

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59255

FILED

SEP 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE


This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery with a deadly weapon.¹ Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Appellant Daniel Rodriguez contends that the district court erred by denying his motion to suppress an eyewitness' pretrial identification of him as the perpetrator because the circumstances surrounding the show-up were unduly suggestive and violated his right to due process. The district court denied Rodriguez's motion "given the totality of the circumstances." See Bolin v. State, 114 Nev. 503, 522, 960 P.2d 784, 796 (1998) (the standard is whether, upon review "of the totality of the circumstances, the identification was so unnecessarily suggestive and conducive to irreparable mistaken identification that the defendant was denied due process of law" (citing Stovall v. Denno, 388 U.S. 293, 302


¹Although the judgment of conviction states that Rodriguez was convicted of battery with a deadly weapon, the verdict form signed by the foreperson and filed in the district court indicates that the jury found him guilty of battery with a deadly weapon causing substantial bodily harm. See NRS 200.481(2)(e)(2).

(1967)), overruled on other grounds by Richmond v. State, 118 Nev. 924, 934, 59 P.3d 1249, 1256 (2002). We conclude that even if the show-up was suggestive, the eyewitness' identification was reliable and Rodriguez's due process rights were not violated. See Bias v. State, 105 Nev. 869, 871-72, 784 P.2d 963, 964-65 (1989); Canada v. State, 104 Nev. 288, 294, 756 P.2d 552, 555 (1988). Therefore, the district court did not err by denying Rodriguez's motion to suppress. See Lamb v. State, 127 Nev. ___, ___, 251 P.3d 700, 703 (2011) ("[W]e review the district court's legal conclusions de novo and its factual findings for clear error."). Accordingly, we

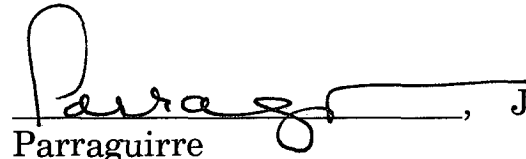
ORDER the judgment of conviction AFFIRMED.

 _____, J.

Douglas

 _____, J.

Gibbons

 _____, J.

Parraguirre

cc: Hon. David A. Hardy, District Judge
Ian E. Silverberg
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk