

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE ALFREDO CARCANO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46980

FILED

AUG 14 2006

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary, one count of possession of stolen property, and one count of grand larceny. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

The district court sentenced appellant Jose Carcano to a prison term of 48-120 months for the burglary count, 48-120 months for the possession of stolen property count, and 24-60 months for the grand larceny count. All of the sentences were ordered to run concurrently with each other.

Carcano argues multiple errors on appeal. First, he 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, except for the grand larceny conviction.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 Carcano is only contesting the value of the items stolen. At trial, one victim testified that her vehicle was listed in the Kelly Blue Book at a value of \$9,000. Carcano claims that the use of the Blue Book constituted inadmissible hearsay. We disagree.² The jury could reasonably infer from the evidence presented that the value of the stolen car was at least \$2,500.³

Grand larceny requires the stolen property be valued at or over \$250.⁴ Another victim, testified the value of the stolen television and subwoofer was \$800.⁵ The test for determining the value of property related to grand larceny is the fair market value of the property at the time and place stolen.⁶ If fair market value cannot be ascertained, other evidence of market value may be admitted.⁷

Here, the State presented no evidence other than the victim's opinion to establish the fair market value of the television set and subwoofer. Additionally, the State did not justify the use of the victim's opinion of the television or subwoofer's value instead of presenting

²"The Kelley Blue Book is a publication that is generally used in the automobile industry as a price list and generally relied on by persons in the trade to determine the value of an automobile." Dugan v. Gotsopoulos, 117 Nev. 285, 288, 22 P.3d 205, 207 (2001); see also NRS 51.245.

³NRS 205.273(4).

⁴NRS 205.220(1)(a).

⁵The sole testimony related to the value of a stolen television and subwoofer is as follows: "State: [T]he television monitor, the subwoofer, approximate value of that? Victim: Is about \$800."

⁶Bryant v. State, 114 Nev. 626, 630, 959 P.2d 964, 966 (1998).

⁷Id. at 629, 959 P.2d at 966.

evidence of the fair market value of the stolen items. "Because the State presented no evidence establishing the fair market value of the stolen [items] and failed to justify the use of an alternative method of valuation, the State failed to prove [grand larceny] beyond a reasonable doubt."⁸

Next, Carcano contends that the indictment failed to provide adequate notice of the charges against him. Specifically, Carcano alleges that the indictment lacked specificity by not mentioning how many computer monitors were taken and what specific computer equipment was stolen from what victim. When a challenge to the sufficiency of the charging document is raised after a verdict, the verdict cures any technical defects unless the defendant has been prejudiced by the defective charging document.⁹ The information indicated what the alleged crimes were, where they occurred, who the victims were and what items were taken. As a result, Carcano's claim fails.

Next, Carcano contends the district court erred by admitting hearsay evidence. Carcano failed to object and therefore we examine the issue for plain error.¹⁰ Carcano alleges that the district court admitted hearsay testimony of a 911 caller through the testimony of law enforcement. Carcano fails to identify where in the record this occurred. "The burden to make a proper appellate record rests on appellant."¹¹

⁸Id. at 630, 959 P.2d at 966.

⁹Laney v. State, 86 Nev. 173, 178, 466 P.2d 666, 669-70 (1970).

¹⁰"Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001).

¹¹See Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980).

Furthermore, Carcano elicited the statement from law enforcement regarding the 911 caller on cross-examination.¹² As a result, no plain error can be ascertained.

Finally, Carcano contends the district court made numerous errors regarding jury instructions. Carcano claims the district court erred by failing to give a "mere presence" jury instruction. Carcano failed to object to or request any of the instructions, which generally precludes appellate review except for plain error.¹³ Carcano further alleges the district court erred by failing to "give lesser related instructions which contained the proper duty to acquit" language. Additionally, Carcano contends the district court erred in its jury instruction regarding fair market value. Carcano's fails to show how any error was "patently prejudicial"¹⁴ and therefore none of these claims rise to the level of plain error.¹⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the

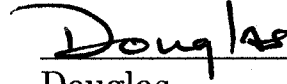
¹²Generally, a party who elicits an alleged error is estopped from challenging that error on appeal. Jones v. State, 95 Nev. 613, 618, 600 P.2d 247, 250 (1979).


¹³Tavares v. State, 117 Nev. 725, 729, 30 P.3d 1128, 1131-32 (2001).

¹⁴McKenna v. State, 114 Nev. 1044, 1052, 968 P.2d 739, 745 (1998).

¹⁵The issue of the jury instruction regarding fair market value is moot as we are reversing the conviction for grand larceny.

district court with instructions to vacate the third, concurrent term of appellant's sentence for grand larceny.¹⁶


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

cc: Hon. Joseph T. Bonaventure, 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

¹⁶On June 29, 2006, appellant's counsel filed a motion to clarify the statement of facts. The motion is unopposed. Cause appearing, the motion is granted.