IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN RANDALL HUENE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57361

FILED

JUL 14 2011

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 of stop required on signal of a police officer (felony). Eighth Judicial District Court, Clark County; Doug Smith, Judge. Appellant John Randall Huene raises five contentions on appeal.

First, Huene argues that the district court erred in admitting testimony that suggested Huene was fleeing a crime and later preventing Huene from eliciting testimony from the same witness to show that Huene had not been implicated in any other crime. We conclude that these contentions lack merit. The challenged testimony, which indicated that the officers initiated a high risk stop because they were not aware why Huene attempted to elude them, did not allude to any prior crimes of Huene. See Collman v. State, 116 Nev. 687, 705, 7 P.3d 426, 437 (2000) ("Reference to a defendant's prior criminal history may be reversible error."); see also NRS 48.045(2). While Nevada Highway Patrol Sergeant Sines testified about the possible reasons a driver might elude the police, he specifically testified that he was not aware of any prior conduct in which Huene had engaged. See Collman, 116 Nev. at 705, 7 P.3d at 437 (providing that reference to defendant's prior criminal activity occurs where jury can reasonably infer from evidence presented that defendant

engaged in prior criminal activity). As the State did not elicit character evidence, Huene was not entitled to cross-examine the witness about Huene's specific instances of conduct, or lack thereof. See NRS 48.055(1).

Second, Huene argues that the district court erred in instructing the jury. He specifically contends that the jury should have been instructed that it was to decide whether the State had proven its case beyond a reasonable doubt instead of whether Huene was guilty or innocent beyond a reasonable doubt. We discern no abuse of discretion. See Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (reviewing district court's decision regarding jury instructions for abuse of discretion). The subject matter of the proffered instructions was substantially covered by the given instructions, see Earl v. State, 111 Nev. 1304, 1308, 904 P.2d 1029, 1031 (1995), which did not impermissibly lessen the burden of proof. Moreover, the district court instructed the jury that the State bore the burden of proof and gave the statutory reasonable doubt instruction. See NRS 175.211.

Third, Huene argues that the district court erred in admitting Sergeant Kemmer's opinion about the speed at which Huene was driving because Kemmer was not properly qualified as an expert, the testimony was outside the scope of NRS 50.265, and the evidence conflicted with testimony about Sergeant Sines' radar reading. We discern no abuse of discretion. See Libby v. State, 115 Nev. 45, 52, 975 P.2d 833, 837 (1999) (reviewing decision to admit or exclude evidence for abuse of discretion). Kemmer had an adequate opportunity to observe Huene's vehicle as it approached and passed him. See Patton v. Henrikson, 79 Nev. 197, 200, 380 P.2d 916, 917 (1963) ("The competency of a nonexpert witness to testify as to the rate of speed of a moving vehicle is shown if such witness

is of ordinary intelligence and has had an adequate opportunity to observe the vehicle at the time in question."). Any difference between Kemmer's estimation of Huene's speed and Sines' testimony about his radar results from earlier in the pursuit affects the weight afforded his testimony and not the admissibility of it.

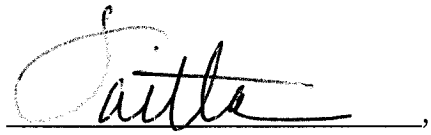
Fourth, Huene contends that there was insufficient evidence to sustain his conviction. We conclude that this contention lacks merit because the evidence, when viewed in the light most favorable to the State, is sufficient to establish, beyond a reasonable doubt and as determined by a rational trier of fact, that Huene failed to stop at the signal of a police officer and operated his vehicle in a manner likely to endanger the property or person of another. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

Sergeant Sines testified that Huene passed a vehicle in an unsafe manner and nearly struck him. Sines activated his emergency equipment, made a U-turn, and pursued Huene. Kemmer, who was several miles behind Sines, activated his emergency equipment and tried to intercept Huene. Huene passed Kemmer at nearly 90 miles per hour. Kemmer observed Huene repeatedly cross the center line during the pursuit. A short time later, Huene pulled over. Huene testified that the terrain and road curves prevented him from seeing the officers until he was on a straight stretch of road. 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, substantial evidence supports the verdict. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Fifth, Huene contends that cumulative error warrants reversal of his conviction. Because Huene has failed to demonstrate any error, we conclude that his contention lacks merit. See Pascua v. State, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006).

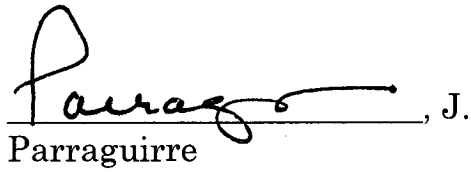
Having considered Huene's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Saitta

_____, J.
Hardesty



_____, J.
Parraguirre

cc: Hon. Doug Smith, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk