

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID JAMES FRAYER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39991

FILED

OCT 15 2002

ORDER OF AFFIRMANCE

CLAUDE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of trafficking in a controlled substance, a violation of NRS 453.3385(1). The district court sentenced appellant David James Frayer to serve a prison term of 12-30 months, and ordered him to pay a fine of \$1,500.00.

Frayer contends that the State adduced insufficient evidence at trial to sustain his conviction beyond a reasonable doubt. Frayer argues that there was no direct evidence linking him to the drugs, and that "there can be no conviction where the circumstances, though they create a strong suspicion of guilt, are as consistent with the theory of innocence as they are with the theory of guilt."<sup>1</sup> We disagree with Frayer's contention.

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

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<sup>1</sup>State v. Cerfoglio, 46 Nev. 332, 350, 213 P. 102, 103 (1923).

elements of the crime beyond a reasonable doubt.”<sup>2</sup> Further, “it is the jury’s function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses.”<sup>3</sup> In other words, a jury “verdict will not be disturbed upon appeal if there is evidence to support it. The evidence cannot be weighed by this court.”<sup>4</sup> We also note that “[c]ircumstantial evidence alone may sustain a conviction.”<sup>5</sup>

Initially, we note that in the fast track statement, Frayer concedes that there is circumstantial evidence that he possessed the controlled substance in question. Additionally, 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. After arresting Frayer for riding a bicycle on a sidewalk in violation of the Sparks Municipal Code, the arresting officer checked his patrol car twice before placing Frayer in the rear passenger seat and did not find any controlled substances. The same officer also testified that he searched Frayer as well and did not discover the drugs. Upon arrival at the police station and after removing Frayer from the patrol car, the officer checked the rear passenger seat again and this time discovered a small bag containing a white powdery substance that later proved to be 5.79 grams of methamphetamine.

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<sup>2</sup>Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)) (emphasis in original omitted).

<sup>3</sup>McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

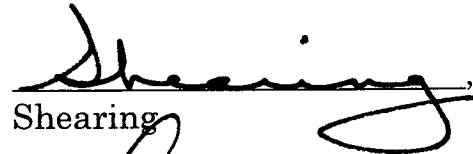
<sup>4</sup>Azbill v. State, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972); see also Nev. Const. art. 6, § 4; NRS 177.025.


<sup>5</sup>McNair, 108 Nev. at 61, 825 P.2d at 576; Walker v. State, 113 Nev. 853, 861, 944 P.2d 762, 768 (1997).


Therefore, we conclude that substantial evidence was presented for a rational trier of fact to have found beyond a reasonable doubt the essential elements of the crime of trafficking in a controlled substance.

Having considered Frayer's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

cc: Hon. Jerome Polaha, District Judge  
Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk