IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN FRANCIS FLYNN, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84135-COA

FILED

FEB 21 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

John Francis Flynn, III, appeals from a judgment of conviction entered pursuant to a jury verdict of trafficking in a schedule I controlled substance. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

Flynn first argues that the district court erred by denying his motion to suppress evidence. Flynn was arrested pursuant to a warrant, and a search incident to his arrest revealed methamphetamine. In his motion, Flynn argued that the warrant was not valid because it was improperly issued more than 14 days after he failed to appear at a court hearing and he should not have been arrested pursuant to an invalid warrant. Flynn also contended that there were irregularities concerning the warrant and that the arresting gaming control agent did not have a good-faith basis for relying upon it. Flynn asserted that because the warrant was invalid and the agent should not have relied upon it, any evidence obtained pursuant to the improper arrest and the search incident to that arrest should be suppressed.

We review the district court's factual findings regarding suppression issues for clear error and review the legal consequences of those

findings de novo. *Somee v. State*, 124 Nev. 434, 441, 187 P.3d 152, 157-58 (2008). "[A]n arrest warrant may permit officers to seize evidence discovered as a result of a lawful arrest," *Meisler v. State*, 130 Nev. 279, 282, 321 P.3d 930, 933 (2014), and "[i]t is well settled that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment," *United States v. Robinson*, 414 U.S. 218, 224 (1973). Moreover, if a police officer acts pursuant to a warrant that is later invalidated, the exclusionary rule for improperly obtained evidence does not apply if the officer's reliance on the invalidated warrant was objectively reasonable. *See Herring v. United States*, 555 U.S. 135, 142 (2009).

The district court conducted an evidentiary hearing concerning the motion to suppress and made the following findings. The warrant was issued in 2007 and was also issued within the 45-day period required by the statute that was in effect at that time. *See* 2003 Nev. Stat., ch. 368, § 5, at 2103-04 (NRS 178.508). The gaming control agent utilized a database to discover the presence of the warrant, and the agent called the justice court to ensure that it had issued the warrant. The agent was informed by the justice court that the warrant had been issued and that he should act pursuant to the warrant. The agent subsequently arrested Flynn pursuant to the warrant and conducted a search of Flynn's person incident to the arrest. The agent discovered contraband during the search incident to arrest.

The district court's findings following the evidentiary hearing are not clearly erroneous. Based on the information provided at the evidentiary hearing, the arrest warrant was valid and the gaming control agent reasonably relied upon the warrant when he arrested Flynn. Because Flynn was properly arrested, the agent was permitted to conduct a search

incident to Flynn's arrest and the evidence discovered pursuant to that search was validly obtained. Therefore, we conclude that the district court did not err by denying Flynn's motion to suppress evidence.

Second, Flynn argues that there was insufficient evidence produced at trial to support the jury's finding of guilt. Flynn contends that the evidence did not establish he knowingly or intentionally possessed methamphetamine. Our review of the record on appeal 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 produced at trial revealed the following. The gaming control agent informed Flynn that he was under arrest pursuant to a warrant. Upon learning that he was to be placed under arrest, Flynn mentioned that he needed to use the restroom. The agent refused Flynn's request and began to place Flynn in handcuffs. Flynn then said, "I'm going right now," and despite Flynn's claim that he was wetting his pants, the agent noticed only a small amount of moisture on Flynn's pants. The agent subsequently secured Flynn in handcuffs. The agent next conducted a search of Flynn and discovered baggies in Flynn's pocket. The baggies contained what the agent believed to be a controlled substance, and the agent therefore conducted a field test concerning the substance. The field test yielded a positive result for methamphetamine. Subsequent testing at a laboratory confirmed the substance to be 5.539 grams of methamphetamine.

"Intent need not be proven by direct evidence but can be inferred from conduct and circumstantial evidence," *Grant v. State*, 117

Nev. 427, 435, 24 P.3d 761, 766 (2001), and the jury could reasonably infer from the evidence presented concerning Flynn's attempt to go into the restroom and the methamphetamine discovered in his pocket that he knowingly or intentionally was in possession of the methamphetamine. Given the evidence, the jury could reasonably find Flynn committed trafficking in a schedule I controlled substance. *See* 2015 Nev. Stat., ch. 506, § 6, at 3088-89 (NRS 453.3385). The jury's verdict will not be disturbed on appeal where, as here, there is substantial evidence to support it. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Alvin R. Kacin, District Judge
Ben Gaumond Law Firm, PLLC
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk