

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLIE LINN SHEPPARD,

No. 37146

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

MAY 18 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of possession of a controlled substance. The district court sentenced appellant to a prison term of 12 to 48 months, suspended the sentence, and placed appellant on probation for three years.

Appellant first contends that the district court erred in denying appellant's motion to suppress evidence resulting from an illegal search. We conclude that there was substantial evidence in support of the district court's finding that the police officer acted in good faith in executing the search warrant and objectively believed that there was probable cause to search appellant's premises.¹

Appellant next contends that the district erred in admitting evidence of drug paraphernalia found in appellant's home. Our review of the record reveals that the district

¹See *Point v. State*, 102 Nev. 143, 149, 717 P.2d 38, 42 (1986) (citing *United States v. Leon*, 468 U.S. 897 (1984)) (recognizing that the exclusionary rule is inapplicable where a police officer harbors an objectively reasonable belief of a warrant's validity).

court did not abuse its discretion in admitting the drug paraphernalia as evidence that appellant intended to possess methamphetamine.² Further, any error arising from the district court's failure to give a limiting instruction was harmless in light of the overwhelming evidence of appellant's guilt.³

Appellant also contends that the district court erred in refusing to instruct the jury on the lesser-included offense of misdemeanor possession of a drug which may not be introduced into interstate commerce pursuant to NRS 454.351. We conclude that NRS 454.351 is not a lesser-included offense of NRS 453.336 because Chapter 454 generally applies to poisons and dangerous drugs, rather than controlled substances. Additionally, NRS 454.351 is not a lesser-included offense of NRS 453.336 because NRS 454.351 contains an additional element, namely the fact that the drug "may not be lawfully introduced into interstate commerce under the Federal Food, Drug and Cosmetic Act."⁴

²See NRS 48.045(2); see also *Salgado v. State*, 114 Nev. 1039, 1042, 968 P.2d 324, 326 (1998) (recognizing that prior to admitting evidence of prior bad acts, the "court must determine three things on the record and outside the presence of the jury: whether admission of the evidence is justified, whether it is proven by clear and convincing evidence, and whether the danger of unfair prejudice substantially outweighs its probative value").


³See *Qualls v. State*, 114 Nev. 900, 903-04, 961 P.2d 765, 767 (1998).

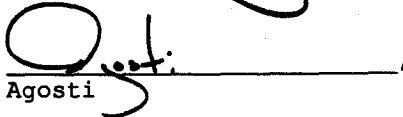
⁴See *Peck v. State*, 116 Nev. ___, ___, 7 P.3d 470, 472 (2000) (holding that the test for a lesser-included offense is whether the charged offense can be committed without committing the lesser offense).

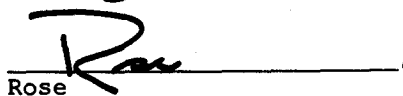
Finally, appellant contends that there was insufficient evidence to support his conviction. We disagree. There was sufficient testimony and evidence presented at appellant's trial to support the jury's verdict.⁵

Having considered appellant's contentions and concluded that they lack merit, we hereby

ORDER the judgment of the district court AFFIRMED.


Shearing, J.


Agosti, J.


Rose, J.

cc: Hon. Richard A. Wagner, District Judge
Attorney General
Humboldt County District Attorney
State Public Defender
Humboldt County Clerk

⁵See Thomas v. State, 114 Nev. 1127, 1142, 967 P.2d 1111, 1121 (1998) (recognizing that the jury's verdict will not be overturned where sufficient evidence exists to support a finding of guilt beyond a reasonable doubt since it is the jury that weighs the evidence and determines the credibility of witnesses).