IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD BROWN KIMBALL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 34769

FILED

APR 12 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of attempted assault on a peace officer with the use of a deadly weapon.[1] The district court sentenced appellant to twelve (12) to forty-eight (48) months in prison.

First, appellant contends the district court incorrectly admitted evidence of a prior bad act when it admitted evidence of the events prior to the commission of the charged crime.[2]

We conclude the evidence was admissible as evidence of appellant's intent. See NRS 48.045(2). We further conclude the probative value of this evidence was not substantially outweighed by the potential for unfair prejudice, and the evidence was relevant. See NRS 48.035(3); see also Bletcher v. State, 111 Nev. 1477, 907 P.2d 978, (1995). Therefore, appellant's arguments on this issue are without merit.

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[1]Appellant drove a motor vehicle at a sheriff's deputy at approximately forty-five (45) miles per hour.

[2]The evidence in question showed that appellant came into the Eagle Station Saloon in an agitated state, got into a fight with a witness, menaced the witness with an axe handle, and then drove off at the approach of sirens.

Next, appellant contends several instances of prosecutorial misconduct occurred during the State's closing argument that warrant reversal of his conviction.

Initially, we note appellant failed to object to all but one of the prosecutor's comments. Moreover, our review of the record reveals the prosecutor's comments were not patently prejudicial. Accordingly, we decline to review the alleged misconduct to which appellant failed to object. See Parker v. State, 109 Nev. 383, 849 P.2d 1062 (1993); see also Sipsas v. State, 102 Nev. 119, 716 P.2d 231 (1986).

As to the remaining allegation of prosecutorial misconduct, appellant argues the prosecutor made improper reference to facts not in evidence. Therefore, he asserts reversal is warranted. We disagree.

The comments to which appellant objected were merely a translation of appellant's estimated speed in miles per hour into feet per second. The prosecutor used this mathematical deduction to explain discrepancies in testimony regarding the distance between the victim and appellant when appellant veered off. We conclude appellant's assertions on this issue are without merit.

Last, appellant contends the evidence presented at trial was insufficient to support the jury's finding of guilt. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980).

In particular, we note the evidence showed appellant drove away from the victim, circled back and drove directly at the victim, and then veered off at the last moment narrowly missing him. The jury could have reasonably inferred from the evidence presented that appellant possessed the requisite

intent to commit the charged crime. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981).

Having considered appellant's contentions and concluded they lack merit, we

ORDER this appeal dismissed.

Maupin, J.
Maupin

Shearing, J.
Shearing

Becker, J.
Becker

cc: Hon. Michael E. Fondi, District Judge
Attorney General
Carson City District Attorney
State Public Defender
Carson City Clerk