IN THE SUPREME COURT OF THE STATE OF NEVADA

LEE ANDREW COURNEYA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37583

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of possession of stolen property, two counts of forgery, and one count of possession of a controlled substance. The district court sentenced appellant to serve numerous concurrent and consecutive prison terms totaling approximately 28 to 104 months.

Appellant first contends that he was deprived of his right to a fair trial by the prosecutor's opening statement and a police officer's testimony regarding incriminating statements made by appellant. Appellant argues that he was prejudiced because the district court ultimately ruled that the statements were inadmissible because of a Miranda[1] violation. We conclude that this argument lacks merit for several reasons. First, we conclude that appellant failed to preserve this issue for appeal by failing to move for a mistrial after the district court ruled that the statements were inadmissible and admonished the jury to disregard the officer's testimony and the related part of the prosecutor's

[1]Miranda v. Arizona, 384 U.S. 436 (1966).

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opening statement.[2] Second, we conclude that the district court alleviated any prejudice by striking the testimony and instructing the jury to disregard the testimony and the related part of the prosecutor's opening statement. Finally, we conclude that any error was harmless beyond a reasonable doubt given the overwhelming evidence of appellant's guilt on the charges to which his statements may have been incriminating.[3]

Appellant next argues that the State adduced insufficient evidence to support the jury's verdict on the charge of possession of a controlled substance. In particular, appellant argues that the State failed to prove, beyond a reasonable doubt, that he had possession of the marijuana. 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.'"[4] 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."[5]

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. In particular, we conclude that the State presented sufficient evidence from which a rational juror could infer that appellant had

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[2]See Clark v. State, 89 Nev. 392, 393, 513 P.2d 1224, 1224-25 (1973).

[3]See Arizona v. Fulminante, 499 U.S. 279, 295-96 (1991) (holding that admission of evidence obtained in violation of Miranda is subject to harmless error analysis).

[4]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).

[5]McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

constructive possession and knowledge of the marijuana.[6] 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.[7]

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

ORDER the judgment of conviction AFFIRMED.[8]

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Michael R. Griffin, District Judge
Attorney General
Carson City District Attorney
Robert B. Walker Jr.
Carson City Clerk

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[6]See Woerner v. State, 85 Nev. 281, 284, 453 P.2d 1004, 1006 (1969) (explaining that possession may be shown by circumstantial evidence and reasonably drawn inferences).

[7]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981).

[8]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted. Additionally, we deny as moot the State's motion to strike appellant's proper person motion for leave to file a supplemental fast track statement.