

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DALE MICHAEL JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74100

FILED

AUG 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Dale Michael Jones appeals from a judgment of conviction, entered pursuant to a jury verdict, of attempted robbery. First Judicial District Court, Carson City; James E. Wilson, Judge.

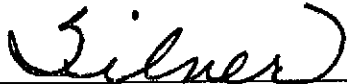
Jones argues the district court erred by refusing his proffered instruction regarding police failure to collect evidence. He claims there was video surveillance that would have provided him an alibi, and he told the police about his alibi. He claims the police were negligent for failing to retrieve the video before it was recorded over. Therefore, the proper sanction was a jury instruction allowing the jury to make an inference in regard to the collection of evidence.


“In a criminal investigation, police officers generally have no duty to collect all potential evidence.” *Randolph v. State*, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001). However, the failure to gather evidence can result in sanctions against the State when the evidence was material and, if it was material, the police “acted out of gross negligence or bad faith in not preserving it.” *Id.*

Jones fails to demonstrate the video would have been material. The evidence presented at trial demonstrated there was likely no video

surveillance that Jones was at a casino a mile from the attempted robbery. Further, he failed to allege the police acted out of gross negligence or bad faith by not obtaining or preserving the video surveillance tape. Even assuming the police were negligent, mere negligence on the part of the police is not sufficient to warrant an instruction to the jury regarding the collection of evidence.¹ *Id.* Therefore, the district court did not err by refusing to give the proffered instruction. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. James E. Wilson, District Judge
Mouritsen Law
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk

¹Jones cited to out-of-state authority to support his proposition that mere negligence on the part of the police was sufficient to warrant a jury instruction on the failure to collect evidence. Essentially, Jones argued this court should overrule *Randolph*. Even if we had authority to entertain Jones' request to overrule *Randolph*, we conclude he has failed to demonstrate such action is warranted.