IN THE SUPREME COURT OF THE STATE OF NEVADA

LEE CHRISTOPHER VOWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44205

FILED

JUN 08 2005

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ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of failure to stop on the signal of a police officer. Eighth Judicial District Court, Clark County; Valerie Adair, Judge. The district court sentenced appellant to two concurrent prison terms of 24 to 72 months.

Appellant contends that the evidence presented at trial was insufficient to support the jury's finding of guilt on one of the counts. Specifically, appellant argues that Count 1 of the information alleged that he failed to stop after being signaled "on Boulder Highway eastbound Desert Inn," but that the State never proved that he was given a signal to stop at that location. 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]

In particular, we note that appellant was approached by police officer K. Ruesch in the parking lot of the Boulder Station casino which is located at the intersection of Boulder Highway and Desert Inn. After

[1]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).

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Ruesch told appellant to exit the car in which he was sitting, and which had been reported stolen, appellant drove away and escaped. Ruesch testified that when appellant left the parking lot of the Boulder Station that appellant continued eastbound on Desert Inn, although Ruesch lost sight of appellant. Appellant was arrested later that same day by another police officer after a chase that began when appellant refused to stop on the signal of the second police officer.

Count 1 of the information charged that appellant either failed to bring his vehicle to a stop or "otherwise [fled] or attempt[ed] to elude a peace officer." The jury could reasonably infer from the evidence presented that appellant fled from Ruesch in the parking lot of the Boulder Station, which is located approximately at Boulder Highway and Desert Inn. Additionally, Count 1 and NRS 484.348, the statute on which the charge was based, are written in the disjunctive. It was therefore not necessary for the State to prove that appellant failed to stop while he was driving, because the State adduced evidence that appellant fled after Ruesch attempted to detain him. The jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.[2]

Appellant next contends that the information in this case was defective because it did not specify exactly how appellant drove in a manner which endangered the persons or property of another.

NRS 173.075(1) provides that "the information must be a plain, concise and definite written statement of the essential facts constituting the offense charged." Here, each count for violating NRS

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[2]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).

484.348 was drafted in the language of the statute, and contained all the elements, including that appellant operated a "motor vehicle in a manner which endangered, or was likely to endanger any person other than himself or the property of any person other than himself."

As to Count I, Ruesch testified that appellant fled the parking lot of the Boulder Station, and there were pedestrians and other vehicles in the parking lot that appellant had to maneuver around in making his escape. As to Count II, the pursuing officer, Ray Byrd, testified that appellant was cutting in and out of heavy traffic, drove through a number of red lights and stop signs, and finally ended up driving into a residential yard. Ruesch and Byrd both testified at the preliminary hearing, and we conclude that appellant was effectively on notice as to the specific acts that were alleged. Moreover, appellant has not demonstrated that the information is so insufficient that it resulted in a miscarriage of justice or actually prejudiced appellant in respect to a substantial right.[3]

Finally, appellant contends that the jury was improperly instructed. Specifically, appellant argues that the jury should not have been informed that the lesser-included offense of failure to stop without endangering property or others is a misdemeanor, whereas the offense of which appellant was convicted is a felony. Appellant argues that by

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[3]See Laney v. State, 86 Nev. 173, 177-78, 466 P.2d 666, 669-70 (1970) (explaining that, where the sufficiency of the charging document is not raised until after a verdict or plea of guilty, such a verdict or plea cures technical defects unless it is apparent that they have resulted in prejudice to the defendant); see also Sanders v. Sheriff, 85 Nev. 179, 181-82, 451 P.2d 718, 719-20 (1969) (holding that a charging document "may simply be drawn in the words of the statute so long as the essential elements of the crime are stated.").

highlighting the distinction between the misdemeanor and felony offenses, the jury was invited to consider matters of sentencing and punishment.

We conclude that the mere labeling of one charge as a felony and one charge as a misdemeanor did not deprive appellant of a fair trial. The jury was instructed that it was not to discuss or consider the subject of punishment. The jury was further instructed that it could not convict appellant unless it found guilt beyond a reasonable doubt as to each element. It is "always presumed that the jury abided by its duty to read and consider all instructions provided by the trial court."[4] Appellant's underlying supposition that the jury only convicted him of the greater charge because of an improper consideration of the punishment is unsupported by the record.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Rose

_____, J.
Gibbons

_____, J.
Hardesty

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[4]Evans v. State, 112 Nev. 1172, 1204, 926 P.2d 265, 286 (1996) (citing Lambert v. State, 94 Nev. 68, 70, 574 P.2d 586, 587 (1978)).

cc: Hon. Valerie Adair, District Judge
Clark County Public Defender Philip J. Kohn
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