

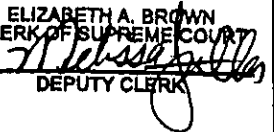
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GILBERT RAYMOND RAMIREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89745-COA

FILED

NOV 12 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Gilbert Raymond Ramirez appeals from a judgment of conviction, entered pursuant to a jury verdict, of assault with the use of a deadly weapon. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Ramirez argues the district court abused its discretion by failing to give a proposed jury instruction. In particular, Ramirez contends the district court failed to instruct the jury that the State was grossly negligent in failing to collect surveillance video and that it was required to presume this video, had it been collected, would have supported his theory of self-defense.

Generally, “police officers . . . have no duty to collect all potential evidence from a crime scene.” *Daniels v. State*, 114 Nev. 261, 268, 956 P.2d 111, 115 (1998) (quotation marks omitted). However, if the police fail to collect material evidence as a result of gross negligence, “the defense is entitled to a presumption that the evidence would have been unfavorable to the State.” *Id.* at 267-68, 956 P.2d at 115. “The district court has broad discretion to settle jury instructions, and this court reviews the district court’s decision for an abuse of that discretion or judicial error.” *Crawford*

25-49394

v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005); *cf. Higgs v. State*, 126 Nev. 1, 20-21, 222 P.3d 648, 660-61 (2010) (reviewing a district court's decision not to give a proffered spoliation instruction regarding the State's alleged failure to properly preserve evidence for an abuse of discretion or judicial error).

Ramirez was charged and convicted of assault with the use of a deadly weapon. At trial, three security guards testified as to the events in question. They testified that Ramirez was pouring himself drinks at a bar, which the establishment did not allow, and that Ramirez refused to stop after being instructed to do so. As a result, one of the security guards, Hunter Brooks, forcibly removed Ramirez from the bar. Ramirez resisted, and as they went out the front door, Ramirez and Brooks accidentally fell over a gate. Brooks landed on top of Ramirez, stood up after a brief moment, and helped Ramirez up. After a short exchange, Ramirez pulled out a knife and lunged at Brooks. At this time, another security guard, Zanaan Bennett, grabbed Ramirez and put him in a chokehold. Ramirez was rendered unconscious, and a third security guard subsequently kicked Ramirez's knife away. Ramirez was restrained until the police arrived.

Bennett, who was the bar's security manager, testified that the bar had multiple video cameras inside the bar and one video camera outside the front door. In particular, he testified that one of the inside cameras would have captured the interaction between Ramirez and Brooks at the bar, but that he would have told the police officers the incident with the knife happened out of view of the front camera based on that camera's angle. A police officer, Zachary Souza, arrived at the scene and received information regarding the bar's security cameras. Souza testified that a security guard told him there "[m]ay not be video because he thinks it cuts

off at a certain point and . . . where [the incident] happened, may not be in view.” Souza testified he did not look at the video to confirm whether the incident was out of view of the camera and that he passed the information from the security guards along to the case officer. Souza also testified that he informed the case officer there was no video. The case officer testified that Souza told him the camera was pointed away from where everything occurred and that he did not look at the video to confirm whether this information was correct.

The police officers were informed that the incident either was not or may not have been captured on video based on where the incident occurred; thus, it was not clear to the police officers that any video recording depicted the incident and had evidentiary significance. In light of Bennett’s representations to the police, Ramirez has not shown the State’s failure to collect video occurred as a result of gross negligence.¹ See *Randolph v. State*, 117 Nev. 970, 988, 36 P.3d 424, 435 (2001) (concluding a defendant failed to demonstrate “that the potential evidentiary significance of” the uncollected evidence “was so obvious that it was gross negligence not to impound and test [it]”). Therefore, we conclude the district court did not

¹To the extent the police officers were negligent in failing to look at the video to confirm whether the incident was depicted therein, we note that Ramirez extensively examined Souza regarding the deficiency of the investigation. See *Daniels*, 114 Nev. at 267, 956 P.2d at 115 (“When mere negligence is involved, no sanctions are imposed, but the defendant can still examine the prosecution’s witnesses about the investigative deficiencies.”).

In addition, the district court did not determine whether the video was material. Because Ramirez fails to demonstrate gross negligence, we need not address that matter. See *id.* at 268, 956 P.2d at 116.

abuse its discretion by refusing to give Ramirez's proposed jury instruction.
Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. David A. Hardy, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk