IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANKLIN JACKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54735

FILED
NOV 15 2010
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ORDER OF AFFIRMANCE

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 Franklin Jackson contends that (1) the State committed a violation under Brady v. Maryland, 373 U.S. 83 (1963), for failing to disclose evidence of a note that implicated him in the shooting; and (2) he was deprived of his right to a fair trial because State witnesses made multiple references to gangs.[1] For the following reasons, we conclude that Jackson's contentions fail and therefore affirm the judgment of conviction.

The State did not commit a Brady violation

Jackson contends that the State committed a Brady violation by withholding evidence that an anonymous informant wrote a note that implicated him in the shooting. We disagree.

[1]Jackson also contends that the district court erred by failing to sever his trial from that of his codefendant, thereby depriving him of the ability to adequately develop his self-defense theory. Because Jackson failed to file a motion to sever from codefendant Williams in the district court or to raise this issue in any other manner below, we decline to address this issue on appeal, as it does not rise to the level of plain error. See, e.g., Jezdik v. State, 121 Nev. 129, 140, 110 P.3d 1058, 1065 (2005).

A Brady issue arises only if the evidence is withheld, is exculpatory, and prejudice ensued. See Mazzan v. Warden, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000).

Here, the parties dispute that the informant's note was withheld. While Jackson alleges that he never knew of the note until after the publication of an article about the case in Las Vegas Sun newspaper, the State contends that the note was contained in its trial notebook, which was purportedly reviewed on several occasions by Jackson's defense counsel.

Even assuming that the evidence was withheld by the State, we cannot discern how a note implicating Jackson in the shooting could be exculpatory. While Jackson argues that the note could have stated that he fired the shots because he feared for his life, he has failed to demonstrate that this is anything more than a hoped-for conclusion. See Leonard v. State, 117 Nev. 53, 68, 17 P.3d 397, 407 (2001) ("The defendant must show that it could be reasonably anticipated that the evidence sought would be exculpatory and material to the defense. It is not sufficient to show merely a hoped-for conclusion . . . ." (internal quotations omitted)).

Based upon the record before us, we cannot conclude that Jackson suffered any prejudice from not being able to use the note at trial. Accordingly, we reject Jackson's argument that the State committed a Brady violation.[2]

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[2]We similarly reject Jackson's argument that the note was newly discovered evidence and that the district court erred by denying his motion for a new trial. See Sanborn v. State, 107 Nev. 399, 406, 812 P.2d 1279, 1284 (1991) ("The grant or denial of a new trial on [the ground of newly discovered evidence] is within the trial court's discretion and will not be reversed on appeal absent its abuse.").

Jackson was not deprived of his right to a fair trial

Jackson contends that he was deprived of his right to a fair trial because multiple State witnesses referred to gangs during the course of their testimony. We review a district court's decision to deny a mistrial motion for an abuse of discretion. Owens v. State, 96 Nev. 880, 883, 620 P.2d 1236, 1238 (1980). The three gang references to which Jackson objected during the eight-day trial were all inadvertent, brief, and pertained to the police unit investigating the shooting rather than to Jackson himself. As such, we cannot conclude that the district court abused its discretion in denying Jackson's motion for a mistrial.[3] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

cc: Hon. Michael Villani, District Judge
Law Office of Betsy Allen
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[3]Nor do we believe that the district court committed plain error by failing to strike, sua sponte, references to Jackson's codefendant by his nickname, "Doo Bear," as this nickname does not necessarily suggest gang affiliation. We further note that Jackson did not seek to sever from his codefendant,