

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN MICHAEL FOSTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59677

FILED

NOV 15 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of failure to stop upon signal of a police officer in manner which endangers other persons or property and third-offense DUI and, pursuant to a jury verdict, of failure to stop upon signal of police officer causing bodily harm to another person and battery with a deadly weapon. First Judicial District Court, Carson City; James E. Wilson, Judge.

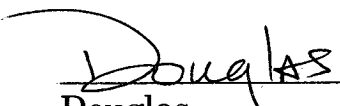
Appellant John Foster argues that there was insufficient evidence to convict him of battery with a deadly weapon because evidence indicated that he attempted to drive around the victim and elude capture rather than intentionally hit her. We disagree. The jury heard that Foster told casino security officers that he would kill them if they followed him, that after he was followed he made eye contact with officers and continued driving in their direction until they moved, and that he had ample room to drive around the victim yet struck her squad car with such force that his truck drove up onto its hood. Thus, the jury could reasonably infer from the evidence presented that Foster intended to strike the victim's squad car. 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. 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).

Next, Foster argues that his conviction for battery with a deadly weapon is redundant to the offense of failure to stop upon signal of a police officer causing bodily harm to another person because the convictions punish the same illegal act. We disagree. Failure to stop upon a signal of a police officer causing bodily harm (NRS 484B.550(4)) punishes the attempt to flee from law enforcement and the resultant harm caused by the failure to obey, whereas battery with the use of a deadly weapon punishes the intentional use of force with a deadly weapon causing bodily harm to a person (NRS 200.481(2)(e)(1)). Because the gravamen of the offenses are not the same, we conclude that the convictions are not redundant. See Salazar v. State, 119 Nev. 224, 227, 70 P.3d 749, 751 (2003) (noting that “redundancy does not, of necessity, arise when a defendant is convicted of numerous charges arising from a single act. The question is whether the material or significant part of each charge is the same even if the offenses are not the same.” (alteration omitted) (internal citation and quotations omitted)).

Having considered Foster’s contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. James E. Wilson, District Judge
Cotter C. Conway
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk