IN THE SUPREME COURT OF THE STATE OF NEVADA

CEASAR SANCHEZ VALENCIA A/K/A CEASAR SANCHAZ VALENCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48640

FILED

SEP 07 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of unlawful possession of an electronic stun device, possession of burglary tools, possession of a stolen vehicle, and burglary. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge. The district court sentenced appellant Ceasar Sanchez Valencia to concurrent prison terms totaling 24 to 60 months.

Valencia first contends that the State failed to disclose exculpatory evidence pursuant to Brady v. Maryland.[1] Specifically, Valencia claims that the prosecutor did not disclose the arrest report of the passenger in Valencia's vehicle.

We conclude that the State's alleged failure to disclose information did not violate the mandate of Brady. Brady and its progeny require a prosecutor to disclose favorable exculpatory and impeachment evidence that is material to the defense.[2] A claim that the State

[1]373 U.S. 83 (1963).

[2]See Strickler v. Greene, 527 U.S. 263, 280 (1999); see also Kyles v. Whitley, 514 U.S. 419, 433-34 (1995).

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 or inadvertently; and (3) prejudice ensued, i.e., the evidence was material.[3] Determining whether the State adequately disclosed information under Brady involves both questions of fact and law, therefore, this court will conduct a de novo review.[4]

In this case, the record does not indicate that the arrest report was favorable or material. Rodriquez was arrested pursuant to unrelated outstanding warrants, and the arrest report did not contain any information relevant to Valencia's defense. Therefore, we conclude that the district court did not err in rejecting Valencia's Brady claim.

Valencia next contends that the prosecutor committed misconduct by implying that Valencia had a criminal history. At trial, the jury was informed, pursuant to a stipulation, that Valencia could not lawfully possess a stun gun. In examining the arresting officer, the prosecutor asked if he knew of any reason why the passenger in Valencia's vehicle or the victim could not possess a stun gun. Citing to Garner v. State,[5] Valencia argues that the district court erred in denying his motion to dismiss because the clear implication from the line of inquiry was that Valencia could not possess a stun due to his criminal history.

"The test for determining whether a statement is a reference to criminal history is whether the jury could reasonably infer from the

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[3]Strickler, 527 U.S. at 281-82.

[4]See State v. Bennett, 119 Nev. 589, 599, 81 P.3d 1, 7-8 (2003).

[5]78 Nev. 366, 374 P.2d 255 (1962).

facts presented that the accused had engaged in prior criminal activity."[6] Here, the prosecutor never mentioned Valencia during the allegedly impermissible inquiry and never referred to Valencia's criminal history during the trial. And even assuming the prosecutor's questions amounted to a reference to Valencia's criminal history, we conclude that any error was harmless beyond a reasonable doubt.[7] Any prejudicial effect of the impermissible inquiry was minimized by the fact that the prosecutor did not directly implicate Valencia and did not elicit specific information about Valencia's prior criminal offenses. Further, there was overwhelming evidence of guilt, including evidence that police apprehended Valencia in the stolen vehicle. In Valencia' pockets, police recovered a flashlight, black gloves and another person's credit card. In the stolen vehicle, police found generic keys that had been filed down and a stun gun. Accordingly, the district court did not err in denying Valencia's motion to dismiss.

Last, Valencia contends that his trial counsel was ineffective. We decline to consider Valencia's contention. This court has repeatedly stated that claims of ineffective assistance of counsel will not generally be considered on direct appeal; such claims must be presented to the district court in the first instance in a post-conviction proceeding where factual uncertainties can be resolved in an evidentiary hearing.[8] Accordingly, we conclude that Valencia must raise his claim of ineffective assistance of

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[6]Rice v. State, 108 Nev. 43, 44, 824 P.2d 281, 281 (1992).

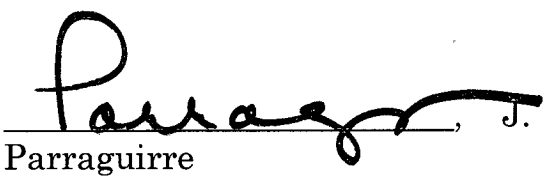
[7]See Chapman v. California, 386 U.S. 18 (1967).

[8]See Johnson v. State, 117 Nev. 153, 160-61, 17 P.3d 1008, 1013 (2001).

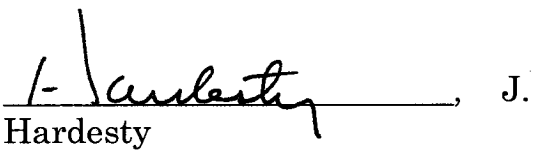
counsel in the district court in the first instance by initiating a post-conviction proceeding.

Having considered Valencia's contentions and concluded that they lack merit or are not properly raised on direct appeal, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Parraguirre



_____, J.
Hardesty

_____, J.
Saitta

cc: Eighth Judicial District Court Dept. 6, District Judge
Goodman Brown & Premsrirut
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk