IN THE SUPREME COURT OF THE STATE OF NEVADA

HOWARD BRIAN ACKERMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45896

FILED

OCT 17 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of first-degree kidnapping. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge. The district court sentenced appellant Howard Brian Ackerman to serve a prison term of life with parole eligibility in 5 years.

Citing to NRS 171.070, Turner v. State,[1] and federal case authority, Ackerman contends that the district court erred by denying his motion to dismiss the criminal charges. Ackerman argues that the Nevada criminal charges should have been dismissed because he had previously been convicted in California for the identical conduct. We disagree. [2]

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[1]94 Nev. 518, 583 P.2d 452 (1978).

[2]We also disagree with Ackerman's argument that double jeopardy principles barred his subsequent prosecution in Nevada. This court has recognized that "the Fifth Amendment double jeopardy clause does not bar the Nevada prosecution because separate prosecutions in two states are permissible under the 'dual sovereignty' theory." Sacco v. State, 105 Nev. 844, 846, 784 P.2d 947, 949 (1989); see also United States v. Wheeler, 435 U.S. 313, 316-17 (1978).

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NRS 171.070 states: "When an act charged as a public offense is within the jurisdiction of another state, . . . as well as of this state, a conviction or acquittal thereof in the former is a bar to the prosecution or indictment therefor in this state." In construing NRS 171.070, this court has recognized that in order for a conviction for an offense in another jurisdiction to bar a subsequent prosecution in Nevada, "'all the acts constituting the offense in [the Nevada prosecution must be] necessary to prove the offense[s] in the prior prosecution.'"[3]

We conclude that the district court did not err by denying the motion to dismiss the Nevada information. The California conviction[4] and the Nevada prosecution did not punish the identical conduct. In California, Ackerman was convicted, pursuant to a nolo contendere plea, of one count of "willfully and unlawfully threaten[ing] to commit a crime which would result in death and great bodily injury to [the victim] with the specific intent that the statement be taken as a threat." Notably, none of the Nevada criminal charges involved the sole act of making a criminal threat. In Nevada, Ackerman was charged with several counts of kidnapping and attempted sexual assault for the acts of taking and detaining the victim without her consent and attempting to force her to perform oral sex. Accordingly, all of the acts necessary to prove the

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[3]Turner, 95 Nev. at 519, 583 P.2d at 453 (quoting People v. Belcher, 520 P.2d 385, 390-91 (Cal. 1974)).

[4]In his appellate brief, Ackerman compares the original criminal charges filed in California with the Nevada charges. However, the statute does not bar subsequent prosecution for all crimes initially charged. NRS 171.070 only prohibits subsequent prosecution if there has been a prior conviction for the same act.

California conviction were not the same as the acts charged in the Nevada prosecution.

Ackerman next contends that the district court erred by granting the State's motion to admit evidence under the complete story doctrine. Citing to Bellon v. State,[5] Ackerman argues that the district court should not have permitted police officers to testify about their interactions with Ackerman at a gas station on July 29, 2003, because the testimony described the crime of resisting a police officer,[6] and the probative value of the evidence about the other crime was outweighed by the prejudicial effect. We conclude that Ackerman's contention lacks merit.

This court has stated that "[t]he decision to admit or exclude evidence rests within the trial court's discretion, and this court will not overturn that decision absent manifest error."[7] We have explained that the doctrine of the complete story of the crime, codified in NRS 48.035(3), allows the State to present all the facts surrounding the commission of a crime "even if it implicates the accused in the commission of other crimes for which he has not been charged".[8] However, under NRS 48.035(3), "a witness may only testify to another uncharged act or crime if it is so

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[5]121 Nev. 436, 117 P.3d 176 (2005).

[6]Ackerman notes that the criminal charges for the acts of resisting the police officers were filed in a separate, pending criminal case.

[7]Collman v. State, 116 Nev. 687, 702, 7 P.3d 426, 436 (2000).

[8]Brackeen v. State, 104 Nev. 547, 553, 763 P.2d 59, 63 (1988).

closely related to the act in controversy that the witness cannot describe the act without referring to the other uncharged act or crime."[9]

In this case, we conclude that the district court did not commit manifest error in admitting the testimony of the police officers describing their observations of Ackerman at a gas station. The testimony of the police officers was highly relevant because it tended to prove the corpus delecti of the kidnapping charges. To the extent the testimony implicated his involvement in the crime of resisting a police officer, the district court did not err by ruling that the kidnapping was so intertwined with the incident of resisting that it could not be described without referring to the other crime.

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

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

[9]Bellon, 121 Nev. at 444, 117 P.3d at 181.

cc: Hon. Joseph T. Bonaventure, District Judge
Donald J. Green
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk