

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO SPINA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54309

FILED

MAY 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Rives*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count of possession of a firearm by an ex-felon. Third Judicial District Court, Churchill County; David A. Huff, Judge.

Appellant Antonio Spina contends that insufficient evidence supported his conviction because the State failed to prove that he was the "Antonio Spina" that possessed the handgun. We review "the evidence in the light most favorable to the prosecution" and determine whether "any rational [juror] could have found the essential elements of the crime beyond a reasonable doubt." McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1984)). Here, the jury heard testimony that Spina was an ex-felon. John Rives identified Spina as the person to whom he gave a Taurus .41 caliber handgun. And sheriff's deputies testified that Spina indicated that the firearm was in the bushes, they recovered a Taurus .41 caliber handgun from the bushes, and they recovered .41 caliber ammunition from Spina's pocket. Based on this testimony, we conclude that a rational juror could reasonably infer that Spina possessed a firearm after having been

convicted of a felony. See NRS 202.360(1)(a). 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. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Spina also contends that the district court erred by admitting unconstitutionally obtained statements into evidence. Spina claims that the State failed to demonstrate that his statements to sheriff's deputies were made after he was advised of and waived his Miranda rights. See Miranda v. Arizona, 384 U.S. 436, 479 (1966). "Failure to raise a claim below generally bars its consideration on appeal, but the rule is relaxed in cases involving plain error or constitutional issues." Miller v. State, 113 Nev. 722, 724, 941 P.2d 456, 457 (1997). Here, two sheriff's deputies testified that Spina was detained outside, he was asked if there was a weapon, he acknowledged that there was a weapon, and he indicated that it was in the bushes. It is clear from the record that the deputies were trying to locate the weapon and we conclude that Spina's statement was admissible under the "public safety" exception to the requirement that Miranda warnings be given before a suspect's answers may be admitted into evidence." New York v. Quarles, 467 U.S. 649, 651, 655 (1984). A third sheriff's deputy testified that he interviewed Spina and Spina admitted to carrying a concealed weapon. The record reveals that the same deputy testified at the preliminary hearing that he read Spina his Miranda rights, Spina elected to speak with him, and Spina filled out a Miranda rights waiver form prior to the interview. Under these circumstances, we conclude that no constitutional violation occurred.

Having considered Spina's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. David A. Huff, District Judge
David D. Spitzer
Attorney General/Carson City
Churchill County District Attorney
Churchill County Clerk