IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS P. SARFATY,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE JENNIFER TOGLIATTI, DISTRICT JUDGE,
Respondents,
and
CITY OF HENDERSON,
Real Party in Interest.

No. 51915

FILED

MAY 05 2009

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

ORDER DENYING PETITION

This original petition for a writ of mandamus challenges a district court order denying petitioner's appeal of his Henderson municipal court conviction for battery constituting domestic violence, a misdemeanor. Petitioner Dennis P. Sarfaty advocates a bright-line rule requiring Nevada municipal courts to dismiss domestic violence cases when the victim recants the charge at trial and independent corroborating evidence is lacking. The petition is denied.

We previously dismissed Sarfaty's direct appeal. Sarfaty v. City of Henderson, Docket No. 51044 (Order Dismissing Appeal, April 9, 2008). We did so because the Nevada Constitution gives the district courts "final appellate jurisdiction in cases arising in municipal courts." Tripp v. City of Sparks, 92 Nev. 362, 363, 550 P.2d 419, 419 (1976) (citing Nev. Const. art. 6, § 6). A "municipal court conviction is not subject to further review by appeal to this court." Id.

A fundamental premise that limits the court's mandamus power is that a petition for such a writ is not an appeal substitute. 16 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice & Procedure § 3932.1 (2d ed. 1996). The fact that Sarfaty now labels his papers "petition" instead of "appeal" does not change his case-specific evidentiary and procedural challenges into matters appropriate for extraordinary writ review. As noted in State of Nevada v. Dist. Ct. (Hedland), 116 Nev. 127, 134, 994 P.2d 692, 696 (2000), "entertaining petitions for review of a district court decision where the district court was acting in its appellate capacity would undermine the finality of the district court's appellate jurisdiction. Accordingly, as a general rule, we [do not] entertain writs that request review of a decision of the district court acting in its appellate capacity unless the district court has improperly refused to exercise its jurisdiction, has exceeded its jurisdiction, or has exercised its discretion in an arbitrary or capricious manner."

In an attempt to justify extraordinary writ review, Sarfaty argues that the district court acted "arbitrarily or capriciously" in rejecting his claims that the municipal court erred in admitting a 911 tape and certain statements by Mrs. Sarfaty; that a witness perjured himself; and that the evidence was insufficient to support his conviction. On direct appeal, the district court disagreed. It concluded, based on its review of the municipal court record, that "there is substantial evidence to support the trial court's verdict below." Because "determinations involving the credibility and weight of evidence are matters within the province of the trier of fact," the district court upheld Sarfaty's conviction. This was neither arbitrary nor capricious nor an act in excess of that court's appellate jurisdiction.

Sarfaty maintains that this case presents an important issue of law that needs clarification, meriting review by extraordinary writ. See State of Nevada v. Dist. Ct. (Ducharm), 118 Nev. 609, 614, 55 P.3d 420, 423 (2002). Specifically, Sarfaty urges this case presents an opportunity to adopt a bright-line rule requiring dismissal in any domestic violence case when the victim recants the charge at trial and corroborating evidence is lacking. Citing State v. Attaway, 676 N.E.2d 600 (Ohio Ct. App. 1996), and an unpublished Nevada municipal court acquittal on a record argued to be similar to his, Sarfaty posits a split of authority, both nationally and in Nevada's municipal courts, on the point. See District Court (Hedland), 116 Nev. at 134, 994 P.2d at 697 (noting that where "there essentially is a split of authority among[ ] the lower courts" this court may exercise "its constitutional prerogative to entertain [a] writ petition[ ]" to resolve the split).

Sarfaty's premise is unsound. The varying results he has identified—acquittal in one domestic violence case and conviction in another, both involving recanted victim statements—do not denote a conflict or split in how courts interpret domestic violence laws. Rather, they appear to reflect legitimate and varying credibility determinations by the finders of fact in cases that are inherently fact-dependent.

Attaway does not persuade us otherwise. Thus, Sarfaty acknowledges that Attaway is the only published case he has found to support the bright-line rule he urges. But later Ohio cases confirm that Attaway "was a holding limited to the specific facts of the case," State v. Pallai, No. 07 MA 198, 2008 WL 5245576 (Ohio Ct. App. Dec. 10, 2008), and "does not stand for the blanket proposition that any out-of-court statement by a victim of domestic violence . . . when contradicted by the

victim at trial and not otherwise corroborated, is legally insufficient to support a conviction." State v. Pettit, No. C-980261, 1999 WL 12759, at *4 (Ohio Ct. App. Jan. 15, 1999). Fairly read, Attaway thus does not adopt the bright-line rule Sarfaty advocates but stands simply as an application of the sufficiency of evidence standard in domestic violence cases: "whether the evidence, if believed, would be enough to satisfy all elements of the crime charged beyond a reasonable doubt." Pallai, at *3.

We decline to rule as a matter of law that absent corroborating evidence, a domestic violence conviction cannot stand if the victim recants the charge.[1] Such a rule does not appear to be supported by precedent in other jurisdictions, nor do we believe it to be appropriate for us to adopt in Nevada. It would take discretion away from the trier of fact to weigh witness credibility and the other unique factual circumstances presented by each individual case. Such a rule is not needed to protect defendants' rights, as defendants still retain their ability to argue at trial, and on appeal, that the evidence presented was insufficient to convict. In fact, such an argument was found persuasive by the Attaway court on appeal given the unique facts of that case. Conversely, and permissibly, the district court here found such an argument unpersuasive, given the unique facts in this case. Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (holding that, so long as a "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" on the

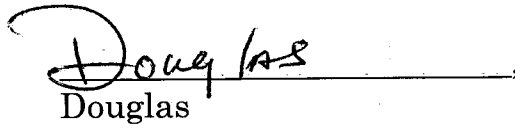
[1]We also note that such a rule, even if adopted by this court, would not help petitioner here, as there was corroborating, albeit not overwhelming, evidence, including the hair removed from Mrs. Sarfaty's head, signs of an altercation in the residence, and the statements Sarfaty made on the 911 tape.

evidence presented, a conviction may stand even though another trier of fact, on the same evidence, might have decided the case differently).

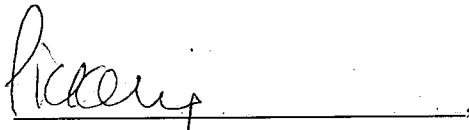
Accordingly, we

ORDER the petition DENIED.

Parraguirre, J.



Douglas, J.



Pickering, J.

cc: Hon. Jennifer Togliatti, District Judge
Law Offices of Al Lasso, LLC
Henderson City Attorney
Eighth District Court Clerk