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

We conclude that Voss is not entitled to a new trial. We also conclude that the district court did not err in finding Voss to be a habitual criminal. Accordingly, we affirm the judgment of the district court. However, we remand with instructions that the district court correct the judgment of conviction to reflect an enhanced sentence for each of the four felonies Voss committed.

Accomplice jury instructions

The district court rejected Voss's request for two jury instructions concerning accomplice testimony. Voss contends that the failure to give these instructions was reversible error. We disagree.

The first requested instruction stated that the jury could not find Voss guilty based on accomplice testimony unless the testimony was

corroborated by evidence tending to connect Voss to the commission of the offense. In this case, Hildenstab testified against Voss after Hildenstab pleaded guilty to the same charges arising out of the same incident. In addition, the state suggested throughout Voss's trial (especially during closing arguments) that Hildenstab and Voss were "partners." Thus, the State treated the two men as accomplices, and the court should have given the instruction.

However, the failure to give the corroborative evidence instruction in this case was harmless because there was sufficient corroborating evidence presented at trial. As this court has stated, corroborative evidence need not be sufficient in itself to establish guilt; it will suffice if it merely tends to connect the accused to the offense.¹ Corroborating evidence, however, must independently connect the defendant with the offense and will not suffice if it merely supports the accomplice's testimony.²

Here, the arresting officer testified that Voss claimed responsibility for all of the stolen equipment and illegal instruments at the time of his apprehension. In addition, the testimony of State and defense witnesses connected Voss to Hildenstab and the motel room with the illegal property prior to the crimes. While this evidence may not have been enough to convict Voss without Hildenstab's testimony, it sufficiently connects Voss with the offenses charged to render harmless the district court's error in failing to read the corroborative evidence instruction.

¹Evans v. State, 113 Nev. 885, 891-92, 944 P.2d 253, 257 (1997).

²Id.

The second requested instruction stated that the jury should view accomplice testimony with distrust. Because Hildenstab's testimony was corroborated by separate evidence, this instruction was not required.³

Cross-examination concerning Voss's prior felonies

Voss argues that the district court committed reversible error by allowing the State to inquire into the circumstances surrounding Voss's prior felony convictions during cross-examination. We disagree.

Early in Voss's direct examination, he acknowledged that he had been previously convicted of six felonies—two counts of burglary and one count of possession of credit cards without consent in June 1996, as well as three more counts of burglary in March 1997. In addition, Voss stated he had been sentenced to 24 years in prison. Over defense counsel's objection, the State then cross-examined Voss about the victims of these previous felonies. Voss acknowledged that the victims in the previous burglaries included St. Thomas Aquinas Church and several businesses. The State also elicited testimony that, although Voss had been sentenced to 24 years, he had actually only served about eight years before being paroled.

As to the State's questions regarding the details of Voss's prior crimes, we find that there was error, but that this error was harmless. "It is settled that details of prior felony convictions are admissible where the defendant has sought on direct examination to explain them away or to minimize his guilt."⁴ Here, Voss did not attempt to explain away the

³Buckley v. State, 95 Nev. 602, 604, 600 P.2d 227, 228 (1979); see Howard v. State, 102 Nev. 572, 576-77, 729 P.2d 1341, 1344 (1986).

⁴McCall v. State, 97 Nev. 514, 515, 634 P.2d 1210, 1211 (1981).

previous convictions or minimize his guilt; thus, the line of questioning was inappropriate. However, we conclude that any error in the cross-examination was harmless for two reasons. First, the district court gave a limiting instruction, which stated that previous felony convictions could only be considered for the purpose of determining the witness's credibility. Second, the State never urged the jury to infer that Voss had a pattern of behavior that involved burglarizing commercial establishments; in fact, the State never referenced the previous convictions in its closing argument.

As to the State's cross-examination regarding Voss's testimony that he was sentenced to 24 years in prison, the State merely clarified that Voss did not in fact serve the entire sentence and instead only served eight years before being paroled. This clarification was appropriate as it served to ensure the jury was not misled.

Thus, we conclude that the cross-examination of Voss did not result in reversible error.

Habitual criminality adjudication

Initially, we note that Voss's argument that he was entitled to have a jury determine his habitual criminal status fails for the reasons stated by this court in O'Neill v. State.⁵

Separately, we reject Voss's argument that, because his previous six felonies were resolved in only two sentencing hearings and resulted in only two judgments of conviction, the district court improperly sentenced him to a class A felony under the habitual criminal statute.

⁵123 Nev. ___, ___, ___ P.3d ___, ___ (2007).

NRS 207.010(b) defines a habitual criminal as someone who has “previously been three times convicted” of a felony. This court has previously stated that “[t]he purpose behind habitual criminal statutes is to increase sanctions for the recidivist . . . [and] to discourage repeat offenders. The statute allows an enlarged punishment for one who cannot be rehabilitated, and, who as a recidivist, repeatedly violates the law.”⁶

In Rezin v. State, this court concluded that two or more convictions growing out of the same act, transaction, or occurrence that are prosecuted in the same indictment or information may only count as a single prior conviction for purposes of the habitual criminal statute.⁷ Voss interprets Rezin to mean that multiple felonies resolved in a single sentencing hearing and judgment of conviction must be considered only one conviction for purposes of the habitual offender statute. We disagree.

The relevant inquiry in a habitual criminal determination is not whether the district court held only one sentencing hearing or issued only one judgment of conviction pertaining to multiple felony convictions, but rather whether those felony convictions arise out of the same act, transaction, or occurrence. Here, Voss entered a guilty plea in case CR95-0654, which charged him with possession of a credit card without consent, in March 1995. Five months later, in August 1995, Voss pled guilty to two counts of burglary in case CR95-2017. Following these guilty pleas, the district court held a single sentencing hearing and issued one judgment of

⁶Odoms v. State, 102 Nev. 27, 32-33, 714 P.2d 568, 571-72 (1986) (internal citations omitted).

⁷95 Nev. 461, 462, 596 P.2d 226, 227 (1979).

conviction. However, under Rezin, it is clear that the possession of a credit card without consent conviction arose out of a different act, transaction, or occurrence than the two burglaries. In this case, after Voss pleaded guilty to the credit card charge, sentencing was delayed so that he could participate in the High Step Program. Instead of taking advantage of this opportunity to reform his behavior, Voss committed the two burglaries to which he pleaded guilty in August 1995. We conclude that Voss's possession of a credit card without consent conviction was distinct from his burglary convictions five months later.

We further conclude that the above convictions were separate from the three burglaries in case CR96-2456 to which Voss pled guilty in December 1996. Taken together, Voss's burglary convictions in CR96-2456 and CR95-2017, and his possession of a credit card without consent in CR95-0654, amount to at least three separate felony convictions. Thus, we need not consider whether any of the combined burglary convictions arose out of different acts, transactions, or occurrences. Rather, based on the above, we conclude that the district court properly sentenced Voss as a habitual criminal pursuant to NRS 207.010(b).

Voss's remaining arguments

We have reviewed Voss's remaining arguments and conclude they lack merit. Specifically, we reject Voss's claim that the State was required to plead the theory of joint possession in the indictment. We also conclude that sufficient evidence supported Voss's convictions for possession of a forged instrument.⁸

⁸As to Voss's sufficiency of the evidence argument, although the forged checks in question were made out to a woman, that woman's stolen
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Voss's Sentence

When one is adjudged a habitual criminal, the proper sentence is not one enhanced sentence, but rather one enhanced sentence for each felony committed.⁹ In this case, the judgment states, "the Court having adjudged the Defendant to be an habitual criminal pursuant to NRS 207.010, hereby sentences the Defendant to the term of Life With the Possibility of Parole to commence after of [sic] period of ten (10) years has been served." Thus, the district court imposed only one enhanced sentence despite the fact that Voss committed four crimes. This was improper. Because an illegal sentence may be corrected at any time,¹⁰ we remand the case so the district court may correct the judgment.

Conclusion

The district court is instructed on remand to correct the judgment of conviction to reflect an enhanced sentence for each of Voss's

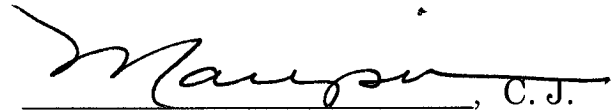
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identification was located in the motel room. The fact that the checks were altered to match the name on the stolen identification card demonstrates more than mere possession. Instead, it demonstrates intent to cash the checks with the false identification. When combined with the recovery of equipment commonly used to alter identification cards, the evidence supports the jury determination that the checks were altered with the intent to eventually cash them. The fact that the checks were made out to a female does not mandate reversal; rather, we conclude that substantial evidence supports the jury verdict.

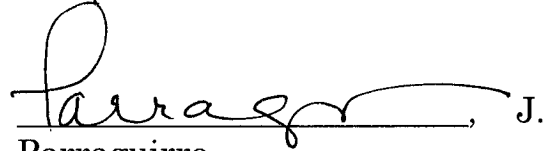
⁹Odoms, 102 Nev. at 33, 714 P.2d at 572 (1986).

¹⁰See NRS 176.555.

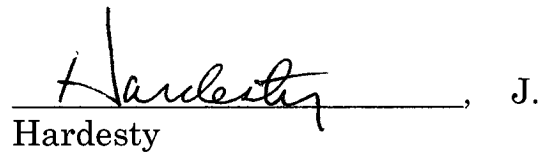
four crimes. In all other respects, we affirm the judgment of the district court.

 _____, C.J.

Maupin

 _____, J.

Parraguirre

 _____, J.

Hardesty

cc: Hon. Brent T. Adams, District Judge
Richard F. Cornell
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk