IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GENESIS VALLION,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71454

ORDER OF AFFIRMANCE

Genesis Vallion appeals from a judgment of conviction entered pursuant to a jury verdict of unlawful sale of a controlled substance, conspiracy to sell a controlled substance, and possession of a controlled substance. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

First, Vallion claims insufficient evidence supports his convictions for unlawful sale of a controlled substance and conspiracy to sell a controlled substance because he was merely a procuring agent for the buyer and his act of bringing the seller to the buyer did not constitute a conspiracy. We review the evidence in the light most favorable to the prosecution and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

The jury heard testimony that Detective Scott Rasmussen was working undercover as a drug buyer when he approached Vallion and asked if he had any methamphetamine. Vallion said he knew where he could get some, but he would have to get it, and he would have to take Rasmussen's

money. Rasmussen said he could not let all of his money go but he would give Vallion twenty dollars if Vallion would leave some sort of collateral.

Vallion left his bankcard as collateral, took Rasmussen's twenty dollars, and went into the Wonder Lodge. A few minutes later, he returned with Sean Swartz. Vallion handed Rasmussen a baggie containing twenty dollars' worth of methamphetamine and asked for the additional money. Rasmussen gave Vallion forty dollars. Vallion turned to Swartz, made a hand-to-hand transaction to Swartz, then turned back to Rasmussen, and handed Rasmussen a baggie containing forty dollars' worth of methamphetamine.

After the transaction was complete, Vallion asked Rasmussen what he was going to get out of the deal, Rasmussen asked what Vallion wanted, and Vallion said he wanted five dollars. Rasmussen told Vallion he did not have five dollars but he could get some cash if they went to the ATM. As they walked toward the ATM, Rasmussen signaled to other detectives that the drug deal was complete and the detectives moved in and arrested Vallion.

The detectives did not find any drugs or money when they searched Vallion, but they did find the prerecorded money used for the methamphetamine purchase when they searched Swartz. In addition to the testimony, the jury heard a recording of the transmissions from the body wire Rasmussen was wearing when he purchased the methamphetamine. The district court instructed the jury on the procuring agent defense.

We conclude a rational juror could reasonably infer from this evidence that Vallion was guilty of unlawful sale of a controlled substance and conspiracy to sell a controlled substance because he expected a benefit for procuring the methamphetamine for Rasmussen and he and Swartz

engaged in a series of coordinated acts to facilitate the unlawful sale. *See* NRS 453.321(1); NRS 453.401(1); *Dixon v. State*, 94 Nev. 662, 664, 584 P.2d 693, 694 (1978) ("The procuring agent defense can be maintained only if the defendant were merely a conduit for the purchaser and in no way benefitted from the transaction."); *Dent v. State*, 112 Nev. 1365, 1368, 929 P.2d 891, 892 (1996) ("[T]he burden is on the State to establish that the defendant had a profit motive or other direct interest when [he] obtained drugs for the recipient."); *Doyle v. State*, 112 Nev. 879, 894, 921 P.2d 901, 911 (1996) ("[A] conspiracy conviction may be supported by a coordinated series of acts, in furtherance of the underlying offense, sufficient to infer the existence of an agreement." (internal quotation marks omitted)), *overruled on other grounds by Kaczmarek v. State*, 120 Nev. 314, 333, 91 P.3d 16, 29 (2004). It is for the jury to determine the weight and credibility to give conflicting testimony, and we will not disturb the jury's verdict on appeal where, as here, substantial evidence supports its verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Second, Vallion claims his conviction for possession of a controlled substance violates the Double Jeopardy Clause because it is a lesser-included offense of his conviction for unlawful sale of a controlled substance. In response, the State argues Vallion was not punished twice for the same offense because the evidence shows there were two distinct methamphetamine transactions, the possession conviction punished one of those transactions, and the sale conviction punished the other transaction.

The record demonstrates the State charged and treated Vallion's possession and sale of methamphetamine as a single criminal transaction. In its opening statement, the State claimed the evidence would show "pursuant to a conversation a bargain was struck or an order was

taken for $60 worth of methamphetamine." In its closing argument, the State asserted, "[Vallion] transferred $60 of meth for $60 in cash. And the entire transaction was described for you by Detective Rasmussen." Based on this record, we conclude Vallion's sale and possession convictions punish the same criminal transaction.

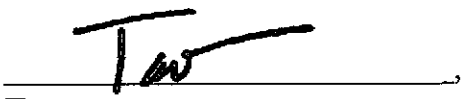
The Double Jeopardy Clause protects a defendant from multiple punishments for the same offense. *LaChance v. State*, 130 Nev. 263, 273, 321 P.3d 919, 926 (2014). However, multiple punishments are permissible when authorized by the legislature. *Id.* To determine whether multiple punishments are authorized, we apply the elements test in *Blockburger v. United States*, 284 U.S. 299 (1932). *Id.* Under this test, "if the elements of one offense are entirely included within the elements of a second offense, the first offense is a lesser included offense and the Double Jeopardy Clause prohibits a conviction for both offenses." *Barton v. State*, 117 Nev. 686, 692, 30 P.3d 1103, 1107 (2001), *overruled on other grounds by Rosa v. State*, 122 Nev. 1258, 147 P.3d 1101 (2006).

Here, NRS 453.321(1), the sale-of-a-controlled-substance statute, states, "it is unlawful for a person to: (a) Import, transport, sell, exchange, barter, supply, prescribe, dispense, give away or administer a controlled or counterfeit substance; (b) Manufacture or compound a counterfeit substance; or (c) Offer or attempt to do any act set forth in paragraph (a) or (b)." NRS 453.336(1), the possession-of-a-controlled-substance statute, prohibits a person from "knowingly or intentionally possess[ing] a controlled substance." Because NRS 453.321 does not contain a "possession" element, possession is not a lesser-included offense of sale of a controlled substance. Accordingly, we conclude Vallion's convictions for

both sale and possession are permissible and do not violate the Double Jeopardy Clause.

Having concluded Vallion is not entitled to relief, we ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Silver



_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Patrick Flanagan, Chief Judge
Second Judicial District Court, Department 1
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk