

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAX REED, II,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58580

FILED

DEC 07 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
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ORDER OF AFFIRMANCE

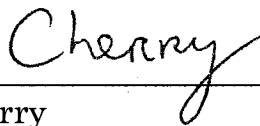
This is an appeal from a judgment of conviction, pursuant to a jury verdict, of possession of a dangerous weapon by a prisoner. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.


Appellant Max Reed, II, contends that the evidence was insufficient to support his conviction because the State failed to present any direct evidence that he possessed a dangerous weapon. We 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); NRS 212.185.


Trial testimony established that the dangerous weapon—a toothbrush sharpened to a point at one end—was found hidden under a sink in Reed's cell, which was in a high security area of the jail. Reed, who had moved into the cell three days earlier, was the only person assigned to that cell, the cell had been thoroughly searched after the prior inmate vacated the cell and again immediately before Reed occupied the cell, and Reed had been given a toothbrush upon assignment to the cell.

We conclude that a rational juror could have inferred from this evidence that Reed had dominion and control over the sharpened toothbrush and thus constructively possessed it. See Glispey v. Sheriff, 89 Nev. 221, 223-24, 510 P.2d 623, 624 (1973) (a person has constructive possession of contraband if he “maintains control or a right to control the contraband”); see also Woerner v. State, 85 Nev. 281, 284, 453 P.2d 1004, 1006 (1969) (dominion and control may be demonstrated through circumstantial evidence and reasonably drawn inferences); Hernandez v. State, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002) (“[C]ircumstantial evidence alone may support a conviction.”). It is for the jury to determine the weight and credibility to give testimony, and a jury’s verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Janet J. Berry, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk