

IN THE SUPREME COURT OF THE STATE OF NEVADA

CONRADO SESMA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52914

**FILED**

JAN 07 2010

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion for a new trial. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Sesma contends that the district court erred in not granting his motion for a new trial or, in the alternative, an evidentiary hearing on his claim that a witness testified falsely at trial that the victim was unarmed. We review the district court's decision for an abuse of discretion, Domingues v. State, 112 Nev. 683, 695, 917 P.2d 1364, 1373 (1996), and we conclude that the district court properly denied the motion.

First, the district court should have dismissed the motion as untimely filed because Sesma filed his motion almost four years after the verdict. NRS 176.515(3) (motion for new trial based on newly discovered evidence must be made "within two years after the verdict or finding of guilt"); Snow v. State, 105 Nev. 521, 524, 779 P.2d 96, 98 (1989).


Second, as a separate and independent ground to deny relief, Sesma's claim lacks merit. The district court found that Sesma failed to demonstrate that the witness's trial testimony was false. The witness's trial testimony that the victim was unarmed when Sesma shot him was


consistent with the testimony of the victim, three eyewitnesses, and two investigating officers. Accordingly, even if the witness had testified consistent with his affidavit, there was no reasonable probability of a different outcome at trial. See Callier v. Warden, 111 Nev. 976, 990, 901 P.2d 619, 627-28 (1995) (a district court should only grant a new trial based on newly discovered evidence in cases involving possible perjury at trial if, among other things, it is “satisfied that the trial testimony of material witnesses was false” and “it is probable that had the false testimony not been admitted, a different result would have occurred at trial”).

We conclude that the district court did not abuse its discretion by denying Sesma’s motion for a new trial or an evidentiary hearing. Therefore, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

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

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. David B. Barker, District Judge  
Law Offices of Cynthia Dustin, LLC  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk