IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY ABRAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60367

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

First, appellant Anthony Abrams contends that insufficient evidence was adduced to support the jury's verdict. We disagree 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. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Mitchell v. State, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

Officer Krista Bullard testified that she pulled up behind Abrams, who was riding a scooter, in order to initiate a traffic stop. Officer Bullard first turned on her patrol lights, then air horn, and ultimately her siren, however, Abrams continued driving. Abrams quickly turned into a 7-Eleven store parking lot, drove through the parking lot and around to the back of the building and down an alleyway and did not stop until he reached a dirt mound. After he stopped, Officer Bullard noticed that Abrams was "sitting on the moped and kind of bent over messing with something." The owner of the scooter reported it stolen two

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days earlier. The owner testified that he left the scooter locked so it could not operate and the keys remained in his possession. The victim also testified that when the scooter was returned, he noticed that the wires to the ignition were cut. Officer Sherri Skimerton testified that the scooter's ignition was tampered with and "punched," meaning, "it's been pushed in and . . . it can be started in a way that doesn't require the key. . . . [I]t's out of its cradle that it sits in." A large, gaping hole was found where there was once a keyhole. A screwdriver with a lug nut wrench at one end was found in Abrams' pants pocket and Officer Skimerton stated that in her experience, such a device "could be used to punch, injure or tamper [with] a vehicle," and is used to start a punched ignition.[1] Photographs of the punched ignition were admitted and shown to the jury.

Circumstantial evidence alone may sustain a conviction. Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003); Grant v. State, 117 Nev. 427, 435, 24 P.3d 761, 766 (2001) ("Intent need not be proven by direct evidence but can be inferred from conduct and circumstantial evidence."). It is for the jury to determine the weight and credibility to give conflicting testimony, McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992), and a jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict, Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also NRS 205.273(1)(b). Therefore, we conclude that Abrams' contention is without merit.

Second, Abrams contends that the district court erred by rejecting his proposed instruction on the allegedly lesser-related offense of unlawful taking of a motor vehicle. We disagree. "[T]he defense has the

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[1]The jury found Abrams not guilty of possession of burglary tools.

right to have the jury instructed on its theory of the case as disclosed by the evidence, no matter how weak or incredible that evidence may be." Vallery v. State, 118 Nev. 357, 372, 46 P.3d 66, 76-77 (2002) (internal quotation marks omitted). A defendant, however, is not entitled to an instruction on a lesser-related, uncharged offense. See Peck v. State, 116 Nev. 840, 845, 7 P.3d 470, 473 (2000), overruled on other grounds by Rosas v. State, 122 Nev. 1258, 1269, 147 P.3d 1101, 1109 (2006). We decline Abrams' request to revisit Peck and conclude that he failed to demonstrate that the district court abused its discretion by rejecting his proposed instruction. See Ouanbengboune v. State, 125 Nev. 763, 774, 220 P.3d 1122, 1129 (2009) ("This court reviews a district court's decision to issue or not to issue a particular jury instruction for an abuse of discretion.").[2]

Third, Abrams contends that the district court erred by providing the following jury instruction because it lowered the State's burden to prove beyond a reasonable doubt that he knew the scooter was stolen: "You are further instructed the knowledge by the defendant of the stolen nature of the vehicle may be inferred from all of the evidence and the reasonable inferences which may be drawn therefrom." We disagree. The district court noted that the challenged instruction was "commonly used" and that the jury was instructed on numerous occasions about the

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[2]In opposing Abrams' proposed instruction below and again in its Fast Track Response in this appeal, the State cites to an unpublished order of this court for support. We remind counsel for the State that an unpublished order has no precedential value and it is improper to cite to and rely on unpublished dispositions of this court. See SCR 123 (providing that "[a]n unpublished opinion or order of [this court] shall not be regarded as precedent and shall not be cited as legal authority" subject to exceptions that do not apply here).

State's burden to prove the elements of the crime beyond a reasonable doubt. We conclude that the instruction did not lower the State's burden of proof and the district court did not abuse its discretion by overruling Abrams' objection. See id.

Fourth, Abrams contends that the district court erred by instructing the jury that it was tasked with determining his guilt or innocence (instruction nos. 6 & 19) because that language undercuts the presumption of innocence and the State's burden of proof. Abrams' claim lacks merit because not only was the jury instructed several times about the State's burden to prove the elements of the crime beyond a reasonable doubt, but instruction no. 6 itself also clearly states: "So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty." Moreover, we have referred to the jury's determination as one of guilt or innocence on numerous occasions. See, e.g., Valdez v. State, 124 Nev. 1172, 1187, 196 P.3d 465, 475 (2008); Chartier v. State, 124 Nev. 760, 762, 191 P.3d 1182, 1183-84 (2008); Browning v. State, 124 Nev. 517, 527, 188 P.3d 60, 67 (2008). Therefore, we conclude that the district court did not abuse its discretion. See Ouanbengboune, 125 Nev. at 774, 220 P.3d at 1129.[3]

Finally, Abrams contends that cumulative error denied him a fair trial and warrants the reversal of his conviction. Because Abrams

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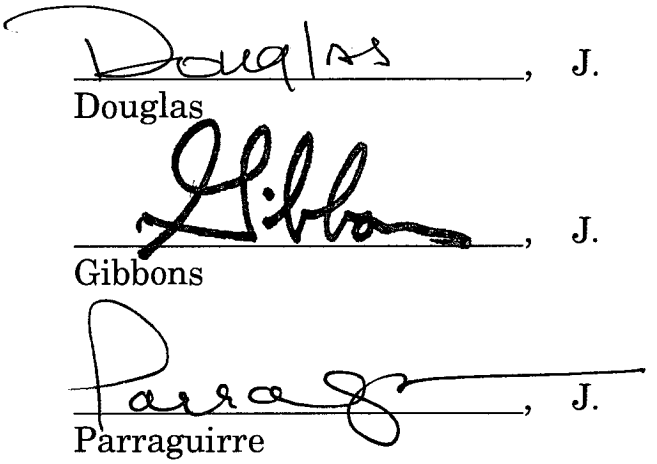
[3]Abrams did not object to instruction no. 19 and we conclude he failed to demonstrate plain error. See Berry v. State, 125 Nev. 265, 282-83, 212 P.3d 1085, 1097 (2009) (this court reviews challenges to unobjected-to jury instructions for plain error), abrogated on other grounds by State v. Castaneda, 126 Nev. ___, 245 P.3d 550 (2010); Valdez, 124 Nev. at 1190, 196 P.3d at 477 (defining "plain error").

failed to demonstrate any error, we conclude that his contention lacks merit. See Pascua v. State, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006). Accordingly, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Douglas

_____, J.
Gibbons

_____, J.
Parraguirre

cc: Hon. Ronald J. Israel, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk