IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ASHLEY GLYNN BRANCH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86219-COA

ORDER OF AFFIRMANCE

Ashley Glynn Branch appeals from a judgment of conviction following a jury trial for one count of possession of a controlled substance and one count of possession of a controlled substance for the purpose of sale. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

In October 2020, Detective Thomas Williams of the Washoe County Sheriff's Office initiated contact with Branch, via Facebook Messenger, posing as a young woman named "Birdie."[1] Five months later, Birdie[2] messaged Branch asking if they had previously "smoked out" together.[3] Branch responded that he was not sure, but that, if they had not, they "damn well should." The two communicated very infrequently over the next year.

In February 2022, law enforcement procured a warrant for Branch's arrest stemming from unrelated charges. After learning of

[1]We do not recount the facts except as necessary to our disposition.

[2]We use Birdie when referring to Detective Williams's Facebook messages to avoid confusion when referring to Detective Williams's testimony at trial.

[3]Detective Williams testified that that term "smoke out" does not refer a specific type of drug, but rather is "open to interpretation."

Branch's arrest warrant, Detective Williams put a plan in place to have Branch come to the Peppermill Casino in Reno (Peppermill) to effectuate his arrest. Birdie reinitiated contact with Branch via Facebook Messenger and asked if Branch would like to meet her at the Peppermill to gamble. Branch responded that he was interested and asked if he should bring "party favors," to which Birdie replied "yea!"[4]

The day of their planned meeting, Branch asked Birdie "how much u spending[?]" When Birdie asked what he meant, Branch clarified "[w]ell I'm not a free delivery service if you're only calling me here for shit then I'd imagine you have a dollar amount in mind right[?]" In turn, Birdie asked how much for a "ball,"[5] to which Branch replied "$70 and I'm here." Shortly thereafter, law enforcement arrested Branch away from his vehicle in the Peppermill parking lot. After Branch was handcuffed, Detective David Tallman searched Branch's person and found a locked cylindrical container and the key to the container in Branch's jacket pockets. Detective Tallman used the key to open the container to find two bags of suspected methamphetamine, which he turned over to Detective Williams.

Following Branch's arrest pursuant to the warrant, a drug detection canine conducted an open-air sniff of Branch's truck and alerted law enforcement to the presence of drugs. Detective Seth Feathers searched the truck and found a lockbox under the front-center seat. After Branch refused to provide law enforcement with the combination to the lockbox,

---

[4]Detective Williams testified that the term "party favors" refers almost exclusively to "harder narcotics," such as "[f]entanyl, heroin, methamphetamine."

[5]Law enforcement testified that "ball" is short for the street term "eight ball," which means 3.5 grams of a substance.

Detective Feathers pried it open and found several bags of suspected methamphetamine, a pipe, a butane torch, a scale, and plastic bags inside. Detective Feathers turned the box and its contents over to Detective Williams.

Detective Williams brought the evidence seized from Branch's person and vehicle to the police station and submitted a request for the suspected methamphetamine to be tested. The substances were submitted in two sets: one set of two bags found on Branch's person and one set of three bags found inside the lockbox. Brad Taylor, a chemist for the Washoe County Sheriff's Office, performed the examination and determined that one bag from the first set contained 6.471 grams of confirmed methamphetamine and one bag from the second set contained 2.414 grams of confirmed methamphetamine. Taylor did not test the presumed methamphetamine from the rest of the bags because he determined that the untested substances looked identical and were similar in weight to the confirmed methamphetamine.

Subsequently, the State charged Branch with one count of possession of a controlled substance and one count of possession of a controlled substance for the purpose of sale and dropped the unrelated charges that served as the basis for Branch's arrest warrant. Branch filed three pretrial motions to exclude evidence: a motion in limine to exclude Taylor's forensic report; a motion to suppress the items found on Branch's person and in his vehicle; and a motion to suppress his Facebook messages with Birdie. After a hearing, the district court issued separate orders denying the motions.

During Branch's two-day jury trial, the State offered testimony from the detectives that searched the container on Branch's person and the

lockbox in his truck. Additionally, the State offered testimony from Detective Williams discussing his Facebook messages with Branch. Detective Willams also testified about receiving the evidence found on Branch's person and in his vehicle from Detectives Tallman and Feathers and submitting that evidence for testing under case number 22-3969. Taylor testified about the process of testing the substances found in the container and lockbox and discussed his forensic report—which stated that the evidence was from case number 22-3969—that confirmed the substances to be methamphetamine. Thereafter, the jury found Branch guilty of both charges. The district court sentenced Branch and this appeal followed.

On appeal, Branch raises three issues. First, he argues that he was entrapped as a matter of law because a law enforcement officer posed as a fictious woman and asked him to come to the Peppermill to effectuate his arrest instead of executing Branch's arrest warrant at his residence. Second, Branch argues that the district court erred in denying his motion to suppress the evidence found in the container on his person and the lockbox in his vehicle because the searches violated his Fourth Amendment rights. Third, Branch argues that there was insufficient evidence to prove chain of custody of the methamphetamine or to convict him of possession of a controlled substance for the purpose of sale. The State responds that, first, Branch was not entrapped as a matter of law because the record shows that he was predisposed to commit the charged crimes. Second, the State contends that the search of the container on Branch's person was a reasonable search incident to arrest and that the search of the lockbox in Branch's vehicle was a reasonable search under the vehicle exception to the warrant requirement. Third, the State argues that it adduced sufficient

evidence at trial to establish chain of custody and to otherwise support the jury's verdict that Branch possessed methamphetamine for the purpose of sale. We consider each argument in turn.

Branch was not entrapped as a matter of law because the record shows he was predisposed to commit the charged crimes

Branch argues that he was entrapped as a matter of law because the State presented the opportunity for him to commit the charged crimes by initiating contact with him over Facebook Messenger and the record shows he was not predisposed to commit the crimes in this case.[6] In response, the State argues that the record shows Branch was predisposed to commit the charged crimes because he initially offered to bring drugs to the Peppermill and explicitly asked Birdie how much she was willing to spend in exchange for the drugs.

The entrapment defense has two elements: "(1) an opportunity to commit a crime is presented by the state (2) to a person not predisposed to commit the act." *Miller v. State*, 121 Nev. 92, 95, 110 P.3d 53, 56 (2005) (quoting *DePasquale v. State*, 104 Nev. 338, 340, 757 P.2d 367, 368 (1988)). To successfully argue entrapment as a matter of law, Branch must show by uncontroverted evidence that he was not predisposed to commit the crimes

---

[6]Branch only raised the entrapment defense in his pretrial motion to suppress and chose to forego an entrapment defense at trial. While Branch preserved the issue for appeal by raising it in his pretrial motion, *see Richmond v. State*, 118 Nev. 924, 932, 59 P.3d 1249, 1254 (2002) (holding that a criminal defendant preserves an issue on appeal if it is sufficiently briefed in a pretrial motion and the district court issues an explicit and definitive order on the motion), entrapment is an affirmative defense, and thus, on appeal, Branch must show he was entrapped as a matter of law, *see Sheriff, Humboldt Cnty., Nev. v. Gleave*, 104 Nev. 496, 498-99, 761 P.2d 416, 418 (1988) (reviewing a district court's grant of defendant's pretrial petition for writ of habeas corpus for entrapment as a matter of law).

he was convicted of in this case. *Corbin v. State*, 111 Nev. 378, 381 n.2, 892 P.2d 580, 582 n.2 (1995).

The Nevada Supreme Court has recognized five factors to aid courts in determining whether a defendant was predisposed to commit a crime: "(1) the defendant's character; (2) who first suggested the criminal activity; (3) whether the defendant engaged in the activity for profit; (4) whether the defendant demonstrated reluctance; and (5) the nature of the government's inducement." *Miller*, 121 Nev. at 97, 110 P.3d at 57. The most important of these five factors is "whether the defendant demonstrated reluctance which was overcome by the government's inducement." *Id.* (quoting *Foster v. State*, 116 Nev. 1088, 1093, 13 P.3d 61, 64 (2000)) (emphasis omitted).

Applying these factors to the present case, we conclude that only the first factor weighs in Branch's favor by uncontroverted evidence. Indeed, nothing in the record places Branch's character in question prior to his first contact with law enforcement. *See United States v. Poehlman*, 217 F.3d 692, 703 (9th Cir. 2000) ("[T]he relevant time frame for assessing a defendant's disposition comes before he has any contact with government agents[.]"). However, as to the second factor, we conclude that Branch first suggested bringing narcotics to the Peppermill when he offered to bring "party favors" in response to Birdie's invitation for him to merely gamble. And, under the third factor, we conclude that a reasonable factfinder could infer that Branch intended to profit from selling Birdie methamphetamine based on his message stating that it would cost her $70 for 3.5 grams; therefore, Branch has not disproved that he engaged in the crimes for profit by uncontroverted evidence.

Critically, Branch fails to discuss the fourth and most important factor—whether he ever expressed reluctance towards law enforcement's suggestion of criminal behavior. *See Greenlaw v. United States*, 554 U.S. 237, 243 (2008) (noting that courts follow the "principle of party presentation" on appeal, which requires the litigants to frame the issues). Additionally, there is no evidence in the record showing that Branch demonstrated any reluctance towards committing the criminal activity here. Indeed, the record shows that, during Branch's initial contact with Birdie, "which generally is the most crucial point for an analysis of entrapment," Branch stated that if he and Birdie had not smoked together before, they "damn well should." *See Adams v. State*, 81 Nev. 524, 526, 407 P.2d 169, 171 (1965). Further, the record shows that, following their initial conversation, Branch messaged Birdie five times between March 14, 2021, and March 18, to no response; Branch first offered to bring narcotics to the Peppermill in response to Birdie's innocuous invitation to gamble; and Branch first discussed the price point of the methamphetamine he was going to bring to the Peppermill. Thus, not only did Branch not demonstrate any reluctance to the charged criminal activity, but he also volunteered the criminal activity on several occasions.

Finally, Branch argues that law enforcement's tactics in this case were "egregious" enough to constitute entrapment as a matter of law under the fifth factor, "the nature of the government's inducement." *Miller*, 121 Nev. at 97, 110 P.3d at 57. However, the entrapment defense does not preclude law enforcement from engaging in "elaborate 'sting' operation[s] . . . [if] the defendant is simply provided with the opportunity to commit a crime," as was the case here. *Jacobson v. United States*, 503 U.S. 540, 549 (1992); *see also Froggatt v. State*, 86 Nev. 267, 270, 467 P.2d

1011, 1013 (1970) (explaining that the entrapment defense bars law enforcement from employing "extraordinary temptations or inducements"). Rather, the entrapment defense only bars law enforcement from "devot[ing] considerable time and effort to persuading the defendant" to commit the charged crimes. *See United States v. Skarie*, 971 F.2d 317, 321 (9th Cir. 1992). For example, in *Jacobson*, the Supreme Court of the United States held that a defendant was entrapped as a matter of law where the government launched a long-term campaign trying to convince the defendant to purchase illicit materials depicting minors engaged in sexual acts. 503 U.S. at 553-54. Specifically, across more than two years, the government sent the defendant several mailings from fake organizations, purportedly aimed at protecting individuals' free speech rights, offering the defendant the opportunity to purchase the illicit materials despite his continued resistance. *Id.* at 543-47. This contrasts from the present case, where law enforcement engaged in only a little conversation over a few weeks to invite Branch to the Peppermill to gamble, which he readily accepted as an opportunity to commit the crimes he was convicted of. As such, in considering all five factors as set forth above, we conclude that Branch has failed to show by uncontroverted evidence that he was not predisposed to commit the crimes in this case, and therefore the district court did not err in denying his motion to suppress based on entrapment.

The warrantless searches of the container on Branch's person and the lockbox in Branch's vehicle were both reasonable

Branch argues that the district court abused its discretion in denying his motion to suppress the evidence found in the locked containers on his person and in his vehicle. He suggests that the warrantless searches did not fall under exceptions to the general warrant requirement and, in turn, were unreasonable. The State responds that law enforcement had

probable cause to search both containers, and that both searches were reasonable because they were conducted pursuant to exceptions to the Fourth Amendment's warrant requirement.

Motions to suppress "present mixed questions of law and fact." *State v. Beckman*, 129 Nev. 481, 485, 305 P.3d 912, 916 (2013) (internal quotation marks omitted). We review "findings of fact for clear error, but the legal consequences of those facts involve questions of law that we review de novo." *Id.* If this court determines that a search was unreasonable, it will deem a district court's denial of a motion to suppress the evidence erroneous. *See Hannon v. State*, 125 Nev. 142, 148, 207 P.3d 344, 348 (2009), *modified* June 2, 2009.

The Fourth Amendment of the United States Constitution and its counterpart in the Nevada Constitution protect individuals from unreasonable searches and seizures. U.S. Const. amend. IV; Nev. Const. art. 1, § 18. A search is reasonable if conducted pursuant to a warrant supported by probable cause. U.S. Const. amend. IV. However, a search is per se unreasonable if done without a warrant unless the search falls under an exception to the warrant requirement. *State v. Lloyd*, 129 Nev. 739, 743, 312 P.3d 467, 469 (2013).

One exception to the Fourth Amendment's warrant requirement exists for searches incident to arrest. *United States v. Robinson*, 414 U.S. 218, 224 (1973). Under this exception, immediately following a lawful arrest, law enforcement may search the arrestee's person and any "personal property . . . immediately associated with the person of the arrestee." *United States v. Chadwick*, 433 U.S. 1, 15 (1977), *abrogated on other grounds by California v. Acevedo*, 500 U.S. 565, 579 (1991). Another exception to the Fourth Amendment's warrant requirement exists

for vehicles. *Carroll v. United States*, 267 U.S. 132, 153 (1925). Under the vehicle exception to the warrant requirement, law enforcement may search a vehicle and containers therein without a warrant if there is probable cause to believe that the vehicle or containers hold contraband. *Acevedo*, 500 U.S. at 579 (holding that the warrantless search of a bag in a defendant's closed trunk was reasonable because law enforcement had probable cause to believe the bag contained drugs).

In this case, law enforcement lawfully arrested Branch pursuant to a warrant and in turn was permitted to search any "personal property . . . immediately associated with" Branch's person, including the container in his front jacket pocket. *See Chadwick*, 433 U.S. at 15; *Robinson*, 414 U.S. at 236 (holding that the search of a closed cigarette carton found on a defendant's person during a search incident to arrest was reasonable under the Fourth Amendment). Additionally, the warrantless search of the lockbox found in Branch's vehicle was reasonable under the vehicle exception to the warrant requirement because law enforcement had probable cause to believe that the lockbox contained contraband. Specifically, in addition to the drug detection canine's alert, Detective Feathers testified that, based on his training and experience, he believed the lockbox contained controlled substances because it is common for individuals who sell drugs to keep them in a lockbox of that nature. *See Lloyd*, 129 Nev. at 751, 312 P.3d at 474 (holding that law enforcement had probable cause to search a vehicle based on a drug detection canine's alert); *Weber v. State*, 121 Nev. 554, 584, 119 P.3d 107, 127 (2005) (holding that a law enforcement officer's conclusions based on their "professional knowledge and experience" may contribute to a finding of probable cause)

rejected on other grounds by Farmer v. State, 133 Nev. 693, 698, 405 P.3d 114, 120 (2017). Thus, we conclude that both searches were reasonable.

While Branch argues on appeal that the locked nature of both containers render their respective searches unreasonable, we are unpersuaded because he points to no legal authority in this jurisdiction or others supporting that assertion. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). Rather, as several courts have recognized, the search incident to arrest and vehicle exceptions to the Fourth Amendment's warrant requirement exist regardless of the searched container's locked status. *See United States v. Ross*, 456 U.S. 798, 824 (1982) ("The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by [whether] there is probable cause to believe that [contraband] may be found [therein]."); *United States v. Tavolacci*, 895 F.2d 1423, 1429 (D.C. Cir. 1990) (holding that the search of a locked bag incident to the defendant's arrest was reasonable under the Fourth Amendment). Therefore, we conclude that the district court did not err in denying Branch's motion to suppress.

Sufficient evidence in the record supports Branch's convictions

Finally, Branch argues that insufficient evidence supports his convictions of possession of a controlled substance and possession of a controlled substance for the purpose of sale on two grounds. First, Branch argues that the evidence in the record shows that he went to the Peppermill to spend time with the fictitious Birdie, not to sell her drugs, and therefore there is insufficient evidence to prove that he possessed the drugs for the purpose of sale. Second, Branch argues that there was insufficient evidence

of chain of custody to prove that law enforcement found methamphetamine in its searches of Branch's person and vehicle.

In reviewing whether sufficient evidence supports a conviction, we must determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact 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 (1979)). We "will not reweigh the evidence or evaluate the credibility of witnesses because that is the responsibility of the trier of fact." *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

Under NRS 453.336(1), "a person shall not knowingly or intentionally possess a controlled substance." And under NRS 453.337(1), a person may not "possess for the purpose of sale . . . any controlled substance classified in schedule I[.]" Methamphetamine is a Schedule I controlled substance. NAC 453.510(7). Thus, to sustain Branch's conviction, there must be sufficient evidence for any reasonable trier of fact to find beyond a reasonable doubt that Branch possessed the methamphetamine for the purpose of selling it. *See McNair*, 108 Nev. at 56, 825 P.2d at 573.

In this case, the State presented testimony from law enforcement that the amount of methamphetamine found on Branch's person was inconsistent with personal use; testimony that officers retrieved methamphetamine, plastic bags, a scale, and a butane torch from Branch's vehicle; and Branch's Facebook messages to Birdie stating that it would cost her $70 for a "ball." We conclude that a reasonable juror could have found from this evidence that Branch possessed methamphetamine for the purpose of sale beyond a reasonable doubt. *See Keller v. State*, No. 73871,

2018 WL 5095919, at *3 (Nev. Oct. 15, 2018) (Order of Affirmance) (explaining that the presence of several plastic bags and an amount of drugs inconsistent with personal use were, taken together, indicative of drug trafficking); *United States v. Johnson*, 357 F.3d 980, 984 (9th Cir. 2004) (holding that a rational jury could infer a defendant's intent to distribute methamphetamine where law enforcement testified that the amount of drugs seized was inconsistent with personal use and law enforcement found small plastic bags and a scale in the defendant's home).

Insofar as Branch challenges the chain of custody of the methamphetamine found on his person and in his vehicle, we are likewise unpersuaded because the testimony and forensic report adduced at trial established a sufficient chain of custody to support Branch's convictions. Specifically, the State presented testimony from Detectives Tallman and Feathers stating that they gave the suspected methamphetamine from the searches of Branch's person and vehicle to Detective Williams. Detective Williams testified that he received the evidence from Detectives Tallman and Feathers and submitted it for testing under case number 22-3969. The State also introduced Taylor's forensic report detailing the results of his tests of the suspected methamphetamine, which likewise stated that the evidence was from case number 22-3969 and listed the subject as Ashley Branch. Taken together, a reasonable juror could have found that this evidence established a sufficient chain of custody to support Branch's convictions. *See Burns v. Sheriff*, 92 Nev. 533, 534-35, 554 P.2d 257, 258 (1976) (holding that a sufficient chain of custody was established where an officer and testing chemist both testified as to handling the same initialed envelope containing the evidence at issue). As such, we conclude that

sufficient evidence adduced at trial supports Branch's convictions. Accordingly, we

ORDER the judgment of conviction AFFIRMED.[7]


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Kathleen M. Drakulich, District Judge
Oldenburg Law Office
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

[7]Insofar as Branch raises other arguments that are not specifically addressed herein, we have considered the same and conclude that they do not present a basis for relief.