IN THE SUPREME COURT OF THE STATE OF NEVADA

DALE DALLAS CRAIG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47149

DALE DALLAS CRAIG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47150

FILED

JAN 24 2007

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

ORDER AFFIRMING IN PART AND REMANDING

These are consolidated appeals from two separate judgments of conviction. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Pursuant to a jury verdict in one case and a plea agreement in the other case, the district court convicted appellant Dale Dallas Craig of one count each of trafficking in a controlled substance, possession of a controlled substance, possession of a controlled substance with the intent to sell, felony failure to stop on the signal of a police officer, and being an ex-felon in possession of a firearm. The district court sentenced Craig to serve various consecutive and concurrent terms of imprisonment, amounting to life with the possibility of parole. Craig presents two issues for our review.

First, Craig contends that the district court erred in denying his pretrial motion to suppress evidence because his arrest and the impoundment and search of his vehicle were unlawful. Craig argues that his arrest was unlawful because (1) the Nye County Sheriff's Deputies did not pursue him into California for a felony violation as required by Cal.

07-01912

Penal Code § 852.2; (2) he was not taken before the Inyo County Magistrate by the arresting officers as required by Cal. Penal Code § 852.3; and (3) the only evidence offered to the Magistrate regarding the validity of his arrest was an Inyo County Sheriff's Deputy's report that was based on the opinions of a Nye County Sheriff's Deputy.

The district court conducted a hearing on Craig's motion to suppress and found that his arrest was lawful under California's fresh pursuit statutes. A district court's "[f]indings of fact in a suppression hearing will not be disturbed on appeal if supported by substantial evidence."[1] Here, the district court's finding is supported by substantial evidence: Craig failed to stop on the signal of a police officer while operating his vehicle in a dangerous manner in Nevada (a felony violation); both the Inyo County Sheriff's Office and the California Highway Patrol were contacted when the pursuit crossed into California; as a courtesy, the Inyo County Sheriff's Office took custody of Craig and brought him before the Inyo County Magistrate; and the Inyo County Magistrate determined that Craig's arrest was lawful.

Craig also argues that the impoundment and search of the vehicle were unlawful because (1) they occurred before the Inyo County Magistrate determined that his arrest was lawful, and (2) the Nye County Sheriff's Office policy for impounding and searching vehicles is inadequate.

NRS 484.397(3)(b) gives officers the discretion to impound a vehicle when they have arrested the driver and are required to take the driver before a magistrate without unnecessary delay. It does not,

---

[1]State v. Johnson, 116 Nev. 78, 80, 993 P.2d 44, 45-46 (2000).

however, require the officers to await a magistrate's determination before impounding the vehicle. Here, the officers had discretion to impound the vehicle because they had arrested Craig and were required by Cal. Penal Code § 852.3 to bring him before a magistrate without unnecessary delay.

Craig claims that the impoundment and search of the vehicle were unlawful because NRS 484.397 fails to provide any standard criteria for determining whether to impound a vehicle. This theory was not presented to the court below, where instead Craig argued that the Sheriff's Office's written policy for inventories was inadequate and not followed. We have consistently held that an appellant is not permitted to change the theory underlying his assignment of error on appeal.[2] Accordingly, we decline to consider this claim.

Second, Craig contends that the district court erred in denying his motion for a directed verdict on the count of failing to stop on the signal of a police officer. He claims that he was entitled to a directed verdict because NRS 484.348(3)(b) contains arbitrary language and is therefore unconstitutionally vague. There is no provision in Nevada law for the entry of a directed verdict in a criminal case. However, "[i]f, at any time after the evidence on either side is closed, the court deems the evidence insufficient to warrant a conviction, it may advise the jury to acquit the defendant, but the jury is not bound by such advice."[3] Our review of the record reveals sufficient evidence to support a conviction for felony failure to stop on the signal of a police officer.

---

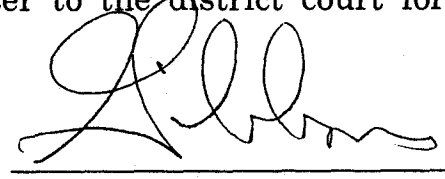
[2]See Ford v. Warden, 111 Nev. 872, 884, 901 P.2d 123, 130 (1995).

[3]NRS 175.381(1).

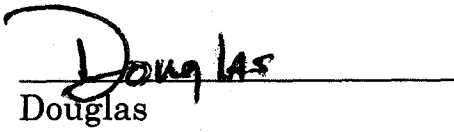
We note from our review of the record that Craig may have received redundant convictions and sentences. Specifically, the conviction for trafficking in a controlled substance and the conviction for possession of a controlled substance with the intent to sell both appear to be based on Craig's possession of the methamphetamine found in the tan metal box.[4] Accordingly, we remand this case to the district court with instructions to determine whether the convictions are redundant and, if they are, to amend the judgment of conviction accordingly.

Having considered Craig's contentions and concluded that they are without merit, and for the reasons set forth above, we

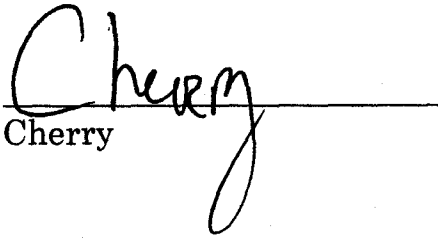
ORDER the judgment of the district court AFFIRMED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.



_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Cherry

---

[4]See State of Nevada v. Dist. Ct., 116 Nev. 127, 136, 994 P.2d 692, 698 (2000) (providing that convictions are redundant if they punish the identical illegal act); Jenkins v. District Court, 109 Nev. 337, 341, 849 P.2d 1055, 1057 (1993) (holding that the district court is precluded from entering redundant convictions against a defendant).

cc: Hon. Robert W. Lane, District Judge
Harold Kuehn
Nye County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Nye County District Attorney/Pahrump
Nye County Clerk