IN THE SUPREME COURT OF THE STATE OF NEVADA

LISA M. GILL A/K/A LISA MICHELE STICKROD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44182

FILED

JAN 11 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of trafficking in a controlled substance (count I) and manufacturing in a controlled substance (count II). Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant Lisa M. Gill to serve a prison term of 10 to 25 years for count I and a concurrent prison term of 3 to 15 years for count II.

Gill first contends that there was insufficient evidence to sustain her conviction for trafficking because there was never definitive proof of the quantity of drugs found in the purse purportedly belonging to her. Gill also contends that there was insufficient evidence to sustain her conviction for manufacturing methamphetamine because: (1) no pseudo-ephedrine was found; (2) the materials for manufacturing were not assembled in a manner to constitute a lab, but instead were scattered in different locations throughout the residence; (3) there was no evidence that methamphetamine was ever manufactured at the residence; and (4) there was no physical evidence linking Gill to any of the materials seized. 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.[1] The jury could reasonably infer from the evidence presented, including the testimony of the law enforcement officers and criminalists, that Gill possessed a trafficking quantity of methamphetamine and a majority of the materials required to manufacture methamphetamine.[2] 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.[3]

Second, Gill contends that the district court erred in admitting Sargeant Faulis' hearsay testimony that William Hodek, the owner of the apartment searched, said that Gill and her co-defendant lived in the apartment. We decline to consider Gill's contention. Our review of the record indicates that Gill's counsel elicited the testimony on cross-examination by asking Sargeant Faulis what Hodek told him about who resided in the apartment. Generally, a party who elicits an alleged error is estopped from challenging that error on appeal.[4] Given the fact that Gill's counsel elicited the hearsay testimony, we decline to consider her challenge to the admission of such testimony.

Third, Gill contends that the district court erred in failing to offer Gill the opportunity to cross-examine co-defendant Bickom. Gill, however, has failed to support her contention with any relevant citation to

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[1]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).

[2]See NRS 453.3385(3); NRS 453.322.

[3]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

[4]Jones v. State, 95 Nev. 613, 618, 600 P.2d 247, 250 (1979).

the record. Moreover, our review of the record does not indicate that counsel for Gill ever requested to cross-examine Bickom or objected to the fact that Gill's right to cross-examination was denied. Accordingly, we conclude that Gill has failed to show that her right to cross-examine Bickom was violated.

Fourth, Gill contends that reversal of her conviction is warranted because Judge Bell, who presided over her trial, was the Clark County District Attorney at the time Gill's indictment was filed and, therefore, Judge Bell's name was on the indictment. Citing to Turner v. State,[5] Gill argues that recusal was mandatory because the facts giving rise to the appearance of implied bias were not disputed. We conclude that Gill's contention lacks merit.

Preliminarily, we note that Gill failed to preserve this issue for appeal by filing a motion to recuse Judge Bell in district court pursuant to NRS 1.235 or NCJC 3E.[6] Nonetheless, even assuming the issue was preserved for review, we conclude that recusal was not mandatory merely because the indictment was filed under Bell's name. Unlike in Turner, there is no indication in the record that Bell, while acting as Clark County District Attorney, made a court appearance as an attorney in the case and therefore NRS 1.230 and NCJC 3E are not implicated.[7] Although the

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[5]114 Nev. 682, 688, 962 P.2d 1223, 1226 (1998).

[6]See id.; see also PETA v. Bobby Berosini, Ltd., 111 Nev. 431, 894 P.2d 337 (1995), overruled by Towbin Dodge, LLC v. Dist. Ct., 121 Nev. ___, 112 P.3d 1063 (2005).

[7]Cf. Turner, 114 Nev. at 686, 962 P.2d at 1225 (mandatory recusal required where the trial judge had previously appeared on behalf of the district attorney's office, at one of appellant's prior sentencing hearings, as well as the initial arraignment of the case over which he was now presiding as judge).

indictment was filed under Bell's name, a deputy district attorney signed the indictment and made the pretrial court appearances in the case. Accordingly, we conclude that mandatory recusal was not warranted.

Fifth, Gill contends that her trial counsel was ineffective for failing "to follow up on Gill's apparent desire to enter plea negotiations with the State." We decline to consider Gill's contention. This court has repeatedly stated that claims of ineffective assistance of counsel will not generally be considered on direct appeal; such claims must be presented to the district court in the first instance in a post-conviction proceeding where factual uncertainties can be resolved in an evidentiary hearing.[8] Accordingly, we conclude that Gill must raise her claim of ineffective assistance of counsel in the district court in the first instance by initiating a post-conviction proceeding.

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

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

[8]See Johnson v. State, 117 Nev. 153, 160-61, 17 P.3d 1008, 1013 (2001).

cc: Hon. Stewart L. Bell, District Judge
Bunin & Bunin
Stanley A. Walton
Attorney General
Clark County District Attorney David J. Roger
Clark County Clerk