

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAMARR ROWELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51577

**FILED**

JAN 29 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary and possession of a credit or debit card without the cardholder's consent. Eighth Judicial District Court, Clark County; James M. Bixler, Judge. The district court adjudicated appellant Lamarr Rowell a habitual criminal and sentenced him to two concurrent prison terms of ten years to life.

On appeal, Rowell challenges his conviction on several grounds, two of which warrant discussion.<sup>1</sup> First, Rowell's challenge that an alleged Brady v. Maryland violation, see 373 U.S. 83 (1963), requires reversal fails because he has not shown that the State withheld material evidence. Second, Rowell's challenge that prosecutorial misconduct requires reversal fails because the misconduct did not affect his

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<sup>1</sup>Rowell also contends that: (1) the district court violated his right to a fair and impartial jury, (2) his convictions are not supported by sufficient evidence, (3) the district court allowed the State to introduce impermissible "bad act" evidence, (4) the burglary and possession of a credit card statutes are unconstitutionally vague, (5) instructional error requires reversal, (6) the district court erred in denying his motion for a new trial and motion to set aside the jury verdict, (7) he was denied his right to effective assistance of counsel, and (8) he was denied due process in being sentenced as a habitual criminal. Having thoroughly reviewed Rowell's contentions, we conclude that they are without merit.

substantial rights. Accordingly, we affirm the district court's judgment of conviction.

Alleged Brady violations

Rowell argues that the State withheld evidence suggesting that another person used the stolen credit card, and that this evidence is material because it shows that another person committed the crimes for which he was convicted.<sup>2</sup> We disagree.

Because this issue involves "both questions of fact and law, we have conducted a de novo review." State v. Bennett, 119 Nev. 589, 599, 81 P.3d 1, 7-8 (2003).

To establish a Brady violation, Rowell must show that the allegedly withheld evidence was material.<sup>3</sup> Id. Whether evidence is material depends partly upon whether the defendant made a specific request for the withheld information. Id. at 600, 81 P.3d at 8. Because Rowell did not specifically request discovery of the evidence at issue, it can only be considered material if there is a "reasonable probability" that its disclosure would have affected the outcome. Id.

Here, while the record supports Rowell's factual premise that another person used the credit card, it does not support his legal conclusion that the evidence is material for three reasons: (1) use of the card by another person does not mean that Rowell did not also use the

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<sup>2</sup>Rowell's contention that the State violated Brady by withholding video evidence is without merit because he was provided with this evidence during discovery. See 373 U.S. at 87.

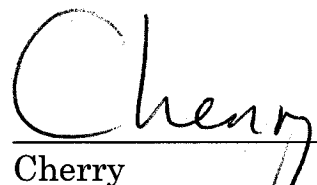
<sup>3</sup>Because we conclude that Rowell has failed to show that the evidence is material, we do not address whether the evidence was favorable to the defense or whether the prosecution intentionally or inadvertently withheld the evidence.


card, (2) the evidence against Rowell was substantial, and (3) Rowell presented his theory that another person used the card to the jury—an argument that the State did not attempt to refute. Accordingly, “we can be confident that the jury’s verdict would have been the same” had the evidence been timely disclosed, and thus Rowell’s argument fails. Kyles v. Whitley, 514 U.S. 419, 453 (1995); see also Bennett, 119 Nev. at 599, 81 P.3d at 8.

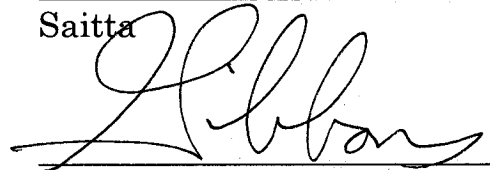
Prosecutorial misconduct

Although he did not object to the alleged instances at trial, Rowell now argues that the prosecutor committed misconduct by vouching for the credibility of several witnesses. While we agree that the prosecutor’s comments amount to impermissible vouching, we are unable to conclude that these comments affected Rowell’s substantial rights and thus amounted to plain error. See Anderson v. State, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005) (unobjected-to attorney misconduct is reviewed for plain error—the error must be clear from the record and adversely affect a party’s substantial rights.). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. James M. Bixler, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk