

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN LEE LEONARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47166

FILED

OCT 17 2006

MANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of felony driving while under the influence of alcohol (DUI). Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Kevin Lee Leonard to serve a prison term of 16 to 72 months.

Leonard first contends that there is insufficient evidence to support the conviction because a motorized scooter is not a vehicle as defined in NRS 484.217. In particular, Leonard argues that it is absurd to conclude that a motorized scooter is a vehicle because it is merely a toy, which weighs approximately twenty-five pounds and goes approximately 20 miles per hour, and poses the same risk of harm as human powered vehicles such as bicycles and skateboards. We disagree.

NRS 484.217 defines a "vehicle" as

every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except:

1. Devices moved by human power or used exclusively upon stationary rails; and

2. Electric personal assistive mobility devices as defined in NRS 482.029.

Based on the plain language of the statute, we conclude that a motorized scooter is a vehicle. The scooter is a transportation device that may be ridden on the highway¹ and, notably, it is moved by gas motor instead of human power and does not ride on rails. Further, the motorized scooter in this case is not a personal assistive mobility device because it does not have an electric motor, is capable of exceeding 15 miles per hour, and has tandem wheels.² The Nevada Legislature defined a vehicle broadly and enumerated certain exceptions; it could have excluded gas powered scooters or skateboards or other similar motorized toys, but did not do so. Accordingly, we conclude that a motorized scooter is a vehicle and there is sufficient evidence to sustain the conviction.³

¹"Highway" is broadly defined to mean "the entire width between the boundary lines of every way dedicated to a public authority when any part of the way is open to the use of the public for purposes of vehicular traffic." NRS 484.065.

²See NRS 482.029 ("Electric personal assistive mobility device' means a self-balancing, two nontandem wheeled device, designed to transport only one person, with an electric propulsion system that limits the maximum speed of the device to 15 miles per hour or less.").

³We do not reach Leonard's arguments that NRS 484.217 was unconstitutionally overbroad and vague, to the extent that he raises them, because he failed to raise the arguments in the district court and does not cite any supporting authority on appeal. See McKenna v. State, 114 Nev. 1044, 1054, 968 P.2d 739, 746 (1998); Maresca v. State, 103 Nev. 669, 748 P.2d 3 (1987).

Leonard also argues that the district court erred in using one of his prior misdemeanor DUI convictions for enhancement purposes because it was not constitutionally valid. In particular, Leonard notes that he was represented by counsel at the plea canvass, but did not have counsel at the sentencing hearing, and there is no indication in the record that he waived his right to counsel during that proceeding. We conclude that Leonard's contention lacks merit.

To establish the validity of a prior misdemeanor conviction, the State must "affirmatively show either that counsel was present or that the right to counsel was validly waived, and that the spirit of constitutional principles was respected in the prior misdemeanor proceedings."⁴

In this case, the State met its evidentiary burden by proffering court records of the 1999 conviction indicating that Leonard was advised of his right to counsel. The municipal court's record of the proceedings indicates that, before entering the plea, the judge personally canvassed Leonard and advised him of "the right to an attorney." Additionally, in the waiver of rights form, which was signed by Leonard, defense counsel, and the judge, Leonard acknowledged that he understood his constitutional rights, including the constitutional right to an attorney. Finally, Leonard failed to present evidence that he subsequently misunderstood or was deprived of his right to counsel at the sentencing

⁴Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991).

hearing sufficient to overcome the presumption of the validity of the court records. Accordingly, we conclude that the district court did not err in using the prior misdemeanor DUI conviction for enhancement purposes.

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

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk