

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRYL EVERETT HARPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38792

FILED

MAR 12 2002

ORDER OF AFFIRMANCE

JANE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of possession of a controlled substance with the intent to sell. The district court sentenced appellant Darryl Everett Harper to serve a prison term of 12 to 32 months.

Harper's sole contention is that the district court erred in giving jury instruction nos. 6 and 19. Specifically, Harper argues that those instructions when considered together eroded the presumption that he was innocent until proven guilty, thereby warranting reversal of his conviction. We disagree.

Jury instruction no. 6 provided:

You are here to determine the guilt or innocence of the Defendant from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty.

(Emphasis added.) Jury instruction no. 19 provided:

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions; with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

(Emphasis added.)

Under Nevada law, the district court has discretion “[i]n charging the jury [and] shall state to [the jury] all such matters of law [it] thinks necessary for their information in giving their verdict.”¹ In considering a claim that a jury instruction was improper, this court has held that the district court’s decision to give a particular jury instruction does not warrant reversal unless the instruction given was arbitrary or exceeded the bounds of law.²

In the instant case, we conclude that the district court did not abuse its discretion in giving jury instruction nos. 6 and 19 because both instructions were not arbitrary and were within the bounds of law. With

¹NRS 175.161(2).

²Jackson v. State, 117 Nev. ___, ___, 17 P.3d 998, 1000 (2001).

regard to jury instruction no. 6, this court has previously approved the use of this identical instruction, concluding that it serves the purpose of admonishing the jury to ignore another individual's culpability when considering whether the defendant is guilty of a charged offense.³ Similarly, with regard to jury instruction no. 19, this court has previously approved the use of the identical language of which Harper complains. Specifically, in Leonard v. State, this court has held that a defendant was not denied the presumption of innocence where the jury was instructed that it should do "equal and exact justice between the Defendant and the State of Nevada."⁴

Although Harper attempts to distinguish our prior precedent by arguing that, cumulatively, the giving of jury instruction nos. 6 and 19 affected the presumption of innocence, the record belies Harper's contention. The record reveals that the district court properly instructed the jury that Harper was innocent until proven guilty.⁵ In fact, jury instruction no. 5 provided, in relevant part, that: "The Defendant is presumed innocent until the contrary is proved. This presumption places

³See Guy v. State, 108 Nev. 770, 778, 839 P.2d 578, 583 (1992).


⁴114 Nev. 1196, 1209, 969 P.2d 288, 296 (1998).

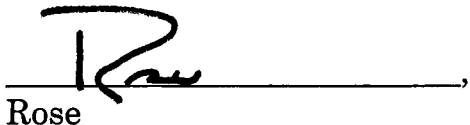
⁵See Cupp v. Naughten, 414 U.S. 141, 146-47 (1973) (recognizing "that a single instruction to a jury may not be judged in artificial isolation, but must be viewed in the context of the overall charge").

upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and the Defendant is the person who committed the offense." Accordingly, because the jury was properly instructed about the presumption of innocence, we conclude that the district court did not abuse its discretion in giving jury instruction nos. 6 and 19.

Having considered Harper's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. Kathy A. Hardcastle, District Judge
Clark County Public Defender
Robert M. Draskovich, Chtd.
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk