

IN THE SUPREME COURT OF THE STATE OF NEVADA

SERENA GATEB A/K/A SERENA  
MICHELLE COMPTON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56304

FILED

DEC 07 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Angela*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to violate the Uniform Controlled Substances Act (counts I, III), trafficking in a controlled substance (counts II, IV-VI), and possession of a controlled substance (counts VII-X). Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Sufficiency of the evidence

Appellant Serena Gateb contends that insufficient evidence was adduced to support the jury's verdict. We disagree and conclude that the evidence, when viewed in the light most favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Mitchell v. State, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

Counts I-IV involved two controlled drug buys conducted by Detective Bryan Brooks. Evidence adduced at trial indicated that Det. Brooks arranged to meet with Joseph Ibok to buy drugs, as he had in the past, but on this occasion, Ibok was unavailable and sent his assistant, Gateb, to complete the transaction. Gateb arrived in the same vehicle Ibok drove on the previous controlled buys and sold Det. Brooks over 11

grams of cocaine. Gateb informed Det. Brooks that he could contact either one of them for future transactions. On a second occasion, Gateb met Det. Brooks and sold him close to 14 grams of cocaine.

Counts V-X pertained to evidence seized during a search of Gateb's residence. After officers entered Gateb's residence, she waived her Miranda rights and informed one of the detectives that there were drugs in her bedroom. A locked safe was located under Gateb's bed and the keys were found on a vanity in the room. Inside the safe, a level-one trafficking amount of psilocin, a level-three trafficking amount of MDMA, and several other drugs were discovered. The safe also contained a digital scale, an owe sheet in Gateb's handwriting, and a large amount of cash.

It is for the jury to determine the weight and credibility to give conflicting testimony and a jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See NRS 453.321(1)(a); NRS 453.336(1); NRS 453.3385(1), (3); NRS 453.401(1). McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). Additionally, circumstantial evidence alone may sustain a conviction. See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

#### Uncharged prior bad act evidence

Gateb contends that the district court erred by (1) admitting evidence that Ibok pleaded guilty to a conspiracy charge, (2) allowing the State to question him about it without first conducting a hearing pursuant to Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), and (3) failing to sua sponte provide the jury with a limiting instruction because it constituted evidence of an uncharged bad act. Gateb also contends that the State violated her right to a fair trial by seeking admission of the

uncharged bad act without filing a pretrial motion and requesting a limiting instruction. See generally Braunstein v. State, 118 Nev. 68, 73, 40 P.3d 413, 417 (2002) (stating that the admission of other bad acts evidence is heavily disfavored).

The admission of details pertaining to Ibok's guilty plea did not amount to uncharged bad act evidence and Gateb cannot demonstrate prejudice. Ibok pleaded guilty to a conspiracy count, but at Gateb's trial, adamantly denied the existence of a conspiracy to possess the drugs discovered in a safe during the search of her residence and instead claimed that the safe and drugs inside were his. Ibok also testified that he agreed to plead guilty to three counts, including conspiracy, because the prosecution agreed to dismiss the majority of the charges brought against him. Therefore, we conclude that Gateb's contention is without merit.

#### Prosecutorial misconduct

Gateb contends that the prosecutor committed misconduct during rebuttal closing argument by incorrectly defining an element of "possession" and, as a result, the district court erred by denying her motions to dismiss, for a mistrial, and for a new trial. The district court found that the prosecutor did not misstate the law and denied Gateb's motions. We agree, see generally Palmer v. State, 112 Nev. 763, 768-69, 920 P.2d 112, 115 (1996) (defining "possession"), and conclude that the district court did not abuse its discretion by denying Gateb's motions. See Hill v. State, 124 Nev. 546, 550, 188 P.3d 51, 54 (2008) (we review district court's decision to deny motion to dismiss for abuse of discretion); Rose v. State, 123 Nev. 194, 206-07, 163 P.3d 408, 417 (2007) (we review district court's decision to deny motion for a mistrial for abuse of discretion); Servin v. State, 117 Nev. 775, 792, 32 P.3d 1277, 1289 (2001) (we review

district court's decision to deny motion for a new trial for abuse of discretion).

Admission of confession

Gateb contends that the district court erred by admitting inculpatory statements made to a detective because they were involuntary due to her impaired mental state. Here, the district court conducted a hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964), and, based on the totality of the circumstances, found that Gateb was not coerced and “voluntarily involved herself in a post-Miranda interrogation.” We agree and conclude that the district court did not err by admitting Gateb’s inculpatory statements. See Colorado v. Connelly, 479 U.S. 157, 175 (1986); see also Chambers v. State, 113 Nev. 974, 981, 944 P.2d 805, 809 (1997).

Jury instructions

First, Gateb contends that the district court erred by overruling her objection to the jury instruction on the presumption of innocence. “The district court has broad discretion to settle jury instructions, and this court reviews the district court’s decision for an abuse of that discretion or judicial error.” Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). Here, the jury instruction was a correct statement of the law and we conclude that the district court did not abuse its discretion. See NRS 175.191; Blake v. State, 121 Nev. 779, 799, 121 P.3d 567, 580 (2005) (rejecting challenge to use of the word “until” in instruction).

Second, Gateb contends that the district court erred by overruling her objections to jury instructions 14-16 (co-conspirator statements, aiding and abetting, actual and constructive possession).

Gateb fails to provide any argument in support of her contention. Therefore, Gateb fails to demonstrate that the district court abused its discretion or committed judicial error in this regard. See Crawford, 121 Nev. at 748, 121 P.3d at 585.

Third, Gateb contends that the district court erred by rejecting her proposed instruction on possession. The district court found that the State's proposed instruction on possession was a correct statement of the law and gave Gateb "the ability to argue exactly what [her proposal] indicates." As a result, the district court found that Gateb's proposed instruction was cumulative. We agree and conclude that the district court did not abuse its discretion. See id.

Cumulative error

Gateb contends that cumulative error warrants the reversal of her conviction. Because Gateb failed to demonstrate any error, we conclude that her contention lacks merit. See Pascua v. State, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.  
Cherry

Gibbons, J.  
Gibbons

Pickering, J.  
Pickering

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