

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES LEE JORDAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45137

FILED

JAN 24 2006

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 one count of level-two trafficking in a controlled substance. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant Charles Lee Jordan to serve a prison term of 16 to 48 months.

Jordan first contends that the evidence presented at trial was insufficient to support the jury's finding that he possessed the cocaine at issue. In particular, Jordan argues that the cocaine evidence was planted on him by an acquaintance after he was severely beaten in a fight. We conclude that Jordan'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.¹ In particular, Reno Police Officer Kenneth Myers testified that, on July 18, 2005, he responded to a street fight. Officer Myers saw Jordan and a female walking up the street away from the scene. As

¹See 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).

Officer Myers approached, he observed that Jordan had a clear plastic bag in his hand and was attempting to hide it under his female companion's dress. The female backed away from Jordan and attempted to push his hands away. Jordan then dropped the plastic bag and ran. He was subsequently apprehended and arrested after a presumptive-field test indicated that the plastic bag contained 10 small, individually wrapped packages of rock cocaine. A Washoe County criminalist also testified that the substance tested positive for rock cocaine and weighed 10.82 grams.

In addition to the law enforcement officers, the female with Jordan at the time of his arrest, Pandora Ponsock, also testified at trial. Ponsock testified that she became involved in a street fight with several people, including Jordan. After the police arrived, everyone in the fight began to disperse, and Ponsock helped Jordan, who had been badly beaten, get up from the ground. As the two walked away, Ponsock explained that Jordan bent down, stuck his hand underneath her dress, and touched her "private area." Ponsock slapped his hand away and then noticed a plastic bag fall to the ground underneath a car. Jordan then ran. After he was apprehended, Jordan told police that the plastic bag belonged to Ponsock. Ponsock insisted that the drugs were not hers.

Despite Jordan's claim that the cocaine was planted by Ponsock, the jury could reasonably infer that Jordan knowingly possessed the cocaine. 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.²

Jordan next contends that prosecutorial misconduct rendered his trial unfair. Jordan challenges the following statement by the prosecutor:

But you heard in the beginning -- which is our system, and it's the greatest system there is, I agree, someone is presumed innocent until proven guilty. Someone walks into this courtroom, and what they say, there's a saying he's cloaked in innocence.

Well, ladies and gentleman, you heard the evidence in this case and that evidence lifted that cloak right off the defendant. And what is underneath that cloak, you see a man that's guilty of the crime charged. As simple as that. Us proving it, the State proving it, and the defendant taking responsibility based on that evidence that we've shown.

(Emphasis added.) Citing to Pagano v. Allard,³ Jordan argues that reversal of his conviction is warranted because the prosecutor's comment

²See 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).

³218 F. Supp. 2d 26, 31 (D. Mass. 2002). In Pagano, the prosecutor argued:

And this defendant like every other defendant in this country enjoys the protection of that legal concept called presumption of innocence.

But now as we come to the end of this trial, the presumption of innocence, which I sometimes characterize as somebody wearing like a cloak . . .

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that the cloak of innocence was lifted impermissibly diluted the presumption of innocence. We disagree.

Preliminarily, we note that at trial Jordan did not object to the prosecutor's statement. The failure to object to prosecutorial misconduct precludes appellate review absent plain error affecting a defendant's substantial rights.⁴ Generally, a defendant must show that he was prejudiced by a particular error in order to prove that it affected substantial rights.⁵ We conclude that Jordan was not prejudiced by the prosecutor's statement.

Unlike in Pagano where the evidence against the defendant was weak, the State presented overwhelming evidence that Jordan committed the charged offense.⁶ Moreover, the district court instructed the jurors that Jordan "shall be presumed innocent unless the contrary is proved by competent evidence beyond a reasonable doubt," and also instructed them that "[n]othing that counsel say during the trial is evidence." Accordingly, we conclude that the prosecutor's statement did not affect Jordan's substantial rights.

... continued

but now that cloak comes off. And now, you people get to judge. You guys get to decide the facts in the case.

Id. (emphasis in original).

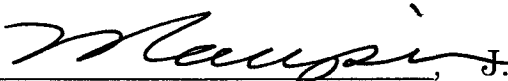
⁴See Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001).

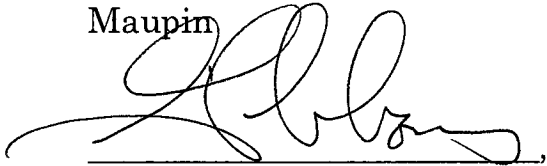
⁵Id.

⁶218 F. Supp. 2d at 36.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Brent T. Adams, District Judge
Washoe County Public Defender
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk