IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYON LEE GARNETT,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38088

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary while in possession of a deadly weapon, two counts of robbery with the use of a deadly weapon, and one count of possession of a firearm by an ex-felon. The district court sentenced appellant: for burglary, to a prison term of 26 to 120 months; for each count of robbery, to a consecutive prison term of 26 to 120 months, with an equal and consecutive term for the use of a deadly weapon; and for possession of a firearm by an ex-felon, to a concurrent prison term of 12 to 48 months.

Appellant first contends that the district court erred by denying his motion for a new trial. Specifically, appellant argues that a new trial is warranted because the prosecutor withheld exculpatory evidence, namely the fact that there was no fingerprint evidence linking appellant to the crime. It "is a violation of due process for the prosecutor to withhold exculpatory evidence, and his motive for doing so is immaterial."[1] Where, as here, the defense has made a general request for

[1]Wallace v. State, 88 Nev. 549, 551-52, 501 P.2d 1036, 1037 (1972) (citing Brady v. Maryland, 373 U.S. 83 (1963)).

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Brady material, the prosecution has a duty to disclose evidence if "there is a reasonable probability that the result would have been different if evidence had been disclosed."[2]

The evidence in question in this case is a fingerprint report, which shows that no usable fingerprints were recovered from the counter, safe or cash register of the convenience store where the robbery occurred. The report further shows that usable prints were recovered from the door to the store. The district court found that the admission of fingerprint report would not have changed the outcome of the trial. We conclude that the district court's finding is correct, and the district court did not, therefore, err by denying the motion for a new trial.

Appellant also contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Specifically, appellant argues that his conviction is the result of mistaken identity. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.[3]

In particular, we note that the victim, who had the opportunity to observe the robber for nearly eight minutes, positively identified appellant. Additionally, another clerk, who was not working at the time of the robbery, was able to identify appellant from the security tape of the robbery. The clerk testified that appellant was a regular customer at the store, and that on one occasion appellant had given the clerk his name and phone number.

The jury could reasonably infer from the evidence presented that appellant was the individual who robbed the store clerk and a customer in the store. It is for the jury to determine the weight and

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[2]Jimenez v. State, 112 Nev. 610, 619, 918 P.2d 687, 692 (1996)

[3]See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980).

credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.[4]

Having considered both of appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. John S. McGroarty, District Judge
Attorney General/Carson City
Clark County District Attorney
Amesbury & Schutt
Clark County Clerk

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[4]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981).