

IN THE SUPREME COURT OF THE STATE OF NEVADA

COREY THOMAS BARNETT,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
May 23 2017 09:22 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 71132

RESPONDENT'S ANSWERING BRIEF

**Appeal From Judgment of Conviction
Eighth Judicial District Court, Clark County**

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ROUTING STATEMENT

This case is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(1) because it is a direct appeal from a Judgment of Conviction which challenges only the sufficiency of the evidence presented at trial.

STATEMENT OF THE ISSUE(S)

WHETHER SUFFICIENT EVIDENCE SUPPORTS BARNETT’S CONVICTION

STATEMENT OF THE CASE

On February 24, 2016, Defendant Corey Thomas Barnett (hereinafter “Barnett”) was charged by way of Indictment with Trafficking in Controlled Substance (Category B Felony – NRS 453.3385.1 – NOC 51156), and Ownership or

Possession of Firearm by prohibited Person (Category B Felony – NRS 202.360 – NOC 51460). Appellant’s Appendix Volume 1 (1 AA), p. 1. Trial commenced on April 11, 2016. 1 AA 6. On April 12, 2016, the Jury returned a verdict of guilty on Count 1, Trafficking in a Controlled Substance. 2 AA 129. That same day, following a bifurcated trial, the Jury returned a verdict of guilty as to Count 2: Ownership or Possession of a Firearm by a Prohibited Person. 2 AA 130. The Judgment of Conviction was filed on July 21, 2016.

On August 19, 2016, Barnett filed a Notice of Appeal. The State responds to the Opening Brief as follows and requests that the Judgment of Conviction in this case is AFFIRMED.

STATEMENT OF THE FACTS

On September 25, 2015, Officers were dispatched to a residential area in reference to a call about a parked vehicle with people sleeping inside. 1 AA 183-84, 188. When they arrived, the officers observed a female, later identified as Ashley Allen (hereinafter “Allen”), sleeping in the driver seat and a black male adult male, later identified as Barnett, sleeping in the passenger seat. 1 AA 188. It appeared as though the two individuals were living in the vehicle. 1 AA 203, 2 AA 43. Officer Fernandez knocked on the driver’s window, which woke up Allen. Id. She rolled down the window and both individuals verbally identified themselves to Officer Fernandez. 1 AA 188-89.

Officer Fernandez performed a records check which indicated that Allen had an active traffic warrant. 1 AA 189. Officer Fernandez requested backup and Officer Deang responded to assist. 1 A 189-90. The officers approached the vehicle to speak with Allen about her outstanding warrant. As Officer Fernandez spoke with Allen, Officer Deang observed. 1 AA 190. While Officer Fernandez was speaking with Allen, Officer Deang indicated that he saw a firearm in the vehicle. 1 AA 192. At that time, both suspects were asked to exit the vehicle and were placed in handcuffs. Id. Officer Fernandez located a silver semiautomatic firearm with a black handle in the driver side floorboard. 1 AA 193. An airsoft gun was also discovered on the passenger side of the vehicle. 1 AA 193-95, 2 AA 22-23.

Neither firearm was in a lockbox or any kind of container and based on the design of the vehicle, even though the firearms were found on the driver's side of the vehicle, they could be accessed by the person in the passenger seat. 1 AA 195-96. Barnett and Allen were placed into handcuffs and read their Miranda rights. Id.; Miranda v. Arizona, 384 U.S. 436, 444-45, 86 S.Ct. 1602, 1612 (1966). While performing the search incident to arrest, in Barnett's right coin pocket, Officer Fernandez located two baggies which appeared to contain a crystal-like substance which he recognized through his training and experience to be methamphetamine. Id.

Allen was agitated and upset as she was interacting with the officers. 1 AA 199. When they asked her about the firearm, she yelled towards Barnett “[r]eally, you’re going to let me fall for this? Really?” 1 AA 199. The vehicle which Allen and Barnett appeared to be living in was registered to Barnett’s mother, Irene Barnett. Id. Although the firearm was not registered to either Allen or Barnett, through his discussion with Allen and the course of his investigation Officer Fernandez was able to determine that Allen was not the owner of the firearm. 1 AA 198. Barnett was placed under arrest for possession of a controlled substance and possession of a firearm by a prohibited person and transported to the Clark County Detention Center. 1 AA 197.

SUMMARY OF THE ARGUMENT

Sufficient evidence supports Barnett’s conviction. Officer Fernandez testified that he located a firearm on the floorboard of the vehicle where Barnett and Allen were found sleeping. The vehicle was registered to Barnett’s mother, although it appeared he and Allen were living in it. The jury heard testimony that the officers determined the firearm did not belong to Allen. Further the jury heard testimony that Barnett had knowledge of the firearms as well as exercising dominion and control over it which was sufficient to find that he had constructive possession of the firearm. At trial the State admitted a certified Judgment of Conviction from the

Eighth Judicial District which proved that Barnett had previously been convicted of a felony.

ARGUMENT

SUFFICIENT EVIDENCE SUPPORTS BARNETT'S CONVICTION

“Where there is substantial evidence to support a jury verdict, it will not be disturbed on appeal.” Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 21 (1981). In reviewing a claim of insufficient evidence, the relevant inquiry is “whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).”

Moreover, “it is the jury’s function, not that of the court, to assess the weight of the evidence and determine the credibility of the witnesses.” Id. This standard does not require this Court to decide whether “it believes that the evidence at the trial established guilt beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319-20, 99 S.Ct. 2781, 2789 (1979). Rather, it is the jury’s role as fact finder “[to fairly] resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” Id. at 319, 99 S.Ct. at 2789.

Accordingly, a jury is free to rely on circumstantial evidence in rendering its verdict. Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980). In fact, the

Nevada Supreme Court has consistently held that circumstantial evidence alone may sustain a conviction. See, Hernandez v. State, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002); Deveroux v. State, 96 Nev. 388, 391, 610 P.2d 722, 724 (1980) (citing Crawford v. State, 92 Nev. 456, 552 P.2d 1378 (1976)). Further, “[i]n assessing a sufficiency of the evidence challenge, a reviewing court must consider all of the evidence admitted by the trial court, regardless whether that evidence was admitted erroneously.” Stephans v. State, 127 Nev. Adv. Op. 65, 262 P.3d 727, 734 (2011) (emphasis removed) (citing McDaniel v. Brown, 558 U.S. 120, 131, 130 S.Ct. 665, 672 (2010) (quotations removed)).

NRS 202.360(1) provides that any person previously convicted of a felony “shall not own or have in his or her possession or under his or her custody or control any firearm. . . .” Although NRS Chapter 202 does not define “possession” specific to the ex-felon-in-possession-of-a-firearm offense, this Court has construed possession in a variety of similar contexts:

The law, in general, recognizes two kinds of possession: actual possession and constructive possession. A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it. A person, who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

Palmer v. State, 112 Nev. 763, 768, 920 P.2d 112, 115 (1996) (quoting Black's Law Dictionary 1163 (6th ed.1990)). From the evidence presented a rational juror could have inferred that Barnett had dominion and control over the gun and thus constructively possessed it. See, Glispey v. Sheriff, 89 Nev. 221, 223-24, 510 P.2d 623, 624 (1973) (a person has constructive possession of contraband if he maintains control or a right to control the contraband); Woerner v. State, 85 Nev. 281, 284, 453 P.2d 1004, 1006 (1969) (dominion and control may be demonstrated through circumstantial evidence and reasonably drawn inferences); Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also Hernandez v. State, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002) (“[C]ircumstantial evidence alone may support a conviction.”).

The record before this Court offers more than sufficient evidence upon which the jury could have concluded that Barnett was an ex-felon in possession of a firearm. A handgun and an airsoft gun were found in the vehicle where Barnett was sleeping. 1 AA 193-94. Neither firearm was in a lockbox or any kind of container. 1 AA 195-96. Based on the design of the vehicle, from the passenger seat, Barnett could have easily reached the firearms on the floorboard of the driver's side. Id. Officer Fernandez testified that he spoke with Allen about the firearm. 1 AA 198. He further testified that the conversation and the course of his investigation resulted in a determination that Allen was not the owner of the firearm. 1 AA 198. At trial,

the State admitted a Certified Judgment of Conviction from the Eighth Judicial District in Case C273458 which indicated that Barnett had previously been convicted of a felony. 2 AA 117.

Barnett's reliance on Woodall v. State, 97 Nev. 235, 236, 627 P.2d 402, 402 (1981) is misplaced. In Woodall, the defendant's companion acknowledged that the weapon was his and that Woodall knew nothing about its existence. Woodall, 97 Nev. at 236, 627 P.2d at 403. Here, Allen indicated by her conduct, acting agitated and upset, her excited utterance towards Barnett asking if he was "going to let her go down for this," and her conversation with Officer Fernandez that the firearm did not belong to her, and was in fact Barnett's. 1 AA 198-99. In Woodall the other individual identified the firearm as being theirs, where here, the other individual indicated that the firearm was not theirs, and in fact belonged to the defendant. Therefore, the instant case is distinguished from Woodall.

Although the theory presented by the defense was that the drugs and firearms belonged to Allen, the jury obviously believed the testimony of the officers that they determined that the drugs and firearms did not belong to Allen and concluded from it that Barnett constructively possessed firearm because he was aware of its location and exercised control over it by having direct access to it inside the vehicle where he and Allen were sleeping. Barnett attempts to entice this Court into inappropriately finding insufficient evidence to support a conviction because "none

of the witnesses testified that they ever saw Mr. Barnett in actual possession of the firearm.” AOB 4.

The jury heard testimony that when she was questioned by officers about the firearm, Allen became upset and agitated and yelled at Barnett “[r]eally, you’re going to let me fall for this? Really?” 1 AA 199. Determination of what weight to apply to each piece of evidence is reserved to the jury, who had the benefit of evaluating the testimony at trial. Regardless of whether Barnett would like to ignore the legal principal of constructive possession, the judgement call as to sufficient evidence to support knowledge, dominion and control was properly submitted to the jury. After weighing the evidence, the jury determined that Barnett was guilty. This Court should not invade the province of the jury merely because Appellant disagrees with their conclusion. The fact that Barnett could easily access the firearm located on the floor of the vehicle he was in is circumstantial evidence to support the fact that he had dominion and control over it. This Court has previously held that dominion and control may be demonstrated through circumstantial evidence and reasonably drawn inferences. Bolden, 97 Nev. at 73, 624 P.2d at 20. Further, [C]ircumstantial evidence alone may support a conviction. Hernandez, 118 Nev. at 531, 50 P.3d at 1112.

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CONCLUSION

It is for the foregoing reasons that the State requests that the Judgment of Conviction in this case is AFFIRMED.

Dated this 23rd day of May, 2017.

Respectfully submitted,

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BY */s/ Jonathan E. VanBoskerck*

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points or more, contains 1,981 words and 10 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 23rd day of May, 2017.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 23rd day of May, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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