IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID VAN DUKE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51142

FILED

APR 21 2009

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of stop required on signal of a police officer, trafficking in a controlled substance, and transport of a controlled substance. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge. The district court sentenced appellant David Van Duke to serve a prison term of 13 to 60 months for stop required on signal of a police officer, a consecutive term of 10 to 25 years for trafficking, and a concurrent term of 13 to 60 months for transport of a controlled substance.

Duke claims that insufficient evidence was presented at trial to sustain his conviction for stop required on signal of a police officer because he was acting in self-defense. Duke asserts that he fled from the police because he was afraid the officer was going to use a taser on him. Duke also claims that insufficient evidence was presented at trial to sustain his conviction for trafficking in a controlled substance because no one saw him throw anything from the car and there was no testimony that the cocaine was for distribution and not personal use. Our review of the record on appeal reveals that sufficient evidence was adduced at trial to establish Duke's guilt beyond a reasonable doubt as determined by a

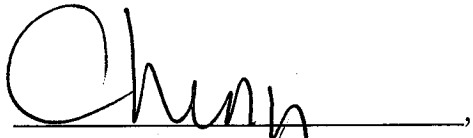
rational trier of fact. See McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Officer Fullington testified that he initially stopped Duke for an expired license plate. When Duke and the passenger of the vehicle began looking back at Officer Fullington in an "unusual, fidgety manner," Officer Fullington called for backup. Officer Fullington told Duke and the passenger to put their hands on the steering wheel and dashboard, respectively. When Duke and the passenger continued to act in an unusual manner, Officer Fullington pulled out his taser, turned the taser on, held the taser down towards his side, and told Duke to "not do anything" or he would tase Duke. Officer Hirschi responded to the call for backup, exited his vehicle, and began to walk towards Officer Fullington. At that time, Duke sped off in his car. Officer Hirschi and Officer Fullington returned to their patrol vehicles and began pursuit of Duke with their lights and sirens on. Duke drove into an apartment complex parking lot, followed by Officer Hirschi, while Officer Fullington drove to the next entrance to the apartment complex to block Duke's exit. Because he was concerned that Duke was going to ram his car, Officer Fullington exited his vehicle. Duke stopped his car before ramming Officer Fullington's patrol car and was boxed in by Officer Hirschi. Officer Fullington saw a beer bottle being thrown out of the passenger's window and what appeared to be a bar of soap being thrown out of Duke's window. The beer bottle and "bar of soap" were collected, and a field test and laboratory test determined that the "bar of soap" was cocaine and weighed 36.34 grams.

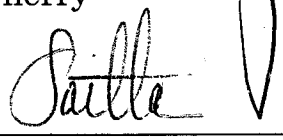
We note that Duke did not request an instruction on self-defense; thus, the jury was not so instructed. See Harris v. State, 106

Nev. 667, 670, 799 P.2d 1104, 1105-06 (1990) (holding that, if requested, a defendant is entitled to a jury instruction on his theory of the case if some evidence supports the theory). Further, contrary to Duke's assertion, trafficking in a controlled substance does not require proof of an intent to distribute. Rather, trafficking in a controlled substance can be established by proving that Duke was knowingly or intentionally in actual or constructive possession of the controlled substance. See NRS 453.3385. We conclude that the jury could reasonably infer from the evidence presented at trial that Duke committed the crimes beyond a reasonable doubt. See NRS 484.348; NRS 453.3385; NRS 453.321. The jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). Accordingly, we

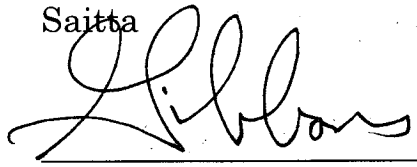
ORDER the judgment of conviction AFFIRMED.



_____, J.
Cherry



_____, J.
Saitta



_____, J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Paul E. Wommer
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk