IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW TYRONE HEMPHILL A/K/A MATTHEW TYRONE HEMPHILL, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58382

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of possession of a stolen vehicle with a value under $2,500. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. Appellant Matthew Tyrone Hemphill raises six errors on appeal.

First, Hemphill contends that the district court abused its discretion by refusing to dismiss a juror who indicated that he might be biased against Hemphill's theory of defense because he believed the value of the stolen vehicle was over $2,500 before the State presented any evidence. While the juror's comments indicated a potential bias, we conclude that there was no actual bias and the district court's decision did not result in prejudice because the jury determined that the vehicle's value was less than $2,500. See Weber v. State, 121 Nev. 554, 581, 119 P.3d 107, 125 (2005) (reviewing denial of for cause challenge for harmless error); see also Hall v. State, 89 Nev. 366, 371, 513 P.2d 1244, 1247 (1973) (requiring "proof of actual bias [or] facts from which to infer bias"). We therefore conclude that Hemphill is not entitled to relief.

Second, Hemphill contends that the State's information did not give adequate notice of the charges to be met and that the district

court erred by instructing jurors on the lesser-included offense of possession of a stolen vehicle with a value less than $2,500. See U.S. Const. amends. VI and XIV; Nev. Const. art. 1, § 8. We disagree. "It is axiomatic that an indictment [or charging information] for one crime carries with it notice that lesser offenses included within the specified crime are also charged and must be defended against." Mildwoff v. Cunningham, 432 F. Supp. 814, 817 (S.D.N.Y. 1977); NRS 175.501; see also Rosas v. State, 122 Nev. 1258, 1268 & n.28, 147 P.3d 1101, 1108 & n.28 (2006) (explaining that State can request lesser-included instructions over objection of defendant). Therefore, we conclude that the district court did not err by instructing the jury on this lesser-included offense.

Third, Hemphill contends that the district court improperly denied his proposed jury instruction on misdemeanor possession of stolen property as a lesser-included or lesser-related offense of possession of a stolen vehicle. However, misdemeanor possession of stolen property is not a lesser-included offense of possession of a stolen vehicle, see Rosas, 122 Nev. at 1263, 147 P.3d at 1105; Montes v. State, 95 Nev. 891, 893-94, 603 P.2d 1069, 1071-72 (1979) (explaining that NRS 205.273 does not contain the element of criminal intent required by NRS 205.275), and the district court is not required to instruct on lesser-related offenses, see Peck v. State, 116 Nev. 840, 845, 7 P.3d 470, 473 (2000), overruled on other grounds by Rosas, 122 Nev. 1258, 147 P.3d 1101.[1] Therefore, we conclude that the district court did not err by refusing to give Hemphill's proposed

[1]To the extent Hemphill asks us to make an exception to our holding in Peck because misdemeanor possession of stolen property is "consistent with the defense theory" and does not disadvantage the government, we decline to do so.

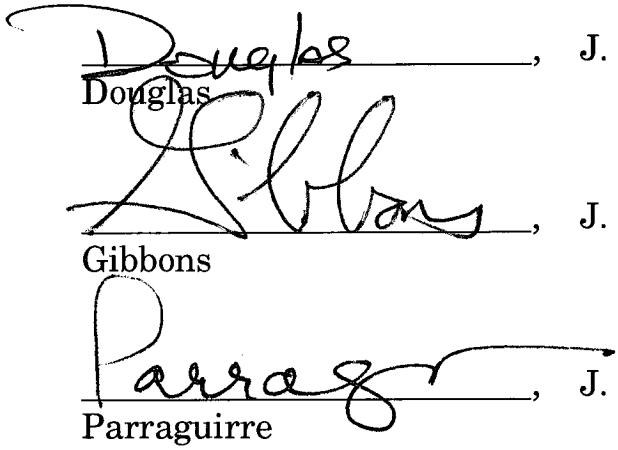
jury instruction. See Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005).

Fourth, Hemphill contends that the district court erred by prohibiting him from arguing to the jury during closing that the State's failure to prove that the vehicle was valued at $2,500 or more required them to render a not guilty verdict. This argument was contrary to the court's instructions to the jury and NRS 205.273(3). Therefore, we conclude that the district court did not err.

Fifth, Hemphill contends that the district court abused its discretion by imposing a disproportionate sentence constituting cruel and/or unusual punishment because his offense was non-violent. See U.S. Const. amend. VIII; Nev. Const. art. 1, § 6. This court will not disturb a district court's sentencing determination absent an abuse of discretion. Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993). Hemphill has not alleged that the district court relied solely on impalpable or highly suspect evidence or that the sentencing statute is unconstitutional. See Chavez v. State, 125 Nev. 328, 348, 213 P.3d 476, 489-90 (2009). Hemphill's prison term of 60-150 months falls within the parameters provided by the relevant statute, see NRS 207.010(1)(a), and the sentence is not so unreasonably disproportionate to the gravity of the offense and his history of recidivism as to shock the conscience, Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979); see also Ewing v. California, 538 U.S. 11, 29 (2003) (plurality opinion); Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion). We conclude that the district court did not abuse its discretion at sentencing. See Parrish v. State, 116 Nev. 982, 988–89, 12 P.3d 953, 957 (2000).

Finally, Hemphill contends that the effect of cumulative error warrants reversal of his conviction. This contention lacks merit. See United States v. Sager, 227 F.3d 1138, 1149 (9th Cir. 2000) ("One error is not cumulative error"). Accordingly, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Douglas

_____, J.
Gibbons

_____, J.
Parraguirre

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