

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENYON JOVANI LEWIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49864

**FILED**

JAN 05 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of conspiracy to violate the controlled substance act, three counts of trafficking in a controlled substance, three counts of unlawful possession of a firearm, and one count of possession of a short-barreled shotgun. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge. The district court sentenced appellant Kenyon Jovani Lewis to serve a term of life in prison with the possibility of parole after 10 years on one of the trafficking counts and to various terms of years for the other counts. All of the sentences are to be served concurrently.

Lewis raises two issues in this appeal from the judgment of conviction: (1) the district court abused its discretion by admitting prior bad act evidence and (2) the State presented insufficient evidence to support the convictions. As explained below, we conclude that both claims lack merit and therefore affirm the judgment of conviction.

First, Lewis argues that the district court abused its discretion by admitting evidence that he is in the United States illegally. According to Lewis, this evidence amounted to improper prior bad act evidence. We disagree. As an initial matter, Lewis failed to preserve this issue for appeal by objecting to its admission at trial. Because of Lewis's failure to

object below, we may only consider this claim if it rises to the level of plain error affecting his substantial rights.<sup>1</sup> We conclude that there was no error in admitting the evidence because the evidence was relevant to establish an element of the three charges for unlawful possession of a firearm under NRS 202.360(2)—that appellant was “illegally or unlawfully in the United States.”<sup>2</sup> And it does not appear that Lewis offered to stipulate to his status such that the probative value of presenting detailed evidence or testimony as to his status would be outweighed by the danger of unfair prejudice.<sup>3</sup> Accordingly, we conclude that Lewis has not demonstrated plain error as a result of the district court’s admission of

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<sup>1</sup>See NRS 178.602 (“Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.”); Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003).

<sup>2</sup>NRS 202.360(2)(b). One section of the statute—NRS 202.360(1)(b)—has been found to be unconstitutionally vague, see Gallegos v. State, 123 Nev. \_\_\_, 163 P.3d 456 (2007), but that provision is not at issue in this case. The statute provides that the offense may be either a category B or a category D felony depending on the status supporting the charge. For example, possession of a firearm by an ex-felon or a drug addict is a category B felony, whereas possession of a firearm by a person who has been adjudicated as mentally ill, committed to a mental health facility, or is illegally or unlawfully in the United States is a category D felony. Compare NRS 202.360(1), with NRS 202.360(2). The State charged Lewis under both provisions.

<sup>3</sup>Cf. Edwards v. State, 122 Nev. 378, 379, 132 P.3d 581, 582 (2006) (holding “that, in a prosecution for possession of a firearm by an ex-felon, if the accused offers to stipulate that he has been convicted of a prior felony or felonies, the admission of the prior convictions is unduly prejudicial when its sole purpose is to prove ex-felon status”).

testimony and evidence showing that he was illegally or unlawfully in the United States.

Second, Lewis argues that the State presented insufficient evidence to support the jury's verdicts on the charges related to firearms and contraband located at the apartment that was searched because the witnesses gave conflicting testimony as to the address where the evidence was seized. In particular, he points out that two witnesses testified that the apartment was located at 83 East Agate, Building 43, Unit 201, whereas two other witnesses identified the address as 85 East Agate, Building 43, Unit 201.

Our review of the record on appeal reveals sufficient evidence, viewed in the light most favorable to the State, to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.<sup>4</sup> In particular, we note that police obtained and executed a valid search warrant for the apartment and officers involved in the search testified regarding the items found in the apartment, including methamphetamine, drug paraphernalia, a sawed-off shotgun, and a revolver. Additionally, there was only one unit involved in the search, and the State presented evidence that Lewis lived there and paid rent for the unit. And in the instances when witnesses identified the wrong street number, they were repeating an error made by the prosecutor in asking a question. The jury could reasonably infer from the evidence presented that Lewis had possession of a trafficking quantity of methamphetamine, a sawed-off shotgun, and a

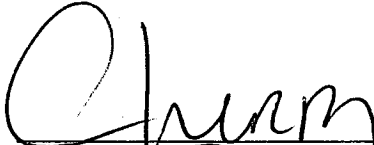
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<sup>4</sup>See Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); Jackson v. Virginia, 443 U.S. 307, 319 (1979).

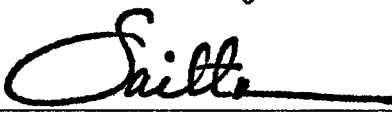
firearm. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.<sup>5</sup>

Having considered the issues raised on appeal and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

  
Cherry J.

  
Gibbons J.

  
Saitta J.

cc: Hon. Kenneth C. Cory, District Judge  
Paul E. Wommer  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>5</sup>See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).