

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO LEON ALVAREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38995

FILED

FEB 05 2003

ORDER OF AFFIRMANCE

JULIENNE BLONK
CLERK OF SUPREME COURT
BY *J. Richard*
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of eight counts of trafficking in a controlled substance, five counts of conspiracy to sell a controlled substance, and two counts of possession of a controlled substance. The district court sentenced appellant: for trafficking, to a prison term of 25 years with parole eligibility after 10 years on each count; for conspiracy, to a prison term of 12 to 32 months on each count; and for possession, to a prison term of 12 to 32 months on each count. The district court ordered one of the trafficking counts to run consecutive to the first trafficking count, but ordered all the remaining counts to run concurrently. The district court also suspended the sentences for possession and placed appellant on probation for a period not to exceed three years.

Appellant first contends that the prosecutor committed misconduct. Specifically, appellant challenges the prosecutor's statement during rebuttal that he had more eyewitnesses who were not called who would have identified appellant as the seller of the drugs. At the time of the comment, the defense objected and the objection was sustained. Defense counsel did not, however, request a curative instruction or that the prosecutor be admonished.

We conclude that this issue has not been preserved for appeal. "In order to preserve for appellate consideration allegations of misconduct in a closing argument, the accused must make a timely objection, obtain a ruling, and request an admonition of counsel and an appropriate instruction to the jury."¹

Moreover, the comment was brief and there is overwhelming evidence of appellant's guilt. The jury was instructed that the statements and arguments of counsel were not to be considered as evidence. We therefore conclude that even if the error was plain, it did not affect appellant's substantial rights.²

Appellant also contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.³

In particular, we note that an undercover police officer testified that appellant, assisted by his friend "Coy," sold her controlled substances on numerous occasions. The undercover officer's testimony was corroborated by two other detectives who performed surveillance during the drug buys.

Despite the fact that "Coy" testified that he alone conducted that drug transactions, the jury could reasonably infer from the evidence presented that appellant conspired to sell controlled substances,

¹Williams v. State, 103 Nev. 106, 110-11, 734 P.2d 700, 703 (1987).

²See Gallego v. State, 117 Nev. 348, 365-66, 23 P.3d 227, 239 (2001).


³See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

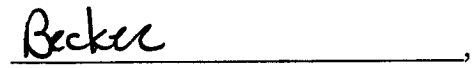
committed the offense of trafficking, and was in possession of a controlled substance. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.⁴

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Sally L. Loehrer, District Judge
Clark County Public Defender
Robert E. Glennen III
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁴See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).