IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL DEAN THOMPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54268

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 possession of stolen property. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

Insufficient Evidence

Appellant Daniel Dean Thompson contends that there was insufficient evidence adduced at trial to support his conviction for possession of stolen property because the State failed to establish that (1) he knew or should have known that the property in question, copper wires, were stolen, and (2) the value of the stolen wires was $2,500 or more. These claims lack 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. McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); Jackson v. Virginia, 443 U.S. 307, 319 (1979). Given that the stolen wires were found in appellant's car, along with tools used to cut wire, we conclude that a rational jury could reasonably infer that Thompson knew or should have known that the wire was stolen. See NRS 205.275(1)(a) and (b) (providing "[a] person commits an offense involving stolen property if the person, for

his own gain . . ., possesses . . . property: (a) [k]nowing that it is stolen property; or (b) [u]nder such circumstances as should have caused a reasonable person to know that is it stolen property"); Gray v. State, 100 Nev. 556, 558, 688 P.2d 313, 314 (1984) (explaining where the circumstances are such as to put a reasonable person on notice as to the stolen nature of the goods he possesses, that person may be found guilty of possession of stolen property); see also Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003) (noting that circumstantial evidence is enough to support a conviction). We also conclude that a rational juror could reasonably infer from the victim and electrical contractor's testimony regarding the costs associated with replacing the stolen wire, that the value of the stolen wire was more than $2,500. See NRS 205.275(2)(c) (having possession of stolen property valued at $2,500 or more is a category B felony); Bain v. Sheriff, 88 Nev. 699, 701, 504 P.2d 695, 696 (1972) (holding, in relevant part, that when fair market value of the property cannot be reasonably determined, the replacement cost may evidence value). 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).

Prior bad acts evidence and limiting instruction

Thompson asserts that his conviction should be reversed because the district court admitted prior bad act evidence regarding a separate incident involving Thompson's possession of stolen property—copper wires—in Baker, Nevada. Thompson asserts that this evidence was highly prejudicial, and the district court admitted this evidence

without holding a hearing to determine its admissibility. Because Thompson did not object to the evidence, we review for plain error. McLellan v. State, 124 Nev. 263, 269, 182 P.3d 106, 111 (2008).

We conclude that the district court did not plainly err in admitting this evidence because (1) it was relevant as proof that Thompson knew or should have known that the wires in his possession were stolen, (2) the events surrounding the Baker incident were undisputed, and (3) the evidence's probative value was not substantially outweighed by the danger of unfair prejudice. NRS 48.045(2) (outlining the admissibility of other crimes); McLellan, 124 Nev. at 270-71, 182 P.3d at 111-12 (finding no plain error in admitting prior bad act when (1) the evidence in question is relevant, (2) the prior bad act is proven by clear and convincing evidence, and (3) the danger of unfair prejudice does not substantially outweigh the evidence's probative value).[1] Even assuming that the district court erred by allowing the testimony regarding the Baker incident, we conclude that given the overwhelming evidence supporting the conviction, the error did not affect Thompson's substantial rights. Cf. McLellan, 124 Nev. at 269, 271, 182 P.3d at 110, 112.

Thompson also argues that the district court erred in failing to give a limiting instruction regarding use of the Baker evidence. Because

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[1]Thompson maintains that testimony regarding the "paraphernalia" found in his vehicle exacerbated the prejudicial effect of the testimony regarding the Baker incident. We disagree. Once the witness made the statement regarding paraphernalia, the prosecution immediately stopped its line of questioning, and the district court admonished the jury to disregard the statement. We must presume that the jury followed that instruction. Lisle v. State, 113 Nev. 540, 558, 937 P.2d 473, 484 (1997), clarified on other grounds, 114 Nev. 221, 954 P.2d 744 (1998).

there is overwhelming evidence supporting Thompson's conviction, we conclude that the district court's failure to provide a limiting instruction was harmless. See id. at 271, 182 P.3d at 112.

Having considered Thompson's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Dan L. Papez, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General/Carson City
White Pine County District Attorney
White Pine County Clerk