IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCUS T. ANDERSON A/K/A
MARCUS TRAMAYNE ANDERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52501

FILED
NOV 05 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 possession of a controlled substance (count I), stop required on the signal of a police officer (count II), conspiracy to traffic in a controlled substance (count III), trafficking in a controlled substance (counts IV, VI), and possession of a firearm by an ex-felon (count VII). Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant Marcus T. Anderson to serve concurrent prison terms of 19-48 months for count I, 24-60 months for count III, and 28-72 months each for counts II, IV, and VI-VII.

Sufficiency of the evidence

Anderson contends that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt. Specifically, Anderson claims: (1) the officers were not travelling in a "readily identifiable police vehicle;" (2) the State failed to prove property damage or endangerment as required by NRS 484.348(3); (3) the State failed to prove that he had "dominion and control" of the controlled substances found in the vehicle and his residence; (4) the State

failed to prove that he was in possession of the firearm found at his residence; and (5) the State failed to prove the existence of a conspiracy.

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. In particular, we note that Detective William Giblin and Sergeant Greg Damron of the Las Vegas Metropolitan Police Department, while travelling together in an unmarked vehicle, initiated a traffic stop by activating the vehicle's red flashing lights and siren. See NRS 484.348(2). Anderson, driving a rented Chevy Malibu, initially pulled over to the side of the road.[1] As the uniformed officers approached the Malibu, Anderson fled at a high rate of speed. Detective Giblin testified that he subsequently saw the Malibu speeding through a parking lot where it struck a cement pillar, causing damage but not disabling the vehicle. Eventually, the officers initiated a second stop of the Malibu, this time at gunpoint, and took Anderson into custody. A small bag containing methamphetamine was discovered on the floor by the driver's side of the vehicle. After a telephonic search warrant was secured, officers searched the apartment Anderson shared with his girlfriend and found trafficking amounts of both methamphetamine and cocaine, a digital scale, numerous plastic baggies typically used in the sale of narcotics, $1,340 in cash, a loaded .357 revolver in a shoe box underneath his bed, and identifying information indicating that Anderson resided there.

Based on all of the above, we conclude that the jury could reasonably infer from the evidence presented that Anderson was guilty on

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[1]The individual named on the rental agreement was Anderson's girlfriend and codefendant, Dana Fuhreng.

all counts beyond a reasonable doubt. See NRS 453.336(1); NRS 484.348(3); NRS 453.401(1); NRS 453.3385(1); NRS 202.360(1)(a). 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 Anderson's claim lacks merit.[2]

"Readily identifiable vehicle"

Anderson contends that NRS 484.348(1) is unconstitutionally void for vagueness because it fails to define "readily identifiable vehicle" and there "is no indication . . . whether the police vehicle must be marked or not." Anderson claims that the statute does not provide a person of ordinary intelligence fair notice of the conduct prohibited and lacks clear standards for law enforcement, and therefore, his conviction for stop required on the signal of a police officer must be reversed. We disagree.

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[2]In a related argument, Anderson contends that the district court erred by denying his pretrial petition for a writ of habeas corpus challenging the probable cause determination regarding the charge of stop required on the signal of a police officer. Anderson concedes that the same evidence was presented to the grand jury that was presented at trial and, because we have found that sufficient evidence was presented to sustain the conviction for stop required on the signal of a police officer based on a higher burden of proof, beyond a reasonable doubt, we conclude that the district court did not err by rejecting his pretrial petition challenging the probable cause determination on that charge.

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." Grayned v. City of Rockford, 408 U.S. 104, 108 (1972). "A statute is unconstitutionally vague and subject to facial attack if it (1) fails to provide notice sufficient to enable persons of ordinary intelligence to understand what conduct is prohibited and (2) lacks specific standards, thereby encouraging, authorizing, or even failing to prevent arbitrary and discriminatory enforcement." Silvar v. Dist. Ct., 122 Nev. 289, 293, 129 P.3d 682, 685 (2006). "This court reviews the constitutionality of statutes de novo." Sanders v. State, 119 Nev. 135, 138, 67 P.3d 323, 326 (2003).

Anderson is correct in stating that NRS 484.348(1) does not expressly define "readily identifiable vehicle," however, as demonstrated here, a person of ordinary intelligence can understand what conduct is prohibited and the statute provides specific standards for enforcement. Although the officers initiated the first traffic stop while driving an unmarked vehicle, they activated the unmarked vehicle's red flashing lights and siren, as required by NRS 484.348(2), and Anderson did, in fact, pull over to the side of the road, thus indicating that he identified the vehicle as belonging to law enforcement personnel. Further, Anderson fled from the scene only after the uniformed officers approached his vehicle on foot. Because Anderson could have had no reasonable doubt that he was violating NRS 484.348 by fleeing in his vehicle after the traffic stop was initiated, his argument that the statute is unconstitutionally vague fails.

Improper character evidence

Anderson contends that the district court erred by denying his motion for a mistrial after Detective Giblin testified that Anderson had a prior conviction. Anderson claims that the prior bad act testimony

amounted to impermissible character evidence and requires the reversal of his conviction. See NRS 48.045(2). We disagree.

Detective Giblin's statement was not solicited by the prosecutor and the district court immediately admonished the jury to "please disregard that testimony about [Anderson's] background or status. He is here only to be judged on the circumstances that occurred [in the instant case]." In denying Anderson's motion for a mistrial, the district court stated, "[The jury was admonished] and he didn't talk about what the conviction was, didn't even talk about whether it's a felony or a misdemeanor. He didn't talk about when, where, how and they were admonished and I think that is sufficient." We agree that Detective Giblin's statement was not clearly and enduringly prejudicial and conclude that the district court did not abuse its discretion by denying Anderson's motion for a mistrial. See McKenna v. State, 114 Nev. 1044, 1055, 968 P.2d 739, 746 (1998); Allen v. State, 99 Nev. 485, 490-91, 665 P.2d 238, 241-42 (1983).

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

ORDER the judgment of conviction AFFIRMED.

_____, J.
Parraguirre

_____, J.
Douglas

_____, J.
Pickering

cc: Eighth Judicial District Court Dept. 7, District Judge
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk