

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN L. SCOTT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43724

FILED

JAN 20 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant Steven Scott's motion for a new trial based on newly discovered evidence. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On June 4, 2002, the district court convicted Scott, pursuant to a jury verdict, of one count of possession of a stolen vehicle, two counts of possession of debit or credit card without cardholder's consent, and one count of failure to stop on signal of police officer. The district court further adjudicated Scott a habitual criminal. The district court sentenced Scott to serve three consecutive terms of life in the Nevada State Prison with the possibility of parole after ten years. On appeal, this court reversed Scott's conviction for failure to stop on signal of police officer, affirmed his remaining convictions, and denied a subsequent petition for rehearing.<sup>1</sup> The remittitur issued on June 29, 2004.

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<sup>1</sup>Scott v. State, Docket No. 39654 (Order Affirming in Part, Reversing in Part and Remanding, April 6, 2004); Scott v. State, Docket No. 39654 (Order Denying Rehearing, June 2, 2004).

On March 5, 2004, Scott, with the assistance of counsel, filed a motion for a new trial based on newly discovered evidence.<sup>2</sup> The State opposed the motion and Scott filed a reply. On July 15, 2004, the district court denied Scott's motion. This appeal followed.

In his motion, Scott contended that his current attorney recently contacted witness Michael McGee. Although McGee testified at Scott's preliminary hearing, he was not called by either party to testify at trial. Scott attached an affidavit from McGee in which McGee stated that Scott was not the driver of the stolen vehicle involved in the instant offenses. McGee further alleged that witnesses Jessie Hardwick and William Paynter misidentified Scott as the driver at trial because they disliked him. Scott argued that this newly discovered evidence merits a new trial.

In order to warrant a new trial, newly discovered evidence must meet the following requirements:

- (1) the evidence must be newly discovered;
- (2) it must be material to the defense;
- (3) it could not have been discovered and produced for trial even with the exercise of reasonable diligence;
- (4) it must not be cumulative;
- (5) it must indicate that a different result is probable on retrial;
- (6) it must not simply be an attempt to contradict or discredit

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<sup>2</sup>See NRS 176.515(3) (providing that a motion for a new trial based on newly discovered evidence must be made within two years of the guilty verdict). The jury found Scott guilty of the instant offenses on March 6, 2002.

a former witness; and (7) it must be the best evidence the case admits.<sup>3</sup>

The grant or denial of a new trial based on newly discovered evidence is within the discretion of the trial court and will not be reversed absent an abuse.<sup>4</sup>

We conclude that the district court did not abuse its discretion in denying Scott's motion for a new trial. Scott failed to establish that McGee's statement was newly discovered evidence and could not have been produced for trial. McGee was known as a potential witness to both parties before and during Scott's trial.<sup>5</sup> Scott did not demonstrate that McGee would not have provided this favorable testimony if he had been called to testify at Scott's trial.

Moreover, Scott failed to establish that a different result would be probable at a second trial. In addition to Hardwick and Paynter's identification of Scott as the driver of the stolen vehicle, a North Las Vegas Police Officer identified Scott as the driver. Further, Scott was arrested only blocks from where the stolen vehicle was abandoned and he was in possession of the victim's debit and credit cards. Therefore, Scott did not adequately establish a basis for a new trial.

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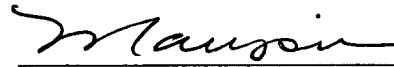
<sup>3</sup>Callier v. Warden, 111 Nev. 976, 988, 901 P.2d 619, 626 (1995).

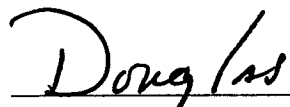
<sup>4</sup>Funches v. State, 113 Nev. 916, 923, 944 P.2d 775, 779 (1997).

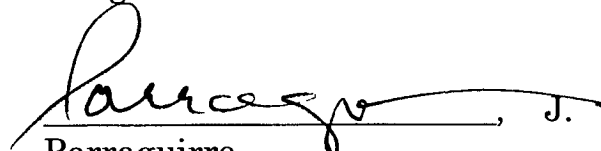
<sup>5</sup>See Burton v. State, 84 Nev. 191, 196, 437 P.2d 861, 864 (1968).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Scott is not entitled to relief and that briefing and oral argument are unwarranted.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. John S. McGroarty, District Judge  
Steven L. Scott  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>7</sup>We have reviewed all documents that Scott has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that Scott has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance