

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMIE ALLEN ROSASCHI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69506

FILED

JUN 21 2016

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Appellant Jamie Rosaschi was convicted of burglary pursuant to his guilty plea. He subsequently filed a timely postconviction petition for a writ of habeas corpus in which he argued his guilty plea was invalid because the State withheld exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963).

“*Brady* and its progeny require a prosecutor to disclose evidence favorable to the defense when that evidence is material either to guilt or to punishment.” *Mazzan v. Warden*, 116 Nev. 48, 66, 993 P.2d 25, 36 (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.

A *Brady* claim is limited in two ways when it is asserted to challenge the validity of a guilty plea: first, the evidence at issue is only favorable to the defendant if it is exculpatory and, second, evidence that

was specifically requested by the defendant is only material “if there is a reasonable *possibility* that but for the failure to disclose the evidence the defendant would have refused to plead and would have insisted on going to trial.” *State v. Huebler*, 128 Nev. 192, 203, 275 P.3d 91, 98, 99 (2012). We review a district court’s *Brady*-claim decision de novo. *Id.* at 198, 275 P.3d at 95-96.

The district court conducted an evidentiary hearing and made the following factual findings. Rosaschi was apprehended by Anthony Carter when he tried to leave a Wal-Mart. Police Officer Daniel Knox responded to the incident and met with Carter, who provided a statement to the police. Officer Knox viewed the video footage of the incident and noted discrepancies between Carter’s statement and what was depicted on the video footage.¹ Rosaschi was arrested and charged with attempted robbery, burglary, attempted grand larceny, and possession of a controlled substance.

The district court found the evidence Rosaschi presented at the evidentiary hearing focused on the fact that Carter’s statement differed from what Officer Knox observed on the video. Rosaschi testified he was concerned with veracity and witness credibility. And Rosaschi’s evidence and testimony centered on impeachment information rather than the exculpatory nature of the video—if any.

¹Officer Knox testified “that [Mr. Carter] said he met [Mr. Rosaschi] outside of the door and asked him to come back in and a fight ensued. The footage showed that [Mr. Carter] ran up to [Mr. Rosaschi] and grabbed him after he took one step out the door and the fight followed that contact.”

The district court found the State withheld the video evidence. Deputy Public Defender Sean Sullivan testified he was aware the video existed, he attempted to obtain the video both before and after the preliminary hearing, he made a formal request to the Washoe County District Attorney's Office for the video, and his investigator attempted to obtain a copy of the video. The State had imputed possession of the video and did not provide it to the defense.²

The district court found Rosaschi's affirmative assertion that he would have pleaded not guilty and insisted on going to trial was of questionable validity and reasonableness. The State's case against Rosaschi for burglary, attempted grand larceny, and possession of a controlled substance was strong. The video evidence was not particularly persuasive because Officer Knox testified that it revealed at least part of Rosaschi's body was outside the door and an altercation ensued, and because Rosaschi knew about the discrepancy between Carter's statement and Officer Knox's video observations before he entered his guilty plea. Rosaschi testified the threat of a habitual criminal adjudication was a major factor influencing his decision to plead guilty. Rosaschi benefited from his guilty plea by avoiding a habitual criminal adjudication despite his history of qualifying criminal convictions. And Rosaschi received a thorough and complete plea canvass.

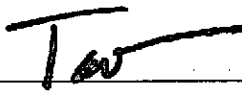
The district court's factual findings are supported by the record on appeal and are not clearly wrong. We conclude Rosaschi failed to demonstrate the withheld video evidence was exculpatory, *see Huebler*,

²Because neither party was able to produce the video evidence, the district court relied upon the testimony of the witnesses in evaluating the materiality of this evidence. *See* NRS 52.255(1).

128 Nev. at 200 n.5, 275 P.3d at 96 n.5 (defining exculpatory evidence), or material, *see id.* at 203, 275 P.3d at 99 (listing factors to consider in applying the materiality test). Accordingly we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Lynne K. Simons, District Judge
Law Offices of Lyn E. Beggs, PLLC
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk