IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL JOSEPH GEIGER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66103

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of possession of a stolen vehicle. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant Michael Geiger contends that the evidence presented at trial was insufficient to support the jury's finding of guilt on count II. Geiger asserts that the State failed to establish that he had either actual or constructive possession of the GMC Yukon or that he knew or should have known that the GMC Yukon was stolen.

When reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the prosecution and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). "[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness." *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975). And circumstantial evidence is enough to support a conviction. *Lisle v. State*,

113 Nev. 679, 691-92, 941 P.2d 459, 467-68 (1997), *holding limited on other grounds by Middleton v. State*, 114 Nev. 1089, 1117 n.9, 968 P.2d 296, 315 n.9 (1998).

The jury heard testimony that a white Nissan Altima had been reported stolen. While on an unrelated call, Officer Harmon saw a parked white sedan that caught his attention. Approximately ten minutes after seeing the white sedan, he drove past the area again and this time saw a GMC Yukon parked next to the white sedan. The hoods were up on both vehicles, the Yukon was running, and there was a set of jumper cables connecting the Yukon to the white car. The white sedan was a Nissan Altima and Officer Harmon noticed that its license plate number matched the plate number for the Altima that had been reported stolen.

Because Officer Harmon did not see anyone in the area at that time, he drove a short distance away, turned off all of the lights on his vehicle, and parked where he would be able to see if one of the vehicles left the area. Approximately one minute later, the Altima left the area. Officer Harmon saw one person in the Altima and eventually stopped the Altima. The driver was Geiger and a set of jumper cables were on the front passenger floorboard.

Officer Harmon asked Geiger if he knew who owned the Altima and Geiger responded that he did not know. Officer Harmon then asked if Geiger had borrowed the car. Geiger responded yes, but when asked, he replied that he did not know from whom he borrowed the car. During a search of Mr. Geiger, Officer Harmon found a key and key fob to a GMC vehicle. Officer Harmon asked Geiger if they belonged to the Yukon he had seen next to the Altima and Geiger responded that he did not know anything about that. Officer Harmon gave the key and key fob

to Officer Knight, who took the key and key fob to the Yukon Officer Harmon had seen earlier. The key fob unlocked the Yukon and the key fit the vehicle. The owner of the Yukon testified that he did not know Geiger and he did not give anyone permission to use the Yukon that evening.

The jury could reasonably infer from the evidence presented that Geiger constructively possessed the GMC Yukon and that he knew or should have known that the vehicle was stolen. *See* NRS 205.273(1)(b); *Batin v. State*, 118 Nev. 61, 65-66, 38 P.3d 880, 883 (2002) (defining constructive possession). The jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); *see also McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Geiger also claims that the district court abused its discretion when imposing sentence by merging the sentences for the two counts. The State concedes the error and we agree.

At sentencing, the court found that adjudication as a habitual criminal was just and proper. The court ordered that the sentences for the two counts be merged into the habitual criminal count and imposed a single term of imprisonment of life with the possibility of parole after ten years. *See* NRS 207.010(1)(b)(2).

Although the district court may impose concurrent sentences for multiple convictions, *see* NRS 176.035(1), the district court must sentence a defendant to definite terms for each conviction, *see* NRS 176.033(1); *Powell v State*, 113 Nev. 258, 264 n.9, 934 P.2d 224, 228 n.9 (1997); *Hollander v. State*, 82 Nev. 345, 353, 418 P.2d 802, 806-07 (1966). We conclude that the district court abused its discretion by merging the sentences for the two counts and, therefore, the sentence must be reversed

and remanded to impose a sentence for each count. *See Parrish v. State*, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000) (we review a district court's sentencing determination for an abuse of discretion). Accordingly, we

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[1]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

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[1]Because Geiger is represented by counsel in this appeal, we decline to grant him permission to file pro se documents. *See* NRAP 46(b). Accordingly, no action will be taken on the pro se documents submitted to this court.