

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY RASHAD FOSTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53921

FILED

MAY 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingosou*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of 18 counts of possessing stolen property and 1 count of conspiracy to commit burglary. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

Appellant Larry Rashad Foster argues that his convictions are not supported by substantial evidence because he mistakenly believed that he was helping a friend move and he was unaware that stolen guns were in the hotel room in which he was staying. A police officer, however, testified that, following his arrest, Foster admitted to entering the victim's house wearing gloves and taking property, including firearms. According to the officer, Foster stated during his interview that he and his two codefendants hurried to remove the guns and other items from the house because they were informed that the victim's son would be returning to the home shortly. A neighbor who lived across the street corroborated that she saw three men rush out of the victim's house. Evidence also was presented that Foster had 17 firearms, 2 televisions, and a Nintendo Wii game console in his hotel room when he was arrested, all of which had been reported stolen. Based on this evidence and testimony, we conclude

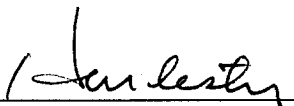
that a rational trier of fact could have found Foster guilty of 18 counts of possessing stolen property and conspiracy to commit burglary. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); see also Thomas v. State, 114 Nev. 1127, 1143, 967 P.2d 1111, 1122 (1998) (defining conspiracy); NRS 205.060(1) (defining burglary); NRS 205.275(1) (defining offenses involving stolen property). 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); Walker v. State, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975).

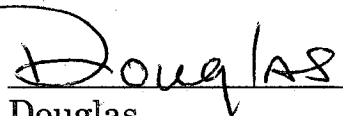
Foster next contends that the sentences imposed constitute cruel and unusual punishment and are disproportionate to the crime because his prior convictions were nonviolent and his present crime consisted of one simple act. See U.S. Const. amend. XIII; U.S. Const. amend XIV; Nev. Const. art. 1, § 6. We review the district court's sentencing determination for an abuse of discretion. Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). Here, Foster concedes that the relevant sentencing statute is constitutional, see Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996), and the sentences imposed were based on Foster's actual possession of several stolen firearms and his convicted felon status. The district court sentenced Foster to serve multiple concurrent and consecutive terms totaling 8 to 40 years. The sentences are within the parameters of the relevant statute, see NRS 205.275(2)(c), and in light of Foster's prior theft-related felony conviction, are not "so unreasonably disproportionate to the offense as to shock the conscience," see Blume, 112 Nev. at 475, 915 P.2d at 284 (quoting Culverson v. State,

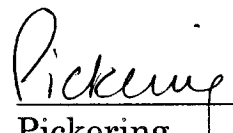
95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); NRS 176.035(1) (permitting the district court to impose consecutive sentences when a person is convicted of two or more offenses). Therefore, we conclude that the sentences imposed do not constitute cruel and unusual punishment and the district court acted within its discretion in sentencing Foster.

Finally, Foster argues that 14 of his convictions for possessing stolen firearms should merge with his remaining count of possessing a stolen firearm because he engaged in one single act. This claim lacks merit because 17 firearms were found in Foster's possession and multiple possession charges may arise from a single act. See NRS 205.275(2)(c) (providing that possession of stolen property valued over \$2,500 or possession of a stolen firearm is a category B felony); see also Wilson v. State, 121 Nev. 345, 354-59, 114 P.3d 285, 292-95 (2005) (reversing a defendant's convictions for four counts of producing child pornography as redundant because the four photographs were produced during one single act, but upholding his convictions for four counts of possessing child pornography).

Having concluded that that Foster's contentions lack merit, we ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. James M. Bixler, District Judge
Robert E. Glennen III
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk