

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICENTE J. MARIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48999

FILED

JUL 17 2007

JANEITE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Anso*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of trafficking in a controlled substance. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge. The district court sentenced appellant Vicente Marin to serve a prison term of 12 to 32 months.

Marin contends that the district court erred by refusing his proposed instruction and instead giving jury instruction nineteen "which negated the presumption of innocence." Jury instruction number nineteen provided:

In your deliberation you may not discuss or consider the subject of punishment, as this is a matter which lies solely with the court. Your duty is confined to the determination of the guilt or innocence of the accused.¹

We conclude that any alleged error was harmless beyond a reasonable doubt given that the jurors were informed, in jury instruction number

¹Marin's proposed instruction replaced the second sentence of jury instruction nineteen with the following language, "Your duty is confined to the determination of whether the State has proven guilt beyond a reasonable doubt."

thirteen, that Marin was "presumed innocent until the contrary [was] proved," that "the State [had] the burden of proving beyond a reasonable doubt every material element of the crime charged," and that Marin was "entitled to a verdict of not guilty" if the jurors had a "reasonable doubt as to guilt."²

Next, Marin contends that the district court erred by refusing his proposed instruction setting forth the defense theory of the case. Marin's proposed instruction provided:

If the State fails to prove beyond a reasonable doubt that Vicente Marin knowingly or intentionally possessed, either actually or constructively, 4 grams or more, but less than 14 grams of Methamphetamine, then Vicente Marin is entitled to a verdict of not guilty of Trafficking in a Controlled Substance.

In Crawford v. State, this court recognized that the trial court must provide jury instructions, upon request, on the significance of a defense theory of the case.³ This court also recognized, however, that the defense is not entitled to instructions that are "misleading, inaccurate, or duplicitous."⁴

Here, Marin's proposed instruction merely restated the elements of the crime and informed the jurors that they must find Marin not guilty if the State failed to prove the elements of the crime beyond a

²See Crawford v. State, 121 Nev. 744, 756, 121 P.3d 582, 590 (2005).

³Id. at 753-54, 121 P.3d at 588-89; see also Carter v. State, 121 Nev. 759, 767, 121 P.3d 592, 597 (2005).

⁴Carter, 121 Nev. at 765, 121 P.3d at 596; Crawford, 121 Nev. at 754, 121 P.3d at 589.

reasonable doubt. The district court did not err by refusing Marin's proposed instruction because it was duplicative of other jury instructions. The substance of Marin's proposed instruction was adequately covered by other jury instructions defining the elements of the crime and the State's burden to prove the elements of the crime beyond a reasonable doubt. And even assuming the proposed instruction should have been given, we conclude the alleged error did not affect the reliability of the jury's verdict under the circumstances of this case.⁵

Finally, Marin argues that there was insufficient evidence in support of the conviction. In particular, Marin argues that there were no controlled substances found on his person in two prior searches, and the corrections officer could not identify Marin as the man from whom she recovered the methamphetamine. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.⁶

In particular, Clark County Corrections Officer Cassandra Womack testified at trial, explaining that she searched an inmate named Vicente Marin and recovered a small plastic bag of white powder. Although Officer Womack could not identify Marin, the arresting officer also testified at trial, identifying Marin as the man who Womack had searched. Subsequent tests on the white powder found on Marin indicated that it was a combination of methamphetamine and a cutting agent

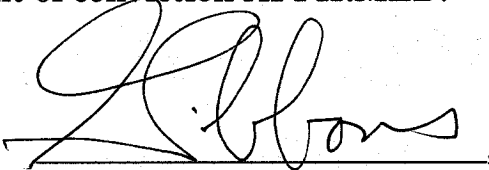
⁵Crawford, 121 Nev. at 756, 121 P.3d at 590.

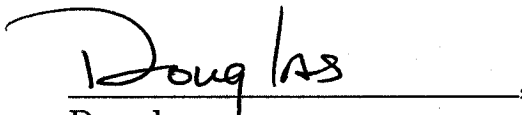
⁶See McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (citing Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

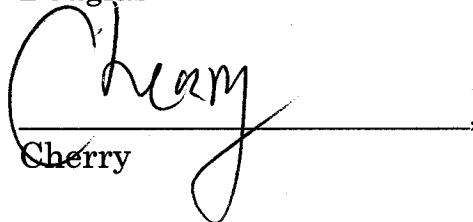
weighing 6.11 grams. We conclude that a rational juror could reasonably infer from the evidence adduced at trial that Marin possessed over four grams of methamphetamine.⁷ It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.⁸

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Lee A. Gates, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁷See NRS 453.3385(1).

⁸See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.