IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW EUGENE LARRY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38658

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea in accordance with North Carolina v. Alford,[1] of two counts of battery with the intent to commit a crime. The district court sentenced appellant Andrew Eugene Larry to serve two consecutive prison terms of

[1]400 U.S. 25 (1970).

24-60 months, and ordered him to pay a fine of $2,500.00; he was given credit for 1,319 days time served.[2]

Larry's sole contention on appeal is that the State adduced insufficient evidence to satisfy NRS 171.010 and establish jurisdiction in the Eighth Judicial District Court in Clark County over the offense for which he was indicted and to which he pleaded guilty.[3] Larry argues that there was no evidence presented by the State showing that the offense occurred in Nevada, and that the relevant events actually occurred within the Mohave Indian Tribal Reservation in Arizona. Larry's contention is without support.

This court has long held that it is not "incumbent upon the state to prove further than that the offense was committed within the

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[2]Larry pleaded guilty to the two counts of battery with the intent to commit a crime only after being tried twice by the State, both times resulting in mistrials. The original indictment charged Larry with one count each of first-degree kidnapping with the use of a deadly weapon, battery with the intent to commit a crime, and battery with the use of a deadly weapon.

[3]NRS 171.010 states that "[e]very person, whether an inhabitant of this state, or any other state, or of a territory or district of the United States, is liable to punishment by the laws of this state for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States."

county."[4] The Buckaroo Jack court further stated that if an exception to jurisdiction exists, the burden of proof as to that exception lies with the defendant.[5] In this case, the State produced sufficient evidence and testimony from witnesses demonstrating that all of the relevant events occurred within the State of Nevada, and Larry has provided no evidence to the contrary, thus failing to satisfy his burden of proving a lack of jurisdiction.[6]

Further, even if the offense occurred in Arizona as Larry contends, the district court still had jurisdiction pursuant to NRS 171.020. Pursuant to NRS 171.020, the State of Nevada has jurisdiction over an offense "[w]henever a person, with intent to commit a crime, does any act

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[4]State v. Buckaroo Jack, 30 Nev. 325, 334, 96 P. 497, 497 (1908).

[5]See id. at 335, 96 P. at 498 (quoting State v. Ta-cha-na-tah, 64 N.C. 614 (1870)); see also Pendleton v. State, 103 Nev. 95, 99, 734 P.2d 693, 695 (1987) ("The defendant has the burden of showing the applicability of negative exceptions in jurisdictional statutes.").

[6]See Buckaroo Jack, 30 Nev. at 334-35, 96 P. at 497-98; see also Duro v. Reina, 495 U.S. 676, 680-81 n.1 (1990) ("For Indian country crimes involving only non-Indians, longstanding precedents of this Court hold that state courts have exclusive jurisdiction . . . ."), superseded by statute on other grounds as stated in U.S. v. Enas, 255 F.3d 662, 665 (9th Cir. 2001).

within this state in execution or part execution of such intent, which culminates in the commission of a crime, either within or without this state." This court held that NRS 171.020 gives the state jurisdiction over an offense "whenever the criminal intent is formed and any act is accomplished in this state in pursuance or partial pursuance of the intent."[7]

Our review of the record on appeal reveals that Larry met the victim at the Avi Resort & Casino in the State of Nevada, and drove her to Laughlin, NV, where they went to two different casinos. After they had an argument in the Loser's Lounge at the Riverside Casino in Laughlin, the victim asked Larry to drive her back to the Avi Resort. Instead, Larry drove past the exit for the resort and eventually stopped at various locations within the state in pursuit of an isolated spot to commit his offense. Regardless of where the eventual offense occurred, Larry's act was part of an "overall continuing crime plan."[8] Therefore, we conclude that the district court properly exercised jurisdiction over Larry pursuant to NRS 171.020 and Shannon v. State.

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[7]Shannon v. State, 105 Nev. 782, 792, 783 P.2d 942, 948 (1989) (emphasis in original omitted).

[8]Smith v. State, 101 Nev. 167, 169, 697 P.2d 113, 115 (1985).

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

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. John S. McGroarty, District Judge
Attorney General/Carson City
Clark County District Attorney
Special Public Defender
Clark County Clerk