IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KEITH MCCOY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46940

FILED

JAN 09 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary (count I), forgery (count II), and attempted theft (count III). Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant Brian Keith McCoy to serve a prison term of 24 to 72 months for count I and two concurrent prison terms of 18 to 48 months for counts II and III.

McCoy contends that his double jeopardy rights were violated because he received multiple criminal convictions for the same illegal act. Specifically, McCoy alleges that the forgery and attempted theft convictions punish the identical conduct--"put[ing] off an instrument which he knew to be forged." While acknowledging that the charged attempted theft offense required a "material misrepresentation," McCoy alleges the "the only 'material misrepresentation' made by McCoy was the uttering of the false instrument to the cashier." We disagree.

"[I]f the elements of one offense are entirely included within the elements of a second offense, the first offense is a lesser included offense and the Double Jeopardy Clause prohibits a conviction for both

offenses."[1] Additionally, even when separate offenses do not violate double jeopardy, this court "will reverse redundant convictions that do not comport with legislative intent."[2] "'The issue . . . is whether the gravamen of the charged offenses is the same such that it can be said that the legislature did not intend multiple convictions.'"[3]

In this case, the convictions do not violate double jeopardy because the elements of forgery are not entirely included within the elements of attempted theft. Most notably, forgery includes the element of a false instrument, while attempted theft does not.[4] Further, we disagree that the charges are redundant. The gravamen of the charged forgery offense is the act involving the forged instrument, while the gravamen of the charged attempted theft is the attempt to obtain property through a material misrepresentation.[5] The forgery offense in this case was complete when McCoy possessed the counterfeit check with the intent to defraud. The attempted theft offense was not complete until McCoy falsely represented to the casino cashier that he was the authorized payee of a check. Because the forgery and attempted theft offenses do not

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[1]Barton v. State, 117 Nev. 686, 692, 694, 30 P.3d 1103, 1107 (2001).

[2]Salazar v. State, 119 Nev. 224, 227, 70 P.3d 749, 751 (2003) (internal quotations omitted).

[3]Id. (quoting State of Nevada v. Dist. Ct., 116 Nev. 127, 136, 994 P.2d 692, 698 (2000)).

[4]Compare NRS 205.110 with NRS 205.0832(1)(c).

[5]NRS 205.0832(1)(c).

contain the same elements or punish the same illegal act, they do not violate double jeopardy and are not redundant.

McCoy also alleges that there was insufficient evidence to sustain his conviction for attempted theft. Specifically, McCoy alleges that, because the check was a forgery, "[t]here is no evidence in this case such an actual real check ever existed. There is no evidence in this case that an authorized payee for such check ever existed." McCoy appears to argue that in order to prove the attempted theft charge, as alleged in the information, the State had to prove that the check McCoy attempted to cash was authentic. We disagree and conclude that there was sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.[6]

In particular, we note that McCoy took a counterfeit check into a Las Vegas casino for $844.09 drawn from a commercial account, misrepresented that it was authentic, and attempted to cash it. A casino cashier employee noticed that the check was substantially different than prior checks drawn on the same commercial account. Although McCoy attempted to flee, casino security detained him and contacted police. The arresting police officer testified at trial that McCoy admitted his involvement in a check cashing scheme, whereby an individual gave him a counterfeit check and promised to pay him $500.00 for cashing the check at the casino. The arresting officer also testified that McCoy admitted he went to the casino for the sole purpose of cashing the counterfeit check.

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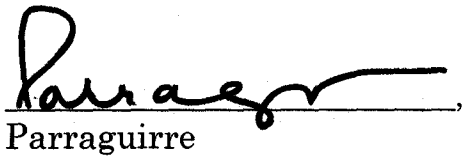
[6]See Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

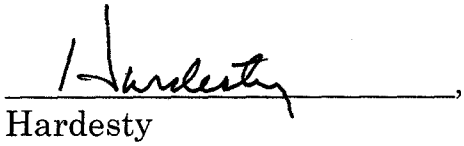
The jury could reasonably infer from the evidence presented that McCoy committed the crime of attempted theft. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.[7]

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

ORDER the judgment of conviction AFFIRMED.



_____, J.
Parraguirre



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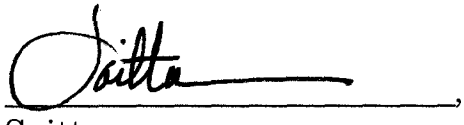

_____, J.
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cc: Hon. Stewart L. Bell, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[7]See 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).