

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD MARK FELIX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57505

FILED

JAN 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of two counts of carrying a concealed firearm and one count of battery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

First, appellant Edward Mark Felix contends that the district court abused its discretion by denying his motions for a mistrial and a new trial based on the State's improper cross-examination of defense witnesses. The district court found that Felix was not prejudiced by the State's cross-examination and denied his motion for mistrial. Felix has not provided transcripts of the cross-examination for our review, see Thomas v. State, 120 Nev. 37, 43 & n.4, 83 P.3d 818, 822 & n.4 (2004) ("Appellant has the ultimate responsibility to provide this court with portions of the record essential to determination of issues raised in appellant's appeal." (quoting NRAP 30(b)(3))); Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."), and we conclude he has failed to demonstrate that the district court abused its discretion by denying his motion for mistrial, see Ledbetter v. State, 122 Nev. 252, 264, 129 P.3d 671, 680 (2006). Similarly, Felix has not demonstrated that the district

court abused its discretion with regard to his motion for a new trial because the record reveals that he withdrew the untimely motion before it was ruled upon.

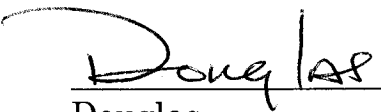
Second, Felix contends that there was insufficient evidence to support his conviction for battery with the use of a deadly weapon because the State failed to prove beyond a reasonable doubt that he was not acting in self-defense. We are unable to conduct a meaningful review of this contention because Felix has not provided transcripts of the evidence that was presented to the jury, see Thomas, 120 Nev. at 43 & n.4, 83 P.3d at 822 & n.4; Greene, 96 Nev. at 558, 612 P.2d at 688, and we conclude that he has failed to demonstrate that, when viewed in the light most favorable to the State, the evidence was insufficient to establish his guilt beyond a reasonable doubt as determined by a rational juror, see Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

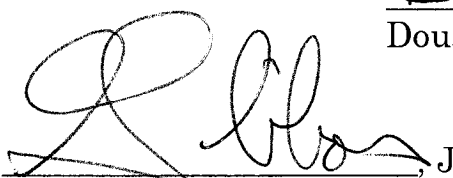
Third, Felix contends that the district court erred by denying his post-trial motion to set aside the two concealed weapon counts for failure to state an offense without conducting an evidentiary hearing. In a motion filed pursuant to NRS 174.105(3), Felix argued that NRS 202.350(1)(d)(3) was unconstitutional as applied to him because he was carrying concealed weapons inside his privately-owned store, the information was insufficient because it failed to allege that he carried the concealed weapons outside of the store, and an evidentiary hearing was necessary to determine whether he voluntarily exited the store. The district court determined that an evidentiary hearing was unnecessary because the facts and circumstances of the case were developed during the trial. The district court heard arguments from counsel and found that the jury heard evidence that Felix voluntarily walked outside of his store to meet the police officers, Felix did not have a permit to carry the concealed

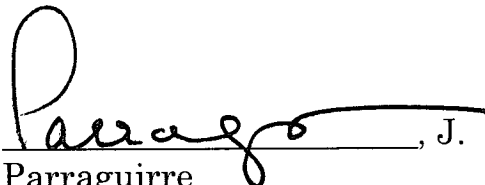
weapons, and the differing witness accounts were evaluated by the jury before it reached its verdict. The district court concluded that a decision on the constitutional issue presented in Felix's motion was not necessary for the disposition of his case and denied the motion. Based on the limited record provided for our review, we conclude that Felix has not demonstrated that (1) the district court erred by denying his motion to set aside the guilty verdicts for the concealed weapons counts, see State Ex Rel. Adams v. Allen, 55 Nev. 346, 349-50, 34 P.2d 1074, 1075 (1934) (constitutional questions will not be decided unless their determination is necessary for the disposition of the case), (2) the information was insufficient because it was missing essential facts constituting the alleged offenses of carrying a concealed weapon, see NRS 173.075(1); NRS 202.350(1)(d)(3); Siriani v. Sheriff, 93 Nev. 559, 560-61, 571 P.2d 111, 111 (1977), or (3) the district court abused its discretion by rejecting his request for an evidentiary hearing, see U.S. v. Schafer, 625 F.3d 629, 635 (9th Cir. 2010) (reviewing the denial of an evidentiary hearing for abuse of discretion), cert. denied, ___ U.S. ___, 131 S. Ct. 2919 (2011),

Having considered Felix's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Jennifer P. Togliatti, District Judge
Herbert Sachs
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk