

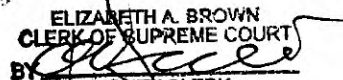
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL SCOTT BOSSIE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86968-COA

FILED

JUL 03 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Michael Scott Bossie appeals from a judgment of conviction, entered pursuant to a jury verdict, of robbery, victim is an older person. Second Judicial District Court, Washoe County; Lynne K. Jones, Chief Judge.

Bossie argues the district court erred by denying his motion to dismiss based on a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). During cross-examination, the victim testified that her stolen credit cards were left at her residence approximately one month after the robbery. The victim explained that she notified law enforcement, who did not collect any evidence related to the return of the victim's cards. The victim further testified that, because she had already received replacement cards, she thereafter destroyed the cards that had been returned. The State did not disclose any information about the returned cards to Bossie. Bossie contends evidence related to the return of the victim's cards was exculpatory because he was in custody at the time the cards were returned and forensic testing could have shown that someone other than Bossie returned the stolen property, thus suggesting someone other than Bossie committed the offense.

Brady and its progeny require a prosecutor to disclose evidence favorable to the defense when that evidence is material to either guilt or punishment. *Jimenez v. State*, 112 Nev. 610, 618-19, 918 P.2d 687, 692 (1996). “[E]vidence is material if there is a reasonable probability that the result would have been different if the evidence had been disclosed” and “[a] reasonable probability is shown when the nondisclosure undermines confidence in the outcome of the trial.” *Mazzan v. Warden*, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000). We review de novo whether the State withheld information under *Brady*. *Id.*

Even assuming the State withheld or failed to disclose evidence for purposes of *Brady*,¹ Bossie has not demonstrated materiality given the evidence presented at trial. The victim was robbed in the driveway of her home after leaving a casino. Ring camera footage of the robbery taken from the victim’s home was admitted into evidence. The video depicts the perpetrator covering his mouth and nose with his T-shirt but the rest of his body, including his “distinctive,” “pronounced” ears and clothing, is visible. Similar clothing was found in Bossie’s possession the day after the robbery and a detective testified that he believed the video depicted Bossie because of Bossie’s clothing and “distinctive ears.” Further, surveillance video taken

¹While we conclude Bossie has not demonstrated the evidence was material, we note that Bossie learned on the first day of trial that the victim’s credit cards were returned, before any law enforcement witnesses testified. Thereafter, Bossie cross-examined law enforcement about the fact that Bossie was in custody when the cards were returned and that Bossie made no phone calls from jail regarding the stolen items. Moreover, Bossie argued in closing that, because he was in custody when the cards were returned, he could not have been the person who returned the cards. Thus, Bossie was able to use the information that was disclosed during trial in his defense.

from the casino parking lot prior to the robbery depicted a car similar to Bossie's moving closer to the victim as she entered her car and later following the victim's car out of the parking lot. A license plate reader placed Bossie's car near the casino around this time and Bossie admitted to law enforcement that he had been staying at the casino while on vacation. Given the substantial evidence of Bossie's guilt, Bossie fails to demonstrate a reasonable probability that the result of his trial would have been different had the State disclosed evidence related to the return of the victim's cards. In light of these circumstances, we conclude Bossie is not entitled to relief based on this claim.

Bossie also argues the district court erred by denying his motion to dismiss because the State failed to collect the evidence related to the return of the victim's cards.² To establish a valid failure-to-collect-evidence claim, a defendant must demonstrate that the evidence was material to his defense. *See Daniels v. State*, 114 Nev. 261, 267-68, 956 P.2d 111, 115 (1998). Evidence is "material" if there is "a reasonable probability that, had the evidence been available to the defense, the result of the proceedings would have been different." *Klein v. Warden*, 118 Nev. 305, 313, 43 P.3d

²Although Bossie additionally asserts the State failed to preserve evidence and cites caselaw regarding the loss or destruction of evidence, "his claim of error actually relates to the State's failure to *gather*" the evidence from the victim. *Daniels v. State*, 114 Nev. 261, 266, 956 P.2d 111, 114-15 (1998) (commenting on the appellant's failure to distinguish between the collection and preservation of evidence). Moreover, as is discussed above, the evidence is not material because substantial evidence of Bossie's guilt was presented at trial. *See Daniel v. State*, 119 Nev. 498, 520, 78 P.3d 890, 905 (2003) (providing that, in order to establish a valid failure-to-preserve-evidence claim, a defendant must demonstrate that the evidence was material to his defense). Therefore, we conclude the Bossie is not entitled to relief based on this claim.

1029, 1035 (2002) (quoting *Daniels*, 114 Nev. at 267, 956 P.2d at 115). We review a district court's denial of a motion to dismiss for an abuse of discretion. See *Hill v. State*, 124 Nev. 546, 550, 188 P.3d 51, 54 (2008).

As is discussed above, substantial evidence of Bossie's guilt was presented at trial. Bossie fails to demonstrate that evidence related to the return of the victim's credit cards was material to his defense because he does not establish a reasonable probability of a different outcome at trial had that evidence been collected. Further, Bossie's contention that the evidence could have been used to identify someone other than Bossie as the perpetrator was merely a hoped-for conclusion, which is insufficient to demonstrate that he was prejudiced or that dismissal was warranted. See *Daniels*, 114 Nev. at 267, 956 P.2d at 115 (concluding dismissal may be warranted for law enforcement's failure to collect evidence where the failure was the result of "a bad faith attempt to prejudice the defendant's case"); cf. *Daniel v. State*, 119 Nev. 498, 520, 78 P.3d 890, 905 (2003) (outlining prejudice for a failure-to-preserve-evidence claim). Therefore, we conclude the district court did not abuse its discretion by denying Bossie's motion to dismiss. Accordingly, Bossie is not entitled to relief based on this claim, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Lynne K. Jones, Chief District Judge
Washoe County Alternate Public Defender
Marc Picker Law
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk