

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOYLE CHASE BARNETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59995

FILED

DEC 13 2012

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

ORDER OF AFFIRMANCE

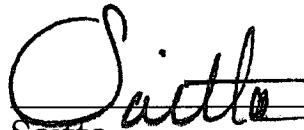
This is an appeal from a district court order denying appellant Doyle Chase Barnett's motion for a new trial. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

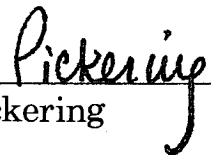
Barnett contends that the district court erred by denying his motion for a new trial based on newly discovered evidence. See NRS 176.515(1). Barnett was convicted of burglarizing a Raley's store in December 2008 and now argues that evidence discovered in May 2011, specifically, a photograph of a sign posted outside a different Raley's stating that entry with backpacks is prohibited, supports his theory of defense. Barnett claims that this newly discovered evidence proves his "non-felonious intent when he entered the store without his backpack that happened to contain his wallet." We disagree.

The district court has broad discretion in ruling on a timely motion for a new trial. See Servin v. State, 117 Nev. 775, 792, 32 P.3d 1277, 1289 (2001). Here, the district court found, among other things, that the alleged newly discovered evidence was irrelevant, immaterial, and "fails to indicate a different result is probable on retrial." The district court also found that "to the extent Barnett relied on the 'no-backpack' policy as a defense at trial, it stands to reason that photos or documentary

evidence of such a policy at any Raley's store easily could have been attained and produced at trial." We agree and conclude that the district court did not abuse its discretion by denying Barnett's motion for a new trial. See Mortensen v. State, 115 Nev. 273, 286, 986 P.2d 1105, 1114 (1999) (listing factors to consider in ruling on motion for a new trial based on newly discovered evidence (quoting Sanborn v. State, 107 Nev. 399, 406, 812 P.2d 1279, 1284-85 (1991))). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Saitta _____, J.


Pickering _____, J.


Hardesty _____, J.

cc: Hon. Patrick Flanagan, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk