

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAURICE KENNETH HART,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47687

**FILED**

SEP 05 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART, AND  
REMANDING

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count of failure to stop on the signal of a police officer and one count of assault on an officer. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. The district court sentenced appellant Maurice Hart to serve a total of 18 months in the county jail.

First, Hart contends that insufficient evidence was presented at trial to support his convictions. Hart specifically claims that the State's case was based on the contradictory and inconsistent testimony of Las Vegas Metropolitan Police Officer Eric Judkins. Our review of the record on appeal reveals sufficient evidence to establish Hart's guilt beyond a reasonable doubt as determined by a rational trier of fact.<sup>1</sup>

In particular, we note that the jury heard the parties' stipulation that Officer Judkins made a proper felony stop of Hart's truck. The jury also heard testimony that Officer Judkins was in uniform and

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

driving a marked police car. Hart was told to raise his hands and get out of the truck, but he drove off instead. Officer Judkins pursued Hart with his overhead lights and siren on. When Hart left his truck and began running, Officer Judkins pursued him on foot. Officer Judkins told Hart to stop and that he was under arrest. Hart turned around, took up a fighting stance, and twice swung at Officer Judkins before he was subdued with a taser.

Based on this evidence, we conclude that a rational juror could reasonably infer that Hart failed to stop on the signal of a police officer and assaulted a police officer.<sup>2</sup> 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.<sup>3</sup>

Second, Hart contends that the district court erred by refusing to give his proposed lesser-included offense instructions and verdict form. Hart specifically claims that he was entitled to instructions on the offense of resisting a public officer, which he argues is a lesser-included offense of assault on an officer.

In Rosas v. State, we observed that “[a] lesser offense is included in a greater offense ‘when all of the elements of the lesser offense are included in the elements of the greater offense.’”<sup>4</sup> We determined that

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<sup>2</sup>See NRS 200.471(1); NRS 484.348(1).

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

<sup>4</sup>122 Nev. 1258, 1263, 147 P.3d 1101, 1105 (2006) (quoting Barton v. State, 117 Nev. 686, 690, 30 P.3d 1103, 1106 (2001)).

“despite some variation in language” all of the elements of resisting a public officer are included in the elements of battery upon an officer.<sup>5</sup> And we reiterated the rule in Nevada that “a defendant is entitled to a jury instruction on a lesser-included offense ‘if there is any evidence at all, however slight, on any reasonable theory of the case under which the defendant might be convicted’ of that offense.”<sup>6</sup>

Here, all of the elements of resisting a public officer are included in the elements of assault on an officer. In particular, we note that a defendant cannot intentionally place an arresting officer “in reasonable apprehension of immediate bodily harm” without resisting, delaying, or obstructing the officer in the performance of his or her legal duties.<sup>7</sup> We conclude that resisting a public officer is a lesser-included offense of assault on an officer and that there was sufficient evidence to support a conviction for resisting a public officer. Accordingly, the district court erred by not giving Hart’s proposed lesser-included offense instructions and Hart’s conviction for assault on a police officer must be reversed.

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<sup>5</sup>Id.

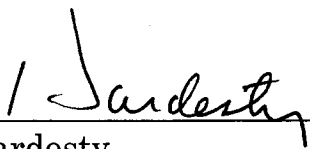
<sup>6</sup>Id. at 1264-65, 147 P.3d at 1106 (quoting Lisby v. State, 82 Nev. 183, 188, 414 P.2d 592, 595 (1966)).

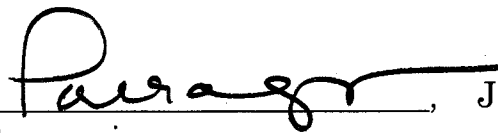
<sup>7</sup>NRS 199.280 (defining resisting a public officer as “willfully resists, delays or obstructs a public officer in discharging or attempting to discharge any legal duty of his office”); NRS 200.471(1)(a), (2)(d) (defining assault as “intentionally placing another person in reasonable apprehension of immediate bodily harm” and specifying the punishment for an assault “committed upon an officer . . . who his performing his duty”).

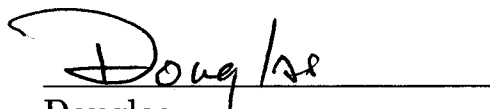
Hart further contends that (1) the district court abused its discretion by denying his challenge for cause, (2) the district court erred by giving a flight instruction and rejecting proposed instructions on reasonable doubt and the duty to acquit, and (3) the State committed prosecutorial misconduct during its opening statement and the district court erred by not striking a witness's testimony. We have reviewed these contentions and determined that they do not entitle Hart to any relief.

Having determined that Hart's conviction for assault on an officer must be reversed, we

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

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Michelle Leavitt, 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