IN THE SUPREME COURT OF THE STATE OF NEVADA

WONZER RATCLIFF,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46463

FILED

JUL 13 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 failure to stop on the signal of a police officer. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

The district court sentenced appellant Wonzer Ratcliff to a prison term of 12-30 months. The sentence was suspended and Ratcliff was placed on probation for a period not to exceed 24 months. Ratcliff argues six issues on appeal.

First, Ratcliff claims that insufficient evidence was adduced to support the conviction. Specifically, Ratcliff argues the State failed to prove he endangered the safety of others. 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 the police officer who attempted to conduct a traffic stop of Ratcliff's vehicle testified that he activated the police vehicle's siren and lights many times throughout the chase, and that Ratcliff traveled at speeds of nearly 100 miles per hour. Additionally, the officer testified that Ratcliff did not stop at numerous red lights, but

[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).

instead drove right through them. Further, the officer stated that Ratcliff nearly collided with other vehicles and pedestrians multiple times.

The jury could reasonably infer from the evidence presented that Ratcliff willfully failed to stop his vehicle while endangering the safety of others. 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.[2]

Second, Ratcliff contends he was deprived of the right to due process because the information did not contain any facts to support the "endangering" element and the jury was not properly instructed on the "endangering" element. Ratcliff was not misinformed or unaware of the nature of the charge against him. There is no requirement that the information contain language that exactly mirrors the statutory language, and "if the words used convey the same meaning as those in the statute, and the substantial rights of the defendant are not prejudiced, words of common understanding are acceptable."[3]

Initially, we note that Ratcliff failed to make a pretrial challenge to the information. "Unless an accused is able to affirmatively demonstrate that the information is so defective that it results in a miscarriage of justice or actually prejudices him in respect to a substantial right, no relief will be afforded him, even when the challenge is made before trial."[4] Ratcliff has made no showing of how he was prejudiced by the minor semantic differences between the statutory language and that

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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).

[3]Watkins v. Sheriff, 87 Nev. 233, 235, 484 P.2d 1086, 1087 (1971),

[4]Watkins, 87 Nev. at 236, 484 P.2d at 1087 (1971).

in the information. Further, Ratcliff failed to offer or request any jury instruction regarding the term "endangering." "The failure to object or to request special instruction to the jury precludes appellate consideration."[5]

Third, Ratcliff contends the term "endanger" in NRS 484.348(3)(b) is unconstitutionally vague for failing to define the term. Statutes enjoy a presumption of validity, thus the burden is on appellant to demonstrate how a statute is unconstitutional.[6] "A statute is void for vagueness if it fails to give a person of ordinary intelligence fair notice that h[is] conduct is forbidden by statute."[7] Ratcliff has not made a showing that persons of ordinary intelligence do not have notice that the driving behavior he exhibited is not forbidden by statute. Further, Ratcliff's claim that there are no "endangering" facts in the information is belied by the record.[8]

Fourth, Ratcliff argues that the district court erred by allowing prior bad act evidence without a Petrocelli[9] hearing. Specifically, Ratcliff contends it was error to allow the prosecution to remark in passing in its opening statement that he admitted to the police that he fled "because his driver's license was revoked, and he did not want to have his vehicle towed." Ratcliff objected and requested a mistrial. The district court denied the request, but failed to give a limiting instruction to the

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[5]McCall v. State, 91 Nev. 556, 557, 540 P.2d 95, 95 (1975).

[6]Sheriff v. Vlasak, 111 Nev. 59, 61-62, 888 P.2d 441, 443 (1995) (quoting Wilmeth v. State, 96 Nev. 403, 405, 610 P.2d 735, 737 (1980)).

[7]Williams v. State, 118 Nev. 536, 545-46, 50 P.3d 1116, 1122 (2002).

[8]Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

[9]Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

jury. The jury was instructed several times that opening statements are not evidence. We must presume that the jurors followed the district court's instructions.[10] As a result, there was no need to give a limiting instruction, because the statement was not an admission of prior bad act evidence.

Even assuming the brief remark constitutes prior bad act evidence, it could have been admissible to show Ratcliff's motive and intent for his failure to stop his vehicle.[11] The test regarding failure to give a limiting instruction is whether the error "had substantial and injurious effect or influence in determining the jury's verdict."[12] Failure to exclude such evidence is harmless error where there is overwhelming evidence supporting the conviction.[13] Given the overwhelming evidence of Ratcliff's guilt, we conclude this claim lacks merit.

Fifth, Ratcliff's claim that the district court erred in giving a flight instruction is without merit. It is proper to instruct on flight where it is reasonable to infer flight from the evidence presented.[14] The evidence overwhelmingly established such an inference was reasonable.

Sixth, Ratcliff claims his rights to due process and to be free from unreasonable search and seizure were violated when the court

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[10]See Lisle v. State, 113 Nev. 540, 558, 937 P.2d 473, 484 (1997) clarified on other grounds, 114 Nev. 221, 954 P.2d 744 (1998).

[11]NRS 48.045(2).

[12]Tavares v. State, 117 Nev. 725, 732, 30 P.3d 1128, 1132 (2001).

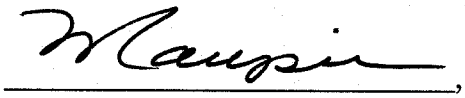
[13]Richmond v. State, 118 Nev. 924, 934, 59 P.3d 1249, 1255 (2002).

[14]Hutchinson v. State, 110 Nev. 103, 113, 867 P.2d 1136, 1143 (1994), modified on other grounds by Mendoza v. State, 122 Nev. ___, 130 P.3d 176 (2006).

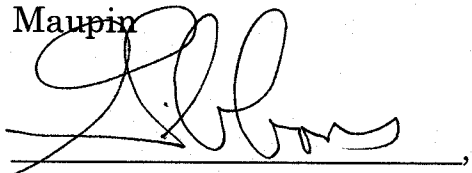
ordered DNA genetic marker testing for a traffic violation. Statutes enjoy a presumption of validity, thus the burden is on appellant to demonstrate how a statute is unconstitutional.[15]

NRS 176.0913(4)(b) clearly mandates a genetic marker is to be taken from those convicted of a category B felony. Further, this court previously determined the relevant DNA statutes to be permissible and therefore, Ratcliff's "contentions concerning abuse of the genetic marker data are merely speculation and conjecture, as he has provided this court with no evidence regarding such abuse."[16]

Having concluded Ratcliff's contentions lack merit, we ORDER the judgment of conviction AFFIRMED.



_____, J.
Maupin



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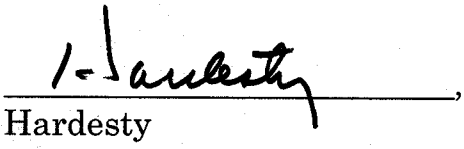

_____, J.
Hardesty

cc: Hon. Douglas W. Herndon, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[15]Vlasak, 111 Nev. at 61-62, 888 P.2d at 443.

[16]Gaines v. State, 116 Nev. 359, 374, 998 P.2d 166, 175 (2000).