

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON A. POTTS,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
DAVID B. BARKER, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 61511

FILED

SEP 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of habeas corpus requests this court to dismiss an indictment on the ground that probable cause was based on information obtained in violation of Miranda v. Arizona, 384 U.S. 436 (1966). See Ex Parte Rowland and Shuman, 74 Nev. 215, 218, 326 P.2d 1102, 1103 (1958) (concerning original proceeding in habeas corpus where this court observed that “the writ of habeas corpus will not be denied where there is a showing, prior to trial, of lack of probable cause that a crime was committed or that the petitioner committed it”). Petitioner Brandon A. Potts is awaiting trial on charges related to an automobile accident in which he struck a police officer who was standing on the side of a roadway investigating an unrelated traffic accident, resulting in serious injuries to the police officer. Potts was handcuffed and placed in the backseat of a patrol car. Some unspecified time later, police officer Kai Degner retrieved Potts from the patrol car and removed the handcuffs. Officer Degner noticed a strong odor of alcohol emanating from Potts’ breath and person, his eyes were bloodshot, watery, and glassy, and

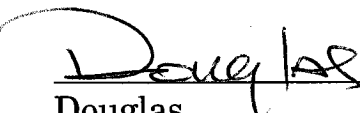
he was swaying slightly. Officer Degner informed Potts that he wanted to conduct field sobriety tests, to which Potts responded that the tests were unnecessary because he had consumed three beers. After Officer Degner explained that it was in Potts' interest to determine whether he was impaired so that he would not be wrongfully jailed, Potts complied. Officer Degner first inquired if Potts suffered from any physical disability, was taking any medication, knew what time it was, if he had been drinking, and if he was driving a vehicle. Potts failed two of three field sobriety tests and was arrested.


Potts complains that the district court erroneously denied his motion to dismiss the indictment because probable cause was based on evidence obtained in violation of Miranda—specifically that he was in custody at the time of his encounter with Officer Degner and therefore he should have been advised of his Miranda rights and that without his statements to Officer Degner, there was no probable cause to arrest him. The district court concluded that Officer Degner's initial questioning and Potts' response did not constitute an interrogation and that Potts was not in custody until after he failed the field sobriety tests.

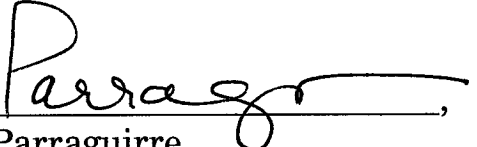
Considering the totality of the circumstances, see Somee v. State, 124 Nev. 434, 444-45, 187 P.2d 152, 159-60 (2008), we conclude that Potts was not subjected to a custodial interrogation triggering the requirements under Miranda. See Holyfield v. State, 101 Nev. 793, 797, 711 P.2d 834, 836 (1985) (observing that Miranda applies to statements taken during custodial interrogation), abrogated in part on other grounds by Illinois v. Perkins, 496 U.S. 292 (1990), as stated in Boehm v. State, 113 Nev. 910, 913 n.1, 944 P.2d 269, 271 n.1 (1997). Even assuming that Potts was in custody, his statements and participation in field sobriety tests were not accomplished in the context of an interrogation under

Miranda. Dixon v. State, 103 Nev. 272, 274, 737 P.2d 1162, 1164 (1987) (stating that a Miranda warning is not required “before reasonable questioning and administration of field sobriety tests at a normal roadside traffic stop”). Because the district court did not err by denying Potts’ motion to dismiss the indictment based on the lack of probable cause, we

ORDER the petition DENIED.¹


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. David B. Barker, District Judge
Law Offices of John G. Watkins
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹We note that counsel did not submit a copy of the district court’s order denying the motion to dismiss the indictment. In a previous original petition for a writ of habeas corpus filed in this court raising the same issue presented here, see Potts v. District Court, Docket No. 60750 (Order Denying Petition, June 14, 2012), we denied the petition based in part on counsel’s failure to provide sufficient documentary support for the petition. However, with that petition counsel included a copy of the district court order, and we take judicial notice of that document here. NRS 47.130; see State Farm Mut. v. Comm’r of Ins., 114 Nev. 535, 539, 958 P.2d 733, 735 (1998) (granting appellant’s motion to take judicial notice of a district court judgment). We caution counsel that an original petition for extraordinary relief must be accompanied by documents “essential to understand the matters set forth in the petition.” NRAP 21(a)(4).