IN THE SUPREME COURT OF THE STATE OF NEVADA

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| GILBERT TYLER,<br>Appellant,<br>vs.<br>THE STATE OF NEVADA,<br>Respondent. | No. 38932 |
| GILBERT TYLER,<br>Appellant,<br>vs.<br>THE STATE OF NEVADA,<br>Respondent. | No. 38933 |
| GILBERT TYLER,<br>Appellant,<br>vs.<br>THE STATE OF NEVADA,<br>Respondent. | No. 38998 |



ORDER OF AFFIRMANCE

These are appeals from judgments of conviction, pursuant to a jury verdict, in three separate cases joined and tried together. We elect to consolidate these appeals for disposition.[1]

In district court case no. CR01-0161, appellant Gilbert Tyler was convicted of three counts of uttering a forged instrument. The district court sentenced Tyler to serve three concurrent prison terms of 19-48 months, and ordered him to pay restitution in the amount of $847.23; he was given credit for 308 days time served.

In district court case no. CR01-1322, Tyler was convicted of one count each of burglary, possession of a forged instrument, and uttering

[1]See NRAP 3(b).

a forged instrument. The district court sentenced Tyler to serve two concurrent prison terms of 19-48 months and a concurrent prison term of 36-120 months, and ordered him to pay restitution in the amount of $691.33. The sentences were ordered to run consecutively to the sentences imposed in district court case no. CR01-0161.

In district court case no. CR01-1338, Tyler was convicted of two counts of possession of a forged instrument, and one count of possession of a document or personal identification to establish false status or identity. The district court sentenced Tyler to serve two concurrent prison terms of 19-48 months and a concurrent prison term of 19-60 months. The sentences were ordered to run consecutively to the sentences imposed in district court case no. CR01-1322.

First, Tyler contends the district court erred in admitting prior bad acts offered into evidence by the State without first conducting a Petrocelli hearing.[2] Tyler, however, has failed to identify any prior acts admitted into evidence requiring a hearing. Without detail or cogent argument, Tyler refers to trial testimony regarding residential and vehicular burglaries. These incidents, however, were never attributed to Tyler. Further, Tyler states that "lawful household items" seized after his arrest and "used to incriminate him" should not have been admitted without a Petrocelli hearing. "Items," however, are not "prior bad acts,"

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[2]Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

and do not require such a hearing.[3] Therefore, we conclude that Tyler's arguments are patently without merit, and the district court did not err.[4]

Second, Tyler contends that the district court erred by allowing the State to use an overly suggestive photo line-up for eyewitness identification purposes. Tyler argues that his due process rights were violated because he was the only bald black man in the photo arrays. Tyler, however, did not object to either the pretrial identification procedures or during trial to witness testimony regarding his identification. This court has stated that counsel's failure to timely object to an allegedly suggestive photo line-up waives the issue for appellate review.[5] Therefore, we will not address this issue.

Third, Tyler contends that the district court erred in joining his three cases for trial. Tyler's claim is bereft of cogent argument and fails to allege with any detail whatsoever how the district court may have erred or how he was prejudiced by the joinder.[6] Moreover, our review of Tyler's contention reveals that it is without merit. The district court

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[3]We also note that Tyler did not object during trial to the admission of either the testimonial evidence or the "lawful household items."

[4]See Collman v. State, 116 Nev. 687, 702, 7 P.3d 426, 436 (2000), cert. denied, 532 U.S. 978 (2001) ("The decision to admit or exclude evidence rests within the trial court's discretion, and this court will not overturn that decision absent manifest error.").

[5]See Lovell v. State, 92 Nev. 128, 132, 546 P.2d 1301, 1304 (1976) (citing Rodriguez v. State, 91 Nev. 782, 542 P.2d 1065 (1975)).

[6]Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

granted the State's motion for joinder based on the overlapping factual connections and cross-admissibility of the evidence in the three cases.[7] "[J]oinder decisions are within the sound discretion of the trial court and will not be reversed absent an abuse of discretion."[8] Further, "[i]f . . . evidence of one charge would be cross-admissible in evidence at a separate trial on another charge, then both charges may be tried together and need not be severed."[9] Therefore, we conclude that the district court did not abuse its discretion.

Fourth, Tyler contends that the district court erred by denying his pretrial motion for a continuance. Although counsel stated that he was ready to proceed with the trial on the scheduled date, Tyler argued below that he needed additional time to further explain the case to counsel and have counsel file a motion to suppress unidentified evidence. For the first time on appeal, however, Tyler argues that he needed the additional time in order to secure alibi witnesses. This court has consistently held that an appellant "cannot change [his] theory underlying an assignment of error on appeal."[10] Therefore, we will not address this issue.

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[7]See NRS 173.115.

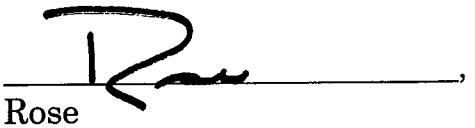
[8]Robins v. State, 106 Nev. 611, 619, 798 P.2d 558, 563 (1990); Shannon v. State, 105 Nev. 782, 786, 783 P.2d 942, 944 (1989).

[9]Mitchell v. State, 105 Nev. 735, 738, 782 P.2d 1340, 1342 (1989).

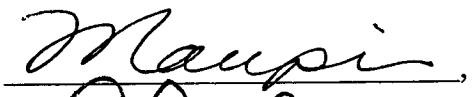
[10]Ford v. Warden, 111 Nev. 872, 884, 901 P.2d 123, 130 (1995); see also Garrettson v. State, 114 Nev. 1064, 1068 n.2, 967 P.2d 428, 430 n.2 (1998).

Having considered Tyler's contentions and concluded that they are without merit, we[11]

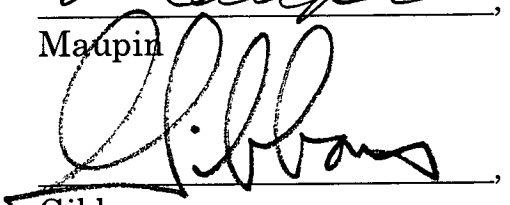
ORDER the judgment of conviction AFFIRMED.[12]



_____, J.
Rose



_____, J.
Maupin



_____, J.
Gibbons

cc: Hon. Jerome Polaha, District Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

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[11]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

[12]Although this court has elected to file the joint appendix submitted, we note that it does not comply with the arrangement and form requirements of the Nevada Rules of Appellate Procedure. See NRAP 3C(e)(2); NRAP 30(c); NRAP 32(a). Specifically, in violation of NRAP 30(c)(2), the indices prefacing the two volumes submitted are not ordered alphabetically. Counsel for both parties are cautioned that failure to comply with the requirements for appendices in the future may result in the appendix being returned, unfiled, to be correctly prepared. See NRAP 32(c). Failure to comply may also result in the imposition of sanctions by this court. NRAP 3C(n).