

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESLEY CHARLES HUNSUCKER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43099

**FILED**

MAY 20 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to cheat at gambling (count I), burglary (count II), commission of a fraudulent act in a gaming establishment (count III), and possession of a cheating device (count IV). Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge. The district court sentenced appellant Wesley Charles Hunsucker to serve a prison term of 28 to 72 months for count I, a consecutive prison term of 48 to 120 months for count II, a concurrent prison term of 28 to 72 months for count III, and a concurrent prison term of 28 to 72 months for count IV.

Hunsucker first contends that there was insufficient evidence in support of his convictions for counts I-IV. In particular, Hunsucker contends that there was no evidence adduced at trial that he ever possessed a cheating device or conspired to or used such a device in a casino. We conclude that Hunsucker's contention lacks merit.

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational

trier of fact.<sup>1</sup> In particular, we note that a surveillance manager at the Ramada Express, a Laughlin casino, testified that, on January 19, 2003, he observed Hunsucker at a dollar slot machine "rubbernecking," quickly looking from left to right, with a female individual blocking the view on either side of him. The surveillance manager explained that the behavior was suspicious because most slot players become entranced by the machine and tend to ignore the occurrences around them. Upon further observation, the surveillance manager observed a burst of light coming from the hopper of the slot machine onto Hunsucker's hand as he cashed out the machine. At some point, the machine tilted, meaning that the coin hopper was empty, but more money was still owed. Rather than wait for the attendant to collect the money owed, Hunsucker removed something from the machine, one of the females, whom had been blocking for Hunsucker, cashed out the tokens, and the group left the casino. The surveillance manager observed Hunsucker and the two females drive away in a Jeep Cherokee into the parking garage of the Edgewater, another Laughlin casino. The surveillance manager noted the license plate of the vehicle and notified the gaming control board. Casino surveillance videotapes corroborating the surveillance manager's testimony were admitted into evidence at trial.

The Nevada State Gaming Control Board Agent whom the surveillance manager had contacted also testified at trial. The gaming agent testified that he reviewed the casino surveillance tapes and concluded that they showed Hunsucker using a light optic cheating device.

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<sup>1</sup>See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

The device has a high-intensity light bulb, which blinds the coin counting optics and allows a person to get more coins than they are entitled to. The gaming agent then went to the Edgewater and located Hunsucker and one of the female individuals in the slot machine area. The couple observed the gaming agent watching them, and managed to avoid him by quickly leaving the casino.

The Jeep they were driving, however, was detained as it attempted to leave the casino parking garage. The Jeep was occupied by the two females observed earlier with Hunsucker, but Hunsucker was not there. When the gaming control agent inquired whom the male was that was with them earlier, one of the females responded that his name was "Wes." The gaming agent observed a hypodermic syringe lying on the floorboard of the Jeep and arrested the two females for possessing the hypodermic device. In a search of the vehicle conducted incident to the arrest, the gaming agent found three fully-functional light optic devices, as well as components used to manufacture such devices, which were admitted into evidence at trial.

Although Hunsucker argues that no one actually saw him with the light optic device, the jury could reasonably infer from the evidence presented that he possessed and used the light optic device and, in doing so, committed the crimes of conspiracy to cheat at gambling, burglary, commission of a fraudulent act in a gaming establishment, and possession of a cheating device.<sup>2</sup> It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not

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<sup>2</sup>See NRS 465.088(2); NRS 465.083; NRS 205.060(1); NRS 465.070(7); NRS 465.080(4).

be disturbed on appeal where, as here, substantial evidence supports the verdict.

Hunsucker also contends that the district court abused its discretion in denying his motion to exclude evidence of the light optic devices seized from the Jeep because the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. We conclude that Hunsucker's contention lacks merit.

NRS 48.015 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Nevertheless, even if evidence is relevant, "it is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury."<sup>3</sup> The district court has considerable discretion in determining the relevance and admissibility of evidence, and this court will not disturb the trial court's decision to admit evidence absent manifest error.<sup>4</sup>

After hearing arguments from counsel, the district court balanced the probative value of the evidence against its potential for unfair prejudice and ruled that the evidence was admissible. We conclude that the district court did not commit manifest error in so ruling because the evidence of the light optic devices was highly relevant to show that Hunsucker committed the charged crimes by possessing, using, and conspiring to use the light optic devices in the casino. Accordingly, the district court did not commit manifest error in admitting the evidence.


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<sup>3</sup>NRS 48.035(1).

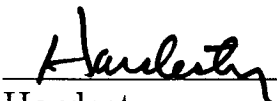
<sup>4</sup>See Lucas v. State, 96 Nev. 428, 431-32, 610 P.2d 727, 730 (1980).

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

ORDER the judgment of conviction AFFIRMED.<sup>5</sup>

  
\_\_\_\_\_, C.J.  
Becker

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Nancy M. Saitta, District Judge  
Michael P. Printy  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk  
Wesley Charles Hunsucker

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<sup>5</sup>Because Hunsucker is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to Hunsucker unfiled all proper person documents he has submitted to this court in this matter.