IN THE SUPREME COURT OF THE STATE OF NEVADA

WESLEY C. HUNSUCKER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37009

FILED

JUL 24 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea,[1] of one count of possession of a cheating device. The district court sentenced appellant to serve 12 to 48 months in prison.

Appellant contends that the prosecution in this case violated the Double Jeopardy Clause of the United States Constitution.[2] Specifically, appellant argues that the State's use of the instant offense as evidence in an unrelated prosecution in Mineral County for, among other things, three counts of possession of a cheating device, precludes the State from prosecuting appellant for the instant offense. Appellant suggests that by using evidence of the instant offense in the trial for the Mineral County offenses, the State "essentially

[1]Appellant pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

[2]Appellant reserved his right to appellate review of this issue as part of the plea negotiations. See NRS 174.035(3).

01-12510

consolidated the two cases," and that the subsequent trial for the instant offense was tantamount to a second prosecution and multiple punishment for the same offense. We conclude that this contention lacks merit.

The Double Jeopardy Clause protects against three abuses: (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense.[3] We conclude that none of these abuses occurred in the instant case. The instant prosecution was not for the same offense as the Mineral County prosecution. Although both cases involved violations of the same statute, they involved different incidents that occurred in different jurisdictions at different times.[4] The mere fact that evidence of the instant offense was admitted in the Mineral County case, pursuant to NRS 48.045(2), does not lead to the conclusion that appellant was previously prosecuted or punished for the instant offense. We therefore reject appellant's double jeopardy claim.[5]

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[3]North Carolina v. Pearce, 395 U.S. 711, 717 (1969); State v. Lomas, 114 Nev. 313, 315, 955 P.2d 678, 679 (1998).

[4]Appellant actually committed the Mineral County offenses after he had been released on his own recognizance in the instant case.

[5]Appellant also argues that the prosecution for the instant offense was barred by the doctrines of res judicata and collateral estoppel because the instant case was merged with the Mineral County case into one "cause of action" and, therefore, the State cannot relitigate that "cause of action." For the same reasons expressed above, we conclude that this contention lacks merit. The instant offense was not merged with the Mineral County case; nor was it finally litigated in connection with the Mineral County case.

Having considered appellant's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.[6]

Maupin, C.J.

Leavitt, J.

Becker, J.

cc: Hon. Lee A. Gates, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk

[6]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.