

IN THE SUPREME COURT OF THE STATE OF NEVADA

DRESDEN MICHAEL WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54676

FILED

NOV 15 2010

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit murder and seven counts of attempted murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant Dresden Williams contends that the district court erred by denying (1) his pretrial petition for writ of habeas corpus because the State failed to present exculpatory evidence to the grand jury and (2) his motion to dismiss the indictment for alleged Brady violations. For the following reasons, we conclude that Williams' contentions fail and therefore affirm the district court's judgment of conviction.

The district court did not err in denying Williams' pretrial petition for writ of habeas corpus

Williams argues that the district court erred by denying his pretrial petition for writ of habeas corpus because the State failed to present exculpatory evidence to the grand jury. He alleges that he was stopped by Las Vegas police officers shortly after the shooting and none of the witnesses who accompanied the officers could identify him as one of the shooters. He contends that this evidence was exculpatory and should have been presented to the grand jury. The State disputed the occurrence of the alleged impromptu identification.

This court reviews the denial of a pretrial petition for writ of habeas corpus for an abuse of discretion. See, e.g., Ostman v. District Court, 107 Nev. 563, 564, 816 P.2d 458, 459 (1991).

NRS 172.145(2) provides that “[i]f the district attorney is aware of any evidence which will explain away the charge, [he] shall submit it to the grand jury.” See also Ostman, 107 at 564, 816 P.2d at 459 (“[A] district attorney violates NRS 172.145(2) if he fails to present . . . evidence which has a tendency to explain away the charge.”). “The determination of whether particular evidence is exculpatory is generally left to the discretion of the district court.” Id.

Upon being presented with Williams’ petition, the district court concluded that even if the facts were true, the evidence would not explain away the charges against Williams and denied the petition accordingly.

Given the limited record before us, we cannot conclude that the district court erred by denying Williams’ petition for writ of habeas corpus in this respect. We are unable to discern whether the allegedly exculpatory event occurred and, even if it did, we cannot conclude that the evidence would have explained away the charges against Williams.

Furthermore, even assuming that the evidence was exculpatory and that the State violated NRS 172.145(2), any error would be harmless beyond a reasonable doubt because a jury convicted Williams on all counts alleged in the indictment. See Echavarria v. State, 108 Nev. 734, 745, 839 P.2d 589, 596 (1992) (“Any irregularities which may have occurred in the . . . grand jury proceeding were cured when [the defendant]

was tried and his guilt determined under the higher criminal burden of proof.”). Accordingly, we conclude that this argument is without merit.¹

There was no Brady violation

Williams alleges that the district court erred by denying his motion to dismiss the indictment because the State committed a violation pursuant to Brady v. Maryland, 373 U.S. 83 (1963), by failing to timely disclose exculpatory evidence. We disagree.

There are three components to a Brady violation: (1) the evidence must be favorable to the accused, (2) the evidence must have been withheld by the State (either intentionally or unintentionally), and (3) prejudice must have ensued. See Mazzan v. Warden, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000).


¹Williams also alleges for the first time on appeal that the district court erred by denying his pretrial petition for writ of habeas corpus on the grounds that he was not provided with sufficient notice of the grand jury proceeding under NRS 172.241(2). He asserts that the State failed to provide him with notice of the second grand jury proceeding where the grand jury added an additional defendant and theft charges to the indictment. We decline to review this argument in this instance for two reasons.

First, because this issue was not raised below, there is no record before us to adequately review whether or not Williams received notice of the second grand jury proceeding. See, e.g., Mulder v. State, 116 Nev. 1, 8, 992 P.2d 845, 850 (2000). Second, both parties concede that the two theft charges, which were the only substantive changes to the indictment as it pertained to Williams, were severed from the charges that are the subject of this appeal and are set for trial at a later date. Because the two theft charges were the only substantive changes to the indictment, Williams’ argument that he was not provided with adequate notice of the grand jury proceedings should be raised in the context of the separate theft case.

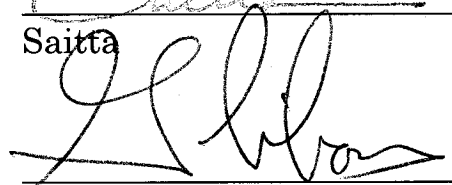
Prior to trial, the State provided Williams with potentially exculpatory evidence that some eyewitnesses provided descriptions that did not resemble Williams. Recognizing the State's late disclosure, the district court granted Williams a one-month continuance to review the evidence.

Because the State disclosed the potentially exculpatory evidence prior to trial, it cannot be said that any evidence was withheld. Furthermore, any possible prejudice that would have resulted from the late disclosure of the evidence was cured by the district court's decision to grant Williams a one-month continuance to review the newly disclosed evidence and prepare his defense. As a result, we conclude that no Brady violation occurred.² Accordingly, we,

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

²We similarly reject Williams' argument that the district court erred by denying his motion to dismiss the indictment because the State failed to present the potentially exculpatory evidence to the grand jury pursuant to NRS 172.145.

cc: Hon. Michael Villani, District Judge
Eichhorn & Hoo LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk