

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER KEITH LASH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 61401

FILED

JUN 13 2013

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery resulting in substantial bodily harm. First Judicial District Court, Carson City; James Todd Russell, Judge.

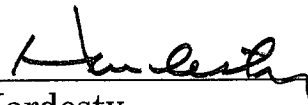
Appellant Christopher Keith Lash contends that the district court erred by giving the jury a flight instruction because the evidence showed only that he left the scene and went home. Even assuming that the district court abused its discretion by giving this instruction, *see Ouanbengboune v. State*, 125 Nev. 763, 774, 220 P.3d 1122, 1129 (2009) (reviewing the district court's decision regarding the issuance of a jury instruction for an abuse of discretion); *e.g.*, *Weber v. State*, 121 Nev. 554, 581-82, 119 P.3d 107, 126 (2005) (describing when a flight instruction is appropriate), we conclude that the error did not have a "substantial and injurious" influence or effect on the jury's verdict, *Tavares v. State*, 117 Nev. 725, 732, 30 P.3d 1128, 1132 (2001) (internal quotation marks omitted) (describing non-constitutional harmless error); *see also* NRS 178.598.

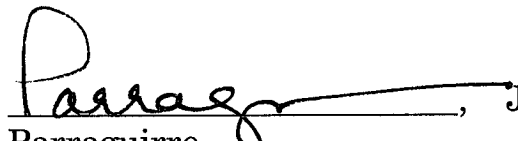
Lash next contends that the district court erred by denying his motion to instruct the jury that it must presume the victim threatened

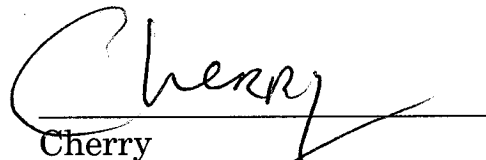
him. Lash asserts he was entitled to this instruction because police failed to gather evidence of the threat that was available at the scene. An evidentiary presumption is warranted where police demonstrate gross negligence by failing to gather material evidence. *Daniels v. State*, 114 Nev. 261, 267-68, 956 P.2d 111, 115 (1998). Here there was no demonstration that the police acted with gross negligence. Therefore, the district court did not abuse its discretion by denying Lash's motion. See *Ouanbengboune*, 125 Nev. at 774, 220 P.3d at 1129.

Finally, Lash contends that cumulative error deprived him of a fair trial. Because he demonstrates only one possible error, we conclude that Lash is not entitled to relief on this claim. See *U.S. v. Sager*, 227 F.3d 1138, 1149 (9th Cir. 2000) ("One error is not cumulative error."). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Cherry

cc: Hon. James Todd Russell, District Judge
State Public Defender/Carson City
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk