

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAFRETO DEMETRIUS COLLINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68651

FILED

APR 20 2016

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 burglary, robbery, grand larceny auto, malicious injury to a vehicle, and invasion of the home. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Appellant Lafreto Demetrius Collins argues the district court erred by denying his motion for a mistrial. Collins asserts a mistrial was warranted because the State failed to disclose that a witness had identified Collins at the scene of his arrest as the person who had stolen her vehicle.

During the trial, a State's witness testified the police asked her and her father to view a recovered vehicle and identify whether the vehicle was the one that had been stolen from them. The witness testified the recovered vehicle belonged to her family and also stated the person the police had arrested at the scene was the person who had taken the vehicle. Notably, the witness did not perform an in-court identification of Collins as the person who committed the crimes. Collins then moved for a mistrial because the State had not disclosed this witness could identify the perpetrator of the crime.

The district court conducted a hearing outside the presence of the jury regarding this issue. The prosecutors asserted the witness had told them prior to trial she was not certain she could identify Collins and had not informed the State she could testify the person who had been arrested at the scene was also the person who had stolen the vehicle. The evidence further established the State did not possess written or recorded statements from this witness. The district court concluded the witness did not inform the State prior to trial she could identify the perpetrator of the crime or that Collins was the perpetrator of the crime. Accordingly, the district court denied the motion for mistrial.


Collins first argues the district court erred in denying the motion for mistrial because the failure to disclose this information violated *Brady v. Maryland*, 373 U.S. 83 (1963). Our review of the record reveals Collins' claim lacks merit. This court reviews whether the State adequately disclosed information under *Brady* de novo. *Mazzan v. Warden*, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000). "To prove a *Brady* violation, the accused must make three showings: (1) the evidence is favorable to the accused, either because it is exculpatory or impeaching; (2) the State withheld the evidence, either intentionally or inadvertently; and (3) prejudice ensued, i.e., the evidence was material." *State v. Huebler*, 128 Nev. 192, 198, 275 P.3d 91, 95 (2012) (internal quotation marks omitted). Collins fails to demonstrate the State withheld the evidence because the record shows it did not possess this information before the witness uttered these statements during trial. Collins also fails to demonstrate this evidence was material because he does not demonstrate a reasonable probability of a different outcome at trial had he possessed this information prior to trial. *See Mazzan*, 116 Nev. at 73, 993 P.2d at 41. Therefore, Collins is not entitled to relief for this claim.

Second, Collins argues the district court abused its discretion in denying his motion for mistrial because the failure to disclose this information violated NRS 174.235(1)(a). We review a district court's ruling on a motion for mistrial for an abuse of discretion. *Ledbetter v. State*, 122 Nev. 252, 264, 129 P.3d 671, 680 (2006). NRS 174.235(1)(a) only requires the State to disclose information that is known by the State "or by the exercise of due diligence may become known" to the State. Moreover, NRS 174.235(1)(a) only encompasses "written or recorded statements made by a witness" and does not encompass oral statements. Here, the district court found the State did not have prior knowledge of this testimony despite having a discussion with the witness regarding her purported testimony before trial. The district court also concluded the witness had not made any written or recorded statements. Accordingly, the district court concluded a mistrial for a violation of NRS 174.235(1)(a) was not warranted. Because the record supports the district court's conclusions in this regard, we conclude the district court did not abuse its discretion in denying the motion for a mistrial. Therefore, Collins is not entitled to relief for this claim.

Having considered Collins' arguments and concluded they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. William D. Kephart, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk