

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN L. SCOTT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39654

**FILED**

APR 06 2004

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of possession of a stolen vehicle, two counts of possession of a debit or credit card without the cardholder's consent, and one count of failure to stop on the signal of a police officer. The district court adjudicated appellant Steven L. Scott as a habitual criminal and sentenced him on each count to a term of life imprisonment with the possibility of parole after ten years.

Scott contends that: (1) the district court deprived him of the right to a meaningful review by failing to state on the record its findings of fact and conclusions of law; (2) the district court failed to conduct a sufficient hearing to determine whether the jury was tainted by a witness's remark to Scott in the jury's presence; (3) the State failed to amend the information to include a habitual criminal charge, and therefore, the habitual criminal adjudication is invalid; (4) the district court erred in admitting evidence of prior bad acts and by failing to properly instruct the jury on the limited purpose for which prior bad act evidence could be considered; (5) the district court erred in not removing a juror based on juror misconduct; and (6) the conviction for failure to stop

on the signal of a police officer violated the Double Jeopardy Clause. We conclude that only the last issue warrants any discussion.

Scott was cited for a violation of NRS 484.348 (1), which provides that a person who willfully fails to stop on the signal of a police office or otherwise flees or evades a police officer is guilty of a misdemeanor. Scott appeared in North Las Vegas Municipal Court, pleaded nolo contendere to the misdemeanor offense, and was assessed a \$500 fine. Thereafter, the State charged Scott by information with a violation of NRS 484.348(3), which provides that a person who, while violating NRS 484.348(1), operates a motor vehicle in a manner that endangers or is likely to endanger another person or another person's property is guilty of a felony. The misdemeanor and the felony charges arose out of a single incident on October 31, 2001.

Scott argues that a misdemeanor violation of NRS 484.348(1) is a lesser-included offense of a felony violation of NRS 484.348(3) and, therefore, the Double Jeopardy Clause precludes his prosecution and conviction on the felony charge following his conviction on the misdemeanor charge. The State concedes that the misdemeanor is a lesser-included offense of the felony, that Scott was convicted of the misdemeanor offense,<sup>1</sup> and that the Double Jeopardy Clause bars the

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<sup>1</sup>The State initially argued in its answering brief that Scott had not adequately demonstrated that he had been convicted of the misdemeanor offense; Scott had only presented a copy of the citation. However, Scott subsequently provided certified copies of the municipal court records demonstrating a conviction. The State has not moved to strike those documents, which apparently were not presented to the trial court, or otherwise objected to this court's consideration of those documents. Instead, at oral argument, the State conceded that Scott had established the misdemeanor conviction and that the felony conviction should be

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subsequent prosecution and conviction on the felony offense. We agree with the parties that Scott's felony conviction for failure to stop on the signal of a police officer must be reversed.

A misdemeanor charge under NRS 484.348(1) is clearly a lesser-included offense of a felony charge under NRS 484.348(3)—a violation of subsection 1 is itself an element of an offense charged under subsection 3. And Scott has demonstrated that he previously was convicted of a misdemeanor offense under NRS 484.348(1) based on the October 31, 2001, incident. Under the Double Jeopardy Clause, the conviction for the misdemeanor precludes the subsequent prosecution and conviction for the felony.<sup>2</sup> We therefore reverse the conviction for failure to stop on the signal of a police officer in violation of NRS 484.348(3).

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*. . . continued*

reversed. Moreover, it appears that this court may take judicial notice of the municipal court documents. See NRS 47.130(2)(b) (providing that judicially noticed fact must be “[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute”); Occhiuto v. Occhiuto, 97 Nev. 143, 145, 625 P.2d 568, 569 (1981) (stating that court may take judicial notice of prior proceedings when there is a close relationship between the two proceedings).

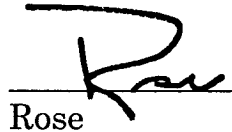
<sup>2</sup>Brown v. Ohio, 432 U.S. 161, 169 (1977). (“Whatever the sequence may be, the Fifth Amendment forbids successive prosecution and cumulative punishment for a greater and lesser included offense.”). Brown recognized that there might be an exception to this rule where the State was unable to proceed on the greater offense at the outset because additional facts necessary to sustain that charge had not yet occurred or had not been discovered despite exercise of due diligence. Id. at 169 n.7. The State has not argued that this exception applies here, and we see nothing in the record to suggest that it does.

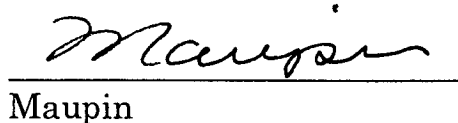
We have considered Scott's remaining arguments and conclude that they lack merit. We therefore affirm the convictions for one count of possession of a stolen vehicle and two counts of possession of a debit or credit card without the cardholder's consent. However, we note that the judgment of conviction erroneously states that Scott was convicted pursuant to a guilty plea.

Based on the foregoing we,

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for entry of a corrected judgment of conviction.

 \_\_\_\_\_, C.J.  
Shearing

 \_\_\_\_\_, J.  
Rose

 \_\_\_\_\_, J.  
Maupin

cc: Hon. John S. McGroarty, District Judge  
Orlando J. De Castroverde  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk