

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES LEE COLLINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52163

FILED

JUN 30 2009

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of trafficking in a controlled substance, child neglect/endangerment, and conspiracy to possess a controlled substance. Seventh Judicial District Court, Lincoln County; Dan L. Papez, Judge.

The district court sentenced appellant James Lee Collins to a prison term of: 120 months with a minimum of 48 months for trafficking in a controlled substance; 48 months with a minimum of 12 months for child neglect/endangerment, to run concurrently with his sentence for trafficking in a controlled substance; and 36 months with a minimum of 12 months for conspiracy to possess a controlled substance, to run consecutively with his sentence for trafficking in a controlled substance. Collins appeals these convictions on multiple grounds, including the validity of the search warrant, the propriety of the State's second prosecution of Collins, and sufficiency of the evidence. We determine that all of Collins' contentions are without merit. Therefore, we affirm the district court's judgment of conviction.¹ The parties are familiar with the

¹Collins also challenges the district court's jurisdiction over Collins' child neglect/endangerment charge and conviction, claiming that the State failed to establish that the crime took place in Lincoln County. Here, the
continued on next page . . .

facts and we do not recount them here except as necessary to our disposition.

Validity of the search warrant

Collins challenges the district court's denial of his motion to suppress certain evidence, alleging that the evidence was collected pursuant to an invalid search warrant. Specifically, Collins argues that probable cause to obtain the search warrant was lacking because the information in the affidavit was obtained from a confidential informant and that information was not corroborated by independent police investigation, as required by Illinois v. Gates, 462 U.S. 213 (1983).

This court, citing Gates, stated that the test for determining whether an affidavit that is issued based on information received from a confidential informant is supported by probable cause is "whether, under the totality of the circumstances, there is probable cause to believe that contraband or evidence is located in a particular place." Keese v. State, 110 Nev. 997, 1002, 879 P.2d 63, 67 (1994). "The reviewing court is not to conduct a de novo probable cause determination but instead is merely to

... continued

State presented evidence that Collins went to Las Vegas "[t]o pick up another supply of drugs" and that Collins took his minor daughter with him. The State also presented evidence that after Collins purchased the methamphetamine in Las Vegas, Collins dropped the drugs off in Caliente, Nevada, for his co-conspirators to pick up. Caliente is located in Lincoln County. Accordingly, we conclude that his jurisdiction challenge is unavailing. See Pendleton v. State, 103 Nev. 95, 98, 734 P.2d 693, 695 (1987) ("The district court has jurisdiction over crimes committed in the county.").

decide whether the evidence viewed as a whole provided a substantial basis for the magistrate's finding of probable cause." Id.

In Gates, the United States Supreme Court recognized that independent police corroboration of an informant's tip is valuable. 462 U.S. at 241. However, the Court did not mandate corroboration in every circumstance. See id. at 241-45. Gates and Draper v. United States, 358 U.S. 307 (1959), two cases in which the Court applauded independent police corroboration, involved tips given by informants who did not indicate the basis for their information. Gates, 462 U.S. at 242-45; Draper, 358 U.S. at 309. In Gates, the informant was anonymous and the police did not have prior experience with him, thus rendering the informant's honesty and reliability questionable. Gates, 462 U.S. at 227, 243-44. Because the police did not know the veracity of the anonymous informant, or how the informant knew the information he provided, it was important that the police provided "[s]omething more" to establish probable cause for a search warrant. Id. at 227. In such a circumstance, corroboration is generally required to "reduce[] the chances of a reckless or prevaricating tale." See id. at 244-45 (quoting Jones v. United States, 362 U.S. 257, 271 (1960), overruled on other grounds by United States v. Salvucci, 448 U.S. 83 (1980)).

Unlike the informant in Gates, the informant in this case was not anonymous; rather, he had face-to-face encounters with police. Also distinguishable from Gates, the informant here provided the basis for his information, relating numerous firsthand observations of, and participation in, drug activity with Collins. The informant detailed the procedures by which he would go about purchasing methamphetamine from Collins and one co-conspirator (specifying that he would call the co-

conspirator, who would then contact Collins, and upon Collins' arrival at the co-conspirator's residence, Collins would unlock the toolbox in which the methamphetamine was kept).

While the affidavit at issue here does not indicate that the police received information from this informant on prior occasions, the personal information that the informant gave the police was confirmed, demonstrating the informant's honesty and reliability. In particular, the informant told the police that he had taken approximately \$2,000 from his uncle without permission, and that he used that money over a two-week period to purchase methamphetamine. He further relayed that he smoked methamphetamine at his own residence. The police confirmed that the informant had stolen \$2,000 from his uncle two weeks prior and that the informant was a methamphetamine user—methamphetamine paraphernalia was discovered in the informant's bedroom.

In light of police officers' personal contact with the informant, the informant's personal knowledge of Collins' drug activity and drug-purchasing procedures, coupled with the informant's confirmed taking of \$2,000 and subsequent drug use, we conclude that the justice of the peace who issued the search warrant had a substantial basis on which to believe that it was more likely than not that methamphetamine and drug paraphernalia would be found upon a search of the residence and the toolbox located therein. See Keesee, 110 Nev. at 1002, 879 P.2d at 66; Gates, 462 U.S. at 236. Therefore, we conclude that Collins' challenge to the search warrant is meritless.

Double jeopardy challenge

During his first trial, Collins moved for a mistrial which was granted by the district court. Collins challenges the district court's denial

of his motion to dismiss the second trial, arguing that the State's carelessness in questioning one of Collins' co-conspirators, Kenneth Bowen, in regard to Collins' prior bad acts, caused Collins to move for the mistrial; therefore, double jeopardy protections bar the second trial.

This court has stated that when a defendant moves for a mistrial, or consents thereto, he or she "deliberate[ly] elect[s] to forgo one's valued right to a trial by the first jury," and any double jeopardy bar to reprosecution is removed. Rudin v. State, 120 Nev. 121, 143, 86 P.3d 572, 586 (2004); Melchor-Gloria v. State, 99 Nev. 174, 178, 660 P.2d 109, 111 (1983). An exception arises, however, when the prosecutor intentionally causes the mistrial or engages in "overreaching" or "harassment." Melchor-Gloria, 99 Nev. at 178, 660 P.2d at 112 (quoting Oregon v. Kennedy, 456 U.S. 667, 675 (1982)). But, even when the prosecutor engages in overreaching or harassment, a mistrial is not necessarily warranted unless it is established that the prosecutor intended to "subvert" the rights guaranteed by the Double Jeopardy Clause: "Only where the governmental conduct in question is intended to 'goad' the defendant into moving for a mistrial may a defendant raise the bar of double jeopardy to a second trial after having succeeded in aborting the first on his own motion." Kennedy, 456 U.S. at 676.

Collins does not argue that the State intentionally questioned Bowen on the prior bad acts in order to subvert the protections of the Double Jeopardy Clause. Instead, Collins claims that the State's failure to prepare Bowen and question him responsibly amounted to "carelessness." Although such allegations of carelessness might have been a relevant consideration had the State moved for the mistrial, see Hylton v. District Court, 103 Nev. 418, 422-23, 426, 743 P.2d 622, 625, 627 (1987) (stating

that upon determining that the prosecution's request for a mistrial was dictated by manifest necessity, the reviewing court must determine "whether the prosecutor is responsible for the circumstances which necessitated declaration of a mistrial"), "inexcusable" neglect is not the standard for determining whether double jeopardy bars retrial after the defendant so moves. See Kennedy, 456 U.S. at 675-76. Because Collins moved for the mistrial, the question is whether the State intentionally questioned Bowen regarding the extent of his drug dealing with Collins in order to "goad" Collins into seeking a mistrial. Thus, despite Collins' contentions of mere carelessness on the State's part, we nevertheless examine whether the State engaged in overreaching or harassment, intending to force Collins to move for a mistrial.

We conclude that the record does not reflect any intent on the part of the State to subvert the protections afforded by the Double Jeopardy Clause. Accordingly, while the parties might have been careless based on the State's questioning and the defense's failure to object, we conclude that the State did not intend to goad Collins into seeking a mistrial and double jeopardy did not bar the second trial from proceeding. Therefore, the district court did not err by denying Collins' motion to dismiss the second trial.

Sufficiency of the evidence

Collins challenges the sufficiency of the evidence with respect to his convictions, alleging that the corpus delicti, or "body of the crime" evidence is insufficient to support his convictions. Although Collins seems to argue that the corpus delicti evidence was insufficient, citing authority stating that evidence must be sufficient without, or in corroboration with, the defendant's admissions or confessions, the record does not reflect that

the State relied on any admissions or confessions attributed to Collins. As a result, it appears that Collins is challenging the sufficiency of the evidence to support his convictions.

A conviction is supported by sufficient evidence if “after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Mitchell v. State, 124 Nev. ____, ____, 192 P.3d 721, 727 (2008) (quoting Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984)) (internal quotations omitted).

Trafficking in a controlled substance conviction

With respect to the trafficking in a controlled substance conviction, the State was required to prove that Collins “knowingly or intentionally s[old], manufacture[d], deliver[ed] or br[ought] into this State or [was] knowingly or intentionally in actual or constructive possession” of, any controlled substance listed in schedule I—i.e., methamphetamine—in an amount greater than 14 grams but less than 28 grams. See NRS 453.3385(2).

While Collins argues that the State’s failure to admit any drugs into evidence prevents his conviction from standing, we disagree. The State presented testimony from both of Collins’ co-conspirators establishing that Collins traveled to Las Vegas in order to obtain a supply of drugs. Additionally, the State called several police officers to testify as to the drugs and paraphernalia, including a digital scale and plastic baggies, they discovered upon searching the house of one of the co-conspirators. Moreover, the State demonstrated that the key to the toolbox in which the drugs were kept was located in Collins’ house, and that, although the box was kept at a co-conspirator’s house across the

street, the toolbox belonged to Collins. Furthermore, the evidence proved that 21 grams of methamphetamine was found in the toolbox. Therefore, we conclude that circumstantial evidence established that Collins knowingly and intentionally possessed between 14 and 28 grams of methamphetamine, and admission of the drug into evidence was not required to support the drug trafficking conviction. Consequently, we conclude that Collins' challenge is unavailing.

Child neglect/endangerment conviction

Turning to the child neglect/endangerment conviction, the State was required to prove that Collins willfully caused his daughter, a minor, "to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect." See NRS 200.508(1) (emphasis added). The phrase "abuse or neglect" is defined, in part, as "negligent treatment or maltreatment of a child under the age of 18 years, . . . under circumstances which indicate that the child's health or welfare is harmed or threatened with harm." NRS 200.508(4)(a) (emphasis added). Additionally, "[p]hysical injury" means "disfigurement" or "impairment of any bodily function or organ," and "[s]ubstantial mental harm" means "injury to the intellectual[,] . . . psychological[,] . . . or the emotional condition of a child. NRS 200.508(4)(d), (e). Therefore, the State had to establish that Collins willfully placed his minor daughter in a situation where, because of Collins' negligence or maltreatment of the child, the child was threatened with physical or emotional injury. See generally NRS 200.508.

This court has stated that by virtue of involving a minor in criminal activities, a defendant's conviction for child neglect/

endangerment may be upheld. Hughes v. State, 112 Nev. 84, 88, 910 P.2d 254, 256 (1996). In Hughes, the appellant was convicted of grand larceny, possession of a stolen motor vehicle and child neglect/endangerment. Id. at 85, 910 P.2d at 254-55. This court stated that even aside from the testimony of an officer regarding police procedures when encountering a person in possession of a stolen vehicle—and the dangers associated therewith—sufficient evidence was adduced at trial to support the conviction. Id. at 87-88, 910 P.2d at 256. At trial, the appellant's daughter testified that she was a passenger in a stolen vehicle on various occasions and that she was present when the appellant stole the keys to a vehicle off of a grocery cart. Id. at 88, 910 P.2d at 256. This court affirmed the appellant's conviction based on this evidence, concluding:

The jury could reasonably infer from the evidence presented that by involving his daughter in such criminal activities, appellant caused her to suffer unjustifiable mental suffering as a result of neglect or placed her in a situation where she may suffer physical pain or mental suffering as the result of neglect.

Id.

Although Collins contends that the State failed to adduce sufficient evidence at trial to support this conviction, we determine that the State presented sufficient evidence. The State offered testimony from two of Collins' co-conspirators evidencing that Collins traveled to Las Vegas in order to obtain another supply of methamphetamine and took his three-year-old daughter with him. Both co-conspirators also testified that Collins dropped the drugs off in a discrete location in Caliente, Nevada, instructing the co-conspirators to pick the drugs up, which they did. Despite the fact that the State did not present eyewitness testimony about Collins being in possession of the drugs and his daughter simultaneously,

the circumstantial evidence demonstrates that Collins traveled from Las Vegas with his daughter while in possession of methamphetamine. A rational trier of fact could conclude that, by virtue of Collins intentionally traveling with his daughter and the drug supply, the three-year-old child's health or welfare was threatened. Hence, we reject Collins' contention and conclude that any rational trier of fact could have found Collins guilty beyond a reasonable doubt of child neglect/endangerment.

Conspiracy to possess a controlled substance conviction

Although Collins claims that the State failed to prove any of the drug related crimes—indicating that Collins challenges his conspiracy-to-possess-a-controlled-substance conviction—Collins offers no analysis with respect to this claim. Nevertheless, upon review of the record, we determine that any rational trier of fact could conclude that Collins committed the crime beyond a reasonable doubt.

To support a conviction for conspiracy to possess a controlled substance, the State must establish that “two or more persons conspire[d] to commit an offense which is a felony under the Uniform Controlled Substances Act.” NRS 453.401(1). Under Nevada law, a conspiracy occurs when two people agree to work towards an unlawful objective. Bolden v. State, 121 Nev. 908, 912, 124 P.3d 191, 194 (2005), overruled on other grounds by Cortinas v. State, 124 Nev. ____, 195 P.3d 315 (2008). Therefore, in this case the State had to prove that Collins agreed with another person to possess a controlled substance—methamphetamine—a felony under the Uniform Controlled Substances Act. See id.; NRS 453.401(1).

The evidence presented at trial established that Collins and a co-conspirator kept drugs in Collins' toolbox, which was located in the co-

conspirator's residence, and that Collins and the co-conspirator worked together to obtain additional supplies of drugs. The State offered testimony from two co-conspirators regarding Collins' participation and their "joint enterprise to acquire drugs." See Bolden, 121 Nev. at 913, 124 P.3d at 194. To the extent that Collins challenges the sufficiency of his conspiracy to possess a controlled substance, we conclude that his contention is without merit.²

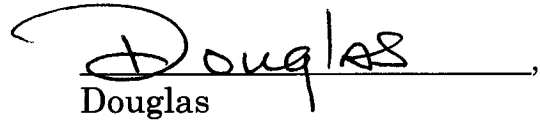
Having considered appellant's contentions and concluded that they are meritless,³ we

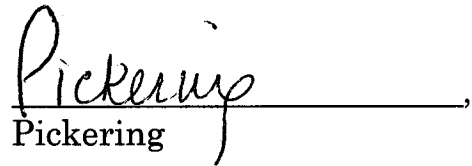
²While Collins also argues that the State failed to prove "the 'willful and unlawful use of force violence [sic] upon the person of another'" and failed "to establish the relationship between the Defendant and the victim," none of his charged crimes have such an element. Therefore, we reject Collins' contention that the State's failure to establish those elements warrants reversal.

³Collins also raises separate challenges relating to a violation of his Confrontation Clause rights, and the district court's decisions prohibiting Collins from commenting on the circumstances surrounding the search warrant and refusing to instruct the jury on two of Collins' proffered instructions. After having carefully considered each of Collins' challenges, we conclude that none of them warrant reversal.

ORDER the judgment of the district court AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Dan L. Papez, District Judge
Matthew D. Carling
Attorney General Catherine Cortez Masto/Carson City
Lincoln County District Attorney
Lincoln County Clerk