IN THE SUPREME COURT OF THE STATE OF NEVADA

HERMAN LEE REED,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55582

FILED

APR 11 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of possession of stolen property and possession of a firearm by a felon.[1] Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Appellant Herman Reed was the subject of a routine traffic stop. When an officer approached his car, he noticed the distinct smell of marijuana. The officer then asked Reed if he had any guns or drugs in his vehicle and—after Reed stated that he did not—asked Reed for consent to search it. Reed consented and officers found a loaded firearm in the trunk and what appeared to be marijuana under a mat in the passenger compartment. When asked about the firearm, Reed stated that he purchased it "from a guy named Larry behind a gas station" and paid only $35 for it because it was likely stolen.

Reed was subsequently charged with violating NRS 205.275(2)(c) (possession of stolen property), NRS 202.360(1)(c) (possession of a firearm by an unlawful user of controlled substance) (hereinafter,

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

"unlawful possession"), and NRS 202.360(1)(a) (possession of a firearm by a felon). The latter charge was heard by the jury in a bifurcated proceeding, and the jury found Reed guilty of all three counts. The unlawful possession charge was dismissed before sentencing. On appeal, Reed raises several contentions.

Constitutionality of NRS 202.360(1)(c) (unlawful possession)

Reed claims that NRS 202.360(1)(c)[2] is unconstitutionally vague as it does not define "unlawful user" or "addict." Reed acknowledges that the district court did not adjudicate and sentence him on this count, but claims that NRS 177.015 nonetheless allows him to appeal. While Reed is correct that NRS 177.015 was amended in 1971 to allow defendants to appeal from a jury verdict, see George v. State, 122 Nev. 1, 3, 127 P.3d 1055, 1056 (2006), this statute still requires that a defendant be "aggrieved" in the action to maintain standing to assert the appeal. We conclude that because Reed was not convicted of violating NRS 202.360(1)(c), he lacks standing to challenge the constitutionality of that part of the statute. See Beury v. State of Nevada, 107 Nev. 363, 367, 812 P.2d 774, 776 (1991) (holding that non-aggrieved parties lack standing to appeal in criminal cases).

Additionally, because he faces no punishment for a verdict without a conviction, Reed's claim would be moot even if he had standing to assert it. See NCAA v. University of Nevada, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981) (holding that this court will not "declare principles of law which cannot affect the matter in issue before it"). We therefore decline to

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[2]NRS 202.360(1)(c) criminalizes possession of a firearm where the possessor "[i]s an unlawful user of, or addicted to, any controlled substance."

entertain Reed's claims pertaining to the constitutionality or sufficiency of the evidence under NRS 202.360(1)(c).[3]

Double jeopardy/redundancy

Reed next asserts that his dual convictions for possession of stolen property and possession of a firearm by a felon violate his rights under the Double Jeopardy Clause and are redundant. In this case, the stolen property that Reed unlawfully possessed was the firearm. Reed therefore asserts that he is being unconstitutionally punished twice for a single criminal act. Reed errs. The crimes of possessing stolen property and being a felon in possession of a firearm each "require the proof of a fact that the other d[oes] not" and there is accordingly no double jeopardy violation.[4] Garcia v. State, 121 Nev. 327, 344, 113 P.3d 836, 847 (2005), modified on other grounds by Mendoza v. State, 122 Nev. 267, 270 n.2, 130 P.3d 176, 177 n.2 (2006); see also Williams v. State, 118 Nev. 536, 548, 50 P.3d 1116, 1124 (2002) (noting that double jeopardy proscribes conviction for both greater and lesser-included offense). The State could have proven

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[3]Reed nevertheless urges this court to consider these claims because the felon-in-possession conviction was "based on" the unlawful possession count, as the State did not prove the existence of a firearm in the bifurcated felon-in-possession proceeding and instead relied on the evidence it produced in the first phase. For the reasons stated above, we decline. Additionally, we note that because the stolen firearm sustained the possession-of-stolen-property conviction, it too provided a factual basis for the felon-in-possession charge.

[4]NRS 202.360(1)(a) (possession of a firearm by a felon) requires the State to prove that the defendant (1) possessed a firearm and (2) has an unpardoned felony conviction; while NRS 205.275(2)(c) (possession of stolen property) requires the State to prove that the defendant (1) buys, possesses, or withholds property and (2) knows or reasonably should know under the circumstances that the property is stolen.

that Reed was a felon in possession without also proving that Reed possessed the firearm knowing it was stolen. Therefore, we are unconvinced by Reed's assertion that because the firearm was common to both offenses, possession of stolen property is a lesser-included offense of possession of a firearm by a felon. Cf. Slobodian v. State, 98 Nev. 52, 53, 639 P.2d 561, 563 (1982) (recognizing that this court has made fact-specific inquires in double jeopardy analysis only where crimes are "so closely related to the charged offense that it was necessary for the prosecutor to prove the lesser offense in order to prove the greater").

Also, because the statutes codifying these crimes "were directed to combat distinct and separate social harms," simultaneous punishment for both crimes comports with legislative intent and the convictions are not redundant. Garcia, 121 Nev. at 344, 113 P.3d at 847; see State v. Koseck, 113 Nev. 477, 479, 936 P.2d 836, 837 (1997).

Illegal search

Reed claims that the district court erred in denying his motion to suppress evidence of the firearm found in the trunk of his vehicle. Reed consented to a search of his vehicle after the stop and stood next to the vehicle as officers searched it. An officer found the firearm inside another container located in the trunk. The district court dismissed Reed's motion to suppress after he failed to provide any support for his contention that officers were required to obtain a separate consent to search the trunk after they obtained general consent to search the vehicle. The district court did not err. See State v. Ruscetta, 123 Nev. 299, 303-04, 163 P.3d 451, 454 (2007) (scope of consent to search determined by totality of circumstances); People v. Minor, 222 P.3d 952, 957 (Colo. 2010) ("[T]he scope of a general search extends to any area that an objective officer could reasonably assume might hold the object of the search, including the trunk of a vehicle and unlocked containers therein."); State v. Akuba, 686

N.W.2d 406, 419-20 (S.D. 2004) (holding that scope of search not exceeded under circumstances where defendant gave general consent and then did not object when officers opened truck and searched items contained therein).

Reed also claims that his consent to the search was obtained involuntarily. That claim is precluded as he failed to raise it below, see Wilkins v. State, 96 Nev. 367, 372, 609 P.2d 309, 312 (1980), and we discern no plain error where evidence of duress or coercion is absent from the record, see State v. Burkholder, 112 Nev. 535, 539, 915 P.2d 886, 888 (1996).

Remaining claims

First, Reed contends that the district court erred in failing to suppress his statement admitting that the firearm was likely stolen because he did not knowingly or voluntarily waive his rights under Miranda v. Arizona, 384 U.S. 436 (1966). In his motion to suppress, Reed only claimed that his waiver was invalid because he was extremely intoxicated. On appeal, Reed abandons this theory and expands his argument, asserting that he is not "of high intelligence" and that the general environment of the traffic stop was prohibitively coercive. As Reed failed to raise these grounds in the district court, his claim is precluded. See Rippo v. State, 113 Nev. 1239, 1259, 946 P.2d 1017, 1030 (1997). Additionally, these claims are belied by the record and we therefore discern no plain error. See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.").

Second, Reed claims that the district court erred in denying his motion to sever the count charging him with unlawful possession from the possession-of-stolen-property count. Even though the former charge was dismissed, Reed argues that the evidence of drugs necessary to prove

the unlawful-possession count unduly influenced the jury's verdict on the possession-of-stolen-property count. The smell of marijuana led the officers to request Reed's consent to search the vehicle for "guns or drugs." Reed consented to the search and both a gun and drugs were found. Hence joinder was appropriate and the district court did not abuse its discretion in denying Reed's motion. See NRS 173.115(2) ("Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged . . . are . . . [b]ased on two or more acts or transactions connected together or constituting parts of a common scheme or plan."); Weber v. State, 121 Nev. 554, 570-71, 119 P.3d 107, 119 (2005) (noting that defendant carries "heavy burden" in showing that district court abused its discretion in denying motion to sever).

Third, Reed asserts that two police officers supplied improperly noticed expert testimony when they testified to their knowledge of narcotics and gun sales. We conclude that the officers' testimony consisted of their observations and personal knowledge as lay witnesses, see NRS 50.265; Crowe v. State, 84 Nev. 358, 362, 441 P.2d 90, 92 (1968) ("Lay witnesses . . . who are sufficiently trained and experienced, may testify at the discretion of the trial court relative to the use and influence of narcotics."), modified on other grounds by Tellis v. State, 84 Nev. 587, 590, 445 P.2d 938, 940 (1968), and the district court did not therefore abuse its discretion in allowing it, see Mulder v. State, 116 Nev. 1, 12-13, 992 P.2d 845, 852 (2000).

Fourth, Reed contends that cumulative error denied him a fair trial. Because we have rejected Reed's assignments of error, we conclude that his allegation of cumulative error also lacks merit. See U.S. v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) ("[A] cumulative-error

analysis should evaluate only the effect of matters determined to be error, not the cumulative effect of non-errors.").

Having considered Reed's claims and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Linda Marie Bell, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk