

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD CONFIDENT ABBOTT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54813

FILED

JUL 06 2010

ORDER OF REVERSAL

TRACIE L. LINDEMAN
CLERK OF SUPREME COURT
[Signature]

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of possession of a controlled substance. Eighth Judicial District Court, Clark County; David B. Barker, Judge.¹

The district court sentenced appellant Richard Abbott to 48 months in prison with the possibility of parole after 14 months. Abbott appeals his conviction on multiple grounds, however, we reverse based on our conclusion that the State failed to establish a chain of custody for the evidence, and therefore, did not present sufficient evidence to support his conviction.²

¹The Honorable David B. Barker signed the judgment of conviction in this matter; however, the Honorable Robert E. Estes presided over the trial.

²Abbott also argues that: (1) his rights to cross-examination and due process were violated; (2) prejudice resulted from a reference to inadmissible evidence; (3) a Miranda violation occurred; and (4) he did not receive a fair trial because the jury venire was not a proportional cross-section of the community, the district court improperly excused a potential juror from the venire, and the State committed Batson violations. Because we reverse the judgment of conviction based on sufficiency of the evidence, we do not reach the merits of Abbott's other challenges raised on appeal.

Sufficiency of the evidence

Abbott argues that the State failed to present sufficient evidence to support his conviction for possession of a controlled substance because the State did not establish a proper chain of custody for the evidence presented at trial. There is sufficient evidence to support a conviction 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.” Higgs v. State, 126 Nev. ___, ___, 222 P.3d 648, 654 (2010) (quoting Rose v. State, 123 Nev. 194, 202, 163 P.3d 408, 414 (2007)). To establish a chain of custody of evidence, the State is required to make a “reasonable showing that substitution, alteration or tampering of the evidence did not occur[,] and . . . the offered evidence is the same, or reasonably similar to the substance seized.” Burns v. Sheriff, 92 Nev. 533, 534-35, 554 P.2d 257, 258 (1976).

Chain of custody

Las Vegas Metropolitan Police Department (LVMPD) Officers Barry Jones and Clay Howell arrested Abbott near the Tropicana Hotel and Casino. Because Officers Jones and Howell were bicycle patrol officers, they requested a patrol car to transport Abbott. LVMPD Officer Baudelio Gastelum arrived on scene and transported Abbott to Clark County Detention Center (CCDC). While being processed at CCDC, Abbott underwent an unclothed search conducted by LVMPD Officer James Kaku. Officer Kaku testified that during the search he removed one clear package from Abbott’s body that appeared to contain a white powdery substance, but that he did not open or inspect the package. Officer Kaku further testified that, at the conclusion of the search, he

transferred custody of the confiscated single clear package to the transporting officer, Officer Gastelum.

Arresting officers Jones and Howell arrived later at CCDC where they were informed that Abbott was allegedly in possession of narcotics. Officers Jones and Howell both testified that they met Officer Gastelum in the drug testing room and saw four small bags containing a white powdery substance on a table. Officer Howell testified that he conducted a field test on the white powder and that it tested positive for cocaine.³ He then placed the four bags of white powdery substance into an evidence bag identified with the corresponding event number and signed the bag. Those four bags of white powdery substance comprised the evidence the State presented at trial to support Abbott's charge of possession of a controlled substance. The record is void, however, of any testimony or other evidence linking the four bags of white powdery substance to the single clear package that Officer Kaku confiscated from Abbott's body.

Officer Gastelum testified that he transported Abbott to CCDC, transferred him to the correction officers at the facility, and remained there until the arresting officers arrived. Despite Officer Kaku's testimony that he transferred custody of the confiscated single clear package containing what appeared to be a white powdery substance to Officer Gastelum, Officer Gastelum testified that he had no recollection of having received any narcotics or packages from Officer Kaku.

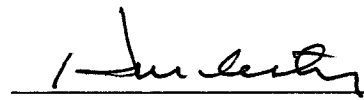
³Later tests performed by a forensic scientist indicated that the white powdery substance consisted of 6.59 grams of acetaminophen (Tylenol) and .32 grams of cocaine.

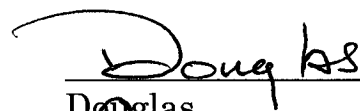
Furthermore, Officer Gastelum testified that he met Officers Jones and Howell in the computer room, where he typically waits for the arresting officers to arrive, and did not go into the drug testing room.

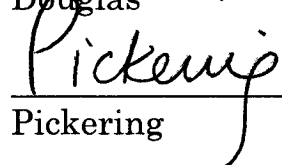
Based on the trial testimony, we determine that the State failed to establish an apparent link between the single clear package that Officer Kaku testified he confiscated from Abbott's body during the unclothed search and the four bags of white powdery substance Officers Jones and Howell testified to having seen on a table in the drug testing room at CCDC. Thus, we conclude that a break in the chain of custody occurred and that the State has failed to make a "reasonable showing that substitution, alteration or tampering of the evidence did not occur[,] and . . . the offered evidence is the same, or reasonably similar to the substance seized." Burns, 92 Nev. at 534-35, 554 P.2d at 258. Because the State failed to establish a sufficient chain of custody for the evidence, we must conclude that no rational trier of fact could have found beyond a reasonable doubt the elements of possession of a controlled substance against Abbott. Therefore, there was insufficient evidence to support Abbott's conviction for possession of a controlled substance.

Accordingly, we

ORDER the judgment of the district court REVERSED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. David B. Barker, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk