

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
DENNIS ROY GARCIA,
Respondent.

No. 57495

FILED

NOV 18 2011

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court granting respondent's motion for a new trial. Fifth Judicial District Court, Nye County; Fifth Judicial District Court Dept. 1.

The State contends that evidence indicating that the victim was previously molested by her cousin was not material evidence that was favorable to the accused and therefore not subject to disclosure under Brady v. Maryland, 373 U.S. 83 (1963). See Mazzan v. Warden, 116 Nev. 48, 66-67, 993 P.2d 25, 36-37 (2000) (explaining the three components of a Brady violation and the standard for determining prejudice). We review the district court's decision for abuse of discretion. State v. Carroll, 109 Nev. 975, 977, 860 P.2d 179, 180 (1993). Despite the State's obligation to provide this court with the materials necessary for our review, see Jacobs v. State, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975), the record does not contain a complete transcript of the testimony from any of the State's witnesses. We therefore conclude that the State failed to show that the district court abused its discretion in granting the respondent's motion for a new trial. City of Las Vegas v. Bolden, 89 Nev. 526, 527, 516 P.2d 110, 111 (1973) ("When evidence on which a district court's judgment rests is

not properly included in the record on appeal, it is assumed that the record supports the lower court's findings."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Fifth Judicial District Court Dept. 1
Nye County District Attorney
Nancy Lord
Nye County Clerk