

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN EUGENE SABO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50089

FILED

JAN 14 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 trafficking in a controlled substance. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant Stephen Eugene Sabo to serve a prison term of 48-120 months and ordered him to pay a fine of \$10,000.

First, Sabo contends that the anticipatory search warrant used to search his residence was invalid. Specifically, Sabo claims (1) the warrant "did not have clear and narrowly drawn triggering events," and (2) the State failed to provide an adequate foundation proving that the confidential informant was reliable.

Initially, we note that Sabo raises this issue for the first time on appeal. Sabo did not file a pretrial motion to suppress and/or challenge the validity of the search warrant in the district court.¹ Under NRS 174.125(1), the defendant bears the burden of making any motion to

¹See generally State v. Parent, 110 Nev. 114, 117, 867 P.2d 1143, 1145 (1994) (approving of the concept of anticipatory search warrants).

suppress. Also, Sabo did not object at trial to the brief testimony pertaining to the manner in which the State secured the search warrant. The failure to raise an objection with the district court generally precludes appellate consideration of an issue.² This court may nevertheless address an alleged error if it was plain and affected the appellant's substantial rights.³ "To be plain, an error must be so unmistakable that it is apparent from a casual inspection of the record."⁴

In this case, Sabo's argument was not considered by the district court, who thus made no findings regarding the validity of the search warrant for this court to review. Additionally, Sabo has failed to provide a record sufficiently developed allowing for a meaningful review of his claim or demonstrating that his substantial rights were violated.⁵ Therefore, we decline to address Sabo's contention.⁶

²See Rippo v. State, 113 Nev. 1239, 1259, 946 P.2d 1017, 1030 (1997).

³See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."); Flores v. State, 121 Nev. 706, 722, 120 P.3d 1170, 1180-81 (2005).

⁴Garner v. State, 116 Nev. 770, 783, 6 P.3d 1013, 1022 (2000), overruled on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002).

⁵See Wilkins v. State, 96 Nev. 367, 372, 609 P.2d 309, 312 (1980).

⁶See Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991) (holding that this court need not consider arguments raised on appeal that were not presented to the district court in the first instance), overruled on other grounds by Means v. State, 120 Nev. 1001, 103 P.3d 25 (2004); Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) (stating that
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Second, Sabo contends that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt. Specifically, Sabo claims that the State failed to prove that the drugs seized from his residence belonged to him and not to one of the other five people present at the time of the search. We disagree.

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. In particular, trial testimony indicated that a level-two trafficking amount of methamphetamine was found hidden in the master bedroom, a few feet from where Sabo had been sleeping, during the execution of a search warrant at his residence.⁷ A digital scale "and approximately 100 small ziplock baggies" were also discovered in the bedroom. An individual present at the time of the search testified at trial that Sabo provided her with methamphetamine.

Based on all of the above, we conclude that the jury could reasonably infer from the evidence presented that Sabo committed the crime beyond a reasonable doubt.⁸ 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

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appellant has the burden to provide this court with an adequate record enabling this court to review assignments of error asserted on appeal).

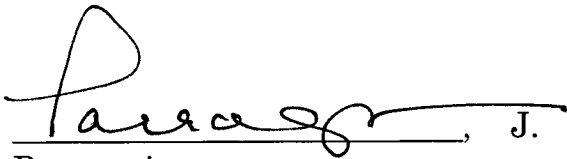
⁷See NRS 453.3385(2).

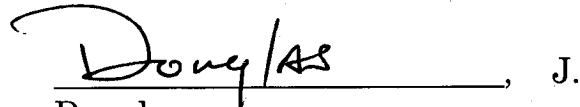
⁸See *Baker v. Sheriff*, 93 Nev. 11, 13, 558 P.2d 629, 629 (1977) ("although mere presence cannot support an inference that one is a party to an offense, presence together with other circumstances may do so").

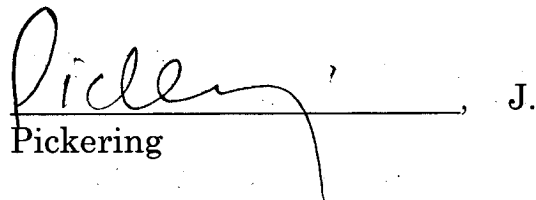
supports the verdict.⁹ Moreover, we note that circumstantial evidence alone may sustain a conviction.¹⁰ Therefore, we conclude that the State presented sufficient evidence to support the jury's verdict.

Having considered Sabo's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


Parraguirre, J.


Douglas, J.


Pickering, J.

cc: Hon. Brent T. Adams, District Judge
Michael V. Roth
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁹See 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).

¹⁰See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).