

IN THE SUPREME COURT OF THE STATE OF NEVADA

CAMERON JOSEPH WILBERT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58299

FILED

APR 12 2012

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of trafficking in a controlled substance and possession of a controlled substance with the intent to sell. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

Appellant Cameron Joseph Wilbert contends that there was insufficient evidence to prove that he was in actual or constructive possession of a pill bottle containing over four grams of a schedule I controlled substance.<sup>1</sup> We disagree.

We review the evidence in the light most favorable to the prosecution and determine whether any rational juror could have found the essential elements of the crime beyond a reasonable doubt. McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). A security officer at the club testified that when she pulled on Wilbert's towel a pill bottle fell to

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<sup>1</sup>Wilbert also contends that there was insufficient evidence to support his conviction for possession of a controlled substance with the intent to sell. Because we reverse this conviction on other grounds, we do not address this claim.

the ground. After the officer picked up the bottle, Wilbert reached for it. When the officer pulled her hand away from Wilbert and looked inside the bottle Wilbert started to walk away. We conclude that a rational juror could infer from these circumstances that Wilbert knowingly possessed the pill bottle containing over four grams of a schedule I controlled substance. See NRS 453.3385(1); Adam v. State, 127 Nev. \_\_\_, \_\_\_ n.3, 261 P.3d 1063, 1064 n.3 (2011). The jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports his conviction. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003) (circumstantial evidence alone may sustain a conviction).

The State asks this court to remand Wilbert's case back to the district court so that it can move to dismiss Wilbert's possession with intent to sell conviction on multiplicity grounds. We do not need to remand Wilbert's case for this reason because the district court erred by entering a judgment of conviction on both counts. See NRS 453.337(2); NRS 453.3385(1); Vidal v. State, 105 Nev. 98, 100-01, 769 P.2d 1292, 1293-94 (1989) (reversing appellant's conviction for possession of a controlled substance with intent to sell where NRS 453.3385 provides a greater penalty). The district court should have instructed the jury that Wilbert could only be found guilty of one of the two offenses. See id. at 101 n.4, 769 P.2d at 1294 n.4. Therefore, we reverse Wilbert's conviction for possession of a controlled substance with the intent to sell and remand to the district court to amend the judgment of conviction accordingly.

Having reviewed Wilbert's contentions and concluded that he is only entitled to the relief described above, we

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

Cherry, J.  
Cherry

Pickering, J.  
Pickering

Hardesty, J.  
Hardesty

cc: Hon. James M. Bixler, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk