IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERTO PRESNO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47901

FILED

DEC 21 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count of possession of a controlled substance. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge. The district court sentenced appellant Alberto Presno to serve a prison term of 12 to 30 months. It further ordered the sentence to be suspended and placed Presno on probation for a period not to exceed one year.

First, Presno contends that the district court erred in denying his motion to suppress. Specifically, Presno claims that the police did not have probable cause to arrest him and therefore the evidence resulting from the unlawful arrest should have been suppressed. Alternatively, Presno claims that even if the arrest was legal, the search incident to the arrest was not.[1]

A police officer may conduct a warrantless arrest if he or she has "reasonably trustworthy information of facts and circumstances that are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been or is being committed by the person to be

[1]Presno cites to Rice v. State, 113 Nev. 425, 936 P.2d 319 (1997).

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arrested."[2] A "complete and intrusive search of a person" is permissible when the search is incident to a lawful custodial arrest.[3]

During the preliminary hearing, Officer Turner testified that he and Officer Coats were investigating a disconnected 911 call near a motel when they spotted Presno laying on a couch in the front office. Officer Turner observed that Presno's right pants pocket appeared to be open and an off-white rock substance wrapped in plastic was "right underneath his right pocket" between his buttocks and the couch. The substance was in plain view and tested positive for rock cocaine. Officer Coats took Presno into custody for possession of a controlled substance and conducted a search incident to an arrest. She found a package of cigarettes inside one of Presno's pockets and she found rock cocaine inside of one of the cigarettes.

The district court denied Presno's motion to suppress evidence after finding that the officers found the rock cocaine under Presno's buttocks, by his pocket, in plain view, and in a public place. We conclude that the district court's finding of fact is supported by substantial evidence,[4] and that it did not err as a matter of law by denying Presno's suppression motion.

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[2]Doleman v. State, 107 Nev. 409, 413, 812 P.2d 1287, 1289 (1991) (citing Beck v. Ohio, 379 U.S. 89, 91 (1964)).

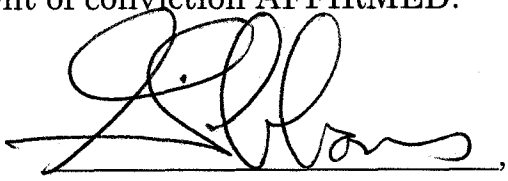
[3]Scott v. State, 110 Nev. 622, 629, 877 P.2d 503, 508 (1994) (citing United States v. Robinson, 414 U.S. 218, 224-29 (1973)).

[4]See State v. Miller, 110 Nev. 690, 694, 877 P.2d 1044, 1047 (1994) (noting that "findings of fact in a suppression hearing will not be disturbed on appeal if supported by substantial evidence").

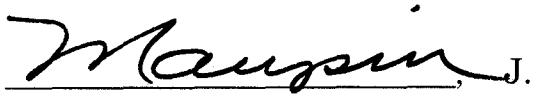
Second, Presno contends that he was denied his right to a fair trial when the prosecutor engaged in misconduct during her closing argument. Presno specifically claims that the prosecutor disparaged defense counsel and their legitimate defense tactics by referring to the defense as a "distraction." However, Presno failed to object to the prosecutor's alleged misconduct at trial, and he has not demonstrated that the prosecutor's remarks were patently prejudicial.[5]

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

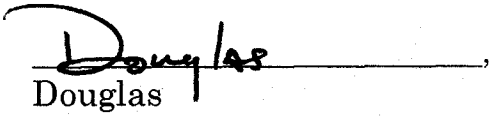
ORDER the judgment of conviction AFFIRMED.



_____, J.
Gibbons



_____, J.
Maupin



_____, J.
Douglas

cc: Hon. Lee A. Gates, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[5]Riker v. State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (holding that when appellant fails to object below, this court reviews alleged prosecutorial misconduct only if it constitutes plain error, i.e., if it is shown to be patently prejudicial).