IN THE SUPREME COURT OF THE STATE OF NEVADA

ARNOLD ESCOBEDO GUERRERO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50215

FILED

MAY 08 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of grand larceny. Eighth Judicial District Court, Clark County; J. Charles Thompson, Judge. The district court sentenced appellant Arnold Guerrero to a prison term of 12 to 48 months, suspended the sentence, and placed Guerrero on probation for an indeterminate period not to exceed 3 years.

First, Guerrero contends that the district court erred by allowing, over trial counsel's objection, the State to offer evidence of the value of an anti-theft tracking device secretly placed inside building materials to prove that the value of goods stolen exceeded the required amount of $250 for grand larceny. Specifically, Guerrero contends that he did not intend to take the tracking device and the jury should not have been permitted to consider the value of the tracking device when determining whether the value of the goods stolen exceeded $250.

Pursuant to NRS 205.220(1)(a), a person commits grand larceny if that person "[i]ntentionally steals, takes and carries away . . . [p]ersonal goods or property, with a value of $250 or more, owned by another person."

08-11453

To the extent that Guerrero argues that the State was required to prove that he had knowledge of the value of the stolen materials, that is not a required element of grand larceny.[1] Further, even assuming that it was error to admit evidence of the value of the tracking device, the error was harmless. Sufficient evidence was presented to establish that Guerrero took goods with a value of over $250, even if the value of the tracking device was not included in the equation.[2]

Second, Guerrero contends that the tracking device was not included in the amended information and the State did not disclose any documents regarding the tracking device.[3] Thus, Guerrero argues that because of the State's omissions, the district court erred by admitting evidence of the tracking device. A conviction will not be set aside unless it is demonstrated that the information is so insufficient that it results in a miscarriage of justice or actual prejudice to a substantial right.[4] As

---

[1]See NRS 205.220(1)(a).

[2]The victim's security and loss prevention manager testified to the retail value of the stolen materials: 24 bags of cement with a value of $15.40 each, 6 bags of silica sand with a retail value of $10.24 each, 2 A-frames valued at $26 each, and 3 vent screens valued at $23.50 each. See Cleveland v. State, 85 Nev. 635, 461 P.2d 408 (1969) (stating that opinion of person who deals in such property provides sufficient evidence to a jury to determine fair market value of the property). We note that even if the jury considered the value and number of goods as presented by defense counsel, the amount still exceeded $250.

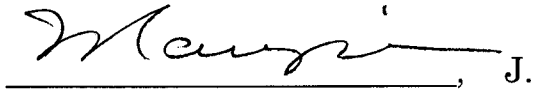
[3]Guerrero does not claim that the State's failure to disclose the information regarding the tracking device resulted in a Brady violation. See Brady v. Maryland, 373 U.S. 83 (1963).

[4]See NRS 173.075; Laney v. State, 86 Nev. 173, 466 P.2d 666 (1970).

discussed above, the admission of the value of the tracking device did not result in actual prejudice to Guerrero's case, and therefore, any error resulting from the admission of evidence regarding the value of the tracking device was harmless.

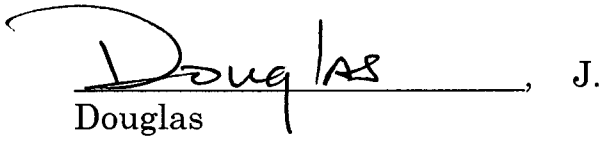
Having considered Guerrero's contentions and determined that they are without merit, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Maupin

_____, J.
Parraguirre



_____, J.
Douglas

cc: Chief Judge, Eighth Judicial District
Hon. J. Charles Thompson, Senior Judge
Joseph A. Scalia, II, Ltd.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk