

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMUEL JOSEPH RUDOLPHO, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52400

FILED

MAR 01 2010

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT

BY *J. J. [Signature]*
DEPUTY CLERK

ORDER AFFIRMING IN PART AND REVERSING IN PART

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

On appeal, appellant Samuel Rudolpho argues that it was error to convict him of both grand larceny and possession of stolen property because the charges arose from the same conduct. While we agree that Rudolpho should not have been convicted of both crimes, and therefore reverse his conviction of possession of stolen property, we nonetheless affirm his conviction of grand larceny.

In Point v. State, we explained that a person cannot be convicted of both a theft crime and of possessing or receiving the property stolen in the commission of that theft. 102 Nev. 143, 147, 717 P.2d 38, 41 (1986), disapproved of on separate grounds by Stowe v. State, 109 Nev. 743, 746-47, 857 P.2d 15, 17 (1993). If the district court allows a defendant to be convicted of both crimes based on the same act, this court will reverse both convictions if it “cannot ascertain what verdict would have been returned by a properly instructed jury.” Id. However, “[u]nder circumstances where the elements of the greater offense are sufficiently established, the lesser offense of possession or receiving should simply be reversed without affecting the conviction for the more serious crime.” Id.

Here, Rudolpho was erroneously convicted of both grand larceny and possession of stolen property for stealing from an elderly man in the complex where he worked as a maintenance man. The record indicates that witnesses saw Rudolpho carry away boxes full of stolen goods from the victim's apartment, and Rudolpho later sold those goods to another tenant for well over \$250. Because this evidence sufficiently establishes that Rudolpho committed the offense of grand larceny, we affirm his conviction of that crime, and reverse only his conviction of possession of stolen property.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART and REVERSED IN PART.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

¹Rudolpho also contends that: (1) the district court erred by sentencing him as a habitual criminal, (2) the State's charging document failed to put him on notice of the charges, (3) the district court erred by refusing to remove a prospective juror for cause, (4) the district court erred by providing several misleading jury instructions, (5) prosecutorial misconduct requires reversal, (6) judicial misconduct requires reversal, (7) his convictions are not supported by sufficient evidence, (8) the restitution award was not supported by sufficient evidence, and (9) cumulative error requires reversal. Having thoroughly reviewed Rudolpho's contentions, we conclude that they are without merit.

cc: Hon. Jackie Glass, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk