

IN THE SUPREME COURT OF THE STATE OF NEVADA

GUSTAVO CONTRERAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58644

FILED

SEP 12 2012

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER OF AFFIRMANCE

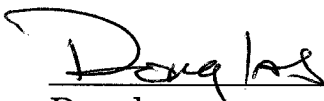
This is an appeal from a judgment of conviction entered pursuant to a jury verdict of battery by a prisoner without the use of a deadly weapon.¹ Eighth Judicial District Court, Clark County; Susan Johnson, Judge.


Appellant Gustavo Contreras contends that his conviction must be reversed because the State failed to preserve a video recording that was “most likely” exculpatory and material to his defense. “The State’s loss or destruction of evidence constitutes a due process violation only if the defendant shows either that the State acted in bad faith or that

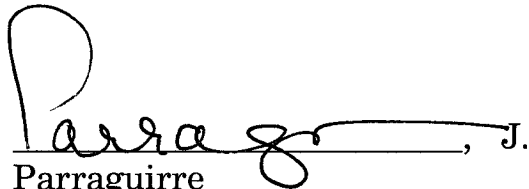
¹The judgment of conviction erroneously states that the jury found Contreras guilty of battery by a prisoner with a deadly weapon in violation of NRS 200.481(2)(g)(1). Following this court’s issuance of its remittitur, the district court shall enter a corrected judgment of conviction that does not contain the “with deadly weapon” language and cites to the proper subsection. See NRS 176.565 (providing that clerical errors in judgments may be corrected at any time); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (explaining that the district court does not regain jurisdiction following an appeal until the supreme court issues its remittitur).

the defendant suffered undue prejudice and the exculpatory value of the evidence was apparent before it was lost or destroyed.” Leonard v. State, 117 Nev. 53, 68, 17 P.3d 397, 407 (2001). During the trial, Corrections Sergeant Patrick Wahlquist testified that he reviewed the video recording from the security camera in the module where the incident occurred. Although the recording depicted Contreras walking in a certain direction, it did not depict the incident. Wahlquist determined that the recording was not relevant to the case and did not make a copy of it. Nothing in the record contradicts this testimony. We conclude that Contreras has not shown that the State acted in bad faith or that the video had exculpatory value and, therefore, Contreras has not demonstrated a due process violation. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Susan Johnson, District Judge
Carl E. G. Arnold
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk