

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERIFF, WASHOE COUNTY,
Appellant,
vs.
ALFREDO SANCHEZ,
Respondent.

No. 40869

FILED

NOV 09 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order granting respondent's pretrial petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant Sheriff contends that the district court committed substantial error when it granted respondent Alfredo Sanchez's pretrial petition for a writ of habeas corpus.

We first note that a "trial court is the most appropriate forum in which to determine factually whether or not probable cause exists."¹ In order to overturn a trial court's decision to grant a pretrial habeas petition based on lack of probable cause, we must determine that the trial court substantially erred in its decision.² In order to move forward in grand jury proceedings, the state must establish "that a crime has been committed and that the accused probably committed it."³ The State can establish probable cause with slight or marginal evidence, and it need not prove

¹Sheriff v. Provenza, 97 Nev. 346, 347, 630 P.2d 265, 265 (1981).

²Sheriff v. Miley, 99 Nev. 377, 379, 663 P.2d 343, 344 (1983).

³Id.

guilt.⁴ “To commit an accused for trial, the State is not required to negate all inferences which might explain his conduct, but only to present enough evidence to support a reasonable inference that the accused committed the offense.”⁵

The Sheriff essentially argues that the district court failed to recognize that the State need only establish probable cause by slight or marginal evidence and contends that the State presented evidence that corroborated Michelle Hays’s testimony and sufficiently connected Sanchez to the charged crimes.

NRS 175.291(1) provides that “[a] conviction shall not be had on the testimony of an accomplice unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense” We have previously held that “[c]orroboration of accomplice testimony is necessary, even at the preliminary hearing stage.”⁶

The State can establish corroborating evidence “from the circumstances and evidence as a whole,”⁷ and such evidence satisfies NRS 175.291 “if it merely tends to connect the accused to the offense.”⁸ We have also held that corroborating evidence is insufficient when it merely shows

⁴Id.

⁵Id. (quoting Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971)).

⁶Sheriff v. Hamilton, 98 Nev. 320, 322, 646 P.2d 1227, 1228 (1982).

⁷Cheatham v. State, 104 Nev. 500, 504, 761 P.2d 419, 422 (1988).

⁸Id. at 504-05, 761 P.2d at 422.

that the defendant was near the scene of the crime⁹ or “merely casts a grave suspicion upon the accused.”¹⁰ Instead, “[c]orroborating evidence . . . must independently connect the defendant with the offense; evidence does not suffice as corroborative if it merely supports the accomplice’s testimony.”¹¹

In the instant case, the district court granted Sanchez’s pretrial habeas petition, concluding that, absent the accomplice’s testimony, there was no evidence that Sanchez knew of the existence of the controlled substances. A conviction for trafficking in controlled substances requires that the defendant have constructive possession of the drugs.¹² Constructive possession requires that the State establish, either by direct or circumstantial evidence, that the defendant maintained control or had a right to control the controlled substance.¹³ A trial court may impute possession to an accused when the controlled substance is discovered in a place “immediately and exclusively accessible to the accused and subject to [his] dominion and control,” and when the accused is aware of the nature of the contraband found.¹⁴

⁹Id. at 505, 761 P.2d at 422.

¹⁰Austin v. State, 87 Nev. 578, 585, 491 P.2d 724, 728 (1971) (quoting People v. Shaw, 112 P.2d 241, 255 (Cal. 1941)).

¹¹Heglemeier v. State, 111 Nev. 1244, 1250, 903 P.2d 799, 803 (1995).

¹²See NRS 453.3385 (trafficking in controlled substances requires “actual or constructive possession).

¹³Sheriff v. Shade, 109 Nev. 826, 830, 858 P.2d 840, 842 (1993).

¹⁴Id. (alternation in original) (quoting Glispey v. Sheriff, 89 Nev. 221, 223, 510 P.2d 623, 624 (1973)).

In Woodall v. State, we concluded that the evidence at trial failed to demonstrate that the defendant possessed or exercised control over the contraband at issue.¹⁵ The record revealed that the contraband was discovered in a truck that was occupied by the defendant and his companion, with no indication as to which person placed the contraband in the vehicle. Similarly, in Marshall v. State, we again determined that, because the defendant did not own the apartment in which the contraband was found and because several persons had access to the apartment, the defendant did not have exclusive access to the contraband.¹⁶

In this case, the State presented no evidence that Sanchez maintained control or had a right to control the drugs found in the vehicle's gas tank. In eliminating Michelle Hays's testimony from consideration, the remaining evidence reveals the following facts: (1) Sanchez was driving a vehicle, not his own, that was discovered to have a large amount of drugs within its gas tank; (2) Sanchez was nervous when speaking to Trooper Miller; (3) Sanchez and Leobardo Carrillo-Vera told inconsistent stories about where they had traveled; (4) there was an overwhelming odor of air freshener emanating from the vehicle; and (5) the presence of gas nozzles in the passenger compartment.

We conclude that these factors do not establish that Sanchez had constructive possession of the controlled substances found in the gas tank. First, Sanchez's act of driving Carrillo-Vera's vehicle does not establish that he had exclusive control of the gas tank. It is equally as plausible that Carrillo-Vera altered the gas tank given that the vehicle

¹⁵97 Nev. 235, 236, 627 P.2d 402, 403 (1981).

¹⁶110 Nev. 1328, 1333, 885 P.2d 603, 606 (1994).

belonged to him. Hays also drove the vehicle during a portion of the group's trip. While Sanchez would have been forced to refuel on an unusually frequent basis, this inference does not establish control or possession of the drugs found in the gas tank. Second, the State presented no evidence that Sanchez had immediate access to the drugs. Third, there is no evidence that Sanchez knew of the existence of the drugs. Furthermore, even if the district court had considered Hays's grand jury testimony, her testimony was unclear as to whether it was Sanchez or Carrillo-Vera who acknowledged the existence of the drugs in the gas tank.


Moreover, we agree with the district court that the above-described evidence, even taken as a whole, is insufficient to find probable cause. While the Sheriff argues that it would have been unreasonable for the owner of such a large amount of drugs to turn over its control to someone, there is no factual basis for this inference. Second, the Sheriff argues that it would be unreasonable for Sanchez not to have wondered why the gas tank remained on full, yet the truck seemed to need refueling more often than usual for a new truck with a 34-gallon tank. As evidence of the malfunctioning fuel gauge came from Hays's testimony, the district court need not have considered it. Furthermore, the Sheriff's contention that an inference of ownership and control of the controlled substances can be drawn from this bit of evidence is unwarranted. Third, the Sheriff asserts that the strong odor of air freshener in the vehicle demonstrates that Sanchez was attempting to cover up the smell of drugs and gasoline. As Sanchez notes, this argument is again speculative given that the drugs were found wrapped in plastic in the gas tank, and therefore, masking any

odors was unnecessary. Furthermore, the State failed to present any evidence that Sanchez placed the air freshener in the vehicle.

Thus, we cannot conclude that the district court committed substantial error when it granted Sanchez's pretrial habeas petition for lack of probable cause. According, we

ORDER the district court's order AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe County Public Defender
Washoe District Court Clerk