

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON LYNN PROFFITT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68256

FILED

NOV 19 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of damage to a jail. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

Appellant Jason Lynn Proffitt argues the State violated his due process rights by failing to collect and preserve a few pieces of the jail-cell sprinkler head he was alleged to have damaged. The evidence produced at trial demonstrated the majority of the broken sprinkler head was preserved, but a number of pieces were not taken into evidence by the Lyon County deputies. Proffitt asserts the deputies were grossly negligent for failing to collect and preserve all of the pieces of the damaged sprinkler head and he was entitled to a presumption that this evidence would have been unfavorable to the State.

Proffitt did not request such a presumption before the district court, and therefore, we review this claim for plain error. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) ("When an error has not been preserved, this court employs plain-error review"). Under this standard, the defendant must demonstrate the error affected his

substantial rights by causing “actual prejudice or a miscarriage of justice.” *Id.* (quoting *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003)).

To establish a valid failure-to-collect-evidence claim, a defendant must first demonstrate the uncollected evidence was material to his defense. *Daniels v. State*, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998). “If the evidence was material, then the court must determine whether the failure to gather evidence was the result of mere negligence, gross negligence, or a bad faith attempt to prejudice the defendant’s case.” *Id.* To establish a valid failure-to-preserve-evidence claim, a defendant must demonstrate “either that the State acted in bad faith or that the defendant suffered undue prejudice and the exculpatory value of the evidence was apparent before it was lost or destroyed.” *Daniel v. State*, 119 Nev. 498, 520, 78 P.3d 890, 905 (2003) (quoting *Leonard v. State*, 117 Nev. 53, 68, 17 P.3d 397, 407 (2001)).

“To establish prejudice, the defendant must show that it could be reasonably anticipated that the evidence would have been exculpatory and material to the defense.” *Id.* (quoting *Cook v. State*, 114 Nev. 120, 125, 953 P.2d 712, 715 (1998)). Evidence is “material” if there is “a reasonable probability that, had the evidence been available to the defense, the result of the proceedings would have been different.” *Klein v. Warden*, 118 Nev. 305, 313, 43 P.3d 1029, 1035 (2002) (quoting *Daniels*, 114 Nev. at 267, 956 P.2d at 115). The defendant must demonstrate more than “merely a hoped-for conclusion from examination of the destroyed evidence or that examination of the evidence would be helpful in preparing

[a] defense.” *Daniel*, 119 Nev. at 520, 78 P.3d at 905 (2003) (alteration in original, internal quotation marks omitted).


Proffitt fails to demonstrate the missing pieces of the sprinkler head were material to his defense because he does not establish a reasonable probability of a different outcome at trial had that evidence been collected and preserved. Proffitt only asserts the missing pieces could possibly have shown the sprinkler-head damage came from some cause other than him, which is insufficient to demonstrate Proffitt is entitled to relief.

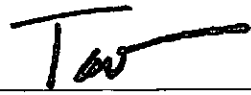
In addition, our review of the record reveals substantial evidence of Proffitt’s guilt was presented at trial. The evidence established Proffitt was the only inmate with access to his cell at the time in question. A fellow inmate testified he heard Proffitt express anger towards a deputy and that Proffitt said he intended to demonstrate his anger towards the deputy by breaking the sprinkler. The sprinkler started leaking approximately five minutes after Proffitt uttered those statements. Deputies then arrived at Proffitt’s cell to see him standing under the sprinkler and viewed the broken sprinkler head. Contained within the broken sprinkler head were fibers consistent with Proffitt’s towel. The deputies then collected the majority of the pieces of the sprinkler head and took numerous photographs depicting the scene of the incident.

Under these circumstances, Proffitt fails to demonstrate the missing pieces of the sprinkler head were material to his defense. Because Proffitt does not demonstrate the uncollected and unpreserved pieces of the sprinkler head were material to his defense, he fails to demonstrate he

was entitled to a presumption the evidence was exculpatory. *See id.* Therefore, Proffitt fails to demonstrate plain error affecting his substantial rights. *See Valdez*, 124 Nev. at 1190, 196 P.3d at 477.

Having concluded Proffitt is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. John Schlegelmilch, District Judge
Wayne A. Pederson, P.C.
Attorney General/Carson City
Lyon County District Attorney
Third District Court Clerk