IN THE SUPREME COURT OF THE STATE OF NEVADA

ILONA DOROTHY CHURCH,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36453

ORDER OF AFFIRMANCE

Ilona Dorothy Church argues various instances of error in appealing her judgment of conviction of one count of trafficking in a controlled substance and one count of possession of a controlled substance. We conclude her arguments lack merit, and we affirm the judgment of the district court.

Church raises a number of challenges to the district court's denial of her motion to suppress the evidence stemming from the automobile stop and search that led to her arrest. She first argues that the anonymous tip did not demonstrate sufficient indicia of reliability to give rise to a reasonable suspicion justifying the stop. In light of the details of the anonymous tip and the corroborating facts obtained by the investigative efforts of the police, we disagree.[1] Church also argues that

[1]See Alabama v. White, 496 U.S. 325 (1990) (holding that an anonymous tip can serve as the basis for reasonable suspicion required to justify an investigatory stop if the tip is sufficiently corroborated or has other indicia of reliability). Church argues that the facts of her case are analogous to those of Florida v. J.L., 529 U.S. 266 (2000), in which the

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Cheryl Marsing's statements, which provided the police with evidence that Church was engaged in illegal activity, could not be used in weighing the reliability of the anonymous tip because there were circumstances that made Marsing's statement to the police less credible. Marsing's credibility, however, is for the fact finder to weigh in the totality-of-circumstances analysis.[2] Church further argues that the police officers were improperly spurred in their investigation by their knowledge that Church had long been a suspect in drug investigations and that the district court was likewise improperly influenced. On the contrary, we conclude that a suspect's criminal history may be considered in the totality-of-circumstances analysis because facts concerning past criminal acts tend to corroborate presently alleged criminal acts when they are similar in nature.[3] Finally, Church contends that she was "unlawfully

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other indicia of reliability). Church argues that the facts of her case are analogous to those of Florida v. J.L., 529 U.S. 266 (2000), in which the Court concluded that the tip provided to the police was not sufficiently reliable. We disagree. The tip given to the police in this case is more analogous to the circumstances discussed in White, in which the Court concluded that the anonymous tip was sufficiently reliable.

[2]See Lay v. State, 110 Nev. 1189, 1192, 886 P.2d 448, 450 (1994) ("[I]t is exclusively within the province of the trier of fact to weigh evidence and pass on the credibility of witnesses and their testimony.").

[3]See U.S. v. Perrin, 45 F.3d 869, 871-73 (4th Cir. 1995) (considering the fact that the defendant had previously been suspected of dealing drugs in the totality analysis); U.S. v. Garcia-Cruz, 978 F.2d 537, 541 (9th Cir. 1992) (considering the fact of the defendant's prior criminal history).

seized" and that there was not probable cause to arrest her. These contentions also lack merit.[4]

Church next contends, offering several reasons, that the district court erred in failing to grant her motion to strike the State's notice of expert witnesses because the State submitted its notice five days after the twenty-one day deadline. Church first argues that the district court improperly allowed the State the benefit of NRS 174.234(3)(b), which allows further disclosure of the information required by subsection 2, without requiring initial compliance with subsection 2. Subsection 3(b), however, sets forth the conditions for disclosing "information relating to an expert witness" that was not provided within the time frame of subsection 2. Thus, by its plain language, subsection 3(b) does not require initial compliance with subsection 2.[5] Church next argues that the district court incorrectly found that the State had not acted in bad faith in its delay in submitting the expert's report. We conclude that substantial evidence supports the district court's finding, and thus the district court

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[4]State v. Harnisch, 113 Nev. 214, 219, 931 P.2d 1359, 1363 (1997) (noting that we will uphold the district court's decision regarding suppression unless we are "'left with the definite and firm conviction that a mistake has been committed'") (quoting U.S. v. Traynor, 990 F.2d 1153, 1157 (9th Cir. 1993)).

[5]See Mangarella v. State, 117 Nev. ___, ___, 17 P.3d 989, 991 (2001) (noting that we give statutes their plain meaning, construing the statute "as a whole" rather than reading it "in a way that would render words or phrases superfluous or make a provision nugatory") (quoting Charlie Brown Constr. Co. v. Boulder City, 106 Nev. 497, 502, 797 P.2d 946, 949 (1990)).

did not abuse its discretion.[6] Church finally argues that the district court improperly considered any prejudice that the report's delay might have caused her when it decided not to strike the State's notice. Reading the district court's order in context, however, it is clear that the district court did not consider prejudice in its analysis under NRS 174.234(3)(b). Rather, the court simply recognized as an aside that if the issue were appealed, Church would have to show prejudice in addition to showing error.[7]

Church next contends that the district court should not have allowed a police officer to testify regarding the information provided by the anonymous tip because the tip contained the prior bad act allegation that Church had sold or possessed drugs the day before her arrest. We conclude that the district court conducted a proper Petrocelli hearing, correctly instructed the jury regarding the evidence, and did not abuse its discretion in admitting the evidence.[8]

Challenging the jury instructions, Church argues that the district court violated her due process rights by lowering the State's burden of proving each element of the crime charged when it instructed

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[6]See Domingues v. State, 112 Nev. 683, 697, 917 P.2d 1364, 1374 (1996) (holding that endorsement of witnesses is left to the district court's discretion).

[7]See id. (noting that this court will not overturn the district court's decision regarding witness endorsement absent abuse of that discretion and a showing of substantial injury to the defendant).

[8]Qualls v. State, 114 Nev. 900, 902, 961 P.2d 765, 766 (1998) (holding that the district court's decision to admit or exclude evidence after conducting a Petrocelli hearing "is to be given great deference and will not be reversed absent manifest error").

the jury that under NRS 453.3385, "[t]he State is not required to prove that the Defendant was aware of the amount of the controlled substance she possessed." We addressed this very issue in State of Nevada v. District Court,[9] wherein we held that "the state is not required to prove that the defendant was aware of the amount of illegal drugs he possessed." Church's arguments do not persuade us to retreat from that holding.

Finally, Church argues that the district court erred by refusing to instruct the jury regarding the crime of possession of a controlled substance for sale[10] as a lesser-included offense to the crime of trafficking in a controlled substance.[11] We conclude that the district court did not err because the crime of possession for sale can be committed without committing the charged offense of trafficking.[12] The vital difference is the intent element. To convict the accused of possession for sale, the fact finder must conclude that the accused possessed the controlled substance "for the purpose of sale."[13] In contrast, the crime of trafficking merely requires that the accused have been "knowingly or intentionally in actual or constructive possession."[14]

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[9]108 Nev. 1030, 1032-33, 842 P.2d 733, 735 (1992).

[10]NRS 453.337.

[11]NRS 453.3385.

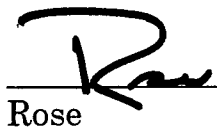
[12]See Lisby v. State, 82 Nev. 183, 187, 414 P.2d 592, 594 (1966) ("[T]o determine whether an offense is necessarily included in the offense charged, the test is whether the offense charged cannot be committed without committing the lesser offense.").

[13]NRS 453.337(1).

[14]NRS 453.3385.

Having concluded that Church's contentions lack merit, we ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing



_____, J.
Rose

_____, J.
Becker

cc: Hon. Jerry V. Sullivan, District Judge
Attorney General/Carson City
Humboldt County District Attorney
State Public Defender/Carson City
Humboldt County Clerk