

IN THE SUPREME COURT OF THE STATE OF NEVADA

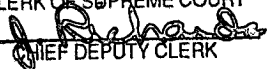
THOMAS JOEY CREAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48232

**FILED**

**FEB 28 2007**

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count of felony failure to stop on the signal of a police officer. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge. The district court sentenced appellant Thomas Joey Crean to serve a prison term of 12 to 30 months. It further ordered the sentence to be suspended and placed Crean on probation for a period not to exceed three years.

First, Crean contends that the district court erred in denying his motion to dismiss the indictment. We have held that the State is barred from a second prosecution where the district court has dismissed the original proceeding "due to the prosecutor's willful failure to comply with procedural rules, or conscious indifference to procedural rules" affecting a defendant's rights.<sup>1</sup> In McNair v. Sheriff, we concluded that it

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<sup>1</sup>See Sheriff v. Simpson, 109 Nev. 430, 433, 851 P.2d 428, 431 (1993); McNair v. Sheriff, 89 Nev. 434, 438, 514 P.2d 1175, 1177 (1973).

is the duty of the district court to determine whether the prosecutor's behavior shows "willful failure" or "conscious indifference" and the prosecutor bears the burden of justifying delay when he moves for a continuance.<sup>2</sup>

Although Crean's trial was initially set for December 2, 2005, District Judge Stewart Bell granted the State's request for a continuance due to the unavailability of a witness. On the day of trial the witness was still unavailable. Judge Bell stated that he had accommodated the State once, he had made arrangements to have jurors available on Christmas week, and Crean and his parents had come in from out of state. He then dismissed the case without making a finding as to whether the State was willfully or consciously indifferent to Crean's rights.

Thereafter, the State obtained an indictment against Crean, and Crean brought a motion to dismiss the indictment. District Judge Jennifer Togliatti heard argument on the motion and subsequently found that Judge Bell did not make specific findings that the prosecutor's conduct demonstrated willful failure or conscious indifference, the prosecutor was not given an opportunity to be sworn and formally request a continuance, and the prosecutor's conduct did not demonstrate willful failure or conscious indifference. We conclude that Judge Togliatti's

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<sup>2</sup>89 Nev. at 438, 514 P.2d at 1177.

findings are supported by substantial evidence and that her decision to deny Crean's motion was not wrong as a matter of law.<sup>3</sup>

Second, Crean contends that the evidence presented at trial was insufficient to support his conviction for failing to stop on the signal of a police officer. However, our review of the record reveals sufficient evidence to establish Crean's guilt beyond a reasonable doubt as determined by a rational trier of fact.<sup>4</sup> In particular, we note that the jury heard evidence that Las Vegas Metropolitan Police Officer Michael Horn observed Crean traveling in the emergency lane of I-15 at a high rate of speed during a period of heavy traffic. Officer Horn, who was driving a marked police vehicle, activated his red lights and siren and attempted to catch Crean. Crean made evasive movements into the traffic, causing other cars to stop or otherwise maneuver to avoid a collision. Officer Horn testified that Crean's car struck another vehicle and the back of a bus. We conclude that a rational juror could reasonably infer from this evidence that Crean failed to stop on the signal of a police officer and operated his car in a manner which endangered or was likely to endanger others and their property.<sup>5</sup> It is for the jury to determine the weight and credibility to

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<sup>3</sup>See Sheriff v. Roylance, 110 Nev. 334, 337, 871 P.2d 359, 361 (1994).

<sup>4</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)).

<sup>5</sup>See NRS 484.348(3).

give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.<sup>6</sup>

Third, Crean contends that he was denied a fair trial due to prosecutorial misconduct. Crean specifically claims that the prosecutor improperly commented on his guilt and credibility, made disparaging remarks about his hearing impairment, and impermissively vouched for the State witnesses.

In determining whether prosecutorial misconduct has deprived a defendant of a fair trial, we inquire as to whether the prosecutor's statements so infected the proceedings with unfairness as to make the results a denial of due process. Furthermore, a defendant is entitled to a fair trial, not a perfect one and, accordingly, a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone, for the statements or conduct must be viewed in context. Finally, we will determine whether any prosecutorial misconduct that did occur was harmless beyond a reasonable doubt.<sup>7</sup>

We have considered the prosecutor's comments in context. To the extent that they constitute improper argument, we conclude that they are harmless beyond a reasonable doubt.

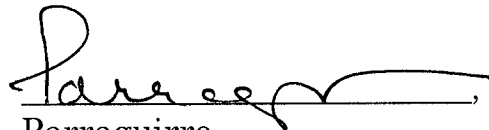
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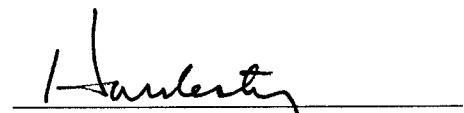
<sup>6</sup>See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

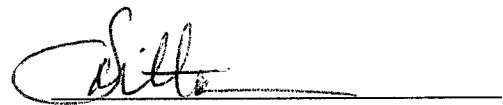
<sup>7</sup>Rudin v. State, 120 Nev. 121, 136-37, 86 P.3d 572, 582 (2004) (internal footnotes and quotation marks omitted).

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

ORDER the judgment of conviction AFFIRMED.<sup>8</sup>

  
Parraguirre J.

  
Hardesty J.

  
Saitta J.

cc: Hon. Jennifer Togliatti, District Judge  
Jeffrey S. Posin & Associates  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>8</sup>We note that there is a clerical error in the judgment of conviction. The judgment incorrectly states that appellant was convicted pursuant to a guilty plea. In fact, appellant was convicted pursuant to a jury verdict. Following this court's issuance of its remittitur, the district court shall correct this error in the judgment of conviction. See NRS 176.565 (providing that clerical error in judgments may be corrected at any time); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (explaining that district court does not regain jurisdiction following an appeal until supreme court issues its remittitur).