IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWINA G. CAMACHO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44229

FILED

JUN 0 1 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary. Fifth Judicial District Court, Mineral County; John P. Davis, Judge. The district court sentenced appellant Edwina G. Camacho to serve a prison term of 28-72 months and ordered her to pay $99.84 in restitution.

First, Camacho contends that the district court erred in denying her pretrial petition for a writ of habeas corpus. Camacho argues that the State failed to present sufficient evidence at the preliminary hearing to establish probable cause to bind her over to the district court on the one count of burglary. Camacho claims that the crime of trespass is a lesser-included offense of burglary, and because trespass requires going "into any building of another,"[1] then the offense of burglary also requires entry into the building "of another." At the hearing in the district court on Camacho's petition, defense counsel argued that "no evidence was offered by the State that [Camacho] did not own or have permission to be in this

[1]See NRS 207.200(1)(a) (defining "trespass") (emphasis added).

bowling alley." On appeal, Camacho contends that the State therefore failed to establish a necessary element of burglary, namely, "that the building in which Camacho had entered was of another." We conclude Camacho's contention is without merit.

The probable cause determination has two components: (1) that an offense has been committed; and (2) that the accused committed the offense.[2] Probable cause to support a criminal charge "may be based on slight, even 'marginal' evidence, because it does not involve a determination of the guilt or innocence of an accused."[3] "To commit an accused for trial, the State is not required to negate all inferences which might explain his conduct, but only to present enough evidence to support a reasonable inference that the accused committed the offense."[4] "Although the [S]tate's burden at the preliminary examination is slight, it remains incumbent upon the [S]tate to produce some evidence that the offense charged was committed by the accused."[5]

Based on our review of the record, we conclude that the State presented enough evidence to support a reasonable inference that

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[2]NRS 171.206.

[3]Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (citations omitted).

[4]Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

[5]Woodall v. Sheriff, 95 Nev. 218, 220, 591 P.2d 1144, 1144-45 (1979).

Camacho committed the crime of burglary.[6] Initially, we note that this court has stated, contrary to Camacho's position, that trespass is not a lesser-included offense of burglary.[7] Further, Deputy Sheriff Randall Adams of the Mineral County Sheriff's Office testified at the preliminary hearing that he and Sergeant Rob Hoferer responded to an alarm triggered at the Silver State Bowling Alley on the night in question. Upon their arrival, they found an open, unsecured door, and heard noise coming from the bar area. When challenged by the officers with a verbal command, Camacho appeared with her hands raised in the air. No one else was present on the premises. According to Deputy Adams, when Camacho was placed in handcuffs, she stated that she "needed money to get out of town." The officers found, wrapped in a sweatshirt, two metal pry bars, a large screwdriver, and a full-face ski mask. Also offered into evidence at the preliminary hearing was a broken lock that had been pried off one of the doors at the bowling alley, and the rubber gloves worn by Camacho. Therefore, based on all of the above, we conclude that the district court did not err in denying Camacho's pretrial petition for a writ of habeas corpus.[8]

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[6]See NRS 205.060(1) (providing that burglary consists of entry into a building "with the intent to commit grand or petit larceny, assault or battery on any person or any felony").

[7]See Smith v. State, 120 Nev. ___, 102 P.3d 569 (2004).

[8]In its fast track response, the State asks this court to adopt and incorporate by reference "all legal argument contained in the Points and Authorities within its Answer" to Camacho's petition filed below. We caution counsel and note that "[b]riefs or memoranda of law filed in

continued on next page . . .

Second, Camacho contends that the district court erred in not conducting a hearing to determine the voluntariness of a statement she made at the time of her arrest.[9] Prior to trial, Camacho filed a motion in limine, seeking a hearing, to determine "the voluntariness and admissibility of any and all alleged confessions, admissions or statements attributed to [her], including non-verbal gestures which may be interpreted to convey information." The district court conducted an in camera hearing prior to the start of the trial. The hearing was not recorded and has not been made part of the record on appeal. Apparently, based on statements made by counsel during trial, the hearing focused on two statements made by Camacho at the time of her arrest, both of which were deemed admissible. At trial, during the State's direct examination of Deputy Adams, he was asked what happened after the officers found Camacho in the bowling alley. The following exchange took place:

> THE STATE: Did [Camacho] ever tell you if there was anyone else in the building?
>
> DEPUTY ADAMS: She – she told us no, there was nobody else, nobody else in the building, and I believe she made the statement I wouldn't endanger anybody else. It's just me.

. . . *continued*
district courts shall not be incorporated by reference in briefs submitted to the Supreme Court." NRAP 28(e); Thomas v. State, 120 Nev. 37, 43 n.3, 83 P.3d 818, 822 n.3 (2004).

[9]See generally Jackson v. Denno, 378 U.S. 368, 377 (1964).

Camacho did not spontaneously object, but when the direct examination came to an end, defense counsel informed the district court that he wished to make a motion outside the presence of the jury. The jury was excused, and Camacho moved for a mistrial, arguing that the statement prejudiced her "because it is an acknowledgement that she placed herself in danger there." Defense counsel claimed that the statement above was not discussed during the hearing on the motion in limine, and argued that "unless she's free to leave, it's a custodial question."

The district court heard the arguments of counsel and concluded that although Camacho's statement was in response to a question posed to her by one of the arresting officers, and despite the fact that she was not free to leave the scene, it was a voluntary statement and that Camacho was not subject to a custodial interrogation. The district court also stated, "I don't think it's a confession. . . . It's not a Miranda violation." We conclude that the district court did not err.

The Fifth Amendment privilege against self-incrimination provides that statements made by a suspect during custodial interrogation are inadmissible unless the police first provide a Miranda warning.[10] "[A]n individual is deemed 'in custody' where there has been a formal arrest or where there has been a restraint on freedom of movement of the degree associated with a formal arrest so that a reasonable person would

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[10]State v. Taylor, 114 Nev. 1071, 1081, 968 P.2d 315, 323 (1998); see also Miranda v. Arizona, 384 U.S. 436, 478-79 (1966).

not feel free to leave."[11] The term interrogation refers to any express questioning, words, or actions on the part of the police "that the police should know are reasonably likely to elicit an incriminating response."[12] This court has recognized that inquiries by police which are investigative and non-coercive in nature do not constitute custodial interrogation.[13] Where the district court's determination is supported by substantial evidence, it will not be disturbed on appeal.[14]

In the instant case, we conclude Camacho's statement was voluntary and not the product of a custodial interrogation requiring Miranda warnings. The arresting officers merely asked Camacho if there was anyone else in the bowling alley. Although Camacho's response was arguably inculpatory, however slightly, the question posed was not intended or even likely to elicit an incriminating response. The question was investigative and non-coercive in nature, and was more relevant to

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[11]Taylor, 114 Nev. at 1082, 968 P.2d at 323.

[12]Rhode Island v. Innis, 446 U.S. 291, 301 (1980); see also Koza v. State, 102 Nev. 181, 186, 718 P.2d 671, 674-75 (1986).

[13]See Johnson v. State, 92 Nev. 405, 406-07, 551 P.2d 241, 242 (1976) (inquiry by police, after observing the defendant shoot one of two victims, as to why he shot the victims, was not deemed a custodial interrogation due to the investigative and non-coercive nature of the questioning); see also Schnepp v. State, 84 Nev. 120, 122, 437 P.2d 84, 85 (1968) (concluding inquiries by police, in particular, (1) to whom did a piece of property belong, and (2) how the property got into the car, "were proper, pre-custody inquiries, investigative and non-coercive in nature, and justified by the circumstances as a legitimate police practice").

[14]Steese v. State, 114 Nev. 479, 488, 960 P.2d 321, 327 (1998).

the officers' safety than anything else. Therefore, we conclude that the district court did not err in denying Camacho's motion for a mistrial.[15]

Additionally, Camacho's contention that the district court did not conduct a hearing is belied by the record. As discussed above, the district court excused the jury, heard the arguments of counsel, and stated its findings for the record. Camacho fails to specify what, if any, other evidence might have been presented that was not, or could not have been, raised during the hearing.

Therefore, having considered Camacho's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Rose

_____, J.
Gibbons

_____, J.
Hardesty

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[15]McKenna v. State, 114 Nev. 1044, 1055, 968 P.2d 739, 746 (1998) (holding that the "[d]enial of a motion for a mistrial is within the sound discretion of the district court, and that ruling will not be reversed absent a clear showing of abuse of discretion").

cc: Hon. John P. Davis, District Judge
Law Offices of Robert Witek
Attorney General Brian Sandoval/Carson City
Mineral County District Attorney
Mineral County Clerk