IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ALLEN PARKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50439

FILED

APR 08 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of grand larceny auto and possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. The district court sentenced appellant Michael Allen Parks to serve two concurrent prison terms of 48-120 months and ordered him to pay $1,055.63 in restitution.

Parks contends that (1) the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt; (2) the district court erred at trial by allowing the admission of uncharged bad act evidence; and (3) the district court abused its discretion by providing the jury with improper instructions. For the reasons discussed below, we conclude that Parks' contentions are without merit.

Sufficiency of the Evidence

Parks contends that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt. Specifically, Parks claims that the State failed to prove that the value of each of the two vehicles in question was $2,500 or more

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and, therefore, he was only guilty of category C felonies. See NRS 205.228(2); NRS 205.273(3). The jury found Parks guilty of having committed two category B felonies. See NRS 205.228(3); NRS 205.273(4).

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. In particular, we note that there was trial testimony regarding the purchase price of the two vehicles, and the State provided, as exhibits, Kelley Blue Book information detailing the value of the vehicles in fair to excellent condition. "The Kelley Blue Book is a publication that is generally used in the automobile industry as a price list and generally relied on by persons in the trade to determine the value of an automobile." Dugan v. Gotsopoulos, 117 Nev. 285, 288, 22 P.3d 205, 207 (2001); see also NRS 51.245. Further, Parks notes in his appellate brief that the State offered "a value of each of the car[s] based upon milage [sic] and general condition." According to the prosecutor, "both of the cars [had] less than 30,000" miles on them.

Based on all of the above, we conclude that the jury could reasonably infer from the evidence presented that Parks was guilty of two category B felonies beyond a reasonable doubt. 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, sufficient evidence supports the verdict. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). Moreover, we note that circumstantial evidence alone may sustain a conviction. See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003). Therefore, we conclude that the State presented sufficient evidence to support the jury's verdict.

Uncharged Bad Act Evidence/Res Gestae

Parks contends that the district court erred at trial by allowing the admission of uncharged bad act evidence, specifically, testimony indicating that during a surveillance conducted by the Las Vegas Metropolitan Police Department, he was seen hauling a stolen trailer immediately prior to being detained. Parks was subsequently charged and convicted of the one count of possession of a stolen vehicle. See NRS 48.045(2). The State counters that evidence of the stolen trailer was properly admitted as res gestae evidence. See NRS 48.035(3); Bellon v. State, 121 Nev. 436, 444, 117 P.3d 176, 181 (2005).

Parks has failed to demonstrate that the admission of the stolen trailer evidence had a "'substantial and injurious effect or influence in determining the jury's verdict.'" Mclellan v. State, 124 Nev. ___, ___, 182 P.3d 106, 111 (2008) (quoting Kotteakos v. United States, 328 U.S 750, 776 (1946)). Therefore, even assuming, without deciding, that evidence of the stolen trailer was improperly admitted by the district court, we conclude, in light of the overwhelming evidence of Parks' guilt, that any error was harmless beyond a reasonable doubt. See Mclellan, 124 Nev. at ___, 182 P.3d at 111.

Jury Instructions

Parks challenges several of the jury instructions provided by the district court. First, Parks contends that jury instruction no. 6 improperly defined the intent necessary to prove grand larceny auto. Parks appears to claim that the State did not provide sufficient evidence to support giving instruction no. 6. We disagree with Parks' contention.

"The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an

abuse of that discretion or judicial error." Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005); see also Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001) ("An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason.").

Parks has not offered any argument or provided legal authority in support of his contention that jury instruction no. 6 was an incorrect statement of the law. See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). Moreover, the State did, in fact, present evidence demonstrating that after a high speed chase, Parks abandoned the stolen vehicle in "an empty dirt lot" before fleeing from the scene. And jury instruction no. 6 properly informed the jury that abandonment was a factor to consider when determining whether Parks had the intent to permanently deprive the owner of the vehicle, and therefore, was guilty of grand larceny auto. See NRS 205.228(1). Accordingly, we conclude that the district court did not abuse its discretion in providing jury instruction no. 6.

Second, Parks contends that jury instruction no. 15 improperly defined how to calculate the value of a vehicle. Additionally, Parks claims that jury instruction no. 15 conflicted with jury instruction no. 8, which also defined how to calculate the value of a vehicle. Parks objected below on the grounds that instruction no. 15 was redundant. On appeal, Parks argues that the jury was confused by the two instructions and, as a result, "there was no way that a jury could properly determine value." We disagree.

Initially, we note that jury instruction no. 15 mirrors the exact language provided in NRS 205.273(6), and therefore, is a correct

statement of the law. Accordingly, we conclude that the district court did not abuse its discretion in providing this instruction. Further, to the extent that Parks alleges that jury instruction no. 15 conflicts with instruction no. 8, we note that instruction no. 8 merely provided a more detailed, specific method for calculating the value of a vehicle. The instructions also similarly state, in part, that the "value is the highest price . . ." (instruction no. 8) and "[t]he value of a vehicle shall be deemed to be the highest value attributable to the vehicle . . . ." (instruction no. 15). (Emphasis added.) In overruling Parks' objection to jury instruction no. 15, the district court stated, "It doesn't make any difference. It's statutory. Possession and grand larceny auto are two separate crimes and two separate definitions. That's 15." We agree with the district court and conclude that Parks' contention is without merit.

Therefore, having considered Parks' contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Eighth Judicial District Court Dept. 15, District Judge
Law Offices of Cynthia Dustin, LLC
Michael Allen Parks
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk