IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT MIRANDA-ZAMARRON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45852

FILED

FEB 09 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of four counts of trafficking in a controlled substance. Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant Roberto Miranda-Zamarron to serve a prison term of 10 to 25 years for each count. The district court imposed the sentences for the first two counts to run consecutively and the sentences for the remaining two counts to run concurrently. The district court also fined Miranda-Zamarron $25,000 for each count.

Miranda-Zamarron contends that insufficient evidence was adduced at trial to support his convictions. He specifically claims that the State failed to prove that (1) the heroin found in his apartment was in his possession, (2) the heroin mixture found in his possession contained 28

grams or more of pure heroin, and (3) the heroin and cocaine found in the silver Lincoln was in his possession. We disagree.

"[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness."[1] Accordingly, the standard of review for a challenge to the sufficiency of the evidence is "'whether, after viewing the evidence in the light most favorable to the prosecution, any rational [juror] could have found the essential elements of the crime beyond a reasonable doubt.'"[2] Circumstantial evidence is enough to support a conviction.[3]

To obtain a conviction for level three trafficking, the State must prove that the defendant knowingly or intentionally sold, manufactured, delivered, or brought into this state or was in actual or constructive possession of 28 grams or more of a Schedule I controlled substance.[4] We have previously stated that "'possession may be imputed when the contraband is found in a location which is immediately and exclusively accessible to the accused and subject to [his] dominion and

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[1]Walker v. State, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975).

[2]McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

[3]Lisle v. State, 113 Nev. 679, 691-92, 941 P.2d 459, 467 (1997).

[4]NRS 453.3385(3).

control,'"[5] and we have held "that the phrase '28 grams or more' refers to the aggregate weight of the entire mixture rather than the weight of the controlled substance that is contained in the mixture."[6] Both heroin and cocaine are Schedule I controlled substances.[7]

Here, the State presented evidence that Miranda-Zamarron had 48.11 grams of heroin on his person at the time of his arrest. When DEA Task Force officers searched the apartment Miranda-Zamarron shared with his wife and two small children, they found 154.22 grams of heroin; the keys to the silver Lincoln; and Miranda-Zamarron's Social Security card, resident alien card, and receipt for the apartment rent. The officers found no indication that anyone else lived in the apartment. While Miranda-Zamarron was under surveillance, he was the only person observed driving the silver Lincoln. When the Lincoln was searched, Task Force officers discovered 121.87 grams of heroin and 139.47 grams of cocaine.

We conclude that the jury could reasonable infer from the evidence presented that Miranda-Zamarron was in possession of the

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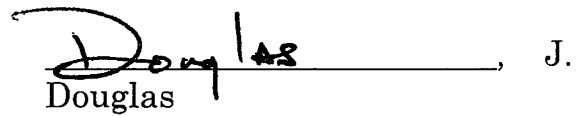
[5]Sheriff v. Steward, 109 Nev. 831, 836, 858 P.2d 48, 51 (1993) (quoting Glispey v. Sheriff, 89 Nev. 221, 223, 510 P.2d 623, 624 (1973)).

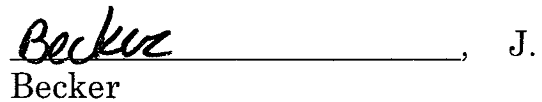
[6]Sheriff v. Lang, 104 Nev. 539, 543, 763 P.2d 56, 59 (1988).

[7]NAC 453.510(3), (8).

heroin and cocaine seized during his arrest, the search of his apartment, and the search of the Lincoln and that the amount of heroin he had on his person at the time of his arrest exceeded 28 grams. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_______________, J.
Douglas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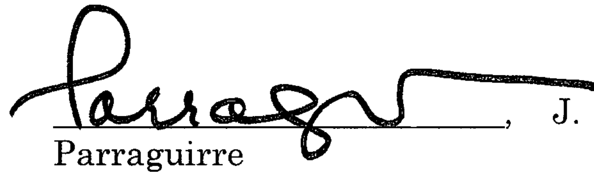
_______________, J.
Parraguirre

cc: Hon. Jerome Polaha, District Judge
Van Ry Law Offices, LLP
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk