IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN J. PICOTTE, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 33979 **FILED** MAY 21 2001 JANETTE M. BLOOM CLERK OF SUPREME COURT BY [signature] CHIEF DEPUTY CLERK
KEVIN J. PICOTTE, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 35058

ORDER OF AFFIRMANCE

Docket No. 33979 is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of first-degree kidnapping with the use of a deadly weapon. Docket No. 35058 is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of first-degree kidnapping with the use of a deadly weapon and first-degree murder with the use of a deadly weapon. Appellant was sentenced to six consecutive terms of life in prison without the possibility of parole. Pursuant to NRAP 3(b), this court ordered that both actions be consolidated for this appeal.

Kevin J. Picotte makes two assignments of error. First, he argues that the district court erred when it admitted evidence which he claims was seized in violation of the Fourth Amendment, and second, that insufficient evidence was presented to support his judgments of conviction. We disagree with both contentions, and, accordingly, affirm Picotte's judgments of conviction.

As to Picotte's first claim, the district court found that Charles Chapoose, the leaseholder, had both actual and apparent authority to consent to the search of the home.

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Review of a district court's determination regarding authority to consent to a search requires consideration of both factual circumstances and legal issues; therefore, we review such determinations de novo.[1]

Although the Fourth Amendment generally prohibits the warrantless entry of a person's home,[2] police may enter and search a home without a warrant where voluntary consent has been obtained from a person with either actual or apparent authority to give consent.[3] Actual authority to consent to a search exists whenever the defendant and the consenting third party have joint access or control over the property subject to the search, or when the defendant assumes the risk that a third party might consent to the search.[4]

Although conflicting testimony was presented, the record contains substantial evidence to support the district court's conclusion. The record contained evidence that Chapoose had informed police officers prior to the search that Picotte had not paid rent. Evidence was also presented at the suppression hearing that Picotte had abandoned the bedroom that was searched. And testimony was presented that Chapoose, the leaseholder, had consented to the search. By apparently abandoning the premises where he had never paid rent, Picotte assumed the risk that Chapoose would consent to a search. Therefore, we conclude that the district court correctly determined that Chapoose had actual authority to consent to the search.

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[1]State v. Taylor, 114 Nev. 1071, 1078, 968 P.2d 315, 321 (1998) (citing United States v. Kim, 105 F.3d 1579, 1582 (9th Cir 1997)).

[2]U.S. Const. amend. IV.

[3]Snyder v. State, 103 Nev. 275, 280, 738 P.2d 1303, 1307 (1987); Illinois v. Rodriguez, 497 U.S. 177, 181 (1990).

[4]Taylor, 114 Nev. at 1079-80, 968 P.2d at 321.

Additionally, apparent authority to consent to a search exists where police officers rely in good faith on what reasonably, although mistakenly, appears to be a party's authority to consent to a search.[5] "Whether an individual has apparent authority to consent to a search must be judged against an objective standard, namely, would the facts available to the officer at that moment warrant a person of reasonable caution to believe that the consenting party had authority over the property."[6]

Evidence was presented that Chapoose was the sole signatory to the lease. Additionally, at the time the search was conducted, police officers were apparently under the impression that Chapoose lived at the residence when he consented to the search. And at the time the search was conducted, it also appeared to police that Picotte no longer resided there. We conclude that the district court properly determined that Chapoose had apparent authority to consent to the search. The police officers reasonably and in good faith relied on what appeared to be Chapoose's authority to consent to the search.

Accordingly, we conclude that the district court did not err in denying Picotte's motion to suppress.

As to Picotte's second claim which attacks the sufficiency of the evidence, Picotte contends that the prosecution's two key witnesses were accomplices who were granted immunity or received lesser sentences in return for their testimony. Picotte argues that their testimony is insufficient to support his conviction.[7] Furthermore, Picotte argues that because physical evidence relied on by the jury

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[5]Snyder, 103 Nev. at 280-81, 738 P.2d at 1307.

[6]Taylor, 114 Nev. at 1080, 968 P.2d at 322.

[7]NRS 175.291.

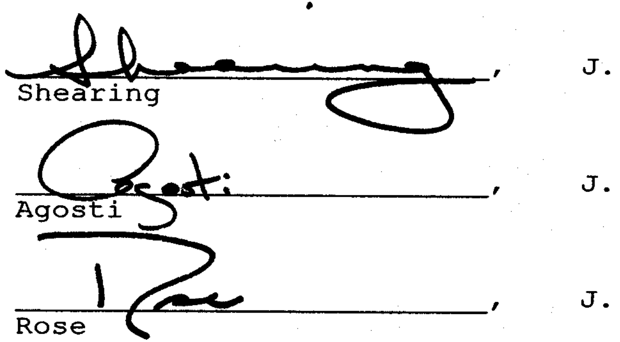
was obtained in violation of the Fourth Amendment, insufficient evidence exists to corroborate the accomplice testimony.

Our review of the record reveals that Tara Lane was not an accomplice. Further, her testimony was amply corroborated. While Michael Wilson is arguably an accomplice, his testimony was corroborated by the evidence retrieved from the search to which Chapoose, the leaseholder, consented. Thus, our inquiry is "'whether, 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.'"[8]

Our review of the record demonstrates that reasonable juries, relying on the evidence presented in each case, could have been convinced of Picotte's guilt beyond a reasonable doubt. Furthermore, as we have rejected Picotte's contention that the physical evidence was seized in violation of the Fourth Amendment, the jury properly relied on this evidence as well. Accordingly, we conclude that sufficient evidence was presented in each case to support Picotte's judgments of conviction.

Accordingly, we

ORDER the judgments of the district court AFFIRMED.



Shearing, J.

Agosti, J.

Rose, J.

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[8]Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting Jackson v. Virginia , 443 U.S. 307, 319 (1979)).

cc: Hon. Steven R. Kosach, District Judge
Attorney General
Scott W. Edwards
Washoe County District Attorney
Washoe County Clerk