IN THE SUPREME COURT OF THE STATE OF NEVADA

ROLAND STARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58742

FILED

MAY 09 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY D. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of trafficking in a controlled substance and felon in possession of a firearm. Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

First, appellant Roland Stark contends that there was insufficient evidence to support his conviction for mid-level trafficking because the margin of error of the scale used to weigh the methamphetamine was great enough to prevent the State from proving beyond a reasonable doubt that the methamphetamine weighed 14 grams or more. However, our review of the record on appeal reveals sufficient evidence to establish Stark's guilt beyond a reasonable doubt as determined by a rational trier of fact. See McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). The jury heard testimony that five packages of methamphetamine were found in a car that Stark had been driving. A forensic scientist weighed the contents of each package individually and determined that the aggregate weight of the methamphetamine was 14.08 grams. The scientist used a digital scale that was calibrated monthly and had a margin of error of plus or minus 0.03 grams. At the close of evidence, the jury was instructed on reasonable doubt and the lesser-

included offenses of low-level trafficking and possession of a controlled substance. See State v. Givens, 917 S.W.2d 215, 219 (Mo. Ct. App. 1996) ("The trial court should resolve all doubts upon the evidence in favor of instructing on the lower degree of the crime, leaving it to the jury to decide of which of the two offenses, if any, the defendant is guilty."). We conclude that a rational juror could infer from the evidence that Stark was guilty of mid-level trafficking and not the lesser-included offenses of low-level trafficking or possession of a controlled substance. See NRS 453.336(1); NRS 453.3385(1), (2). It is for the jury to determine the weight and credibility to give conflicting testimony, and the 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).

Second, Stark contends that the district court erred by denying his pretrial suppression motion because the police officer did not have probable cause to search the car and his general statement of consent to the search did not extend to the car's radio console and air vents. However, the district court determined that Stark lacked standing to challenge the validity of the vehicular search and Stark has completely failed to assert or show that he had any legitimate expectation of privacy in the car. See Rakas v. Illinois, 439 U.S. 128, 130-31 n.1 (1978) ("The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure."); McKee v. State, 112 Nev. 642, 645, 917 P.2d 940, 942 (1996); Scott v. State, 110 Nev. 622, 627-28, 877 P.2d 503, 507-08 (1994). Accordingly, we conclude that Stark has failed to demonstrate that the district court erred by denying his suppression motion.

Third, Stark contends that the district court erred by instructing the jury that "[t]wo or more persons may have joint possession of a narcotic if jointly and knowingly they have such dominion, control, and exclusive possession" because this instruction was inherently contradictory and misstated the law. We review a district court's decision to give a jury instruction for abuse of discretion or judicial error. Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). We conclude that the district court did not abuse its discretion by giving this instruction because it accurately reflects Nevada law and was pertinent to the facts of this case.[1] See Maskaly v. State, 85 Nev. 111, 114, 450 P.2d 790, 792 (1969); Doyle v. State, 82 Nev. 242, 243-45 & 244 n.1, 415 P.2d 323, 324 & n.1 (1966).

Having considered Stark's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Gibbons, J.
Gibbons

Parraguirre, J.
Parraguirre

[1]To the extent that Stark asserts that the instruction was prejudicial because he "was denied the ability to elicit relevant testimony from the officer with respect to Krystal Sharron and her dominion and control over the narcotics in the car," we conclude that his assertion is belied by the record.

cc: Hon. Valorie J. Vega, District Judge
Dayvid J. Figler
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk