IN THE SUPREME COURT OF THE STATE OF NEVADA

MONTENEQUE NAKIA KNOX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50383

FILED

AUG 04 2008

TRACIE K. LINDEMAN
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 one count of possession of a stolen motor vehicle. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court adjudicated appellant Monteneque Knox a habitual criminal and sentenced him to serve a prison term of 10 to 25 years.

First, Knox contends that insufficient evidence was presented at trial to support his conviction for possession of a stolen motor vehicle. Knox specifically claims that no evidence was adduced that he "knew or should have known the car was stolen." Knox asserts that he could not know that the car was stolen because he took it with the intent of returning it to the owner. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.[1]

[1]McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

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Here, the jury heard testimony that the victim left his car running, went into his garage to get an ice scraper, heard the car door shut and the car being driven away, saw that the car was gone, and called the police. A police officer spotted the car and followed it. The car entered a parking garage, accelerated, and crashed into three parked cars. A bystander told the police officer that the driver was hiding under a truck, whereupon Knox was arrested. The jury was also shown a surveillance videotape depicting the chase inside the parking garage.

Based on this evidence, we conclude that a rational juror could reasonably infer that Knox committed the offense of possession of a stolen motor vehicle.[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, Knox contends that the district court erred by denying his proposed instruction, which would have required the jury to find that he intended to permanently deprive the owner of the vehicle before it could find him guilty of possession of a stolen vehicle. Knox claims that his theory of defense was that he was innocent of possession of a stolen vehicle and guilty of unlawful taking of a motor vehicle. Knox argues that the difference between these two crimes is that possession of a stolen vehicle requires the intent to permanently deprive the owner of the vehicle

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[2]See NRS 205.273(1)(b).

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

whereas unlawful taking of a motor vehicle does not.[4] Knox further asserts that sufficient evidence was presented at trial to warrant his proposed unlawful taking of a motor vehicle instruction.

As a general rule, "'[a] defendant in a criminal case is entitled, upon request, to a jury instruction on his theory of the case so long as there is some evidence, no matter how weak or incredible, to support it.'"[5] However, a defendant is not entitled to instructions that are "misleading, inaccurate, or duplicitous,"[6] nor is he entitled to instructions on lesser-related offenses.[7]

Here, Knox's proposed instruction on the elements of possession of a stolen motor vehicle was inaccurate because the statute governing the elements of possession of a stolen motor vehicle "does not require the state to prove that [a defendant] intended to deprive the owner permanently of his vehicle."[8] And Knox's proposed instruction on the elements of unlawful taking of a motor vehicle concerned an uncharged, lesser-related offense. Under these circumstances, the district court did not abuse its discretion by denying Knox's proposed jury instructions.

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[4]Knox cites to Lord v. State, 107 Nev. 28, 37, 806 P.2d 548, 553 (1991), in support of this proposition.

[5]Harris v. State, 106 Nev. 667, 670, 799 P.2d 1104, 1105-06 (1990) (quoting Roberts v. State, 102 Nev. 170, 172-73, 717 P.2d 1115, 1116 (1986)).

[6]Carter v. State, 121 Nev. 759, 765, 121 P.3d 592, 596 (2005).

[7]Peck v. State, 116 Nev. 840, 845, 7 P.3d 470, 473 (2000), overruled on other grounds by Rosas v. State, 122 Nev. 1258, 147 P.3d 1101 (2006).

[8]Montes v. State, 95 Nev. 891, 894, 603 P.2d 1069, 1071 (1979).

Third, Knox contends that the district court erred when it adjudicated him a habitual criminal. Quoting O'Neill v. State, Knox claims that the district court used facts such as "a defendant's criminal history, mitigation evidence, victim impact statements and the like in determining whether to dismiss [a habitual criminality] count."[9] Knox argues that pursuant to Cunningham v. California,[10] Blakely v. Washington,[11] and Apprendi v. New Jersey,[12] a jury should have established the existence of these facts beyond a reasonable doubt before they were considered by the district court.

In O'Neill, we observed that "[t]he plain language of NRS 207.010(2) grants the district court discretion to dismiss a count of habitual criminality, not the discretion to impose such an adjudication based on factors other than prior convictions."[13] We noted that the "district court may consider facts such as a defendant's criminal history, mitigation evidence, victim impact statements and the like in determining whether to dismiss [a habitual criminality] count . . . [because] such facts do not operate to increase the punishment beyond the already established statutory maximum and therefore need not be found by a jury beyond a

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[9]123 Nev. 9, 16, 153 P.3d 38, 43, cert. denied, ___ U.S. ___, 128 S. Ct. 153 (2007).

[10]549 U.S. 270 (2007).

[11]542 U.S. 296 (2004).

[12]530 U.S. 466 (2000).

[13]O'Neill, 123 Nev. at 12, 153 P.3d at 40.

reasonable doubt."[14] And we concluded "that neither NRS 207.010 nor our case law interpreting it violates" Cunningham, Blakely, or Apprendi.[15]

Our review of the record on appeal reveals that the State filed a notice of intent to seek habitual criminal adjudication, the district court found that Knox had three valid prior felony convictions, and the district court chose not to dismiss the habitual criminal count. Under these circumstances, Knox has failed to demonstrate that the district court erred in adjudicating him a habitual criminal.

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

ORDER the judgment of conviction AFFIRMED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

cc: Hon. Steven P. Elliott, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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[14]Id. at 16, 153 P.3d at 43.

[15]Id. at 17 & n.28, 153 P.3d at 43 & n.28.