

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANDREW JAMES HALES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73553

FILED

JUN 13 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Andrew James Hales appeals from a judgment of conviction, pursuant to a jury verdict, of possession of a controlled substance. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Hales challenges the constitutionality of NRS 453.570, which states “[t]he amount of a controlled substance needed to sustain a conviction” for an offense prohibiting possessing a controlled substance “is that amount necessary for identification as a controlled substance by a witness qualified to make such identification.” Hales argues the Legislature had no reasonable purpose for criminalizing an identifiable but unusable quantity of a controlled substance.


“The constitutionality of a statute presents a question of law that this court reviews de novo.” *State v. Eighth Jud. Dist. Ct. (Logan D.)*, 129 Nev. 492, 501, 306 P.3d 369, 375 (2013). Statutes are presumed to be valid, and the challenger has the burden to demonstrate that a statute is unconstitutional. *Id.* “When undertaking a substantive due process analysis, a statute that does not infringe upon a fundamental right will be upheld if it is rationally related to a legitimate government purpose.” *Id.* at 501, 306 P.3d at 375-76. “The Legislature need not articulate its purpose

in enacting a statute; the statute will be upheld if any set of facts can reasonably be conceived of to justify it." *Id.* at 501, 306 P.3d at 376.

Hales does not assert that NRS 453.570 infringes upon a fundamental right. Moreover, the State has an interest in the management of controlled substances for the health and safety of its citizens, *see State v. Eight Judicial Dist. Court*, 101 Nev. 658, 663, 708 P.2d 1022, 1025 (1985) ("The authority to provide for health, safety and welfare of the citizen is inherent in the police power of the State without any express statutory or constitutional provision"), and we conclude Hales fails to demonstrate that the enactment of NRS 453.570 was not rationally related to that purpose. Therefore, we conclude Hales fails to meet his burden to demonstrate NRS 453.570 is unconstitutional. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michael Montero, District Judge
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk