

IN THE SUPREME COURT OF THE STATE OF NEVADA

EVARISTO JONATHAN GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64221

FILED

DEC 26 2014

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

ORDER DENYING MOTION

This is an appeal from a judgment of conviction. In their briefs, the parties dispute the facts surrounding an eyewitness' identification of appellant at the time of the preliminary hearing. Specifically, the parties disagree whether appellant was first identified while he was in a jury box surrounded by other defendants. In response to that dispute, respondent has filed a motion requesting that this court take judicial notice of the fact that appellant was not alone in the jury box. Such a fact is not one that is "[g]enerally known within the territorial jurisdiction of the trial court" or "[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." NRS 47.130(2). Accordingly, it is not properly subject to judicial notice and respondent's motion for judicial notice is denied.

Respondent's alternative request that this matter be remanded to the district court for an evidentiary hearing to determine whether appellant was alone in the jury box is also denied. This court's review is limited to the record made in and considered by the district court. *Carson Ready Mix v. First Nat'l Bank*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981). Thus, any new information adduced at an evidentiary

hearing or facts determined by the district court after an evidentiary hearing may not be considered by this court when resolving this appeal.

It is so ORDERED.

 C.J.

cc: Goodman Law Group
Attorney General/Carson City
Clark County District Attorney