

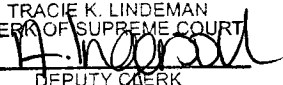
IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEXANDER BAYOT A/K/A
ALEXANDER BERNARD BAYOT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59410

FILED

NOV 15 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of eleven counts of forgery and one count of conspiracy to commit forgery. Eighth Judicial District Court, Clark County; Jerome T. Tao, Judge.

Suppression motion

Appellant Alexander Bayot contends that the district court erred by denying his pretrial suppression motion. Bayot argues that the inventory search became an illegal search for evidence when the patrol officer discovered counterfeit bills in the car and called financial crimes detectives and the detectives assisted with the search. Bayot asserts that the evidence and his incriminating statements should have been suppressed. We review the district court's findings of fact for clear error and its legal conclusion as to the constitutionality of a search de novo. Somee v. State, 124 Nev. 434, 441, 187 P.3d 152, 157-58 (2008). The district court conducted an evidentiary hearing and made the following factual findings on the record: The reasons for arresting Bayot,

impounding the vehicle, and conducting an inventory search were valid. The detectives participated in the inventory search to assist the patrol officer. And the presence of the detectives did not transform the inventory search into a general search for evidence. The district court's factual findings are supported by the record and are not clearly erroneous. We conclude that the district court properly determined that the inventory search did not violate the federal and state constitutions and did not err by denying Bayot's suppression motion. See U.S. Const. amend. IV; Nev. Const. art. 1, § 18; Diomampo v. State, 124 Nev. 414, 432, 185 P.3d 1031, 1042 (2008); Weintraub v. State, 110 Nev. 287, 871 P.2d 339 (1994).

Jury instruction

Bayot contends that the district court erred by modifying his proposed criminal elements instruction. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error." Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). Here, the parties each provided the district court with proposed criminal elements instructions. Bayot's instruction tracked directly with the amended information, which combined the criminal elements for two theories of forgery in each forgery count, and informed the jury that it must find all of these elements beyond a reasonable doubt. The State's instruction presented the elements for NRS 205.100(1) (fictitious instruments) and NRS 205.110 (forged instruments) as alternative theories of criminal liability. The district court removed the reference to reasonable doubt and "the payment of money or property of some bank in existence" language from Bayot's instruction and gave both instructions to the jury. We

conclude that the district court erred by giving Bayot's instruction because the modified instruction inaccurately stated the law and the substance of the instruction was provided in the other instructions. See Carter v. State, 121 Nev. 759, 765, 121 P.3d 592, 596 (2005) (defendants are not entitled to instructions that are "misleading, inaccurate or duplicitous"). However, the error was harmless because the jury was instructed on reasonable doubt and the elements necessary to find Bayot guilty of forgery.¹ See Valdez v. State, 124 Nev. 1172, 1189, 196 P.3d 465, 476 (2008) (defining nonconstitutional harmless error); Barnier v. State, 119 Nev. 129, 132, 67 P.3d 320, 322 (2003) (reviewing jury instruction issues for harmless error).

Multiplicity

Bayot contends that the district court erred by denying his motion to strike seven of the eleven forgery counts because they are multiplicitous. "An [information] that charges a single offense in several counts violates the rule against multiplicity." Bedard v. State, 118 Nev. 410, 413, 48 P.3d 46, 47-48 (2002). "The general test for multiplicity is that offenses are separate if each requires proof of an additional fact the

¹To the extent that Bayot argues that the district court's modifications to his proposed jury instruction affected his constitutional right to be informed of the nature of the State's allegations, we conclude that the amended information filed in this case adequately placed Bayot on notice of the charges and theories that he should be prepared to defend against. See NRS 173.075(1); State v. Dist. Ct., 116 Nev. 374, 377-78, 997 P.2d 126, 129 (2000).

other does not.” Gordon v. District Court, 112 Nev. 216, 229, 913 P.2d 240, 249 (1996). Here, the State consolidated Bayot’s unlawful possession of 37 counterfeit bills into eleven forgery counts. Because possession of each bill had to be proven independently of all other bills, each forgery count required proof of a different fact. See United States v. Adriatico, 637 F. Supp. 105, 106 (D. Nev. 1986) (“The keeping, just as the making and the passing, of each forged note, is, or may be treated as, a separate and distinct offense.” (quoting Logan v. United States, 123 F. 291, 293 (6th Cir. 1903))). Therefore, the forgery counts were not multiplicitous and we conclude that the district court did not err by denying Bayot’s motion to strike.

New trial

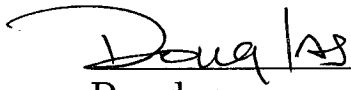
Bayot contends that the district court erred by denying his motion for a new trial based on newly-discovered evidence—a response to the complaint he filed with the LVMPD Citizen Review Board after the jury rendered its verdict. We review a district court’s ruling on a motion for a new trial for an abuse of discretion. Servin v. State, 117 Nev. 775, 792, 32 P.3d 1277, 1289 (2001). The district court heard argument on the motion and found that (1) the Citizens Review Board letter could have been discovered and produced at trial, and (2) the letter was not newly-discovered evidence—it was a conclusion based on evidence that was presented to the jury.² The district court determined that Bayot failed to

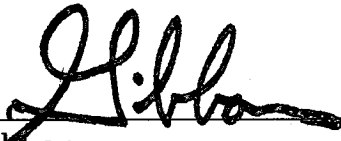
²The letter stated that, “Based on your complaint and a thorough investigation, a policy violation was found to be sustained,” and noted
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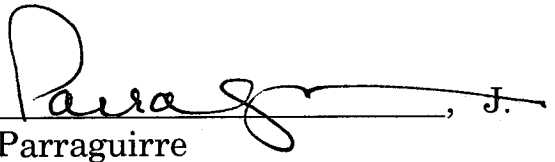
meet all seven of the Hennie factors and denied the motion. See Hennie v. State, 114 Nev. 1285, 1290, 968 P.2d 761, 764 (1998). We conclude that the district court did not abuse its discretion in this regard.

Having considered Bayot's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Jerome T. Tao, District Judge
Oronoz & Ericsson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

... continued

that, "We are unable to disclose which policy violation was sustained as such matters are confidential by law."