

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAVON DEANDRE HOLMES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53549

**FILED**

**APR 07 2010**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit robbery, burglary while in possession of a firearm, first-degree kidnapping with the use of a deadly weapon, robbery with the use of a deadly weapon, and coercion with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Valerie Adair, Judge. Appellant Javon Holmes raises six claims on appeal.

First, Holmes claims that there is insufficient evidence to support his convictions. Although he acknowledges that the victim's eyewitness identification of him would normally be sufficient, he claims that because (1) the victim was under stress during the crime, (2) cross-racial identifications are often inaccurate, and (3) he closely resembles his brother, the victim's identification of him as one of the perpetrators is insufficient to support his convictions. However, the evidence at trial showed that the victim observed and conversed with his attackers at close range several times over a period of about 30 minutes and made a concerted effort to memorize their faces. He unequivocally identified Holmes in a pretrial photographic line-up and again at trial. We conclude that this evidence was sufficient for a rational juror to find beyond a

reasonable doubt that Holmes was one of the four perpetrators of the charged crimes.<sup>1</sup> See Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Second, Holmes claims that the State withheld evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963). Holmes' sister, Rose Abieta, testified at an evidentiary hearing that she told investigating officers that Holmes was with her at the time of the crimes. Holmes claims that the State withheld this evidence from him. Not only was Abieta's testimony contradicted by other witnesses but no Brady violation occurred because the alibi testimony of his sister was evidence which was available to Holmes. See Steese v. State, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998).

Third, Holmes claims that the district court erred by denying a motion for a new trial based on newly discovered evidence. His motion was based on Abieta's potential alibi testimony. Again, because Abieta's testimony was easily discoverable with the exercise of reasonable diligence, the district court did not abuse its discretion in denying the motion. Mortensen v. State, 115 Nev. 273, 286-87, 986 P.2d 1105, 1114 (1999).

Fourth, Holmes claims that the district court committed plain error by allowing two codefendants who had previously pleaded guilty to testify that they had named Holmes as a coconspirator in their guilty

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<sup>1</sup>We note that appellant's appendix includes only portions of the trial transcripts. It is appellant's burden to provide this court with an adequate record for review. McConnell v. State, 125 Nev. \_\_\_, \_\_\_, 212 P.3d 307, 316 n.13 (2009). Nevertheless, our review of the submitted excerpts reveals sufficient evidence to support Holmes' convictions.

pleas in lieu of directly identifying him as their accomplice. We conclude that the codefendants' guilty pleas should not have been admitted as evidence that Holmes committed the charged crimes. See United States v. Halbert, 640 F.2d 1000, 1004 (9th Cir. 1981) ("[T]he guilty plea or conviction of a codefendant may not be offered by the government . . . as substantive evidence of the guilt of those on trial."); Hilt v. State, 91 Nev. 654, 662, 541 P.2d 645, 650 (1975). However, we conclude that the error did not affect Holmes' substantial rights. See Archanian v. State, 122 Nev. 1019, 1031, 145 P.3d 1008, 1017 (2006). Had the two testifying codefendants been first asked whether Holmes was their accomplice, they would have either answered affirmatively or their guilty plea agreements would have been admissible to impeach them. See United States v. Wiesle, 542 F.2d 61, 62 (8th Cir. 1976). Furthermore, as stated above, the victim unequivocally identified Holmes as one of the robbers. In addition, the district court gave a limiting instruction and the written guilty plea agreements were not admitted into evidence.<sup>2</sup>

Fifth, Holmes claims that the district court erred by refusing a proposed jury instruction that, because the State failed to adequately process the crime scene, the jury was to assume that Holmes' fingerprints were not present. We conclude that the district court did not abuse its discretion in rejecting this instruction. See Higgs v. State, 126 Nev. \_\_\_, \_\_\_, 222 P.3d 648, 661 (2010) ("District courts have 'broad discretion to

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<sup>2</sup>Holmes asserts in his briefs that "the record clearly states that the certified plea agreements were admitted into evidence." Holmes is in error. While the district court initially admitted the written plea agreements, it stated after further discussion that "they're not admitted," and they were not presented to the jury.

settle jury instructions.” (quoting Cortinas v. State, 124 Nev. \_\_\_, \_\_\_, 195 P.3d 315, 319 (2008), cert denied, \_\_\_ U.S. \_\_\_, 130 S. Ct. 416 (2009))). The evidence that Holmes claims should have been collected was not “material” because the absence of his fingerprints—or the presence of someone else’s fingerprints—would not have been exculpatory or reasonably likely to change the results of trial. See Randolph v. State, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001). To the extent that the investigating officers were negligent, Holmes thoroughly cross-examined them regarding their investigation, and he fails to show that the district court erred in finding that they did not act in bad faith or with gross negligence. See id.

Finally, Holmes claims that cumulative error warrants reversal of his convictions. Based on the foregoing discussion, we conclude that any error in this case, when considered either individually or cumulatively, does not warrant relief. See Hernandez v. State, 118 Nev. 513, 535, 50 P.3d 1100, 1115 (2002); Ennis v. State, 91 Nev. 530, 533, 539 P.2d 114, 115 (1975) (defendant is “not entitled to a perfect trial, but only to a fair trial”).

Having considered Holmes’ claims and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

cc: Hon. Valerie Adair, District Judge  
Law Office of Betsy Allen  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk