

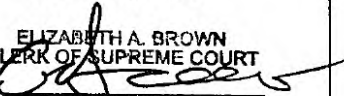
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SEAN RODNEY ORTH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85229-COA

FILED

MAR 28 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Sean Rodney Orth appeals from a judgment of conviction, entered pursuant to a guilty plea, of stop required on signal of a police officer. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Orth argues the justice court abused its discretion by denying his motion to dismiss the criminal complaint based upon the State's allegedly improper request for continuance of the preliminary hearing. Errors that arise before entry of a guilty plea are ordinarily waived by entry of the guilty plea, *see Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975), and Orth does not argue that he preserved this alleged error as part of his guilty plea, *see* NRS 174.035(3). Therefore, we conclude Orth's claim is waived.

Orth also argues his conviction violates the Double Jeopardy Clauses of the United States and Nevada Constitutions because his

previous conviction for resisting a public officer “arose from the exact same acts” and those acts cannot be divided into separate crimes. Orth also contends that resisting a public officer is a lesser included offense of stop required on signal of a police officer. The State argues that Orth’s double jeopardy claim is also waived by entry of the guilty plea.

To the extent Orth’s claim is based on the face of the charging documents and does not attempt to contradict those instruments, we conclude Orth has not waived his double jeopardy claim by entering his guilty plea. *See Menna v. New York*, 423 U.S. 61, 63 n.2 (1975) (holding that “a plea of guilty to a charge does not waive a claim that—judged on its face—the charge is one which the State may not constitutionally prosecute”); *cf. United States v. Broce*, 488 U.S. 563, 576 (1989) (holding respondents waived their double jeopardy claim because they could not “prove their claim without contradicting [the] indictments”).

The Double Jeopardy Clauses of the United States and Nevada Constitutions prohibit the State from punishing a criminal defendant multiple times for the same offense. U.S. Const. amend. V;¹ Nev. Const. art. 1, § 8; *Kelley v. State*, 132 Nev. 348, 350, 371 P.3d 1052, 1053 (2016). The State may not avoid this limitation “by the simple expedient of dividing a

¹The Double Jeopardy Clause of the Fifth Amendment is applicable to the States through the Fourteenth Amendment. *See Brown v. Ohio*, 432 U.S. 161, 164 (1977).

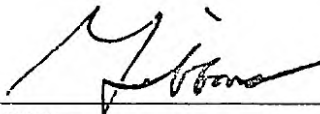
single crime into a series of temporal or spatial units.” See *Brown v. Ohio*, 432 U.S. 161, 169 (1977). However, separate acts may “result in separate convictions even though the acts were the result of a single encounter and all occurred within a relatively short time.” *Gaxiola v. State*, 121 Nev. 638, 651, 119 P.3d 1225, 1234 (2005) (internal quotation marks omitted).

Unlike in *Brown*, where the charges against the defendant related to a single victim and stemmed from the same underlying conduct, taking or operating the victim’s motor vehicle over a 9-day period, 432 U.S. at 162-63, here, Orth was not convicted of multiple offenses for the same conduct under a theory of temporal or spatial severability. Rather, each conviction stems from different conduct constituting a criminal offense. Regarding Orth’s conviction for stop required on signal of a police officer, the amended information and plea canvass indicate that Orth’s guilty plea was based on Orth’s failure to stop his vehicle after being signaled to do so by Henderson Police Department Officers P. Duffy, B. Brink, and/or J. Hehn. Regarding Orth’s prior conviction for resisting a public officer, the criminal complaint and plea hearing indicate that Orth’s no contest plea was based on Orth’s failure to obey Officers A. Mangan’s and/or K. Lippisch’s verbal commands to stop during a subsequent foot pursuit. Although these events occurred during the course of a single encounter, the charges covered different conduct directed toward different police officers. Therefore, the State did not unconstitutionally divide a single crime into a


series of temporal or spatial units when it charged Orth with stop required on signal of a police officer, and we conclude Orth's conviction did not implicate his double jeopardy rights.²

Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Tierra Danielle Jones, District Judge
The Law Firm of C. Benjamin Scroggins, Chtd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²In light of our disposition, we need not address whether resisting a public officer is a lesser included offense of stop required on signal of a police officer.