

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL CRUZ-MARTINEZ A/K/A  
DANIEL CRUZMARTINEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56717

**FILED**

JAN 12 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracie K. Lindeman*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of burglary and grand larceny of a motor vehicle. Eighth Judicial District Court, Clark County; David Wall, Judge.

First, appellant Daniel Cruz-Martinez contends that the district court abused its discretion by denying his motion to dismiss the case because the State failed to comply with the district court's pretrial discovery order and the State withheld, denied, and destroyed exculpatory evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963). He asserts that as a result of the violation he was denied his confrontation and speedy trial rights.

The record reveals that Cruz-Martinez was arrested after taking a car that the police were using as bait to catch car thieves. Prior to trial, Cruz-Martinez specifically requested discovery of any reports or records regarding previous activations of the bait car and the district court entered a discovery order. After receiving some discovery, Cruz-Martinez expressly waived his speedy trial right and requested a continuance so that he could investigate the newly provided discovery. The State did not provide evidence of a video recording and a field interview card prior to

trial. During the trial, evidence was presented that when the bait car was activated two days before Cruz-Martinez's arrest, the video system recorded the empty interior of the car, and a field interview card linking the arrest of Jesus Chacon with the car activation was created. The district court found that the State violated the discovery order and Brady by failing to provide timely disclosure of the field interview card. The district court remedied the violation by allowing Cruz-Martinez to recall a State's witness, examine the witness regarding the field interview card, and enter the field interview card into evidence.

We conclude that the district court provided an adequate remedy, see NRS 174.295(2); Rudin v. State, 120 Nev. 121, 139, 86 P.3d 572, 584 (2004), the Brady violation was harmless because the substance of the undisclosed evidence reached the jury, see Jones v. State, 113 Nev. 454, 471, 937 P.2d 55, 65-66 (1997), Cruz-Martinez was able to confront the witnesses against him, and he waived his speedy trial rights, see Furbay v. State, 116 Nev. 481, 484, 998 P.2d 553, 555 (2000). We therefore conclude that the district court did not abuse its discretion by denying Cruz-Martinez's motion to dismiss the case. See Hill v. State, 124 Nev. 546, 550, 188 P.3d 51, 54 (2008).<sup>1</sup>

Second, Cruz-Martinez contends that the district court abused its discretion by refusing to instruct the jury, in line with Sanborn v. State, 107 Nev. 399, 407-08, 812 P.2d 1279, 1285-86 (1991), that the State's failure to preserve the video that was recorded when the bait car was activated on September 5, 2009, created an irrebuttable presumption

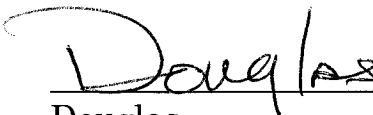
---


<sup>1</sup>To the extent that Cruz-Martinez claims that the district court erred by concluding that a mistrial would not bar a retrial, this issue was not preserved for appeal because Cruz-Martinez did not seek a mistrial.

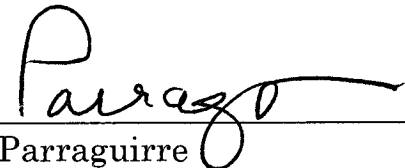
that Jesus Chacon entered the bait car on that date and removed the keys. The district court found no indication that the State acted in bad faith, the video evidence was material, or Cruz-Martinez suffered undue prejudice, and rejected the proposed instruction. We conclude that the district court did not abuse its discretion in this regard. See Grey v. State, 124 Nev. 110, 122, 178 P.3d 154, 163 (2008); Daniel v. State, 119 Nev. 498, 520, 78 P.3d 890, 905 (2003).

Having considered Cruz-Martinez's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Jerome T. Tao, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk