

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRICK CHARLES ESTELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56749

FILED

JUN 09 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of possession of a firearm by an ex-felon. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant Darrick Charles Estell claims that insufficient evidence supports his conviction. This claim lacks merit because the evidence, when viewed in the light most favorable to the State, is sufficient to establish Estell's guilt beyond a reasonable doubt as determined by a rational trier of fact. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

The jury heard testimony that officers Brian Hammerbeck and Chad Leavitt pulled Estell over because he had a burnt out headlight. While he was approaching the car, Leavitt observed the passenger, Mark Ahern, reach down between his leg and the passenger door. When Ahern lifted his right hand, he had a baggie with a green leafy substance in it. Ahern slowly transferred the baggie to his left hand and then dropped the baggie in the area of the center console. Leavitt removed Ahern from the vehicle and arrested him. Hammerbeck was on the driver's side of the car

and directed Estell to put his hands on the steering wheel. Estell complied and Hammerbeck stepped back to see if Leavitt needed any assistance with Ahern. When Hammerbeck looked back at Estell, Estell's hands were no longer on the steering wheel and Estell was focused on the center console area of the car. Hammerbeck grabbed Estell's arm, startling Estell, and Estell dropped the baggie. Hammerbeck then arrested Estell, called to have the car towed, and conducted an inventory search of the car. During the search, a 9mm semiautomatic handgun was found between the driver's seat and center console. Estell testified that the car was his and he was the only person who drove it. Ahern testified that he had marijuana with him on the night in question, but he did not have a gun and did not know that there was a gun in the car. Estell stipulated that he had a prior felony conviction. This evidence was sufficient for a rational juror to infer that Estell unlawfully possessed a firearm. See NRS 202.360(1)(a). It was for the jury to assess the witnesses' credibility and determine the weight to give their testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. McNair, 108 Nev. at 56, 825 P.2d at 573; Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Estell also claims that the prosecutor committed misconduct by shifting the burden of proof and injecting her personal opinion when she commented on Estell's failure to deny ownership of the gun upon the officers' inquiry about the gun. Estell failed to object on the grounds now claimed. Therefore, we review for plain error. See Pantano v. State, 122 Nev. 782, 795, 138 P.3d 477, 485 (2006). We conclude that the prosecutor did not commit misconduct because, when considered in context, the prosecutor's comments recapped the testimony presented at trial and

argued that Estell was not a credible or believable witness. See Leonard v. State, 117 Nev. 53, 81, 17 P.3d 397, 415 (2001) (“in some instances the prosecutor may comment on a defendant’s failure to substantiate a claim”); Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1106 (1990) (a prosecutor may demonstrate through inferences from the record that a witness might not be credible); Klein v. State, 105 Nev. 880, 884, 784 P.2d 970, 973 (1989) (a prosecutor may argue the evidence and “suggest reasonable inferences that might be drawn from that evidence”).

Having reviewed Estell’s contentions and concluded they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk