

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE J. SMITH, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40590

FILED

AUG 15 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
THE JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of felony possession of a controlled substance. The district court sentenced appellant Willie J. Smith, Jr., to serve a prison term of 18 to 48 months.

Smith 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.¹

In particular, we note that North Las Vegas Police Officer Charles Stucky testified that, while Smith was sitting on the curb in handcuffs, he observed him grinding his heel back and forth over the pavement. Upon closer examination, Officer Stucky observed Smith attempting to crush a rock of crack cocaine with his foot. As Officer Stucky pulled Smith to his feet, he also observed several additional rocks of crack cocaine on the ground between Smith's legs. Officer Stucky

¹See 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).

placed Smith under arrest and took him to the North Las Vegas Detention Center.²

At the Detention Center, another North Las Vegas Police Officer, Christopher Martinez, strip-searched Smith. Officer Martinez testified that after he asked Smith to “bend at the waist, spread his butt cheeks, and squat and cough,” Officer Martinez observed two rocks of crack cocaine wrapped in a clear plastic bag fall out of Smith’s buttocks onto the floor. Forensic Specialist, Carol Crossley, testified that she tested the rock substances found on Smith at the time of his arrest and during the strip-search and the rocks tested positive for cocaine.

Although, at trial, Smith alleged that all the rock cocaine discovered belonged to other individuals, the jury could reasonably infer from the evidence presented that Smith had actual or constructive possession of the rock cocaine.³ 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

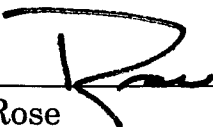
²We note that the majority of Officer Stucky’s testimony was corroborated by North Las Vegas Police Officer Gary King, who assisted in arresting Smith. Both Officer Stucky and Officer King also described the chain of custody procedures for the rock cocaine evidence confiscated from Smith.


³See NRS 453.336(1); 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).


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).

Having considered Smith's contention and concluded that it lacks merit, we affirm the judgment of conviction. However, our review of the judgment of conviction reveals a clerical error. The judgment of conviction states that Smith was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. We therefore conclude that this matter should be remanded to the district court for the correction of the judgment of conviction. Accordingly, we

ORDER the judgment of conviction AFFIRMED, and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.⁵

 J.
Rose

 J.
Maupin

 J.
Gibbons

cc: Hon. Michael L. Douglas, District Judge
Stanley A. Walton
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.