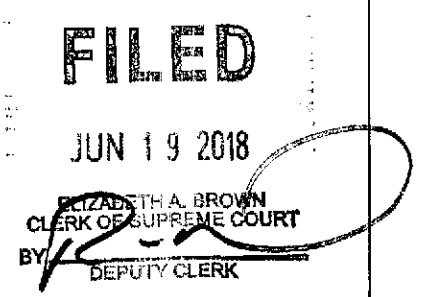
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROMMELL JONES, A/K/A ROMELL RAY JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73622



ORDER OF AFFIRMANCE

Rommell Jones appeals from a judgment of conviction entered pursuant to a jury verdict of 12 counts of burglary while in possession of a firearm, 19 counts of robbery with the use of a deadly weapon, burglary, robbery, and 2 counts of attempted robbery with use of a deadly weapon. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Jones was arrested after he burglarized 13 businesses and robbed several patrons and employees within each business. The jury convicted Jones after a six-day trial and, at sentencing, the district court adjudicated him as a large habitual criminal.[1]

On appeal, Jones argues his aggregate sentence and the district court's admission of a 9-1-1 call recording of a victim's report of a crime violated his constitutional rights. We disagree.

We first address Jones' argument that his sentence violates the United States Constitution's Eighth Amendment. We afford the district court wide discretion in its sentencing decisions, *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), including adjudicating a defendant a habitual criminal, *Clark v. State*, 109 Nev. 426, 428, 851 P.2d 426, 427

[1]We do not recount the facts except as necessary to our disposition.

(1993). And we will not reverse where "the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence," *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). A sentence that is within the statutory limits is not cruel and unusual, regardless of its severity, unless it "is so unreasonably disproportionate to the offense as to shock the conscience." *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 222 (1979)).

Here, the district court properly adjudicated Jones under the large habitual criminal statute and sentenced Jones to 7 consecutive life sentences without the possibility of parole, and 28 concurrent life sentences without the possibility of parole, reasoning that sentencing Jones under the large habitual criminal statute was warranted as "he terrorized a great number of people" while committing the crimes. The district court's sentences are within the parameters provided by the relevant statute, *see* NRS 207.010(1)(b)(1), and Jones does not allege that the statute is unconstitutional. Jones also does not allege that the sentence was based on impalpable or highly suspect evidence. Jones was convicted of three prior felonies, the most recent arising out of an armed robbery of a person over the age of 65 years, and he committed the series of burglaries and robberies here with the use of a deadly weapon while on parole for that armed robbery. In light of Jones' crimes and his history of recidivism, we are not convinced that the sentence imposed is so grossly disproportionate to the crime as to constitute cruel and unusual punishment. *See Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion) (addressing the policy behind imposing harsher sentences on habitual criminals). Therefore, we

conclude the district court did not abuse its discretion when sentencing Jones.

Jones next contends that the admission of a recorded 9-1-1 call of a victim, when the victim did not testify at trial, violated his Sixth Amendment confrontation rights under *Crawford* because the 9-1-1 recording was testimonial hearsay.

We review a district court's decision to admit evidence for an abuse of discretion. *Harkins v. State*, 122 Nev. 974, 980, 143 P.3d 706, 709 (2006). *Crawford* interpreted the Sixth Amendment's confrontation clause to require an opportunity for a defendant to cross-examine a witness if his or her testimony is testimonial in nature. 541 U.S. at 68. The admission of a 9-1-1 recording violates a confrontation right under *Crawford* if the statement was testimonial in nature. *Harkins*, at 986-87, 143 P.3d at 713-14. A statement is testimonial if the totality of the circumstances of its making "would lead an *objective witness* reasonably to believe that the statement would be available for use at a later trial." *Id.* at 986, 143 P.3d at 714 (internal quotations marks omitted). 9-1-1 calls are generally not testimonial in nature if the primary purpose of the dispatcher's questions is to gain information to meet an ongoing emergency. *Davis v. Washington*, 547 U.S. 813, 828 (2006); *see also Harkins*, 122 Nev. at 987, 143 P.3d at 716 (explaining a statement made during the course of an ongoing emergency is a factor showing a statement was not testimonial).

Here, the district court did not abuse its discretion when it admitted the 9-1-1 call recording. After reviewing the totality of circumstances surrounding 9-1-1 call, we conclude that the 9-1-1 dispatcher elicited statements primarily to enable police assistance and meet the ongoing emergency. The victim made the 9-1-1 call within seconds after the

robbery took place seeking police assistance, and the 9-1-1 dispatcher's questions were necessary to resolve the emergency and dispatch police to the correct location as the perpetrator may have been armed and was running from the scene towards another business. *Cf. Davis* at 817-18, 828 (holding that a victim's statements to 9-1-1 operator were not testimonial in nature where the victim called 9-1-1 for help after she was attacked by the defendant, and the defendant fled during the call, and the dispatcher gathered information about the attack and the defendant.) *Id.* at 817-18. Moreover, the record indicates the victim's statements were made while still under stress caused by the robbery qualifying those statements as excited utterances, an exception to the hearsay rule. *See* NRS 51.095 ("A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition is not inadmissible under the hearsay rule."). Therefore, we conclude the district court did not abuse its discretion by admitting this evidence. Accordingly we,

ORDER the judgment of conviction Affirmed.

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Douglas Smith, District Judge
The Law Offices of William H. Brown, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk