IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES THOMAS PETELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56161

FILED

SEP 14 2011

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 fraudulent acts.[1] Fifth Judicial District Court, Nye County; Miriam Shearing, Judge.

Appellant James Thomas Petell contends that insufficient evidence supports his conviction because no "competent" evidence was adduced at trial demonstrating that he asked to be paid for the royal flush. We disagree because the evidence, when viewed in the light most favorable to the State, is sufficient to support the conviction beyond a

[1]The judgment of conviction erroneously states that Petell was convicted pursuant to a guilty plea. Following this court's issuance of its remittitur, the district court shall enter a corrected judgment of conviction. See NRS 176.565 (providing that clerical errors in judgments may be corrected at any time); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (explaining that the district court does not regain jurisdiction following an appeal until the supreme court issues its remittitur).

reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

First, Petell's contention lacks merit because the slot technician testified at trial that Petell claimed he had won a jackpot and was "adamant" about getting paid. Further, the State introduced evidence that Petell had won a royal flush in diamonds on the same machine two days earlier, the last hand played on a machine remains on the machine until the game is played again, and the hand in question was a royal flush in diamonds. Until a new bet is placed on a game the words "press bet one or bet max to start" flash on the screen every three seconds. Petell admitted that he did not place a bet on the game and the jury viewed a picture and a video depicting the hand in question with the words "press your bet" or "press max bet to start" appearing on the screen. No ticket came out of the machine, it did not flash the word "jackpot," and no bells, lights, or music that normally signal a win went off. Petell's gaming history from three casinos, dating back several years, was admitted into evidence and Petell conceded that he had never won a jackpot before without placing a bet. Despite the slot technician's misgivings about the legitimacy of the royal flush, the casino's food and beverage manger decided to pay Petell for the win. From this evidence a juror could reasonably infer that Petell claimed, collected, or took money from a gambling game with the intent to defraud, without having made a wager on the game. See NRS 465.070(3); see also NRS 193.200 ("Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused."). It is for the jury to determine the weight and credibility to give conflicting

testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Relatedly, Petell claims that he is immune from prosecution under NRS 194.010(4) and (6) because he accepted payment for the win based on a mistake of fact and committed the charged offense through misfortune or accident. As discussed above, the evidence adduced at trial provided sufficient evidence to support the jury's finding that Petell acted with the intent to defraud. Accordingly, we conclude this contention lacks merit.

Petell next contends that the district court erred by admitting evidence that he was the person who won the royal flush jackpot on March 9, 2007. Petell appears to assert that the district court erred by allowing the State to introduce a previously undisclosed report of his player's club records in violation of NRS 174.235. NRS 174.235 does not contemplate voluntary disclosure and the record before this court does not indicate, and Petell does not allege, that he made a specific request for his player's club records from the State. See Thompson v. State, 93 Nev. 342, 343, 565 P.2d 1011, 1012 (1977). Additionally, Petell knew that he had previously won on the same machine and cannot claim to have been prejudiced by admission of that fact. We conclude that the district court did not abuse its discretion by admitting this evidence. See Chavez v. State, 125 Nev. 328, 344, 213 P.3d 476, 487 (2009).

Petell also appears to contend that the State's failure to disclose the fact that he had won the March 9th royal flush constituted a violation of Brady v. Maryland, 373 U.S. 83 (1963). We review an alleged

Brady violation de novo. Lay v. State, 116 Nev. 1185, 1193, 14 P.3d 1256, 1262 (2000). Even assuming that evidence of Petell's prior win was in the State's possession, we conclude that it was not exculpatory for purposes of Brady, see id. at 1194, 14 P.3d at 1262, and was otherwise available to the defense because Petell knew he won the previous jackpot, see Steese v. State, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998) ("Brady does not require the State to disclose evidence which is available to the defendant from other sources, including diligent investigation by the defense."). We conclude Petell has failed to demonstrate a Brady violation.

Finally, Petell contends that the district court erred by denying his motion for a judgment of acquittal or, alternatively, for a new trial. No written order denying the motion appears to have been entered by the district court. And although it appears from the record that the district court held a hearing on this motion, Petell has not included a transcript of this proceeding in his appendix. See Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."). Petell's motion was based on the above-discussed alleged discovery and Brady violations. As noted above, we conclude there was no discovery or Brady violation, and sufficient evidence was adduced at trial to sustain Petell's conviction. See NRS 175.381(2) (the district court may enter a judgment of acquittal if the evidence is insufficient to sustain a conviction). Under these circumstances, Petell has failed to demonstrate that the district court

abused its discretion by denying his motion. See NRS 175.381(2); NRS 176.515(1); Steese, 114 Nev. at 490, 960 P.2d at 328. Accordingly, we

ORDER the judgment of conviction AFFIRMED.[2]

Douglas, J.
Douglas

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Chief Judge, The Fifth Judicial District Court
Hon. Miriam Shearing, Senior Justice
Nancy Lord
Nye County District Attorney
Attorney General/Carson City
Nye County Clerk

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[2]Although we filed the appendix submitted by Petell, it fails to comply with the Nevada Rules of Appellate Procedure because it does not include several documents necessary for this court's determination of the issues raised on appeal. See NRAP 3C(e)(2)(C); NRAP 30(b); NRAP 30(c)(2). We were able to resolve this appeal on the merits only due to the State's inclusion of the necessary documents in its appendix to the fast track response. Counsel for Petell is cautioned that future failure to comply with the appendix requirements may result in the imposition of sanctions. NRAP 3C(n).