

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADAM RODRIGUEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43344

FILED

OCT 19 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of felony stop required on the signal of a peace officer. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant Adam Rodriguez to serve a prison term of 18 to 48 months.

Rodriguez first contends that there was insufficient evidence to support his felony conviction for failure to stop on the signal of the police officer. Specifically, Rodriguez contends that there was no evidence that he operated his vehicle in a manner that was likely to endanger any other person or their property as required by NRS 484.348(3)(b).<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup>NRS 484.348(3)(b) provides that a driver of a vehicle who fails to stop on the signal of a police officer is guilty of a category B felony if the driver: "[o]perates the motor vehicle in a manner which endangers or is likely to endanger any person other than himself or the property of any person other than himself."

<sup>2</sup>See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

In particular, we note that Las Vegas Metropolitan Police Officer Ailee Alsup testified at trial that, on August 26, 2003, at approximately 3:45 a.m., she observed an individual driving a vehicle with a broken taillight. Officer Alsup attempted to pull over the driver, who was later identified as Rodriguez, by activating the police car's red and blue lights. Rodriguez initially started to pull the vehicle over and then "just gunned it." Officer Alsup testified that Rodriguez then sped onto the freeway, which was congested for that time of the morning because it had been reduced to one lane due to road construction. Officer Alsup explained that as Rodriguez merged into the single lane of freeway traffic, he had to hit the vehicle brakes suddenly to avoid hitting another vehicle. Officer Alsup also explained that, when the driver in front of Rodriguez attempted to pull over to the right, Rodriguez followed, so the driver had to swerve to the left, nearly colliding with Officer Alsup's police vehicle. Rodriguez then accelerated his vehicle, driving approximately 80 mph in a 50 mph zone, and exited the freeway. Rodriguez sped through an intersection and made a right-hand turn on a red light without yielding or stopping. At the intersection, several drivers had to slam on their vehicle brakes to avoid hitting Rodriguez's and Officer Alsup's vehicles. Rodriguez then drove into a grocery store parking lot, slowed down his vehicle, and fled to a neighboring apartment complex while the vehicle was in drive and still rolling. According to Officer Alsup, the female passenger screamed to her that the car was still moving; Officer Alsup told her to place the car in park and exit the vehicle.

Although Rodriguez notes that his girlfriend, the female passenger, testified that Rodriguez did not come close to hitting other vehicles and was not endangering others on the roadway, the jury could

reasonably infer from the evidence presented that Rodriguez operated the motor vehicle in a manner which was likely to endanger other individuals or their property. 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.<sup>3</sup>

Rodriguez next contends that reversal of his conviction is warranted because Officer Alsup referred to a prior bad act in violation of Rodriguez's constitutional rights to due process and a fair trial. In particular, the following colloquy occurred:

Prosecutor: And did you determine the identity of the driver?

Officer Alsup: Yes.

Prosecutor: How did you do that?

Officer Alsup: [A]fter interviewing the female passenger, at first she told me she only knew him as "Snoop."

Prosecutor: Okay.

Officer Alsup: There was also a picture of him in the vehicle with her. Fortunately, our neighboring substation, a sergeant from that substation was on the scene and she had a recent incident with the same two people. She saw the picture --

....

This sergeant assisted with the -- of developing the identity of this person.

Rodriguez contends that the admission of Officer Alsup's testimony referencing a "recent incident" amounted to reversible error because: (1) the district court did not give a cautionary instruction; and (2) the

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<sup>3</sup>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).

statement clearly implied that Rodriguez had committed some other prior crime. We disagree.

In Thomas v. State, we held that that the admission of witness testimony referencing a defendant's criminal history was harmless because: (1) the statement was unsolicited by the prosecutor; (2) defense counsel had refused the district court's offer to admonish the jury; and (3) there was overwhelming evidence of the defendant's guilt.<sup>4</sup>

In this case, even assuming Officer Alsup's statement about a "recent incident" was a reference to prior criminal activity, we conclude that the resulting error was harmless. First, the statement was not intentionally solicited by the prosecutor, but was inadvertently made in response to a proper question involving the identity of the driver. Second, any prejudicial effect of the admission of the testimony was minimized by the fact that Officer Alsup's brief reference described neither the number nor the nature of Rodriguez's prior criminal offenses. Although Rodriguez notes that the jury did not receive a cautionary instruction,<sup>5</sup> in light of the evidence presented against Rodriguez, we are convinced that Officer Alsup's inadvertent reference to a "recent incident" did not affect the outcome of the proceedings. Accordingly, reversal of Rodriguez's conviction is not warranted.


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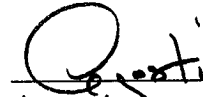
<sup>4</sup>114 Nev. 1127, 1141-42, 967 P.2d 1111, 1121 (1998); see also Rice v. State, 108 Nev. 43, 44, 824 P.2d 281, 281 (1992).


<sup>5</sup>It is unclear from the record on appeal whether defense counsel actually requested a cautionary instruction. Defense counsel's initial objection was discussed at an unrecorded sidebar conference. After the unrecorded conference, the prosecutor resumed questioning Officer Alsup. There was no further testimony about the "recent incident."

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

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Jackie Glass, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk