IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARTER JESSE SANFORD, SR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68932

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of sale of a controlled substance at or near a school and possession of a controlled substance for sale. Seventh Judicial District Court, Lincoln County; Gary Fairman, Judge.

Brady claim

Appellant Carter Sanford, Sr., claims the prosecutor violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose exculpatory or impeachment evidence.

Sanford argues the prosecutor possessed specific statements made by Travis Brown and Coby Budy that contradicted testimony Budy later gave in court, these statements could have been used to impeach Budy's testimony, and it is likely the jury would have reached a different verdict had these statements been disclosed to the defense. Sanford does not further identify these alleged statements, nor does he support his argument with citations to the record on appeal.

The record reveals on the first day of trial—before any evidence was taken—Sanford raised a *Brady* claim in the district court that is substantially similar to the claim he now raises on appeal. This

record indicates Sanford obtained the evidence in time to make use of it at trial, *see United States v. Fernandez*, 231 F.3d 1240, 1248 n.5 (9th Cir. 2000) ("*Brady* merely requires the government to turn over the evidence *in time for it to be of use at trial.*"), and it does not demonstrate the prosecutor failed to disclose favorable evidence, *see State v. Huebler*, 128 Nev. 192, 198, 275 P.3d 91, 95 (2012) (explaining the requirements for establishing a *Brady* violation). Accordingly, we conclude this claim lacks merit.

Information claim

Sanford claims the district court erred by denying his pretrial motion to dismiss the information. Sanford argues count one, the sale-of-a-controlled-substance count, failed to provide adequate notice of the charge he faced because it accused him of a single offense which occurred during a five-month period and it did not identify the buyer.[1] Sanford asserts these discrepancies allowed the State to present evidence of various alternative sales and argue if the jury believed the evidence regarding any one of these sales then it must find Sanford guilty of the sale-of-a-controlled-substance count.

NRS 173.075(1) specifies that "the information must be a plain, concise and definite written statement of the essential facts constituting the offense charged." The sufficiency of an information is determined by practical considerations. *Laney v. State*, 86 Nev. 173, 178, 466 P.2d 666, 669 (1970). The test is whether the information standing

[1]Sanford makes this same argument with regard to count three, but count three was not alleged to have occurred over a five-month period. Instead, the second-amended criminal information plainly states the count three offense occurred on or about March 6, 2014.

alone contains the elements of the offense intended to be charged and is sufficient to apprise the defendant of the nature of the offense so he may adequately prepare a defense. *Id.*

Count one adequately informed Sanford of the period during which the offense was alleged to have occurred, presented coherent factual allegations that identified the means by which he committed the offense, and did not accuse him of committing alternative offenses. *See Williams v. State*, 118 Nev. 536, 549-50, 50 P.3d 1116, 1125 (2002); *Cunningham v. State*, 100 Nev. 396, 400, 683 P.2d 500, 502 (1984) ("Unless time is an essential element of the offense charged, there is no absolute requirement that the state allege the exact date."). Accordingly, we conclude the information provided sufficient notice of the nature of the alleged offense and the district court did not abuse its discretion by denying Sanford's motion to dismiss the information.

Double jeopardy claim

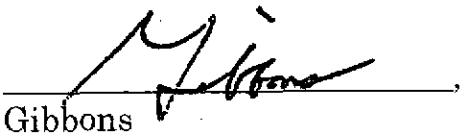
Sanford claims his convictions for sale of a controlled substance and possession of a controlled substance for sale violate the Double Jeopardy Clause because possession of a controlled substance for sale is a lesser included offense of sale of a controlled substance.

The Double Jeopardy Clause protects "against multiple punishments for the *same offense*." *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969) (emphasis added), *overruled on other grounds by Alabama v. Smith*, 490 U.S. 794 (1989).

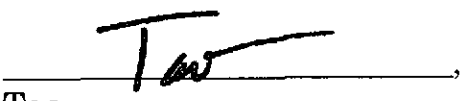
Sanford was prosecuted for two different offenses: count one was based on a methamphetamine sale Sanford made sometime between November 2013 and March 2014, and count three was based on the methamphetamine Sanford had in his possession on March 6, 2014.

Because the counts arose from two separate and distinct criminal acts, we conclude they did not implicate the Double Jeopardy Clause.

Having concluded Sanford is not entitled to relief, we ORDER the judgment of conviction AFFIRMED.[2]



_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Silver

cc: Hon. Gary Fairman, District Judge
Sears Law Firm, Ltd.
Attorney General/Carson City
Lincoln County District Attorney
Lincoln County Clerk

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[2]Sanford's fast track statement lacks citations to the record in support of the factual assertions he makes in the statement. *See* NRAP 3C(e)(1)(C); NRAP 28(e)(1). We caution Sanford's counsel that failure to comply with the Nevada Rules of Appellate Procedure in the future may subject counsel to sanctions. *See* NRAP 3C(n).