

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY EDWARD ALLEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66655

FILED

AUG 05 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of trafficking in a controlled substance and four counts of possession of a stolen firearm. Third Judicial District Court, Lyon County; William Rogers, Judge.

Appellant Gary Allen first argues the evidence presented at trial was insufficient to support the jury's finding of guilt for the possession of stolen firearms because the State failed to produce evidence to overcome Allen's entrapment defense. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. *See Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

The evidence and testimony produced at trial demonstrated Allen committed the charged crimes. An entrapment defense consists of two elements: the State presenting the opportunity to commit a crime and a defendant who is not predisposed to commit the act. *Miller v. State*, 121 Nev. 92, 95, 110 P.3d 53, 56 (2005). There was no evidence presented at trial to support an assertion that the sheriff deputies presented Allen with


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an opportunity to possess stolen firearms. Moreover, Allen's own testimony demonstrated his predisposition to possessing stolen firearms. Allen himself testified he knew the firearms were stolen prior to the deputies' involvement in this matter, he knowingly took possession of the stolen firearms from the person that stole them, and he hid them in an effort to avoid detection by the deputies. A few days after Allen hid the firearms, Allen retrieved the firearms without notifying the deputies of their existence and placed them in his vehicle. The deputies arrived at Allen's residence to talk with Allen and then viewed the firearms for the first time in Allen's vehicle. Based on the evidence presented at trial, we conclude the jury could reasonably find Allen committed four counts of possession of stolen firearms. See NRS 205.275(1).

Second, Allen argues there was insufficient evidence to support his conviction for trafficking in a controlled substance because the State did not establish Allen had more than 4 grams of methamphetamine. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See *Origel-Candido*, 114 Nev. at 381, 956 P.2d at 1380; see also *Jackson*, 443 U.S. at 319. The State's criminalist testified Allen's methamphetamine weighed 4.051 grams at the laboratory and he explained certain mathematical calculations he undertook to ascertain the degree of certainty regarding that weight. Based on the evidence presented at trial, we conclude the jury could reasonably find Allen committed trafficking in a controlled substance. See NRS 453.3385(1). 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. 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). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Justice Law Center
Kenneth V. Ward
Attorney General/Carson City
Lyon County District Attorney
Lyon County Clerk