


IN THE SUPREME COURT OF THE STATE OF NEVADA

ZEL NORMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47548

FILED

FEB 20 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of two counts of possession of a controlled substance and one count of failure to stop on the signal of a police officer. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court adjudicated appellant Zel Norman a habitual criminal and sentenced him to serve three consecutive prison terms of 60 to 240 months. Norman presents five issues for our review.

First, Norman contends that the evidence presented at trial was insufficient to support his conviction for felony failure to stop on the signal of a police officer. Our review of the record on appeal, however, reveals sufficient evidence to establish Norman's guilt beyond a reasonable doubt as determined by a rational trier of fact.¹

In particular, we note that Las Vegas Metropolitan Police Officer Lawrence Gilbert testified that when he activated his red lights

¹See McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (citing Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

and siren Norman pulled over and stopped. However, when he exited his patrol car and approached Norman's car, Norman drove away. During the ensuing pursuit, Norman drove through stop signs without stopping, traveled at speeds of 40 to 45 miles per hour in a residential area with a posted speed limit of 25 miles per hour, and traveled south on a northbound lane with northbound traffic.

We conclude that a rational juror could reasonably infer from the evidence adduced at trial that Norman failed to stop on the signal of a police officer and drove his car in a manner that was likely to endanger other persons or their property.² 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.³

Second, Norman contends that the endangering element of NRS 484.348(3) is unconstitutionally vague because it fails to give clear notice of what actions or conduct are "endangering" or "likely to endanger." He notes that other states have found the "endangering" language unconstitutional.⁴

²See NRS 484.348(3)(b).

³See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

⁴Norman cites to State v. Pigge, 322 P.2d 703 (Idaho 1957); State v. Adams, 143 N.W.2d 920 (Neb. 1966); State v. Huffman, 275 N.W.2d 838 (Neb. 1979); People v. Firth, 146 N.E.2d 682 (N.Y. 1957), all of which review challenges to the States' reckless driving statutes.

Criminal laws are subject to facial attack under two different doctrines: (1) the overbreadth doctrine, which permits the facial invalidation of laws that inhibit the exercise of First Amendment rights, and (2) the void-for-vagueness doctrine, which permits the facial invalidation of a law that "is so imprecise, and vagueness so permeates its text, that persons of ordinary intelligence cannot understand what conduct is prohibited, and the enactment authorizes or encourages arbitrary and discriminatory enforcement."⁵

NRS 484.348 does not implicate the First Amendment, it is not so unclear that vagueness pervades the statute's content, and it does not lend itself to arbitrary and discriminatory enforcement. Moreover, as applied here, the statute gives fair notice to people of ordinary intelligence that failure to stop on the signal of a police officer coupled with driving through stop signs, speeding through residential areas, and traveling against the flow of traffic constitutes felonious conduct.

Third, Norman contends that the district court erred by not instructing the jury on the significance of his theory of defense. Norman's theory of the case was that his failure to stop on the signal of a police officer was not done in a manner which endangered or was likely to endanger other persons or their property.

⁵City of Las Vegas v. Dist. Ct., 118 Nev. 859, 862-63, 59 P.3d 477, 479-80 (2002).

The district court is ultimately responsible for ensuring that the jury is fully and correctly instructed.⁶ If requested, the district court must provide instructions on the significance of findings that are relative to the defense's theory of the case.⁷ "If [a] proposed [defense] instruction is poorly drafted, a district court has an affirmative obligation to cooperate with the defendant to correct the proposed instruction or to incorporate the substance of such an instruction in one drafted by the court."⁸ The defense is not entitled to instructions that are "misleading, inaccurate, or duplicitous."⁹

Here, even assuming that the district court erred by not giving Norman's proffered instruction or by failing to ensure that the substance of Norman's proffered instruction was adequately incorporated into the jury instructions, "we are convinced beyond a reasonable doubt that the jury's verdict was not attributable to the error and that the error was harmless under the facts and circumstances of this case."¹⁰

⁶Crawford v. State, 121 Nev. 744, 754-55, 121 P.3d 582, 589 (2005).

⁷Carter v. State, 121 Nev. 759, 767, 121 P.3d 592, 597 (2005); Crawford, 121 Nev. at 753-54, 121 P.3d at 588-89.

⁸Carter, 121 Nev. at 765, 121 P.3d at 596 (quoting Honeycutt v. State, 118 Nev. 660, 677-78, 56 P.3d 362, 373-74 (2002) (Rose, J., dissenting)).

⁹Carter, 121 Nev. at 765, 121 P.3d at 596; Crawford, 121 Nev. at 754, 121 P.3d at 589.

¹⁰Crawford, 121 Nev. at 756, 121 P.3d at 590.

Fourth, Norman contends that the district court erred when it provided the jury with instructions that included the terms "felony" and "misdemeanor." Norman argues that by 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 offense as a felony and the other offense as a misdemeanor did not deprive Norman of a fair trial. The jury was instructed that it was not to discuss or consider the subject of punishment and that it could not convict Norman unless it found guilt beyond a reasonable doubt as to each element. We presume that the jurors followed the district court's instructions.¹¹

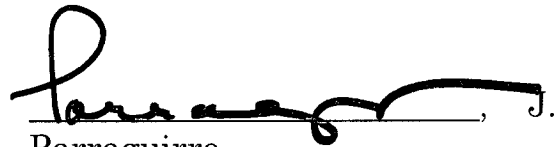
Fifth, Norman contends that the district court erred by denying his motion to strike and his request for a curative instruction after the State elicited testimony that violated the parties' pretrial stipulation. Prior to trial, the parties stipulated that evidence regarding Norman's arrest warrant would be limited to the fact that the warrant existed and that there would be no mention of the details or underlying charges giving rise to the warrant. During its case in chief, the State elicited testimony that Norman informed a police officer that "he knew he had a warrant, and that he might be doing some serious time and he didn't want to go back." Thereafter, the district court overruled Norman's motion to strike and request for a curative instruction. Under these facts,

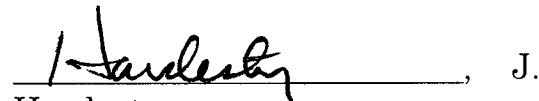
¹¹See Lisle v. State, 113 Nev. 540, 558, 937 P.2d 473, 484 (1997) ("There is a presumption that jurors follow jury instructions."), clarified on other grounds, 114 Nev. 221, 954 P.2d 744 (1998).

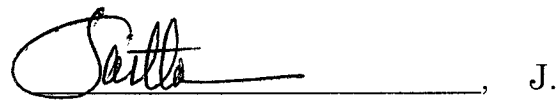
we conclude that it would have been preferable for the district court to strike the testimony and give a curative instruction. However, the district court's failure to do so did not constitute a reversible error.¹²

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

ORDER the judgment of conviction AFFIRMED.


Parraguirre, J.


Hardesty, J.


Saitta, J.

cc: Hon. Jackie Glass, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹²See NRS 178.598; Tavares v. State, 117 Nev. 725, 732, 30 P.3d 1128, 1132 (2001) (the failure to give a limiting instruction on the use of uncharged bad act evidence is harmless if the error did not have a substantial and injurious effect or influence the jury's verdict).