


IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WILBERT RICHARDSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56450

FILED

MAR 18 2011

TRACIE K. LINDEMAN
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ORDER OF AFFIRMANCE

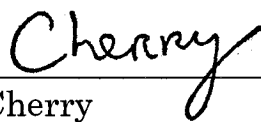
This is an appeal from a judgment of conviction, pursuant to a jury verdict, of home invasion. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.


First, appellant James Wilbert Richardson contends that police officers' failure to gather exculpatory surveillance video of the crime entitled him to the dismissal of the charges and/or a jury instruction that the video would have been unfavorable to the State. Such remedies may be warranted where police have failed to gather constitutionally material evidence. Daniels v. State, 114 Nev. 261, 267-68, 956 P.2d 111, 115 (1998); Steese v. State, 114 Nev. 479, 491-92, 960 P.2d 321, 329 (1998). However, we conclude that Richardson has failed to demonstrate that any video was constitutionally material because there is not a reasonable probability that the result of the proceeding would have been different if any video was available to the defense. See Steese, 114 Nev. at 491-92, 960 P.2d at 329 (concluding that evidence was not material where its exculpatory value was merely speculative and not supported by the record); accord Randolph v. State, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001); Daniels, 114 Nev. at 267-68, 956 P.2d at 115-16. Therefore, the


district court did not err by denying Richardson's motion to dismiss or by declining to give his proposed jury instruction.

Second, Richardson contends that the prosecutor committed misconduct during rebuttal closing argument by "arguing that the system was somehow not treating the victim fairly and implying that it was the duty of the jury to make up for that shortcoming." Even assuming that any of the prosecutor's comments were improper, see, e.g., Rose v. State, 123 Nev. 194, 210, 163 P.3d 408, 419 (2007) (asking jurors to be fair to the victim constitutes misconduct), we conclude that the error was harmless, see Valdez v. State, 124 Nev. 1172, 1188-89, 196 P.3d 465, 476 (2008), because Richardson's conviction is supported by overwhelming evidence of guilt. The victim testified that Richardson, with whom she was acquainted, kicked in her door, entered her apartment, and rummaged around in her belongings. Richardson admitted to the arresting officer that he kicked in the victim's door and entered her apartment. A responding officer testified that Richardson's shoe matched the shoe print on the victim's door, and the footwear impression examiner testified that Richardson's shoe and the print on the door were of a similar pattern, shape, and size. In addition, the jury listened to the victim's 9-1-1 call, which was recorded while Richardson kicked in the door and entered the apartment, and viewed Richardson's shoes and the shoeprints on the door. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Douglas W. Herndon, District Judge
Bush & Levy, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk