IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRY TROUGHTON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35031

FILED

OCT 02 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of using and/or being under the influence of a controlled substance. The district court sentenced appellant to serve 12 to 48 months in prison.

Appellant's sole contention is that the State adduced insufficient evidence to establish that the charged offense occurred in Churchill County. We disagree.

"It is well settled that the allegation of venue in a criminal case is a material allegation and must be proved." People v. Gleason, 1 Nev. 143, 147 (1865). "The general rule governing proof of venue is that there need be no positive testimony that the violation occurred at a specific place, but it is sufficient if it can be concluded from the evidence as a whole that the act was committed at the place alleged in the indictment." Dixon v. State, 83 Nev. 120, 121-22, 424 P.2d 100, 100-01 (1967). Moreover, venue need not be shown beyond a reasonable doubt. See James v. State, 105 Nev. 873, 875,

784 P.2d 965, 967 (1989); Dixon, 83 Nev. at 122, 424 P.2d at 101.

Our review of the record reveals sufficient evidence to establish that the crime occurred in Churchill County. In particular, appellant's parole officer testified that a urine sample that appellant submitted on April 7, 1999 in Fallon, Nevada[1] tested positive for methamphetamine in a presumptive drug test. A second presumptive test was also positive for methamphetamine. Subsequent laboratory tests confirmed that appellant's urine sample contained 339 nanograms of methamphetamine per milliliter. Appellant's parole officer testified that when he contacted appellant in the jail to give him notice of a parole revocation hearing, appellant told the parole officer that he had "screwed up" and had used methamphetamine four days prior to when he provided the urine sample. Appellant claimed that he was drunk and used methamphetamine while in Silver Springs, Nevada[2] so that he could drive home to Fallon. A toxicologist testified that the amount of methamphetamine in appellant's urine was relatively low and could not be correlated to the level of the drug in his system at the time the sample was taken.

We conclude that the jury could reasonably infer that appellant committed the offense of being under the influence of a controlled substance in Churchill County based

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[1]Fallon is in Churchill County.

[2]Silver Springs is in Lyon County.

on the amount of the drug in appellant's urine and his statement that he ingested the drug four days prior in Lyon County so that he could drive to his home in Churchill County. See Dixon, 83 Nev. at 122, 424 P.2d at 101 (venue may be established by circumstantial evidence). Accordingly, we affirm the judgment of the district court.

It is so ORDERED.

Young, J.
Young

Maupin, J.
Maupin

Becker, J.
Becker

cc: Hon. Archie E. Blake, District Judge
Attorney General
Churchill County District Attorney
Churchill County Public Defender
Churchill County Clerk