IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED OLIVER HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47705

FILED

JUL 17 2007

CLERK OF SUPREME COURT
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ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to jury verdict, of two counts of burglary, two counts of grand larceny, two counts of possession of stolen property, and one count of conspiracy to commit larceny. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Alfred Oliver Howard to serve consecutive prison terms totaling 144 to 360 months.[1]

Howard contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Specifically, Howard contends that there was no evidence presented that demonstrated he had knowledge that the storage unit in question contained stolen property. 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.[2]

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[1]The district court subsequently vacated the possession of stolen property convictions.

[2]See 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).

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In particular, we note that Richard Frisch testified that Howard had convinced him to assist with stealing items from other storage units, transfer the items to a storage shed they had rented, and later sell the items. Sylvia Love testified that she found Frisch inside of her storage unit, and that Howard quickly closed a storage unit, ran to his truck, and drove off. Love's cousin, Zentwell Dyson, pulled her air conditioner off of the back of the truck as Howard drove away. Other stolen items, including those belonging to Michelle Aguda, were discovered in the storage unit that Howard had closed. Love testified that items stolen from her exceeded $250.00 in value.

The jury could reasonably infer from the evidence presented that Howard conspired with Frisch to steal property, and did in fact, break into storage units and steal property exceeding $250.00 in value.[3] 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.[4]

Howard 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. Howard notes that the verdict forms and jury instructions failed to state that the charges involving the stolen items were brought in the

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[3]See NRS 199.480(3); NRS 205.060(1); NRS 205.220(1).

[4]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).

alternative. Citing to Stowe v. State,[5] Howard 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 affecting the conviction for the more serious crime."[6] Here, as previously discussed, the State presented sufficient evidence that Howard was guilty of the greater offense of grand larceny of the stolen items. Because the elements of the greater offenses were sufficiently established, we conclude that the district court did not err in dismissing the stolen property counts as impermissibly redundant.

Finally, Howard contends that the district court erred in denying his Batson[7] challenge because the State failed to provide plausible race-neutral explanations for the peremptory challenges of two Hispanic jurors.

Pursuant to Batson and its progeny, a three step process is used for evaluating race-based objections to peremptory challenges: (1) the opponent of the peremptory challenge must make a prima facie showing of racial discrimination; (2) upon a prima facie showing, the

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[5]109 Nev. 743, 857 P.2d 15 (1993).

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

[7]Batson v. Kentucky, 476 U.S. 79 (1986).

proponent of the peremptory challenge has the burden of providing a race-neutral explanation; and (3) if a race-neutral explanation is tendered, the trial court must decide whether the proffered explanation is merely a pretext for purposeful racial discrimination.[8] The trial court's decision on the question of discriminatory intent is a finding of fact to be accorded great deference on appeal.[9]

Our review of the record on appeal reveals that the district court did not abuse its discretion in overruling Howard's objection to the peremptory challenges of the two Hispanic venire persons. The prosecutor explained that: (1) the first venire person did not have adequate ties to the community, was difficult to understand, and was evasive; and (2) the second venire person had a past criminal conviction in which he felt he was treated unfairly, had close family members who had been tried for serious criminal offenses, and had previously not appeared as a witness in a criminal proceeding even after he was subpoenaed. The district court found that the prosecutor's explanations for the peremptory challenges were race-neutral, and Howard failed to present any evidence of racial discrimination. Under these circumstances, we conclude that the district court did not err by overruling Howard's objection.

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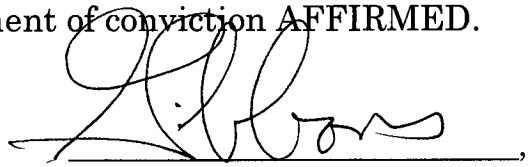
[8]See id. at 96-98; see also Purkett v. Elem, 514 U.S. 765, 767 (1995); Doyle v. State, 112 Nev. 879, 887, 921 P.2d 901, 907 (1996), overruled on other grounds by Kaczmarek v. State, 120 Nev. 314, 91 P.3d 16 (2004).

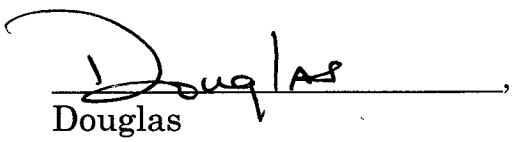
[9]See Hernandez v. New York, 500 U.S. 352, 364-65 (1991) (plurality opinion); Thomas v. State, 114 Nev. 1127, 1137, 967 P.2d 1111, 1118 (1998).

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

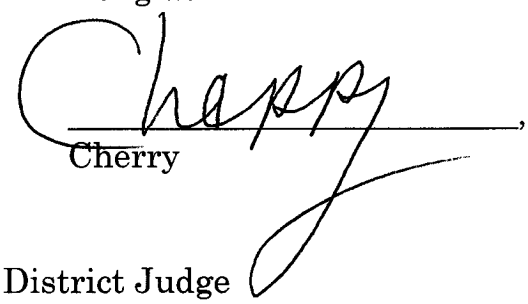
ORDER the judgment of conviction AFFIRMED.



_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Cherry

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk