

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ANTHONY TURNER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52037

**FILED**

**OCT 13 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 entered pursuant to a jury verdict of one count of conspiracy to violate the controlled substance act and one count of trafficking in a controlled substance. Eighth Judicial District Court, Clark County; Michael Villani, Judge. The district court sentenced appellant John Anthony Turner to serve a prison term of 28 to 72 months for the conspiracy count and a concurrent prison term of 19 to 48 months for the trafficking count.

Insufficient Evidence

Turner contends that there was insufficient evidence adduced at trial to support his convictions. Turner claims that a rational juror could not find him guilty of the conspiracy and trafficking offenses because coconspirator Mundana Ess-Haghabadi testified that she did not have "any knowledge or involvement with the narcotic recovered from the vehicle."

"[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness." Walker v. State, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975). 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.” McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)). Circumstantial evidence is enough to support a conviction. Lisle v. State, 113 Nev. 679, 691-92, 941 P.2d 459, 467-68 (1997), holding limited on other grounds by Middleton v. State, 114 Nev. 1089, 1117 n.9, 968 P.2d 296, 315 n.9 (1998).

Here, the jury heard testimony that Turner was pulled over for a traffic violation. Before the police officers approached his car, Turner told Ess-Haghabadi to hold something for him. When Ess-Haghabadi realized that Turner had handed her a large bag of methamphetamine, she put the bag in her bra. The officers found a marijuana pipe when they searched Turner. The officers found two scales, some small plastic baggies, a marijuana cigarette, a plastic pipe, a glass pipe, and a small amount of methamphetamine when they searched Turner’s car. A female officer found a baggie of methamphetamine when she searched Ess-Haghabadi. The female officer testified that Ess-Haghabadi’s bra had been cut open to form a pocket and that the pocket held both a silicone pad to enhance Ess-Haghabadi’s bust and the baggie of methamphetamine. The methamphetamine had a gross weight of 12.3 grams.

Based on this testimony, we conclude that a rational juror could reasonably infer that Turner conspired with Ess-Haghabadi to violate the controlled substance act and that he knowingly and intentionally possessed a trafficking quantity of a schedule I controlled substance. See NRS 453.321(1); NRS 453.3385; NRS 453.401(1). 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. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

#### Prior Bad Acts

Turner contends that the district court abused its discretion by admitting prior bad act evidence. He specifically claims that the district court erred by allowing the State to elicit testimony regarding his "prior acts of drug use and drug sales" despite its pretrial ruling prohibiting this testimony.

"The trial court's determination to admit or exclude evidence of prior bad acts is a decision within its discretionary authority and is to be given great deference." Braunstein v. State, 118 Nev. 68, 72, 40 P.3d 413, 416 (2002). Such determinations will not be reversed absent manifest error. Id. However, before admitting prior bad acts evidence, the district court must conduct a hearing outside the presence of the jury and determine whether "(1) the incident is relevant to the crime charged; (2) the act is proven by clear and convincing evidence; and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice." Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

Here, the district court conducted a hearing on the State's motion to admit evidence of other crimes. During the hearing, the district court ruled that the State could not present evidence of Turner's previous drug sales, but it could present evidence concerning the marijuana and paraphernalia that were recovered during the search that lead to the instant charges. Contrary to Turner's assertion, the district court was not asked to rule on the admissibility of Turner's previous drug use. During

the trial, outside the presence of the jury, the district court ruled that the State could ask Ess-Haghabadi whether she and Turner had used drugs on the day of the arrest. When Ess-Haghabadi subsequently testified that she had seen the scale found in Turner's car "on another day," the parties asked to approach the bench and a bench conference ensued. Although some of the bench conference was transcribed, the transcription is largely indiscernible. Nonetheless, it is clear that Ess-Haghabadi's testimony regarding what she had seen "on another day" was addressed during the bench conference. Immediately following the bench conference, the State passed the witness to Turner for cross-examination. We conclude from these circumstances that Turner has failed to demonstrate that the district court abused its discretion.

#### Discovery Violation

Turner contends that the State failed to provide discoverable information in violation of Brady v. Maryland, 373 U.S. 83 (1963), and Nevada's discovery statutes. Turner asserts that during cross-examination, Ess-Haghabadi continuously referred to Detective Stephen Bourque as "Steve" and testified that Detective Bourque entered his phone number into her cell phone when she was in handcuffs, told her to contact him when she was released from jail, gave her his phone number when she was released from jail so that "he could tell her where to go for all of this," and placed her in contact with Deputy District Attorney Brett Keeler. Turner claims that the State did not disclose the existence of a relationship between Ess-Haghabadi and Detective Bourque, and he argues that the relationship was relevant to the issue of bias and that the failure to disclose the relationship implicated his confrontation rights.

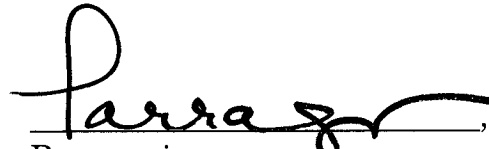
“Brady and its progeny require a prosecutor to disclose evidence favorable to the defense when that evidence is material either to guilt or to punishment.” Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000). A claim that the State committed a Brady violation must show that: (1) “the evidence at issue is favorable to the accused;” (2) the State failed to disclose the evidence, either intentionally or inadvertently; and (3) “prejudice ensued, i.e., the evidence was material.” Id. at 67, 993 P.2d at 37. Evidence which the defense did not specifically request “is material [only] if there is a reasonable probability that the result would have been different if the evidence had been disclosed.” Id. at 66, 993 P.2d at 36.

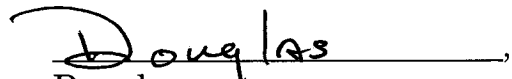
Here, on the first day of trial, the State called Detective Bourque as a witness and Turner had an opportunity to confront and cross-examine him. On the second day of trial, the State called Ess-Haghabadi as a witness and Turner had an opportunity to confront and cross-examine her. Turner questioned Ess-Haghabadi about her relationship with Detective Bourque and she denied that there was any relationship. Thereafter, Turner requested a bench conference and informed the district court that he wanted to call Detective Bourque as a witness. The district court ruled that Turner could call Detective Bourque during his case-in-chief. However, Detective Bourque had been released from his subpoena by the State and Turner was unable to reach him by phone. Turner told the district court that Detective Bourque’s testimony was relevant because Detective Bourque and Ess-Haghabadi were either having a relationship or Ess-Haghabadi was an undercover informant who had not been disclosed to him, this evidence demonstrated witness bias, and the detective committed perjury. The district court concluded that there was no evidence to support these assertions, noted that it was


Turner's duty to subpoena his witnesses, and declined Turner's request for a continuance. The record on appeal does not support Turner's assertion that Detective Bourque and Ess-Haghabadi had a relationship, that the State withheld favorable evidence, or that he was deprived of his right to confront the witnesses against him. Accordingly, we conclude that Turner's contention is without merit.

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

ORDER the judgment of conviction AFFIRMED.

 J.  
Parraguirre

 J.  
Douglas

 J.  
Pickering

cc: Hon. Michael Villani, District Judge  
Scott M. Holper  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk