

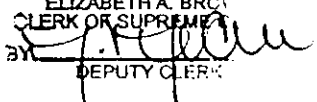
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SANDY SERRANO ACOSTA,
Appellant.
vs.
THE STATE OF NEVADA.
Respondent.

No. 88894-COA

FILED

MAY 21 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Sandy Serrano Acosta appeals from a judgment of conviction, entered pursuant to a jury verdict, of three counts of unlawful taking of a motor vehicle and one count of stop required on signal of police officer which endangers or is likely to endanger any other person or the property of any other person. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

Acosta argues the district court erred in submitting a flight instruction to the jury over his objection. Acosta contends the flight instruction “presupposes” the flight element of NRS 484B.550 (stop required on signal of police officer) and allowed the jury to conflate flight as evidence of consciousness of guilt with that element. For this reason, Acosta avers the flight instruction confused the jury and shifted the burden of proof.

We review a district court’s decision to give a jury instruction for an abuse of discretion or judicial error. *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). “Jury instructions that are unduly confusing may be erroneous.” *Gonzalez v. State*, 131 Nev. 991, 999, 366 P.3d 680, 685 (2015) (citation omitted). The trial court has a duty “to refrain from instructing on principles of law which not only are irrelevant to the issues

raised by the evidence but also have the effect of confusing the jury or relieving it from making findings on relevant issues.” *Id.* at 997, 366 P.3d at 684 (quoting *People v. Alexander*, 235 P.3d 873, 935 (Cal. 2010)).

With regard to flight, the jury was instructed:

The flight of a person after the commission of a crime is not sufficient in and of itself to establish that person’s guilt. However, if flight is proved, it may be considered by you in light of all other evidence in deciding the question of guilt.

The essence of flight embodies the idea of deliberately going away with consciousness of guilt and for the purpose of avoiding apprehension or prosecution.

Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to such a circumstance are matters for your deliberation.

In pertinent part, NRS 484B.550(1) provides that a driver who “willfully fails or refuses to bring the vehicle to a stop, *or who otherwise flees* or attempts to elude a [police] officer in a readily identifiable vehicle . . . when given a signal to bring the vehicle to a stop” is guilty of the offense of stop required upon signal of a police officer. (Emphasis added.)

We disagree with Acosta’s argument that the flight instruction allowed the jury to conflate flight as evidence of consciousness of guilt with the flight element of NRS 484B.550. First, the flight instruction did not presuppose flight but rather informed the jury flight could be considered *if proven*. Second, the flight instruction referred to flight “after the commission of a crime” whereas the act of fleeing itself, under the above-identified circumstances, was the purported violation of NRS 484B.550 in Acosta’s case. For the jury to use the flight instruction to determine Acosta’s guilt under NRS 484B.550, as contended by Acosta, the jury would have

already determined his flight was proven, thus providing the jury with a factual basis to find Acosta fled pursuant to NRS 484B.550. Because the jury could not use the flight instruction without first making findings independently relevant to his guilt under NRS 484B.550, the flight instruction did not relieve the State from meeting its burden of proving whether Acosta violated NRS 484B.550.¹ Therefore, we conclude the district court did not abuse its discretion in submitting the flight instruction on these grounds.

Second, Acosta contends the district court erred in submitting a flight instruction where there was insufficient evidence that he left the gas station parking lot with a consciousness of guilt. “[A] district court may properly give a flight instruction if the State presents evidence of flight and the record supports the conclusion that the defendant fled with consciousness of guilt and to evade arrest.” *Rosky v. State*, 121 Nev. 184, 199, 111 P.3d 690, 699-700 (2005). “Flight instructions are valid only if there is evidence sufficient to support a chain of unbroken inferences from the defendant’s behavior to the defendant’s guilt of the crime charged.” *Jackson*, 117 Nev. at 121, 17 P.3d at 1001. Because flight instructions are potentially prejudicial, “this court carefully scrutinizes the record to determine if the evidence actually warranted the instruction.” *Weber v. State*, 121 Nev. 554, 582, 119 P.3d 107, 126 (2005), *overruled on other grounds by Farmer v. State*, 133 Nev. 693, 698, 405 P.3d 114, 120 (2017).

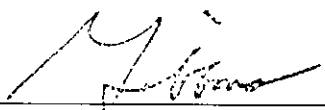
¹Because Acosta was charged with other crimes, for which the jury could properly consider his flight after the commission of the crimes as consciousness of guilt, we conclude the flight instruction did not improperly confuse the jury.


Here, the State presented evidence that a Hyundai had been taken from a casino's valet area. The same day, police tracked the Hyundai around Las Vegas using surveillance cameras and later to a gas station parking lot using a helicopter. After surveilling the Hyundai, officers surrounded it with their vehicles, activated lights and sirens, and got out on foot with guns drawn. Acosta, who was identified by one of the officers as the driver of the Hyundai, backed the Hyundai into a police vehicle and drove out of the area on the wrong side of the road against traffic. The Hyundai was surveilled driving at a high rate of speed on the interstate before police called off the pursuit. In light of these facts, the State presented evidence of Acosta's flight and the record supports the conclusion that Acosta fled with consciousness of guilt and to evade arrest. Accordingly, we conclude the district court did not err by giving the flight instruction to the jury.

Even assuming the district court erred by submitting the flight instruction to the jury, any error was harmless. Given the strength of the State's evidence that Acosta violated NRS 484B.550, there is no indication that the instruction had a "substantial and injurious effect or influence [on] the jury's verdict." *Tavares v. State*, 117 Nev. 725, 732, 30 P.3d 1128, 1132 (2001). For these reasons, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Crystal Eller, District Judge
Nevada Defense Group
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk