

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUSSELL LEE GARNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57785

FILED

JAN 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY Angela
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary, possession or sale of document or personal identifying information to establish false status or identity, and two counts of possession of credit or debit card without cardholder's consent. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

First, appellant Russell Lee Garner contends that the district court erred by denying his motion and renewed motions to suppress evidence seized after his arrest because the police lacked probable cause to arrest him because they did not investigate whether Garner had permission to use the driver's license and credit card or whether he had legally changed his name. The district court's factual findings regarding a motion to suppress are reviewed for clear error but the legal consequences of those findings are reviewed de novo. Somee v. State, 124 Nev. 434, 441, 187 P.3d 152, 157-58 (2008). Here, the district court found that the police knew Garner's name; observed him present a driver's license and a credit, debit, or gift card to the cashier; and learned that the name on the items presented was not Garner's. The district court determined that this scenario gave rise to probable cause to believe that Garner possessed a document or personal identifying information to establish a false identity.



See NRS 205.465(1). We agree and conclude the district court did not err by denying Garner's motions to suppress. See State v. McKellips, 118 Nev. 465, 472, 49 P.3d 655, 660 (2002) (defining probable cause); see also e.g., People v. Nunez, 875 N.Y.S.2d 484, 485 (App. Div. 2009) (possibility that defendant may be innocent does not negate probable cause to arrest); State v. Phillips, 347 So. 2d 206, 209 (La. 1977) (police need not negate all possible lawful explanations for conduct before making an arrest based on probable cause).

Second, Garner contends that the district court erred by denying his motion for a mistrial after detectives' testimony described a team operation to surveil him and thus implied that he was known to police through previous encounters. This court will not reverse the district court's denial of a motion for mistrial absent a clear showing of abuse of discretion. Rose v. State, 123 Nev. 194, 206-07, 163 P.3d 408, 417 (2007). To the extent it could be inferred from detectives' testimony that Garner had engaged in prior criminal activity, see Hardison v. State, 104 Nev. 530, 532, 763 P.2d 52, 54 (1988), we conclude that the district court did not abuse its discretion by denying the motion for a mistrial because the reference was not so "clearly and enduringly prejudicial" as to require a mistrial, especially in light of the substantial evidence of guilt. See Meegan v. State, 114 Nev. 1150, 1155, 968 P.2d 292, 295 (1998), clarified on other grounds by Vanisi v. State, 117 Nev. 330, 341 & n.14, 22 P.3d 1164, 1171-72 & n.14 (2001).

Third, Garner contends that the district court erred by denying his motion for a directed verdict on counts two and four because insufficient evidence supported those counts. The district court reached the merits of the motion and determined that sufficient evidence had been

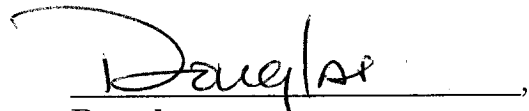
elicited at trial to go forward. Although the district court may advise the jury to acquit a defendant, NRS 175.381(1), or, after the jury has returned a verdict, enter a judgment of acquittal, NRS 175.381(2), there is no provision in Nevada law for the entry of a directed verdict in a criminal proceeding. See State v. Combs, 116 Nev. 1178, 1180, 14 P.3d 520, 521 (2000). Therefore, the district court did not err by denying Garner's motion, albeit for the incorrect reason. See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970). Moreover, our review of the record reveals that sufficient evidence was adduced to support both counts beyond a reasonable doubt. See NRS 205.465(1), (2)(b); NRS 205.690(2), (5); NRS 205.760(1); Jackson v. Virginia, 443 U.S. 307, 319 (1979); Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); Hernandez v. State, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002) (“[C]ircumstantial evidence alone may support a conviction.”).


Fourth, relying on Crawford v. State, 121 Nev. 744, 753, 121 P.3d 582, 588 (2005), Garner contends that the district court erred by declining to give his proposed negatively phrased instructions on the State's burden to prove the elements of burglary and possession of a credit card without cardholder's consent. The substance of the proposed instructions was covered by other instructions given to the jury and substantial evidence of guilt supports each of these convictions. Therefore, we conclude that any error did not substantially affect the jury's verdict. See Santana v. State, 122 Nev. 1458, 1463, 148 P.3d 741, 745 (2006); Valdez v. State, 124 Nev. 1172, 1189, 196 P.3d 465, 477 (2008) (defining nonconstitutional harmless error).

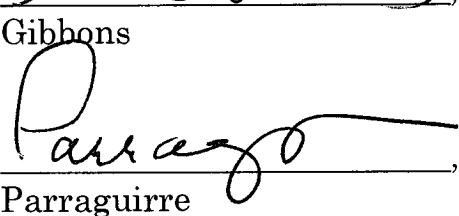
Fifth, Garner asserts that the district court erred by denying his proposed instructions defining the term “personal identifying

information,” see NRS 205.461; NRS 205.4617, because that term appears in the statute defining the offense with which he was charged—possession or sale of a document or personal identifying information to establish false status or identity, see NRS 205.465(1). We disagree. The statute requires the State to prove that Garner possessed a document or personal identifying information and the State proceeded at trial only on the theory that Garner possessed a document—namely, a driver’s license—to establish a false identity. Therefore, we conclude that the district court did not abuse its discretion by declining to give the proposed instructions. See Crawford, 121 Nev. at 748, 121 P.3d at 585. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

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