

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUSSELL RADER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 34746

FILED

NOV 21 2000

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of battery with the use of a deadly weapon. The district court sentenced appellant to a prison term of 12 to 48 months. The district court suspended the sentence and placed appellant on probation for a period not to exceed four years.

Prior to sentencing, appellant filed a motion for a new trial based on ineffective assistance of counsel. Specifically, appellant argued that his trial counsel was ineffective for failing to present evidence to corroborate appellant's assertion that he was acting in self-defense. Appellant contends that the district court erred by denying appellant's motion for a new trial.

To state a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that, but for counsel's errors, there is a reasonable probability that the outcome of the proceedings would have been different. See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984). The court need not consider both prongs of the

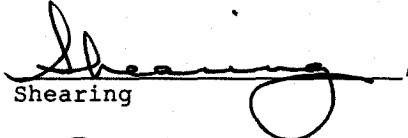
Strickland test if the defendant makes an insufficient showing on either prong. See Strickland, 466 U.S. at 697.

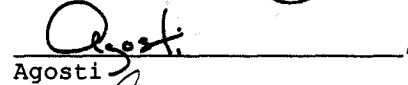
In light of the evidence against appellant, we conclude that there is not a reasonable probability that the jury would have acquitted appellant even if trial counsel had presented evidence of appellant's injuries. Accordingly, we conclude that the district court did not err by denying appellant's motion for a new trial.


Appellant also argues that his counsel was ineffective because he failed to proffer jury instructions on self-defense. This issue was not raised below. We therefore decline to consider it. See Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991).

Having considered appellant's contention and concluded that it is without merit, the judgment of conviction is affirmed.

It is so ORDERED.


Shearing, J.


Agosti, J.


Leavitt, J.

cc: Hon. Ronald D. Parraguirre, District Judge
Attorney General
Clark County District Attorney
Patti & Sgro
Clark County Clerk