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## Kelley v. State, 132 Nev. Adv. Op. 32 (Apr. 28, 2016)

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CRIMINAL LAW: DOUBLE JEOPARDY CLAUSE

**Summary**

The Court determined (1) the charge of misdemeanor reckless driving, NRS § 484B.653(1)(a) is a lesser included offense of felony eluding a police officer, NRS 484B.550(3)(b) and thus, (2) the appellant may not be punished for both crimes because the Double Jeopardy Clause prohibits such conviction.

**Background**

In February 2014, appellant Justin Patrick Kelley (“Kelley”) drove his all-terrain vehicle (ATV) through the city of Wells. A deputy sheriff began chasing Kelley after observing Kelley speeding, driving on the left side of the road, and refusing to stop his ATV. Kelley was arrested and charged with (1) reckless driving and (2) felony eluding a police officer.

In November 2014, Kelley pleaded no contest to misdemeanor reckless driving. In December, he moved to dismiss the felony eluding a police officer charge citing the Double Jeopardy Clause. The district court rejected Kelley’s double jeopardy argument and determined that misdemeanor reckless driving did not constitute a lesser included offense of felony eluding a police officer. In January 2015, Kelley pleaded guilty to the felony. This appeal followed.

**Discussion**

Under the Double Jeopardy Clause, a criminal defendant may not be punished more than once for the same offense without clear legislative authorization.<sup>2</sup> The Blockburger test determines whether multiple convictions violate the Double Jeopardy Clause:<sup>3</sup> “if the elements of one offense are entirely included within the elements of a second offense.”<sup>4</sup> Here, the elements of Nevada’s felony eluding offense include: (1) driving a vehicle (2) in a manner that endangers or is likely to endanger any other person or the property of another person.<sup>5</sup> Accordingly, all the elements of misdemeanor reckless driving—(1) driving a vehicle (2) in willful or wanton disregard of the safety of persons or property<sup>6</sup>—are included in the elements of felony eluding. Thus, the reckless driving charge is a lesser included offense of the felony eluding a police officer and double jeopardy applies. Because Kelley was already convicted of a lesser included offense, the misdemeanor, he cannot be convicted of both crimes. The Court found the plain language of both offenses further demonstrated this relationship. Therefore, the Court concluded Kelley’s felony conviction should be reversed.

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<sup>1</sup> By Mackenzie Warren.

<sup>2</sup> *LaChance v. State*, 130 NEV., 29, 321 P.3d 919, 923 (2014).

<sup>3</sup> *Blockburger v. U.S.*, 284 U.S. 299 (1932).

<sup>4</sup> *Barton v. State*, 117 Nev. 686, 692 30 P.3d 1103, 1107 (2001).

<sup>5</sup> NEV. REV. STAT. §§ 484B.550(1); NEV. REV. STAT. §§ 484B.550(3)(b) (1997).

<sup>6</sup> NEV. REV. STAT. §§ 484B.653(1)(a) (1983).

## **Conclusion**

Subsequently convicting Kelley for felony eluding a police officer after he already was convicted of a lesser included offense, misdemeanor reckless driving, would violate the Double Jeopardy Clause. The Court reversed Kelley's felony conviction to comport with double jeopardy.