IN THE SUPREME COURT OF THE STATE OF NEVADA

TROY WISE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41381

FILED

DEC 22 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of trafficking in a controlled substance. The district court sentenced appellant Troy Wise to serve a prison term of 28 to 72 months.

Wise first contends that the evidence presented at trial was insufficient to support the jury's finding that he possessed the methamphetamine at issue. Relying on Sheriff v. Shade,[1] Wise argues that there was no evidence presented that he knowingly possessed the drugs hidden in the dashboard of the vehicle because the drugs were not in plain sight, Wise did not own the vehicle and other individuals had access to it. We conclude that Wise's contention lacks merit.

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.[2] In particular, both Wise and Raquel Casarez, the owner of the vehicle in which the methamphetamine was found, testified that Wise

[1]109 Nev. 826, 858 P.2d 840 (1993).

[2]See 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).

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drove the vehicle for about three days prior to his arrest on unrelated charges, when the vehicle was impounded. The methamphetamine at issue was not discovered during the initial inventory search of the vehicle, but instead was found in a subsequent search conducted pursuant to a warrant, which was obtained based on several telephone calls Wise made to Casarez from jail. In particular, according to the trial testimony of two law enforcement officers, Wise telephoned Casarez on several occasions and requested that she retrieve the "shit" or "6 G's" from a specific location under the dashboard of the impounded vehicle.[3]

Wise testified at trial that, when he was referring to "shit," he meant a television and a computer, which he alleged were in the backseat of the vehicle. Similarly, Wise testified that by "6 G's" he meant $6,000.00, which was allegedly hidden inside the vehicle.[4] Despite Wise's testimony explaining the telephone calls, the jury could reasonably infer that Wise was referring to the six grams of methamphetamine recovered from the vehicle. 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.[5]

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[3]Washoe County Sheriff's Officer Anthony Buell listened to Wise's outgoing calls made to Casarez from jail. Buell testified that he heard Wise tell Casarez: "I'm going to give you the shit to make the money unless you don't want to do it." In a subsequent telephone call, Wise told Casarez: "There's a fat one, you know where . . . [y]eah, where the 6 g's are. You know what that is, right."

[4]Law enforcement officers also testified that no televisions, computers or large sums of money were ever found in the vehicle.

[5]See 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).

Wise next contends that prosecutorial misconduct rendered his trial unfair. Wise challenges the following statement by the prosecutor:

> The judge told you at the beginning of the trial that the defendant is presumed innocent. That is the foundation of our judicial system and the criminal justice system. Someone is presumed innocent. And the State has the burden to prove that they are not innocent. There's a saying that they are cloaked with a veil of innocence.
>
> Well, ladies and gentleman, after you heard the evidence in this case, that veil was lifted from the defendant of innocence, [sic] and what's underneath it is a man that's guilty of the crime he is charged with. It's as simple as that.

(Emphasis added.) Citing to Pagano v. Allard,[6] Wise argues that reversal of his conviction is warranted because the prosecutor's comment that the veil of innocence was lifted impermissibly diluted the presumption of innocence. In its appellate brief, the State concedes that the prosecutor's comment amounted to misconduct, but argues that the error was harmless. We conclude that Wise was not prejudiced by the isolated instance of misconduct.

Preliminarily, we note that Wise did not object to the prosecutor's statement. Generally, the failure to object to prosecutorial misconduct precludes appellate review.[7] Nonetheless, even assuming this issue was preserved for appellate review, we conclude that the isolated instance of prosecutorial misconduct did not warrant reversal of Wise's

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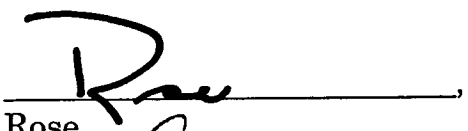
[6]218 F. Supp. 2d 26 (D. Mass. 2002).

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

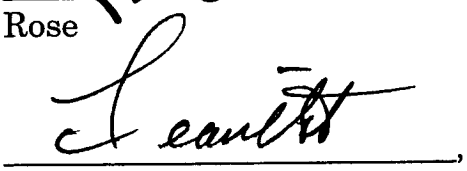
conviction.[8] Here, unlike in Pagano where the evidence against the defendant was weak, the State presented overwhelming evidence against Wise.[9] Accordingly, we conclude that prosecutor's statement did not affect Wise's substantial rights.[10]

Having considered Wise's contentions and concluded that they lack merit, we

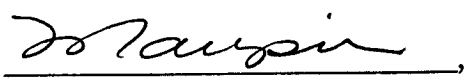
ORDER the judgment of the conviction AFFIRMED.



_____, J.
Rose



_____, J.
Leavitt



_____, J.
Maupin

cc: Hon. Brent T. Adams, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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[8]See Greene v. State, 113 Nev. 157, 169, 931 P.2d 54, 62 (1997), receded from on other grounds by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

[9]218 F. Supp. 2d at 36.

[10]See Rowland v. State, 118 Nev. 31, 38, 39 P.3d 114, 118-19 (2002); Gallego v. State, 117 Nev. 348, 365-66, 23 P.3d 227, 239 (2001).