

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL MACEDO,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36910

**FILED**

APR 18 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of unlawful taking of a motor vehicle, a gross misdemeanor in violation of NRS 205.2715. The district court sentenced appellant to serve a jail term of 6 months and released him on bail pending the outcome of this appeal.

First, appellant contends that the car in question is not a "vehicle" under NRS 205.2715(3).<sup>1</sup> Appellant argues that the car, a 1929 Model A Ford, is not a "vehicle" because it has been non-operational for approximately twenty years, and is rusted, rotting, and missing crucial parts. We disagree with appellant's contention.

"Where the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to

<sup>1</sup>NRS 205.2715:

3. "Vehicle" as used in this section means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, waterway or airway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

search for its meaning beyond the statute itself."<sup>2</sup> In this case, the language of NRS 205.2715(3) is unambiguous and its meaning clear. The statute does not require that a vehicle be in driving condition or even be motorized to qualify as a vehicle, and its state of disrepair does not make it any less of a vehicle. We therefore conclude that appellant's contention is without merit.

Second, appellant contends that the State adduced insufficient evidence at trial to sustain his conviction. Appellant argues that NRS 205.2715 is a specific intent crime, and that the State failed to prove that he had the specific intent to deprive the owner of the vehicle without the owner's consent. We disagree.

When reviewing a claim of insufficient evidence, the relevant inquiry is "'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'"<sup>3</sup> Furthermore, "it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses."<sup>4</sup> In other words, a jury "verdict will not be disturbed upon appeal if there is evidence to support it. The evidence cannot be weighed by this court."<sup>5</sup>

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<sup>2</sup>State v. Jepsen, 46 Nev. 193, 196, 209 P. 501, 502 (1922); Paschall v. State, 116 Nev. \_\_\_, \_\_\_, 8 P.3d 851, 853 (2000); see also County of Clark v. Doumani, 114 Nev. 46, 52, 952 P.2d 13, 16 (1998) ("It is well settled in Nevada that words in a statute should be given their plain meaning unless this violates the spirit of the act." (quoting McKay v. Bd. of Supervisors, 102 Nev. 644, 648, 730 P.2d 438, 440 (1986))).

<sup>3</sup>Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)) (emphasis in original omitted).

<sup>4</sup>McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).


<sup>5</sup>Azbill v. State, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972); see also Nev. Const. art. 6, § 4; NRS 177.025.

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. Initially, we note that NRS 205.2715 is not a specific intent crime. The statute expressly states that the elements required for criminal liability include the taking and carrying away of a vehicle without the owner's consent; it also states that it is not necessary to prove an intent to permanently deprive the owner of the vehicle.<sup>6</sup> Furthermore, the State presented evidence demonstrating that appellant was in possession of the vehicle, that another individual was the rightful owner of the vehicle, and that appellant was in possession of the vehicle without the owner's consent. We therefore conclude that appellant's contention is without merit.

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

ORDER the judgment of conviction AFFIRMED.

  
Shearing J.

  
Agosti J.

cc: Hon. Jerry V. Sullivan, District Judge  
Attorney General  
Pershing County District Attorney  
State Public Defender  
Pershing County Clerk

<sup>6</sup>NRS 205.2715:

1. Every person who takes and carries away or drives away the vehicle of another without the intent to permanently deprive the owner thereof but without the consent of the owner of such vehicle is guilty of a gross misdemeanor.

2. Every person who is in possession of a vehicle without the consent of the owner of such vehicle may reasonably be inferred to have taken and carried away or driven away the vehicle.

ROSE, J., dissenting:

I do not believe the 1929 Model A Ford that sat for twenty years in a non-operational condition qualifies as a "vehicle" as defined by NRS 205.2715. For this reason I dissent.

Uncontroverted testimony indicated that the vehicle had been inoperable for many years and that it would cost an astronomical amount of money to make the vehicle operable. Accordingly, the old Ford is clearly not a "device in, upon or by which any person or property is or may be transported or drawn upon a public highway." NRS 205.2715(3).

At the very least, the statute is ambiguous when applied to situations such as this. And it is a cardinal rule of statutory construction that courts must narrowly construe ambiguous penal statutes in favor of the accused. See Buschauer v. State, 106 Nev. 890, 896, 804 P.2d 1046, 1049 (1990). Therefore, we should accept appellant's reasonably tenable interpretation that the old, dilapidated, inoperable heap of metal that had been decaying in a field for twenty years is not a "vehicle" as defined by NRS 205.2715.

  
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Rose

J.