

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRICE JAMES DANIELS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78874-COA

FILED

AUG 10, 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Brice James Daniels appeals from a judgment of conviction entered pursuant to a jury verdict of two counts of trafficking in a controlled substance. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

First, Daniels claims his right to a speedy preliminary hearing was violated when the justice court granted the State's request for a continuance. Even assuming this issue was preserved for review, Daniels failed to provide a transcript of the justice court's hearing on the State's motion for the continuance. *See Thomas v. State*, 120 Nev. 37, 43 & n.4, 83 P.3d 818, 822 & n.4 (2004) ("Appellant has the ultimate responsibility to provide this court with 'portions of the record essential to determination of issues raised in appellant's appeal.'" (quoting NRAP 30(b)(3))); *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."). Without this transcript, we are unable to review the justice court's ruling, and therefore, we decline to reach the merits of this claim.

Second, Daniels claims the district court abused its discretion by denying his motion for a new trial based on newly discovered evidence.

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A jury found Daniels guilty of trafficking in controlled substances after receiving evidence that a confidential informant bought methamphetamine and black tar heroin from Daniels during a controlled buy. Daniels sought a new trial based on evidence the confidential informant told an inmate “that he set up a person for a drug deal, that he was actually lying on the guy, and that he already had the drugs on him before the deal took place.” Daniels argued this evidence went to the heart of his defense that he was “set up.”

A district court may grant a new trial based on newly discovered evidence if the motion is made within two years of the verdict or finding of guilt. NRS 176.515(3). To prevail on a claim for a new trial, the defendant must show that the evidence is

newly discovered; material to the defense; such that even with the exercise of reasonable diligence it could not have been discovered and produced for trial; non-cumulative; such as to render a different result probable upon retrial; not only an attempt to contradict, impeach, or discredit a former witness, unless the witness is so important that a different result would be reasonably probable; and the best evidence the case admits.

Mortensen v. State, 115 Nev. 273, 286, 986 P.2d 1105, 1114 (1999) (internal quotation marks omitted). We review the district court’s decision to grant or deny a new trial for abuse of discretion. *Servin v. State*, 117 Nev. 775, 792, 32 P.3d 1277, 1289 (2001).


The record demonstrates that the district court reviewed the pleadings, considered the parties’ arguments, and made the following findings. The evidence propounded is neither newly discovered nor material to the defense. It is cumulative because Daniels testified about being “set up” extensively during the trial. It is unlikely to render a different verdict

because the "eyewitness nature and controlled environment in which the buy occurred" made it improbable that the jury would believe that Daniels was set up by the confidential informant. And it is really just an attempt to contradict, impeach, or discredit a former witness.

Having reviewed the evidence at issue and the record before us, we conclude that Daniels failed to make a factual showing that would justify an evidentiary hearing and the district court did not abuse its discretion by denying his motion for a new trial. Accordingly, we

ORDER the judgment of conviction AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Egan K. Walker, District Judge
David Kalo Neidert
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹To the extent that Daniels claims he was deprived of effective assistance of counsel, we decline to consider his claim on direct appeal. See *Archanian v. State*, 122 Nev. 1019, 1036, 145 P.3d 1008, 1020-21 (2006) (declining to consider ineffective-assistance-of-counsel claims on direct appeal unless the district court has held an evidentiary hearing on the matter or an evidentiary hearing would be needless).