

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHELLE LOPEZ-BOECKLE A/K/A  
MICHELLE LOPEZ-BOECKLE-  
NCELLIN A/K/A MICHELLE LOPEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58447

**FILED**

**MAR 07 2012**

TRAGIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Anderson*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of trafficking in a Schedule I controlled substance. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant Michelle Lopez-Boeckle contends that insufficient evidence supports her conviction because the State failed to prove constructive possession. Specifically, Lopez-Boeckle argues that, under a constructive possession theory, the State must prove that she had exclusive access to the location where the narcotics were discovered. 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).

The gravamen of constructive possession is whether the accused maintains dominion and control or a right to dominion and control over the contraband or the location where the contraband is found. See Glispey v. Sheriff, 89 Nev. 221, 223-24, 510 P.2d 623, 624 (1973). Immediate and exclusive access to the location where the contraband is

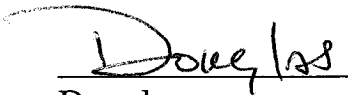
found is only one way to establish constructive possession. See id. Even without exclusive control of the location, the accused may still constructively possess the narcotics if “she has not abandoned the narcotic and no other person has obtained possession.” See id.; see also People v. Bigelow, 231 P.2d 881, 884 (Cal. Dist. Ct. App. 1951).


Here, 13.54 grams of methamphetamine was found in a hallway linen closet next to the bedroom where Lopez-Boeckle had been staying with her boyfriend for six months. An officer testified that Lopez-Boeckle told him that she added her name to the lease two days earlier. Lopez-Boeckle testified that she and her roommates had previously used methamphetamines and she found needles in the home on prior occasions. Officers also testified that they discovered surveillance cameras inside and outside the home along with drug paraphernalia in almost every room. Lopez-Boeckle denied that a pipe found in her bedroom was hers and testified that she only used the lower linen closet and not the upper closet where the methamphetamine was discovered. We conclude that a rational juror could infer from these circumstances that Lopez-Boeckle maintained dominion and control or a right to dominion and control over the contents of the linen closet and had knowledge of its narcotic character. NRS 453.3385(1); Sheriff v. Shade, 109 Nev. 826, 829-30, 858 P.2d 840, 842 (1993); State of Nevada v. District Court, 108 Nev. 1030, 1032-33, 842 P.2d 733, 735 (1992). The jury’s verdict will not be disturbed on appeal where, as here, substantial evidence supports a 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).

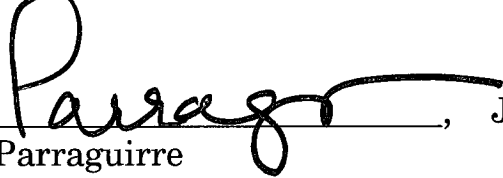
Lopez-Boeckle also contends that the district court erred by striking her exculpatory testimony from the record. We conclude that this testimony was properly excluded upon a timely objection by the State as nonresponsive and inadmissible hearsay evidence. See NRS 50.115; NRS 51.035; NRS 51.065. Furthermore, Lopez-Boeckle's attorney made no attempt to argue that the objection was improper or rephrase the question to conform with the rules of evidence. See NRS 47.040(1)(b). Therefore, we conclude that the district court did not err by sustaining the objection and striking the testimony.

Having considered Lopez-Boeckle's arguments and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Michael Villani, District Judge  
Yampolsky, Ltd.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk