

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESSE B. GREENBERG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45529

FILED

JUL 06 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of burglary, grand larceny, felony possession of stolen property, and gross misdemeanor possession of stolen burglary tools. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court adjudicated appellant Jesse B. Greenberg as a habitual criminal and sentenced him to serve 4 concurrent prison terms of life with parole eligibility in 10 years.

Greenberg first contends that the district court erred by refusing his request for alternate counsel made on the eve of trial. Specifically, Greenberg contends that he was entitled to alternate counsel because he had irreconcilable differences with his defense attorney, his attorney failed to file pretrial motions, and the district court failed to conduct an in camera hearing and an adequate inquiry. We conclude that Greenberg's contention lacks merit.

The right to counsel of one's choice is not absolute, and a defendant is not entitled to reject his court-appointed counsel and request substitute counsel at public expense without first showing adequate

cause.¹ In reviewing a ruling on a motion for substitute counsel, this court considers the nature of the conflict alleged, the timeliness of the motion, and the adequacy of the district court's inquiry.² Whether friction between a defendant and his attorney justifies appointment of new counsel is entrusted to the sound discretion of the trial court.³

In this case, we conclude the district court did not abuse its discretion in denying the motion for alternate counsel. Although Greenberg expressed his dissatisfaction with his attorney, alleging he had only met with him once, he failed to show a significant breakdown in the attorney-client relationship.⁴ Defense counsel James Buchanan informed the district court that he had reviewed the discovery with Greenberg, discussed potential defenses strategies, and recommended a plea bargain after considering the State's evidence. Also, as noted by the district court, Greenberg's request for substitute counsel was not filed until the eve of trial. Finally, although the district court's inquiry was limited, we conclude that it was sufficient because both Greenberg and his attorney were provided an opportunity to explain the nature of the attorney-client

¹Thomas v. State, 94 Nev. 605, 607, 584 P.2d 674, 676 (1978).

²Young v. State, 120 Nev. 963, 968-69, 102 P.3d 572, 576 (2004).

³Thomas, 94 Nev. at 607-08, 584 P.2d at 676.

⁴Cf. Young, 120 Nev. at 969-71, 102 P.3d at 576 (concluding that there was a significant breakdown in the attorney-client relationship where attorney failed to investigate the case, prepare a defense, and violated court order requiring that he communicate with client).

relationship.⁵ Because there was an insufficient showing of adequate cause, the district court acted within its discretion by denying the motion for alternate counsel.

Greenberg next contends that the district court erred by failing to require the jury to further deliberate after it returned a verdict of guilty on both alternative counts of grand larceny and possession of stolen property. Greenberg notes that the verdict forms and jury instructions failed to state that the charges involving the stolen camcorder were brought in the alternative. Citing to Milanovich v. United States,⁶ Greenberg argues that the district court impermissibly usurped the function of the jurors by speculating on which verdict they actually intended. We disagree.

This court has recognized that if a defendant is convicted of both a theft offense and possession of stolen property for the same act of theft, and "the elements of the greater offense are sufficiently established, the lesser offense of possession . . . should simply be reversed without

⁵See Garcia v. State, 121 Nev. ___, ___, 113 P.3d 836, 843-44 (2005) (noting that an in camera hearing was not required where defense attorney addressed the issues raised in the motion on the record).

⁶365 U.S. 551 (1961) (construing federal statute and concluding that a defendant is entitled to a new trial when he is convicted of both theft and possession of stolen property). We note that Milanovich has been called into doubt by United States v. Gaddis, 424 U.S. 544 (1976). See U.S. v. Brown, 996 F.2d 1049, 1055-56 (10th Cir. 1993) ("Every appellate court decision since Gaddis has similarly concluded that a new trial is not required where the defendant is convicted of both theft and possession and both were properly submitted to the jury.") (citing numerous federal cases).

affecting the conviction for the more serious crime."⁷ In this case, there was overwhelming evidence presented that Greenberg was guilty of the greater offense of grand larceny of the camcorder. In particular, an eyewitness found Greenberg in the casino nightclub, which was not open for business, and a subsequent search of his backpack by a night club employee revealed the night club's camcorders. Although Greenberg attempted to flee, he was apprehended by police; when Greenberg was arrested, he had the camcorders, as well as other stolen property and burglary tools in his possession. Because the elements of the greater offense were sufficiently established, we conclude that the district court did not err in dismissing the stolen property count as impermissibly redundant.

Having considered Greenberg's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Maupin, J.

Maupin

Gibbons, J.

Gibbons

Hardesty, J.

Hardesty

⁷See Point v. State, 102 Nev. 143, 147, 717 P.2d 38, 41 (1986).

cc: Hon. Stewart L. Bell, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk