

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARIO MOLINA-ORDENANA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46932

FILED

AUG 14 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count of trafficking in a controlled substance. Third Judicial District Court, Lyon County; Robert E. Estes, Judge. The district court sentenced appellant Mario Molina-Ordenana to serve a prison term of 18 to 60 months.

Molina-Ordenana contends that the district court erred in denying his motion to dismiss, which was based on a Brady violation.¹ Specifically, Molina-Ordenana claims that the State failed to disclose a subpoena compliance letter which indicated that he was not the subscriber of the cellular phone number the State called to set up a controlled buy. We conclude that the district court did not err.

"Brady and its progeny require a prosecutor to disclose evidence favorable to the defense when that evidence is material either to guilt or to punishment."² A claim that the State committed a Brady violation must show that: (1) "the evidence at issue is favorable to the accused;" (2) the State failed to disclose the evidence, either intentionally

¹Brady v. Maryland, 373 U.S. 83 (1963).

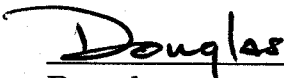
²Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000).


or inadvertently; and (3) "prejudice ensued, i.e., the evidence was material."³ Evidence which the defense did not specifically request "is material [only] if there is a reasonable probability that the result would have been different if the evidence had been disclosed."⁴

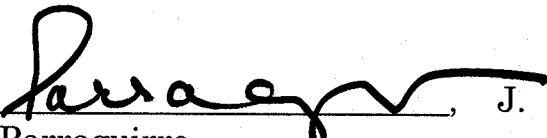
Here, the district court found that the subpoena compliance letter was exculpatory and it should have been disclosed to the defense. However, based on the evidence presented at trial and the fact that the cellular phone number was contained within other reports that the defense did receive, the district court determined that Molina-Ordenana had not been prejudiced. We agree.

Moreover, we conclude that Molina-Ordenana has not demonstrated a reasonable probability that the trial result would have been different if the subpoena compliance letter had been disclosed. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

³Id. at 67, 993 P.2d at 37.

⁴Id. at 66, 993 P.2d at 36.

cc: Hon. Robert E. Estes, District Judge
Law Office of Kenneth V. Ward
Attorney General George Chanos/Carson City
Lyon County District Attorney
Lyon County Clerk