

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON THORPE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60330

FILED

JAN 16 2013

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of conspiracy to commit robbery, burglary while in possession of a deadly weapon, five counts of robbery with the use of a deadly weapon, and battery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

First, appellant Jason Thorpe contends that the district court erred by allowing his coconspirator to testify about her text message communications with him at the time of the robbery because the testimony violated the best evidence rule. Because Thorpe failed to object to this testimony on this ground below, we review for plain error. See NRS 178.602; Pantano v. State, 122 Nev. 782, 795 & n.28, 138 P.3d 477, 485 & n.28 (2006). We conclude that Thorpe failed to demonstrate that the original text messages were required and therefore has not shown plain error. See NRS 52.235; NRS 52.255.


Second, Thorpe contends that the State violated Brady v. Maryland, 373 U.S. 83 (1963), by failing to disclose evidence that his coconspirator received leniency in exchange for her testimony. Pursuant to Brady, the State must disclose evidence that is favorable to the defense when that evidence is material either to guilt or punishment. Mazzan v.

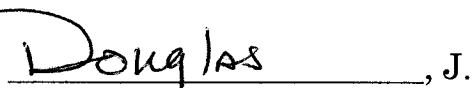
Warden, 116 Nev. 48, 66-67, 993 P.2d 25, 36-37 (2000). “[T]here are three components to a Brady violation: the evidence at issue is favorable to the accused; the evidence was withheld by the state, either intentionally or inadvertently; and prejudice ensued, i.e., the evidence was material.” Id. at 67, 993 P.2d at 37. Here the record contains no evidence beyond Thorpe’s own assertions that the coconspirator received leniency in exchange for her testimony or that the State withheld any such evidence. Accordingly, we conclude that no Brady violation occurred.

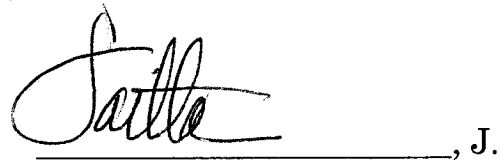
Third, Thorpe contends that the prosecutor committed misconduct during closing argument by stating that Thorpe has known that he was guilty since January 4, 2011, and now the jury knows it too. Thorpe did not object to this alleged instance of prosecutorial misconduct, and we conclude that he has not demonstrated plain error. See Valdez v. State, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (reviewing unpreserved claims for plain error); Jain v. McFarland, 109 Nev. 465, 476, 851 P.2d 450, 457 (1993) (“During closing argument, trial counsel enjoys wide latitude in arguing facts and drawing inferences from the evidence.”).

Having considered Thorpe’s contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Abbi Silver, District Judge
David R. Fischer
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk