IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY ALLEN PATTERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43213

FILED

DEC 02 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Rudak
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of possession of a stolen motor vehicle. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Gregory Allen Patterson to serve a prison term of 16 to 60 months.

Patterson first contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Specifically, he asserts that the State failed to produce evidence that he knew the vehicle was stolen. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.[1]

NRS 205.273(1)(b) provides that a person commits the offense of possession of a stolen motor vehicle if he "[h]as in his possession a motor vehicle which he knows or has reason to believe has been stolen." "Direct proof of defendant's knowledge or belief [that the vehicle is stolen] is

[1]See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980).

rarely available."[2] Therefore, evidence that the defendant was in possession of the stolen vehicle "with slight corroboration in the form of statements or conduct tending to show guilt" is sufficient to sustain a conviction.[3]

In this case, the State presented overwhelming evidence, including the testimony of the victim and several law enforcement officers involved in the case, to support the jury's finding that Patterson knew or should have known that the vehicle was stolen. Although Patterson testified that he believed the vehicle was owned by his son's friend, it is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.[4]

Patterson next contends that, even if the evidence is sufficient to sustain the conviction as a matter of law, this court should order a new trial because the evidence presented at trial was conflicting. Patterson relies on State v. Purcell[5] and Evans v. State,[6] which are cases addressing the district court's authority to order a new trial pursuant to NRS 176.515. Patterson did not file a motion for a new trial in district court pursuant to

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[2]Montes v. State, 95 Nev. 891, 894, 603 P.2d 1069, 1072 (1979).

[3]Id. at 894-95, 603 P.2d at 1072.

[4]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

[5]110 Nev. 1389, 887 P.2d 276 (1994).

[6]112 Nev. 1172, 926 P.2d 265 (1996).

NRS 176.515. The district court was in the best position to independently evaluate any conflicting evidence in this case in the first instance, but appellant failed to seek the available remedy below. Accordingly, we reject this contention.

Finally, Patterson contends that that State improperly commented on his exercise of the right to remain silent. We conclude that Patterson's contention lacks merit.

In Doyle v. Ohio,[7] the United States Supreme Court held that the Due Process Clause of the Constitution forbids the prosecution from commenting on a defendant's invocation of the right to remain silent following an arrest.[8] However, this court will not reverse a conviction when the comments on post-arrest silence were harmless beyond a reasonable doubt.[9] Such improper comments are harmless beyond a reasonable doubt and do not require reversal where: (1) the prosecution made only a passing reference to the defendant's post-arrest silence; or (2) there is overwhelming evidence of guilt.[10] Here, even assuming without deciding that the prosecutor improperly commented upon Patterson's exercise of his right to remain silent, we conclude that the comments were harmless beyond a reasonable doubt.

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[7]426 U.S. 610 (1976).

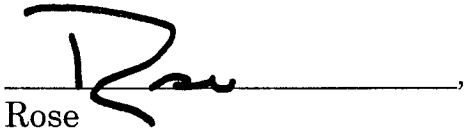
[8]See also Washington v. State, 112 Nev. 1054, 1059, 921 P.2d 1253, 1257 (1996).

[9]Morris v. State, 112 Nev. 260, 264, 913 P.2d 1264, 1267 (1996).

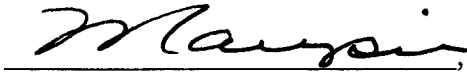
[10]Id. at 264, 913 P.2d at 1267-68.

Having considered Patterson's contentions and concluded that they lack merit, we

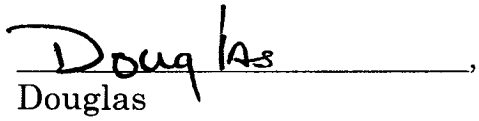
ORDER the judgment of conviction AFFIRMED.



_____, J.
Rose



_____, J.
Maupin



_____, J.
Douglas

cc: Hon. Steven P. Elliott, District Judge
Steven L. Sexton
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk