

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE ISRAEL ALVAREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57069

FILED

JAN 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angel*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of trafficking in a controlled substance, four counts of allowing a child to be present during the commission of certain controlled substance violations, failure to stop on signal of a peace officer causing property damage, offering, attempting, or committing an unauthorized act relating to a controlled or counterfeit substance, two counts of battery with a deadly weapon, assault with a deadly weapon, and four counts of abuse, neglect, or endangerment of a child. Third Judicial District Court, Churchill County; Leon Aberasturi, Judge. Appellant Jose Alvarez raises two issues on appeal.

First, Alvarez argues that the evidence is insufficient to support his conviction for trafficking in a controlled substance because NRS 453.3385 requires actual or constructive possession. We disagree. One method of establishing guilt under NRS 453.3385 requires "actual or constructive possession" of a controlled substance; an alternative method requires a person to sell, deliver, or bring drugs into Nevada. In this case, a drug task force arranged to purchase methamphetamine from Alvarez

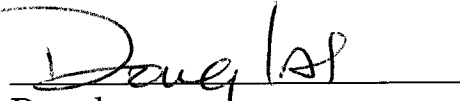
through a confidential informant. In a recorded phone call, Alvarez agreed to bring “a whole one”—a pound of methamphetamine in drug trafficking vernacular—to Fallon from California. Alvarez fled when police sought his arrest. Officers briefly lost sight of Alvarez but found a trail of methamphetamine in his path. A rational juror could reasonably infer that Alvarez was trafficking in methamphetamine. See Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (stating review standard for sufficiency of evidence).


Second, Alvarez argues that the district court erred in limiting defense counsel’s closing argument on the grounds that it was not based on facts in evidence. See Glover v. Dist. Ct., 125 Nev. 691, 702, 705, 220 P.3d 684, 692, 694 (2009) (stating that closing arguments must be based on facts presented during trial). Police officers testified that Alvarez rammed police vehicles during his flight from police. Subsequently, counsel introduced several photographs of the Budget Inn where the police chase started. Witnesses testified that the photographs showed the motel and tire tracks. Counsel failed to present any further evidence regarding the tire tracks. During closing argument, counsel attempted to argue that the tire tracks showed that police officers had actually crashed into Alvarez. The prosecution objected, asserting that by claiming the tire tracks were made by police, counsel was arguing facts not in evidence. The court sustained the objection to the use of the photographs but allowed counsel to argue the same theory, sans the photographs. We conclude that excluding these photographs did not reasonably alter the probability of Alvarez’s conviction, Nika v. State, 124 Nev. 1272, 1292-93,


198 P.3d 839, 854 (2008), and therefore the district court did not err in this regard.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

 J.
Douglas

 J.
Gibbons

 J.
Parraguirre

cc: Hon. Leon Aberasturi, District Judge
Martin G. Crowley
Churchill County District Attorney
Attorney General/Carson City
Churchill County Court Administrator