IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTINEZ SMITH AYTCH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51386

FILED

MAY 05 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of grand larceny and one count of burglary. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court adjudicated appellant Martinez Aytch a habitual criminal and sentenced him to serve three concurrent terms of life in the Nevada State Prison with parole eligibility after ten years.

Aytch raises three claims on appeal: (1) there was insufficient evidence to support his convictions, (2) his confrontation rights were violated, and (3) cumulative error warrants reversal of his convictions.

First, Aytch challenges the sufficiency of the evidence supporting his grand larceny convictions on two grounds—the State failed to prove he carried away any property and that the stolen property had a value of $250 or more. Further, Aytch argues that because the burglary count was premised on the theory that he entered the victim's apartment with the intent to commit larceny and no larceny was proven, his conviction for burglary should likewise be reversed.

The standard of review for sufficiency of the evidence is "'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)). "This court will not disturb a jury verdict where there is substantial evidence to support it, and circumstantial evidence alone may support a conviction." Hernandez v. State, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002).

Viewed in a light most favorable to the State, the evidence at trial showed that, on December 24, 2006, Tara Pelaccio was at a bar near her house. She hung her jacket on the back of her chair and placed her keys and cell phone in the left pocket of her jacket. Shortly thereafter, Aytch and a female companion, Charma McCollum, approached Pelaccio. Aytch stood on her left and McCollum on the right. McCollum introduced herself as "Jello" and when Pelaccio turned to speak to her, Aytch abruptly left the bar. Then McCollum left.

When Pelaccio was about to leave the bar, she noticed that her keys and cell phone were missing. The bartender called the police. Another bar patron went outside and saw Aytch and McCollum get into a white van with the partial license plate number "832." A short time later, the police stopped a white van with license plate number 832-TVD. Aytch and McCollum were inside, and Pelaccio's keys and cell phone were found in the center console of the van. A search of the van also uncovered luggage, a telescope, clothing, and other items belonging to Pelaccio.

Police investigators accompanied Pelaccio to her apartment where they found the door ajar. Although there was no sign of forced entry, the house had been "trashed."

Based on this evidence, we conclude that a rational trier of fact could have found beyond a reasonable doubt that Aytch carried away Pelaccio's phone and keys, committed burglary by entering Pelaccio's apartment with the intent to take her property, and in fact removed Pelaccio's possessions from her apartment.

With respect to Aytch's contentions that the State failed to prove that the value of the stolen items was over $250, this court has held that the appropriate measure of "the value of property taken is the fair market value of the property at the time and place it was stolen if there be such a standard market." Cleveland v. State, 85 Nev. 635, 637, 461 P.2d 408, 409 (1969). However, "where such market value cannot be reasonably determined other evidence of value may be received such as replacement cost or purchase price." Id.

With respect to the first grand larceny count, there does not appear to be a standard market for used cellular phones, and thus the purchase price was an appropriate measure.[1] Pelaccio testified at trial that she purchased her cell phone from her employer, at a discount, for $250. Thus, we conclude that there was sufficient evidence to support the

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[1]Aytch asserts that "[c]ommon sense dictates that a used cell phone . . . [has] an ascertainable value on the open market." However, he offers no evidence in support of this assertion.

jury's conclusion that the stolen cell phone and keys were worth at least $250.

With respect to the second grand larceny count, a number of items were taken from Pelaccio's apartment, including a telescope, luggage, a duffel bag, a wallet, and several suits and evening gowns. Pelaccio testified that she purchased the telescope for $75 and the luggage for $35. She stated that the evening gowns and suits cost between $250 and $300 each, totaling more than $1,000. Thus, we conclude that even if a standard market existed for those items, it is not reasonably likely that the fair market value was less than $250. Cf. Bryant v. State, 114 Nev. 626, 630, 959 P.2d 964, 966 (1998) (concluding that because purchase price of stolen items was only $335, it was conceivable that fair market value of items was below $250 felony threshold).

Viewed in a light most favorable to the prosecution, we conclude that the evidence presented at trial was sufficient for a rational jury to conclude beyond a reasonable doubt that Aytch was guilty of two counts of grand larceny and burglary.

Second, Aytch claims that he was prejudiced by testimony elicited in violation of the United States Supreme Court decision in Bruton v. United States, 391 U.S. 123 (1968). In Bruton, the Supreme Court determined that the Confrontation Clause of the Sixth Amendment was violated when a non-testifying defendant's confession, implicating his codefendant, was admitted at their joint trial. Id. at 126. Specifically, Aytch complains of two instances that he argues violated Bruton: (1) McCollum's testimony that at some point she realized that the items in the van were probably stolen and (2) a police officer's testimony that

McCollum told him that she realized some items had been stolen when she saw Aytch leave the bar.

Aytch's claim that McCollum's in-court testimony violated Bruton is patently without merit. By very definition, the in-court testimony of a codefendant who is subject to cross-examination does not violate the Confrontation Clause.

Likewise, because McCollum later testified as to her prior statements and was "subject to full and effective cross-examination," the police officer's testimony regarding McCollum's out-of-court statements did not implicate the Confrontation Clause. Nelson v. O'Neil, 402 U.S. 622, 626 (1971) (quoting California v. Green, 399 U.S. 149, 158 (1970)). "[W]here the declarant . . . is present to testify and submit to cross-examination, our cases, if anything, support the conclusion that the admission of his out-of-court statements does not create a confrontation problem." Green, 399 U.S. at 162. See also Nelson, 402 U.S. at 626-27; Mendez v. United States, 429 F.2d 124, 128 (9th Cir. 1970) (quoting Santoro v. United States, 402 F.2d 920, 922 (9th Cir. 1968)). Accordingly, once McCollum testified and was subject to cross-examination, any Bruton error was cured.[2] See Nelson, 402 U.S. at 626-27; Green, 399 U.S. at 161-62. Therefore, we conclude that Aytch's Bruton claims are without merit.

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[2]Moreover, while McCollum's out-of-court statement to the police officer was inadmissible hearsay as to Aytch, see NRS 51.035; Nelson, 402 U.S. at 626, the district court properly sustained Aytch's objection to that testimony and instructed the jury to disregard the statement. "[T]his court generally presumes that juries follow district court orders and

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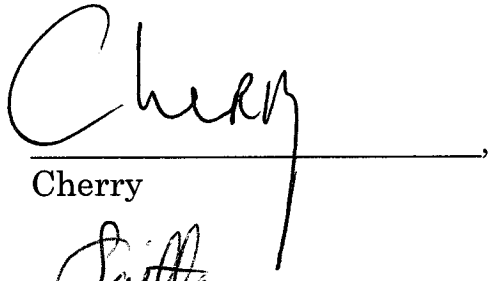
Finally, Aytch claims that cumulative error warrants reversal of his convictions. We conclude that any error in this case, considered either individually or cumulatively, does not warrant reversal of Aytch's convictions.

Having considered Aytch's claims and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Cherry

_____, J.
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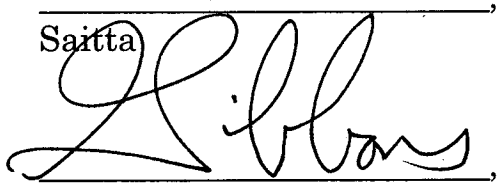

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Gibbons

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instructions." Summers v. State, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006). Therefore, we conclude that even if McCollum had declined to testify, Aytch fails to demonstrate prejudice.

cc: Eighth Judicial District Court Dept. 7, District Judge
Karen A. Connolly, Ltd.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk