IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEXANDER COLEMAN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 34985

FILED

JUN 13 2000

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of possession of a stolen motor vehicle (count one) and two counts of eluding a police officer (counts two and three). On count one, the district court sentenced appellant to twelve (12) to thirty-six (36) months in the Nevada State Prison. On counts two and three, the district court sentenced appellant to concurrent terms of twelve (12) to forty-eight (48) months in prison. Counts two and three are consecutive to count one.

First, appellant contends the evidence presented at trial was insufficient to support the jury's finding of guilt on two counts of eluding a police officer. However, the record reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980).

In particular, we note the evidence at trial indicated appellant twice failed to stop when hailed to do so by a police officer. The first officer testified he pursued appellant with activated flashing lights and siren, and that upon fearing for public safety deactivated his flashing lights and siren and terminated the pursuit. The first officer then radioed to other officers appellant's description and heading.

A short time later, a second officer initiated pursuit with activated flashing lights and siren. Appellant failed to stop for either officer.[1] We conclude the jury could have reasonably inferred from the evidence that appellant committed two separate and distinct acts of eluding a police officer. See NRS 484.348(1) and (2). Therefore, appellant's contention on this issue is without merit.[2]

Last, appellant contends the district court erred by rejecting one of his proposed jury instructions. Specifically, appellant asserts the following jury instruction should have been given: "The law prevents multiple punishment for the same offense. If you find that the two counts of [e]luding in this case are the result of one act then you can only find the defendant guilty of one count." We disagree.

A defendant generally is entitled, upon his request, to a jury instruction based on his theory of the case so long as "there is some evidence, no matter how weak or incredible, to support it." Harris v. State, 106 Nev. 667, 670, 799 P.2d 1104, 1105-06 (1990). Here, the record is devoid of any evidence to support the giving of appellant's proposed jury instruction.[3] Therefore, we conclude the district court did

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[1]The chase ended when appellant crashed the stolen car and was apprehended a short time later after a foot-chase.

[2]Appellant also contends his conviction of two counts of eluding a police officer violates the Double Jeopardy Clause. See U.S. Const. amend. V; Nev. Const. art. 1, § 8;; see also State v. Lomas, 114 Nev. 313, 315, 955 P.2d 678, 679 (1998). Because there was substantial evidence indicating there were two distinct acts of eluding a police officer, appellant's contention must fail. Cf. Gordon v. District Court, 112 Nev. 216, 229-30, 913 P.2d 240, 249 (1996); see also State v. Church, 589 N.W.2d 638, 645 (Wis.Ct.App. 1998) ("Multiple offenses are not the same in fact if the facts on which they are based are 'either separated in time or of a significantly different nature.'") (citation omitted), review granted, 594 N.W.2d 382 (Wis. 1998).

[3]We note the State's evidence describing the two separate acts of eluding a police officer went unopposed.

not err in rejecting the proposed jury instruction. Accordingly, we

ORDER this appeal dismissed.

Maupin, J.

Shearing, J.

Becker, J.

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk