

563 P.3d 295

Supreme Court of Nevada.

Kenneth VAUGHN, a/k/a Kenneth Murray Vaughn  
Bey, a/k/a Kenneth Imhotep Vaughn Bey, Appellant,

v.

The STATE of Nevada, Respondent.

No. 85629

|

Filed February 6, 2025

**Synopsis**

**Background:** Defendant was convicted in the District Court, Clark County, Eric Johnson, J., of six counts of offering a false instrument for filing or record, two counts of simulation of legal process, and two counts of intimidating a public officer, and was sentenced as a habitual criminal to 5-20 years in the aggregate and ordered to pay \$19,600 in restitution. Defendant appealed.

**Holdings:** The Supreme Court, Parraguirre, J., held that:

[1] as a matter of first impression, to support conviction for offering a false instrument for filing or record, State must prove that there was a law allowing for the filing, registration, or recordation of the specific type of document at issue through the office to which it is offered;

[2] district court acted within its discretion in denying defendant's motion to dismiss indictment on ground that his right to a speedy trial was violated;

[3] evidence failed to support convictions for offering a false instrument for filing or record;

[4] statute making it felony to knowingly offer for filing, registration, or recording any false or forged instrument that, if genuine, might be filed, registered, or recorded under laws of state of Nevada or United States, was not unconstitutionally vague;

[5] district court acted within its discretion when it asked a witness allegedly irrelevant questions submitted by jury;

[6] testimony of State's expert witness alluding to criminal intent, a legal conclusion, did not prejudice defendant;

[7] jury instruction that stated "a defendant's contention that he believes the law of the United States and of the State of Nevada do not validly constrain him does not constitute a justification or excuse for his action and the jury is instructed to disregard such contentions" was not misleading;

[8] district court acted within its discretion by adjudicating defendant as a habitual criminal;

[9] defendant's sentence of an aggregate prison term of 5-20 years was not so disproportionate to the offenses of simulation of legal process and intimidating a public officer as to shock the conscience in violation federal and state prohibitions on cruel and/or unusual punishment;

[10] district court improperly relied on impalpable or highly suspect evidence in determining restitution, thus prejudicing defendant; and

[11] reversal of entire judgment of conviction was not warranted under the doctrine of cumulative error.

Affirmed in part and reversed in part.

**Procedural Posture(s):** Appellate Review; Pre-Trial Hearing Motion; Post-Trial Hearing Motion.

West Headnotes (33)

[1] **Forgery** 🔑 False entries or records, and alteration of entries or records

To support conviction under statute making it felony to knowingly offer for filing, registration, or recording any false or forged instrument that, if genuine, might be filed, registered, or recorded under laws of state of Nevada or United States, State must prove that there is a law allowing for the filing, registration, or recordation of the specific type of document at issue through the office to which it is offered. [Nev. Rev. St. § 239.330\(1\)](#).

[2] **Criminal Law** 🔑 Time of trial; continuance

Supreme Court reviews a district court's decision to grant or deny a motion to dismiss an

indictment based on a speedy trial violation for an abuse of discretion. [U.S. Const. Amend. 6](#).

[3] **Criminal Law** ⚡ [Review De Novo](#)

**Criminal Law** ⚡ [Speedy trial](#)

In evaluating whether a defendant's Sixth Amendment right to speedy trial has been violated, Supreme Court gives deference to district court's factual findings and reviews them for clear error, but reviews court's legal conclusions de novo. [U.S. Const. Amend. 6](#).

[4] **Criminal Law** ⚡ [Delay caused by accused](#)

**Criminal Law** ⚡ [Length of Delay](#)

**Criminal Law** ⚡ [Prejudice or absence of prejudice](#)

District court acted within its discretion in denying defendant's motion to dismiss indictment on ground that his right to a speedy trial was violated, in prosecution for six counts of offering a false instrument for filing or record, two counts of simulation of legal process, and two counts of intimidating a public officer, where delays were minimal and largely justifiable or caused by defendant's own conduct, and defendant failed to demonstrate prejudice as a result of the delay. [U.S. Const. Amend. 6](#).

[5] **Forgery** ⚡ [False entries or records, and alteration of entries or records](#)

Evidence failed to support convictions for six counts of offering a false instrument for filing or record against defendant who submitted, to the county records office, documents that purported to take ownership of property to which defendant had no claim, where records administration manager for the county recorder's office testified that none of documents defendant submitted were recordable, he noted certain requirements that documents involving real property had to meet to be recorded, and he testified that none of the documents met those requirements, and State pointed to no laws authorizing the recordation of

the documents defendant offered. [Nev. Rev. St. § 239.330\(1\)](#).

[6] **Criminal Law** ⚡ [Province of court and jury](#)

Denial of motion for judgment of acquittal is reviewed for abuse of discretion.

[7] **Criminal Law** ⚡ [Review De Novo](#)

Whether a statute covers certain conduct is a legal question subject to de novo review.

[8] **Constitutional Law** ⚡ [False pretenses and fraud](#)

**Forgery** ⚡ [Statutory provisions](#)

Statute making it felony to knowingly offer for filing, registration, or recording any false or forged instrument that, if genuine, might be filed, registered, or recorded under laws of state of Nevada or United States, was not unconstitutionally vague, where defendant provided a reasonable construction of the statute that provided adequate notice of the prohibited conduct, which Supreme Court adopted. [Nev. Rev. St. § 239.330\(1\)](#).

[9] **Forgery** ⚡ [False entries or records, and alteration of entries or records](#)

Statute making it felony to knowingly offer for filing, registration, or recording any false or forged instrument that, if genuine, might be filed, registered, or recorded under laws of state of Nevada or United States, concerns documents having the present ability to be filed under state or federal law, but that are forged or contain false information. [Nev. Rev. St. § 239.330\(1\)](#).


[10] **Statutes** ⚡ [Validity](#)

Supreme Court will not invalidate a statute unless the party challenging the statute makes a clear showing of invalidity.

[11] **Constitutional Law** 🔑 Presumptions and Construction as to Constitutionality

Every reasonable construction must be resorted to, in order to save a statute from unconstitutionality.

[12] **Witnesses** 🔑 Propriety of particular questions

District court acted within its discretion when it asked a witness allegedly irrelevant questions submitted by jury in prosecution for six counts of offering a false instrument for filing or record, two counts of simulation of legal process, and two counts of intimidating a public officer, where court appropriately applied the  *Flores v. State*, 114 Nev. 910, safeguards for allowing juror questions.

[13] **Witnesses** 🔑 Procedure

Allowing juror questions is within sound discretion of court, subject to certain safeguards, including: (1) initial jury instructions explaining that questions must be factual in nature and designed to clarify information already presented; (2) requirement that jurors submit their questions in writing; (3) determinations regarding admissibility of questions must be conducted outside presence of jury; (4) counsel must have opportunity to object to each question outside presence of jury; (5) admonition that only questions permissible under rules of evidence will be asked; (6) counsel be permitted to ask follow-up questions; and (7) the admonition that jurors must not place undue weight on responses to their questions.

[14] **Criminal Law** 🔑 Opinion evidence

Testimony of State's expert witness alluding to criminal intent, a legal conclusion, did not prejudice defendant in prosecution for six counts of offering a false instrument for filing or record, two counts of simulation of legal process, and two counts of intimidating a public officer, where district court ordered jury to disregard witness's statement.

[15] **Criminal Law** 🔑 Reception and Admissibility of Evidence

A trial court's decision to admit evidence is reviewed for an abuse of discretion.

[16] **Criminal Law** 🔑 Defenses in general

Jury instruction that stated “a defendant's contention that he believes the law of the United States and of the State of Nevada do not validly constrain him does not constitute a justification or excuse for his action and the jury is instructed to disregard such contentions” was not misleading in prosecution of defendant, a Moorish national, for offering a false instrument for filing or record, simulation of legal process, and intimidating a public officer.


[17] **Criminal Law** 🔑 Instructions

Supreme Court generally reviews a district court's decision settling jury instructions for an abuse of discretion or judicial error.

[18] **Criminal Law** 🔑 Review De Novo

Whether a jury instruction was an accurate statement of the law is a legal question subject to de novo review.

[19] **Sentencing and Punishment** 🔑 Recidivist treatment as mandatory or discretionary

District court acted within its discretion by adjudicating defendant as a habitual criminal in prosecution for six counts of offering a false instrument for filing or record, two counts of simulation of legal process, and two counts of intimidating a public officer, where court determined that it was proper to adjudicate defendant as a habitual criminal to deter further criminal conduct.  Nev. Rev. St. § 207.010(1) (a).

**[20] Criminal Law** 🔑 Sentencing

Supreme Court reviews sentencing decisions for an abuse of discretion.

**[21] Sentencing and Punishment** 🔑 Remoteness

Habitual criminal statute, which allows for any five previous convictions to be used in adjudicating someone as a habitual criminal, makes no exceptions for remote or stale convictions. 📄 Nev. Rev. St. § 207.010(1)(a).

**[22] Sentencing and Punishment** 🔑 Recidivist treatment as mandatory or discretionary

District courts have discretion to decline to apply the habitual criminal statute when the adjudication of habitual criminality serves neither the purposes of the statute nor the interests of justice. 📄 Nev. Rev. St. § 207.010(1)(a).

**[23] Jury** 🔑 Sentencing Matters

A judge may determine the fact of a prior conviction in adjudicating a defendant as a habitual criminal. 📄 Nev. Rev. St. § 207.010(1)(a).

**[24] Sentencing and Punishment** 🔑 Total sentence deemed not excessive**Sentencing and Punishment** 🔑 Cumulative or consecutive sentences

Defendant's sentence of an aggregate prison term of 5-20 years was not so disproportionate to the offenses of simulation of legal process and intimidating a public officer as to shock the conscience in violation federal and state prohibitions on cruel and/or unusual punishment, where district court noted that a lengthy sentence was appropriate to deter defendant from continuing his criminal behavior. U.S. Const. Amend. 8; Nev. Const. art. 1, § 6.

**[25] Sentencing and Punishment** 🔑 Punishment authorized by statute

A sentence within statutory limits is not cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience. U.S. Const. Amend. 8; Nev. Const. art. 1, § 6.

**[26] Criminal Law** 🔑 Restitution**Sentencing and Punishment** 🔑 Use and effect of report**Sentencing and Punishment** 🔑 Amount, value

District court improperly relied on impalpable or highly suspect evidence in determining restitution, namely, \$9,600 for unpaid rent and \$10,000 for damages to the rental unit, to be paid to defendant's landlord, thus prejudicing defendant in prosecution for simulation of legal process; court appeared to have ordered those amounts based on a notation contained in presentence investigation report, there was no indication that it received any evidence, let alone reliable and accurate evidence, regarding the alleged property damage, the evidence it did receive of unpaid rent through the landlords' testimony did not calculate to the amount ordered, and no explanation was provided for how any alleged property damage or unpaid rent was directly related to the crime of which landlords were victims.

**[27] Criminal Law** 🔑 Restitution

Supreme Court reviews restitution awards for abuse of discretion.

**[28] Sentencing and Punishment** 🔑 Amount, value

Sentencing courts must rely on reliable and accurate evidence in setting restitution.

1 Case that cites this headnote

**[29] Criminal Law** 🔑 Restitution

Abuse of discretion in connection with restitution will be found only when record demonstrates prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.

**[30] Criminal Law** 🔑 Restitution

Defendant preserved for appellate review his argument that district court abused its discretion by awarding restitution in the amount of \$9,600 for unpaid rent and \$10,000 for damages to the rental unit, to be paid to defendant's landlord, without adequate evidentiary support, in prosecution for simulation of legal process, despite State's contention that defendant failed to object to the presentence investigation report, which contained a notation regarding those amounts, and further failed to object to the restitution amount at sentencing, where defendant stated that landlords were paid and that the restitution amount was "a lie."

[1 Case that cites this headnote](#)

**[31] Criminal Law** 🔑 Grounds in general

Reversal was not warranted under the doctrine of cumulative error following convictions for offering a false instrument for filing or record, simulation of legal process, and intimidating a public officer, even though Supreme Court reversed defendant's convictions on six counts of offering a false instrument for filing or record and restitution award to landlords, where issues Supreme Court discussed did not impact the trial as to the remaining counts and there were no errors made by district court on other issues raised by defendant.

**[32] Criminal Law** 🔑 Grounds in general

Where cumulative error at trial denies defendant his or her right to fair trial, Supreme Court must reverse conviction.

**[33] Criminal Law** 🔑 Grounds in general

In evaluating cumulative error, Supreme Court must consider whether issue of innocence or guilt is close, quantity and character of error, and gravity of crime charged.

**\*298** Appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of simulation of summons, complaint, judgment, order or other legal process; six counts of offering a false instrument, for filing or record; and two counts of intimidating a public officer. Eighth Judicial District Court, Clark County; [Eric Johnson](#), Judge.

**Attorneys and Law Firms**

Nancy M. Lemcke, Public Defender, Audrey M. Conway, Chief Deputy Public Defender, and Katherine Currie-Diamond, Deputy Public Defender, Clark County, for Appellant.

[Aaron D. Ford](#), Attorney General, Carson City; [Steven B. Wolfson](#), District Attorney, and Austin Beaumont and Jonathan E. VanBoskerck, Chief Deputy District Attorneys, Clark County, for Respondent.

BEFORE THE SUPREME COURT, [STIGLICH](#), [PICKERING](#), and [PARRAGUIRRE](#), JJ.

*OPINION*

By the Court, [PARRAGUIRRE](#), J.:

**\*299 [1]** [NRS 239.330\(1\)](#) makes it a felony to knowingly offer for filing, registration, or recording any false or forged instrument that, if genuine, might be filed, registered, or recorded under the laws of the State of Nevada or the United States. Today, we hold that to support a conviction under this statute, the State must prove that there is a law allowing for the filing, registration, or recordation of the specific type of document at issue through the office to which it is offered.

Appellant Kenneth Vaughn was convicted by a jury of six counts of offering a false instrument for filing or record under [NRS 239.330\(1\)](#), in addition to two counts of simulation of summons, complaint, judgment, order or other legal process and two counts of intimidating a public officer. He was

adjudicated as a habitual criminal, sentenced to serve a prison term of 5-20 years in the aggregate, and ordered to pay \$19,600 in restitution. He now challenges his conviction and sentence on several grounds.

Because Vaughn's conduct did not fall within the conduct proscribed by [NRS 239.330\(1\)](#), we reverse his conviction on the six counts under that statute. Further, we reverse the restitution award, as the district court relied on impalpable or highly suspect evidence in determining the restitution amount. We affirm the conviction as to the remaining counts.

### FACTS

Kenneth Vaughn is a self-described Moorish National who claims that the governments of the United States and Nevada have no jurisdiction over him. In 2020 through 2021, Vaughn sent documents to his landlords claiming to take ownership of the property he rented. He also posted similar documents at the home of another family, demanding that the owners vacate the property. Relatedly, he sent multiple documents to the Clark County Recorder for recordation. These documents purported to take ownership of property to which he had no claim. When the office declined to record the documents, he called the office and threatened to have people fired and arrested if they did not record his documents.

Vaughn was arrested and ultimately charged as follows: counts 1 and 10, simulation of summons, complaint, judgment, order or other legal process: counts 2-7, offering a false instrument for filing or record pursuant to [NRS 239.330\(1\)](#); and counts 8-9, intimidating a public officer. Vaughn represented himself at trial with standby counsel and was convicted of all counts. Vaughn was adjudicated as a habitual criminal pursuant to [NRS 207.010\(1\)\(a\)](#) and sentenced to serve a prison term of 5-20 years on each count, to run concurrently. He was also ordered to pay \$19,600 in restitution. He now appeals his conviction and sentence.

On appeal, Vaughn argues that (1) the district court abused its discretion in denying his motion to dismiss the indictment on speedy trial grounds, (2) the State failed to prove the elements of the charges beyond a reasonable doubt, (3) he was prejudiced by a witness's answers to questions submitted by the jury, (4) a witness improperly testified to legal conclusions, (5) the district court provided a misleading jury instruction, (6) the district court abused its discretion by adjudicating him as a habitual criminal, (7) the district

court's restitution award was founded on impalpable or highly suspect evidence, and (8) cumulative error warrants reversal of his entire judgment of conviction.

### \*300 DISCUSSION

#### *Vaughn's speedy trial challenge*

[2] [3] [4] Vaughn argues his constitutional right to a speedy trial was violated and the district court abused its discretion in denying his motion to dismiss on those grounds. See [U.S. Const. amend. VI](#). “We review a district court's decision to grant or deny a motion to dismiss an indictment based on a speedy trial violation for an abuse of discretion.” [State v. Inzunza](#), 135 Nev. 513, 516, 454 P.3d 727, 730 (2019). “In evaluating whether a defendant's Sixth Amendment right to a speedy trial has been violated, this court gives deference to the district court's factual findings and reviews them for clear error, but reviews the court's legal conclusions de novo.” [Id.](#) at 516, 454 P.3d at 730-31. In applying the factors laid out in [Barker v. Wingo](#), we find no abuse of discretion in the district court's ruling. [407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed.2d 101 \(1972\)](#) (stating courts must look at the “[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant” as a result of the delay). The delays in this case were minimal and largely justifiable or caused by Vaughn's own conduct. Vaughn has also failed to demonstrate prejudice as a result of the delay. We therefore conclude that the district court did not abuse its discretion in denying Vaughn's motion to dismiss on speedy trial grounds.

#### *The scope of NRS 239.330(1)*

[5] [6] [7] Vaughn argues the State failed to prove the elements of counts 2-7—offering a false instrument for filing or record—beyond a reasonable doubt because his conduct did not fall within the scope of the statute under which he was convicted.<sup>1</sup> Vaughn moved for a judgment of acquittal on these grounds pursuant to [NRS 175.381\(2\)](#), and the district court denied the motion. We review the denial of a motion under [NRS 175.381](#) for an abuse of discretion. See [Milton v. State](#), 111 Nev. 1487, 1493, 908 P.2d 684, 688 (1995). But “[w]hether a statute covers certain conduct is a legal question subject to de novo review.” [Martinez v. State](#), 140 Nev. —, 558 P.3d 346, 356-57 (2024). For counts 2-7, the State prosecuted Vaughn under [NRS 239.330\(1\)](#), which states in relevant part that

a person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in a public office under any law of this State or of the United States, is guilty of a category C felony and shall be punished as provided in [NRS 193.130](#).

Therefore, to convict Vaughn, the State was required to prove that the documents Vaughn sent for recording, “if genuine, might be filed, registered or recorded in a public office under any law of this State or of the United States.” *Id.*

The documents Vaughn sent for recording were titled as follows: Default Notice to Affidavit of Allodial Secured Land Property Repossession Written Statement Nonresponse Notification; Eminent Domain Cover Letter and Notification of Aboriginal Indigenous Writ of Possession and Execution; Affidavit of Clear Perfect Allodial Land Title; Affidavit of Allodial Secured Land Property Repossession Written Statement; Aboriginal Indigenous Writ of Possession and Execution; and Affidavit of Fact—Notice of Default Judgment. Vaughn argues his conduct did not fall within the scope of the statute because none of the documents he attempted to file with the recorder's office were of a type that could have been recorded “if genuine.” See *Genuine*, *Black's Law Dictionary* (12th ed. 2024) (defining “genuine” as “authentic or real”). In [People v. Harrold](#), the Supreme Court of California reversed the conviction of a defendant under a similarly worded statute because there was no California state law allowing for the recordation of the type of document the defendant tried to record. [84 Cal. 567, 24 P. 106, 107 \(1890\)](#). Vaughn argues that the same situation is present here—there is no state or federal law authorizing the recording of the documents he attempted **\*301** to record and, therefore, he cannot be convicted under the statute.

Because the documents he sent were readily recognizable as documents that could not be recorded under state or federal law. Vaughn also argues that his conviction on those counts is inconsistent with the purpose of the statute—to prevent officials from *acting upon* false documents in mistaken belief

of accuracy. See *People v. Bel Air Equip. Corp.*, 39 N.Y.2d 48, 382 N.Y.S.2d 728, 346 N.E.2d 529, 532 (1976) (noting the purpose of a similar statute “is to guard against the possibility that officers of the State or its political subdivisions would act upon false or fraudulent instruments that had been filed with their offices in the belief that such documents were accurate and true” (internal quotation marks omitted)); see also [State v. Hampton](#), 143 Wash.2d 789, 24 P.3d 1035, 1038 (2001) (instructing the district court to “consider the likelihood and extent of others’ reliance on the document” in determining liability under a similar statute).

The State, on the other hand, argues for a more expansive view of the scope of documents contemplated by [NRS 239.330\(1\)](#), stating that the content or purpose of the document is what matters under the statute. The content of Vaughn's documents purported to take ownership of property to which Vaughn had no claim. Because there are recordable documents under state law that, if genuine, provide a valid claim to property if recorded, the State argues Vaughn may be held liable for attempting to record documents with this same purpose.

**[8] [9] [10] [11]** The State's reading of the statute is not entirely unreasonable, and it is not difficult to see how Vaughn's conduct may have been of the type the Legislature wished to discourage in enacting the statute. But we have held that “[a]mbiguity in a statute defining a crime or imposing a penalty should be resolved in the defendant's favor.” *State v. Fourth Jud. Dist. Ct. (Martinez)*, 137 Nev. 37, 39, 481 P.3d 848, 850 (2021) (alteration in original) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 296 (2012)). Thus, construing the ambiguity in Vaughn's favor, we conclude that the statute concerns documents having the present ability to be filed under state or federal law, but that are forged or contain false information. This is a reasonable construction of the statute that accounts for its likely purpose: to prevent officials from acting upon the documents in mistaken belief of accuracy.<sup>2</sup>

Applying that reading of the statute to the evidence introduced at trial, we conclude that the State failed to prove the elements of the charges. Courtney Hill, the Records Administration Manager for the Clark County Recorder's office, testified that none of the documents Vaughn submitted were recordable. He noted certain requirements that documents involving real property must meet to be recorded and testified that none of the documents met those requirements. The State points to no laws authorizing the recordation of the documents Vaughn offered. Because there is no state or federal law allowing for

the recordation of the specific documents Vaughn sent to be recorded, we conclude the State failed to show that Vaughn's conduct was covered by the statute. Convicting Vaughn for attempting to record documents that are readily recognizable as documents that cannot be recorded would likewise not further the purpose of the statute. We therefore conclude the district court abused its discretion in denying Vaughn's motion under [NRS 175.381\(2\)](#) and reverse Vaughn's conviction on counts 2-7.

#### *Juror questions*

[12] [13] Vaughn claims that he was prejudiced when the district court, over his objections, asked a witness irrelevant questions \*302 submitted by the jury. Vaughn argues that he was prejudiced by the answers to the questions. We have held that allowing juror questions is within the sound discretion of the court, subject to certain safeguards. [Flores v. State](#), 114 Nev. 910, 912-13, 965 P.2d 901, 902-03 (1998).

These safeguards include: (1) initial jury instructions explaining that questions must be factual in nature and designed to clarify information already presented; (2) the requirement that jurors submit their questions in writing; (3) determinations regarding the admissibility of the questions must be conducted outside the presence of the jury; (4) counsel must have the opportunity to object to each question outside the presence of the jury; (5) an admonition that only questions permissible under the rules of evidence will be asked; (6) counsel [be] permitted to ask follow-up questions; and (7) an admonition that jurors must not place undue weight on the responses to their questions.

[Id.](#) at 913, 965 P.2d at 902-03. Here, the district court appropriately applied the [Flores](#) safeguards, and we conclude there was no abuse of discretion.

#### *Witness testimony*

[14] [15] Vaughn argues that he was prejudiced when the State's expert witness testified to a legal conclusion. A trial court's decision to admit evidence is reviewed for an abuse of discretion. [McLellan v. State](#), 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). Here, the district court ordered the jury to disregard the witness's statement alluding to criminal intent. Vaughn has failed to demonstrate any prejudice. Therefore, we conclude the district court did not abuse its discretion.

#### *Jury instruction*

[16] [17] [18] Vaughn argues the district court erred by providing a misleading jury instruction that improperly favored the State. "This court generally reviews a district court's decision settling jury instructions for an abuse of discretion or judicial error." [Berry v. State](#), 125 Nev. 265, 273, 212 P.3d 1085, 1091 (2009), *abrogated on other grounds* by [State v. Castaneda](#), 126 Nev. 478, 245 P.3d 550 (2010). But "whether the jury instruction was an accurate statement of the law is a legal question subject to de novo review." [Id.](#) Vaughn objected to the language in one instruction that stated, "[a] defendant's contention that he believes the law of the United States and of the State of Nevada do not validly constrain him does not constitute a justification or excuse for his action and the jury is instructed to disregard such contentions." Vaughn's assertion that because he is a Moorish National, he is not subject to the jurisdiction of Nevada or the United States, is an invalid theory as a matter of law. *See, e.g.*, [Butts v. Clarke](#), No. 1:23CV1396 (PTG/IDD), 2025 WL 27824, at \*7 (E.D. Va. Jan. 3, 2025) (rejecting as a matter of law the assertion that a person who claims status as a Moorish American is exempt from criminal prosecution) (collecting cases). Therefore, we conclude that the district court did not abuse its discretion or commit judicial error by overruling Vaughn's objection.

#### *Habitual criminal*

[19] [20] [21] [22] Vaughn claims that the district court abused its discretion by adjudicating him as a habitual criminal under [NRS 207.010\(1\)\(a\)](#), claiming that the convictions used to sentence him were stale and, therefore, should not have been considered. We review sentencing decisions for an abuse of discretion. [Chavez v. State](#), 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). [NRS 207.010\(1\)\(a\)](#) allows for any five previous convictions to be

used in adjudicating someone as a habitual criminal. The statute makes no exceptions for remote or stale convictions. Although district courts have discretion to decline to apply the statute when the adjudication of habitual criminality “serves neither the purposes of the statute nor the interests of justice.”

▮ *Sessions v. State*, 106 Nev. 186, 191, 789 P.2d 1242, 1245 (1990), we discern no abuse of discretion here. The district court determined that it was proper to adjudicate Vaughn as a habitual criminal to deter further criminal conduct. We conclude that the district court did not abuse its discretion in making this determination.

[23] Alternatively, relying on ▮ \*303 *Erlinger v. United States*, 602 U.S. 821, 144 S.Ct. 1840, 219 L.Ed.2d 451 (2024). Vaughn argues that the district court erred by not requiring the jury to find beyond a reasonable doubt the fact that Vaughn's convictions happened on separate occasions prior to the instant offenses. But ▮ *Erlinger*'s holding was limited to the fact-specific findings required for conviction under the Armed Career Criminal Act. See ▮ *id.* at 825, 144 S.Ct. 1840. Even under ▮ *Erlinger*, a judge may “determine[ ] the fact of a prior conviction.” ▮ *Id.* at 839, 144 S.Ct. 1840. Here, the district court properly found the fact of five prior convictions, and there is no requirement necessitating the submission of the question to the jury.

[24] [25] Finally, Vaughn argues that even if there was no abuse of discretion in the manner of the habitual criminal adjudication, his ultimate sentence, an aggregate prison term of 5-20 years (concurrent prison terms of 5-20 years on counts 1 and 10), violates the federal and state prohibitions on cruel and/or unusual punishment. See U.S. Const. amend. VIII: Nev. Const. art. 1, § 6. “[A] sentence within the statutory limits is not ‘cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.’ ” ▮ *Allred v. State*, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004) (quoting *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996)). As mentioned above, the district court noted that a lengthy sentence was appropriate to deter Vaughn from continuing his criminal behavior. Vaughn does not argue that ▮ NRS 207.010(1) (a) is unconstitutional, and given the circumstances, the punishment is not so disproportionate to the offense as to shock the conscience. Therefore, we conclude that the district

court did not abuse its discretion with regard to the sentence imposed for counts 1 and 8-10.

#### *Restitution award*

[26] [27] [28] [29] Vaughn argues that the district court abused its discretion by awarding restitution without adequate evidentiary support. We review restitution awards for an abuse of discretion. Cf. ▮ *Chavez*, 125 Nev. at 348, 213 P.3d at 490 (noting district courts have wide discretion in sentencing decisions); ▮ *Martinez v. State*, 115 Nev. 9, 12, 974 P.2d 133, 135 (1999) (noting restitution “is a sentencing determination”). Sentencing courts must “rely on reliable and accurate evidence in setting restitution.” ▮ *Martinez*, 115 Nev. at 13, 974 P.2d at 135. “[A]n abuse of discretion will be found only when the record demonstrates ‘prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence ....’ ” ▮ *Lloyd v. State*, 94 Nev. 167, 170, 576 P.2d 740, 742 (1978) (omission in original) (quoting ▮ *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)).



Here, the district court ordered restitution to be paid to Vaughn's landlords in the amount of \$9,600 for unpaid rent and \$10,000 for damages to the rental unit. But Vaughn points out on appeal the landlords' testimony regarding unpaid rent calculates to less than \$9,600. Further, there was no documentary evidence provided to the court regarding unpaid rent or alleged property damage.

The district court appears to have ordered these amounts based on a notation contained in the presentence investigation report. The PSI was not included in the record on appeal, but it is difficult for us to imagine that a single notation in a PSI—presumably a hearsay statement—can constitute “reliable and accurate evidence.” ▮ *Martinez*, 115 Nev. at 13, 974 P.2d at 135. There is no indication that the district court received any evidence, let alone reliable and accurate evidence, regarding the alleged property damage. And the evidence it did receive of unpaid rent through the landlords' testimony does not calculate to the amount ultimately ordered. Importantly, it also appears that no explanation was provided for how any alleged property damage or unpaid rent was directly related to the crime of which the landlords were victims—simulation of summons, complaint, judgment, order or other legal process. See ▮ *Nied v. State*, 138 Nev. 275, 281, 509 P.3d 36, 42 (2022) (stating that restitution “should adequately compensate the

victim for economic losses or expenses *directly related to the criminal offense*” (emphasis added)).

[30] The State urges us to consider the argument waived because Vaughn failed to object to the PSI and further failed to object \*304 to the restitution amount at sentencing. But our review of the sentencing hearing reveals that Vaughn stated the landlords were paid and that the restitution amount was “a lie.” Given the context, we conclude this was sufficient to preserve the argument for appeal. We further conclude that Vaughn has demonstrated prejudice as a result of the district court’s consideration of impalpable or highly suspect evidence, and we reverse the restitution award.

#### *Cumulative error challenge*

[31] [32] [33] Vaughn argues that the above assigned errors, if not reversible individually, require reversal when cumulated. Where cumulative error at trial denies a defendant his or her right to a fair trial, this court must reverse the conviction.  *Big Pond v. State*, 101 Nev. 1, 3, 692 P.2d 1288, 1289 (1985). In evaluating cumulative error, this court must consider “whether the issue of innocence or guilt is close, the quantity and character of the error, and the gravity of the crime charged.”  *Id.* As discussed above, Vaughn’s conviction on counts 2-7 and the restitution award require reversal. However, the issues we discussed did not impact the trial as to counts 1 and 8-10. As there were no errors made by the district court on the other issues raised by Vaughn, there are no errors to accumulate. Thus, we conclude that Vaughn’s

contention that cumulative error requires reversal of the entire judgment of conviction is without merit.

#### CONCLUSION

NRS 239.330(1) makes it a felony to knowingly offer for recording any false or forged instrument that, if genuine, might be filed, registered, or recorded under the laws of Nevada or the United States. We hold that absent a specific law allowing for the same type of documents at issue in this case to be filed, registered, or recorded through the office at which it is offered, one cannot be convicted under this statute. Because the State failed to prove that the documents Vaughn offered for recordation were of the type that could have been recorded under state or federal law, we reverse his conviction on counts 2-7. We further conclude that the district court relied on facts supported only by impalpable or highly suspect evidence in determining the restitution amount and, therefore, reverse the restitution award. We affirm the judgment of conviction in all other respects.

We concur:

Stiglich, J.

Pickering, J.

#### All Citations

563 P.3d 295, 141 Nev. Adv. Op. 6

#### Footnotes

- 1 Vaughn also argues the State failed to prove the elements of counts 1 and 8-10. We are satisfied that the State proved the elements of those charges with sufficient evidence and affirm his conviction on those counts.
- 2 Vaughn alternatively argues that NRS 239.330(1) is unconstitutionally vague. This court will not invalidate a statute unless the party challenging the statute “make[s] a clear showing of invalidity.” *Pimentel v. State*, 133 Nev. 218, 222, 396 P.3d 759, 763-64 (2017) (internal quotation marks omitted). Further, “every reasonable construction must be resorted to, in order to save a statute from unconstitutionality.” *Id.* at 222, 396 P.3d at 764 (internal quotation marks omitted). Because Vaughn provided a reasonable construction of the statute that provides adequate notice of the prohibited conduct, which is adopted here, the statute is not unconstitutionally vague.

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