

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH ERNESTO FRUTOS,

No. 36234

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

OCT 24 2000

JANETIE M. BLOOM
CLERK OF SUPREME COURT
BY: *[Signature]*
SHEP DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of trafficking in a controlled substance (methamphetamine) and possession of a controlled substance for the purpose of sale (marijuana). The district court sentenced appellant to serve concurrent terms of 12 to 70 months and 12 to 36 months in prison.

Appellant's sole contention is that the State adduced insufficient evidence to support the jury's verdict on the trafficking charge. In particular, appellant argues that the State failed to prove, beyond a reasonable doubt, that he knew he was carrying methamphetamine. We disagree.

When reviewing a claim of insufficient evidence, the relevant inquiry is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in original omitted). Furthermore, "it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

The State charged appellant with trafficking in a controlled substance in violation of NRS 453.3385. A person violates NRS 453.3385 when, inter alia, he "is knowingly or intentionally in actual or constructive possession" of a schedule I controlled substance. NRS 453.3385. Thus, an essential

element of the offense is that appellant had knowledge of the narcotic nature of the substance. See Sheriff v. Shade, 109 Nev. 826, 830, 858 P.2d 840, 842 (1993). Knowledge may be established "'by direct evidence or by circumstantial evidence and reasonably drawn inferences.'" See id. (quoting Fairman v. Warden, 83 Nev. 332, 336, 431 P.2d 660, 663 (1967)).

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. During an encounter with police, appellant was asked for and gave permission for an officer to look in a plastic shopping bag that he was carrying and that he said contained coffee. The officer found a dog food can, which contained sixty hypodermic syringes, inside the bag. Appellant told the officer that a friend gave the bag to him and he was not aware that there were syringes in the can. The officer nonetheless informed appellant that he was under arrest for possession of the hypodermic syringes and asked appellant to place his hands behind his back. At that time, the officer discovered that appellant had a film canister in his right hand, which the officer previously had not seen. When asked what was in the canister, appellant said that he did not know. The officer discovered what turned out to be seven grams of methamphetamine in the canister, which would have a street value of \$1,000.00. The officer testified that this is a trafficking quantity of methamphetamine and that methamphetamine is sometimes sold on the street in preloaded syringes.

During the booking procedures at the jail, appellant indicated that he had marijuana concealed in the waistband of his pants. An officer reached into the waistband area of appellant's pants and retrieved a small plastic baggy containing marijuana. Subsequently, when appellant was allowed to use the restroom, an officer heard something drop to the floor. The officer looked into the restroom and saw another small plastic bag that appeared to contain marijuana lying on the floor in front of appellant. The bag contained three individually

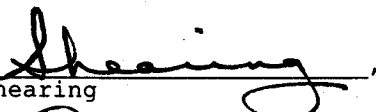
wrapped bags of marijuana, which was packaged consistent with the sale of marijuana.

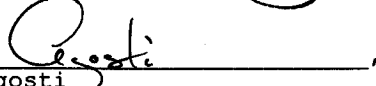
Appellant testified that he had spent the night at the apartment of Eddie Carillo, a friend he had known for a short period of time, and that Carillo asked him to carry the bag and film canister to Carillo's car. Appellant was then supposed to return to the apartment.¹ Appellant further testified that he did not know that there were syringes in the bag and methamphetamine in the canister. Finally, he testified that the marijuana was for his own personal use and that he used it to treat his arthritis.


The jury could reasonably infer from the evidence presented that appellant knew that the canister contained a controlled substance. 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, 624 P.2d 20 (1981).

Having considered appellant's contention and concluded that it is without merit, we affirm the judgment of conviction.

It is so ORDERED.


_____, J.
Shearing


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Michael R. Griffin, District Judge
Attorney General
Carson City District Attorney
William G. Rogers
Carson City Clerk

¹We note that the police officer who stopped appellant testified that appellant was walking to the car with a woman who was walking toward the driver's side of the car with car keys in her hand.