

IN THE SUPREME COURT OF THE STATE OF NEVADA

GRIFF ELLIOTT TURNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52942

FILED

MAR 11 2010

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 one count of possession of a stolen vehicle and three counts of possession of a document or personal identifying information to establish a false status or identity. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Sufficiency of the evidence

Appellant Griff Elliott Turner first claims that insufficient evidence was adduced at trial to support his convictions. This claim lacks merit because the evidence, when viewed in the light most favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Mitchell v. State, 124 Nev. ___, ___, 192 P.3d 721, 727 (2008). The State presented evidence that Turner possessed three Nevada driver's licenses bearing his photograph but containing other people's names and addresses. The State also presented evidence that Turner was observed driving a stolen Porsche Cayenne with the license plates of a 2006 Nissan and parking it away from his home, and that the Porsche's manual, and its registration and insurance documents in the owner's

name, were found in Turner's bedroom. Based on this evidence, we conclude that a rational juror could infer that Turner possessed documents or personal identifying information for the purpose of establishing a false status, license or identity for himself, see NRS 205.465(1), and that he had in his possession a vehicle he knew or had reason to believe had been stolen, see NRS 205.273(1)(b). 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. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Comment on post-arrest silence

Turner next claims that the prosecutor committed misconduct by eliciting testimony that Turner remained silent in response to questions posed by a police officer when Turner was in custody before being formally arrested. As Turner failed to object to the evidence on this ground below, we review for plain error. See NRS 178.602; Valdez v. State, 124 Nev. ___, ___, 196 P.3d 465, 477 (2008). We conclude that Turner was subject to a de facto arrest when he was placed in handcuffs and taken into custody before he was formally arrested and that the reference to Turner's silence was improper. See NRS 171.104 (defining "arrest"); State v. McKellips, 118 Nev. 465, 471, 49 P.3d 655, 659 (2002) (the question of whether a defendant is subject to a temporary detention or a de facto arrest is reviewed de novo); Morris v. State, 112 Nev. 260, 263-64, 913 P.2d 1264, 1267 (1996) (the prosecution is forbidden from commenting at trial upon a defendant's post-arrest, pre-Miranda silence). Nevertheless, we conclude that Turner has not demonstrated plain error warranting relief because the single, passing reference to Turner's post-

arrest silence did not affect his substantial rights. See Gaxiola v. State, 121 Nev. 638, 654, 119 P.3d 1225, 1236 (2005); see also Morris, 112 Nev. at 264, 913 P.2d at 1267 (a mere passing reference to a defendant's post-arrest silence is harmless).

Evidence of uncharged thefts

Turner next claims that the prosecutor improperly elicited testimony suggesting that he committed uncharged acts of theft of personal identifying information and the Porsche because the testimony was not admissible under NRS 48.035(3). As Turner failed to object to this testimony at trial, we review for plain error. See NRS 178.602; Diomampo v. State, 124 Nev. ___, ___, 185 P.3d 1031, 1041 (2008). We are not persuaded that the challenged testimony was clearly inadmissible under NRS 48.035(3) or that it was not admissible under other grounds and therefore conclude that Turner has failed to demonstrate plain error. See Richmond v. State, 118 Nev. 924, 935, 59 P.3d 1249, 1256 (2002) ("To be plain, an error must be so unmistakable that it is apparent from a casual inspection of the record." (internal quotation marks omitted)). Further, even assuming the testimony was not admissible, we conclude that it did not affect Turner's substantial rights and does not warrant relief. See Diomampo, 124 Nev. at ___, 185 P.3d at 1041 (the defendant has the burden to show actual prejudice under plain error review).

Joinder of charges

Turner also claims that the district court erred by failing to sua sponte sever the possession of a stolen vehicle charge from the identification-related charges because the offenses were not connected together, part of a common scheme or plan, or based on the same act or transaction. See NRS 173.115. We review this claim for plain error

because Turner did not move to sever the counts. See NRS 178.602. For the reasons identified by Turner, we conclude that the joinder of charges was improper. Nevertheless, we conclude that the error did not affect Turner's substantial rights because the question of guilt was not close and each of the four convictions was supported by substantial evidence. See Valdez, 124 Nev. at ___, 196 P.3d at 477 (the defendant is not entitled to relief absent a demonstration that plain error caused actual prejudice).

Having considered Turner's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

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