

IN THE SUPREME COURT OF THE STATE OF NEVADA

NICKY RASHAWN HARRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56249

FILED

DEC 10 2010

TRACEE 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 stolen motor vehicle. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Appellant Nicky Harris contends that the district court erred by declining to give the jury his proposed instructions requiring the jury to find that the initial taking of the car was done with the intent to permanently deprive the owner of the vehicle and/or without the owner's consent. The statute governing the elements of possession of a stolen vehicle does not require the State to prove that the vehicle was initially taken with the intent to permanently deprive the owner of his vehicle or that the vehicle was initially taken without consent. NRS 205.273(1). Accordingly, we conclude that the district court did not abuse its discretion by declining to give these instructions. See Quanbengboune v. State, 125 Nev. ___, ___, 220 P.3d 1122, 1129 (2009) (the district court's decision to give or not give a jury instruction is reviewed for an abuse of discretion); Carter v. State, 121 Nev. 759, 765, 121 P.3d 592, 596 (2005) (a defendant is not entitled to inaccurate instructions).

Harris also contends that the district court erred by declining to give his proposed instruction on unlawful taking of a vehicle because that offense is a lesser-included and lesser-related offense of possession of a stolen vehicle. Unlawful taking of a vehicle is not a lesser-included offense of possession of a stolen vehicle. See NRS 205.2715(1); NRS 205.273(1); Smith v. State, 120 Nev. 944, 946, 102 P.3d 569, 571 (2004) (defining lesser-included offense). Further, a defendant is not entitled to an instruction on a lesser-related offense. 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). Accordingly, we conclude that Harris has failed to demonstrate an abuse of discretion,¹ see Ouanbengboune, 125 Nev. at ___, 220 P.3d at 1129, and we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

¹To the extent Harris contends that the prosecutor abused its discretion by charging him with possession of a stolen vehicle rather than grand larceny auto, we disagree. See Stromberg v. State, 125 Nev. ___, ___, 200 P.3d 509, 512 (2009).

cc: Hon. Linda Marie Bell, District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Eighth District Court Clerk