

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD ROSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58563

FILED

APR 11 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *Angela*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Ronald Ross's motion to dismiss or, in the alternative, motion for a new trial based on newly discovered evidence.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Ross argues that the district court erred by denying his motion for a new trial on the basis that he had newly discovered evidence that charges against him in another case were dropped because a police officer with Las Vegas's Tourist Safety Unit incorrectly identified him on a surveillance videotape. He claims that the prosecution failed to disclose the prior misidentification to him, in violation of Brady v. Maryland, 373 U.S. 83, 87 (1963), and he was unable to discover the evidence until after

¹To the extent that Ross seeks to appeal from the denial of his motion to dismiss, which was filed after his convictions were affirmed on direct appeal, we lack jurisdiction to review it. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists. Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). Although NRS 177.015(1)(b) provides for an appeal from an order of the district court granting a motion to dismiss, there is no such provision for an appeal from an order denying a motion to dismiss.

trial. He further asserts that the misidentification was material to his case because it could have been used to show bias on the part of the entire Tourist Safety Unit, which was involved in the investigation and prosecution of the instant case. We conclude that the district court did not abuse its discretion in denying his motion for a new trial. See Mortensen v. State, 115 Nev. 273, 286-87, 986 P.2d 1105, 1114 (1999).

Ross was present during his previous trial when the prosecutor informed the district court that Ross was incorrectly identified on a surveillance videotape and the State would not pursue charges arising from that incident. Therefore, Ross failed to establish that the evidence was “newly discovered” and could not have been produced in his instant trial with reasonable diligence. See Sanborn v. State, 107 Nev. 399, 406, 812 P.2d 1279, 1284-85 (1991) (outlining the factors required to prevail on a motion for new trial based on newly discovered evidence). Moreover, Ross did not establish that the evidence of a prior misidentification was material or that a different result would be probable at a second trial. In the instant case, surveillance videos of two separate thefts were admitted into evidence and shown to the jury, two police officers identified Ross as the individual in the videos, the victim of one of the thefts identified Ross as the person who stole her wallet, and eyewitnesses to the other theft provided descriptions that matched Ross’s appearance and clothing when he was arrested several hours after the theft. Thus, evidence of a misidentification in another case by a police officer who did not testify or identify Ross in the instant case would not have been material to the defense or likely to change the outcome at a retrial. Accordingly, we conclude that the district court did not abuse its

discretion in denying Ross's motion. See Mortensen, 115 Nev. at 286-87, 986 P.2d at 1114.

Having reviewed Ross's contentions and concluded that no relief is warranted, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Douglas W. Herndon, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk