

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SCOTT ANTHONY KANVICK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89415-COA

FILED

AUG 21 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Scott Anthony Kanvick appeals from a judgment of conviction, pursuant to a jury verdict, of battery which constitutes domestic violence with a prior felony conviction for domestic battery and false imprisonment constituting domestic violence. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

In December 2023, Mary Melzo stayed late at work to help clean up after a holiday party while her boyfriend, Kanvick, waited for her in his truck, where the two were temporarily living due to financial circumstances. Melzo met Kanvick in the parking lot where the two argued until she eventually got into the passenger's seat and they drove off.

Once they were driving, Kanvick questioned Melzo about why she was alone at work with another man. Melzo attempted to clarify that she was with her boss and that nothing romantic happened between them. Nevertheless, Kanvick grabbed a lanyard around Melzo's neck, pulled her down toward the truck's center console, and beat her with a closed fist. Melzo slipped out of the lanyard and attempted to open the truck door, but Kanvick accelerated in such a way that the door shut. Kanvick grabbed Melzo's ponytail and resumed punching her.

After some time, Kanvick allowed Melzo to exit the vehicle. She testified at trial that she was in an unfamiliar area, so she called a taxicab to take her to her boss's house. While awaiting her cab, Melzo took various photographs of her face depicting her injuries. Melzo's boss, Jamie Rivera-Zavala, also photographed Melzo's injuries while she was briefly at his house. The next day, police officers spoke with Melzo and took their own photographs of her injuries. Melzo continued to take pictures of her injured face for several days after the beating. Kanvick was later arrested and charged by way of information with felony battery which constitutes domestic violence with a prior felony conviction for domestic battery and false imprisonment constituting domestic violence.

Prior to trial, the district court held a hearing where it addressed various pending motions. The district court granted Kanvick's motion to preclude reference to his indigency based on the State's nonopposition. Additionally, the district court referenced a discovery motion which it construed "as a motion asking the [c]ourt to direct the State to comply with the law" and instructed the State to follow the law.

The matter proceeded to a three-day jury trial. At the beginning of trial, the State asked for clarification of the district court's order precluding references to Kanvick's indigency because it believed that there would be testimony that Kanvick and Melzo were homeless at the time. The district court clarified that it interpreted the motion "to mean that no references to the fact that the defendant is being represented by counsel at taxpayer expense and limited to that." The district court stated that it would not permit the State to "cross the line and suggest that [being homeless] is itself criminal conduct or in any way something that should work to the disadvantage to [sic] the defense."

On the second day of trial, Kanvick objected to various photographs of Melzo that the State intended to introduce into evidence.

Kanvick claimed that the photographs were not fair representations of Melzo's injuries as "[t]hey seem[ed] digitally enhanced, altered, and taken in circumstances likely to [inflamm]e the passion of the jury[.]" In response, the State asserted that the photographs were received directly from Melzo a few weeks prior and that it immediately disclosed them to defense counsel. The State further responded that the witnesses who took the photographs would testify that they were fair and accurate depictions of Melzo's injuries at the time. The State explained that this testimony was verifiable because the photographs had timestamps and "[t]he metadata within them showing the date and time as to when they were taken were included in the photographs as they were released in discovery."

Upon hearing this, Kanvick pointed out that he received the photographs as PDF files without the referenced metadata. The State responded that it did not know whether the discovery it provided to Kanvick included the metadata, but stated that it would be able to provide that information immediately. At that point, Kanvick argued, "the State intends to create a timeline that they generated through that metadata, and the defense is not privy to that metadata. So I would ask that that not be included." The district court confirmed that the State could provide Kanvick with the metadata immediately and instructed the State to provide the native files to the defense. The district court further noted that arguments as to the accuracy of the photographs would be reserved until the witnesses testified and that Kanvick would be allowed to voir dire those witnesses about the photographs.

The State then provided the files with metadata to Kanvick. Kanvick objected, arguing that the State had evidence that was not provided to the defense until the morning of the second day of trial. Kanvick claimed that he did not have sufficient time to review the metadata and thus requested either dismissal with prejudice or that the photographs be

excluded from evidence. The State argued that Kanvick had the photographs prior to trial and that, while the metadata had apparently not been disclosed, Kanvick did not seek a motion to compel. The State further argued that it was under the impression that Kanvick had all the discovery and that the metadata would not be given to the jury. Kanvick argued that the photographs he received from the State were all PDFs without metadata and that he was unaware the metadata existed. Kanvick posited that metadata generally contains more than just timestamps and also includes details about the resolution and camera settings for the phones that took the photographs, which could be used to discover whether those models of phones used AI to enhance the pictures. Kanvick requested a mistrial because the metadata was not provided with sufficient time for him to review the evidence.

The district court denied both Kanvick's request to dismiss the case and his request for a mistrial. Instead, the court ordered a 90-minute recess during which Kanvick could review the files with the metadata. In doing so, the district court determined that the prejudice was "modest to de minimis" and that the issue could be addressed over the 90-minute break. The court thereafter took a recess.

Once back on the record, the parties confirmed that Kanvick had received the native files with the metadata. The State said that it printed the photographs directly from the JPEG files and would mark the photographs as exhibits in real time. The district court then proceeded with the State's case-in-chief.

Melzo testified that she began dating Kanvick in May 2020 and was still dating him on the day she was attacked. She described how Kanvick had arrived to pick her up and appeared volatile. Melzo described how, once she got in the truck, Kanvick beat her with a closed fist. After Kanvick allowed her to exit the vehicle, Melzo recalled that her ear was

bruised and that she had trauma to her eyes, the top of her head, and the wells of her eyes. She testified that she took several photographs of herself while hiding in the bushes. When presented with copies of these photographs, Melzo testified that she took the pictures right after exiting the truck, roughly between 1:20 and 1:30 a.m. Melzo agreed that they were fair and accurate depictions of what she looked like right after the incident.

During his voir dire regarding the photographs, Kanvick asked Melzo whether she knew the model of phone with which the photographs were taken. Melzo explained that she used her iPhone XR to take the photographs and that she did not believe any of the photographs used AI or any other kinds of picture enhancement. Over Kanvick's objection, the photographs were admitted.

Melzo testified that the police took pictures of her the day after she was beaten. These photographs were also admitted over Kanvick's objection. Melzo further explained that she used her iPhone XR to take various pictures of herself between December 25 and December 30 to document the progression of her injuries. These pictures were also admitted into evidence over Kanvick's objection.

Rivera-Zavala testified that when he saw Melzo on the night she was attacked, she "[l]ooked like a monster, like really, really, really hurt on her face." He described taking a picture of Melzo while she was at his house that night. During Kanvick's voir dire of Rivera-Zavala regarding the photograph, Rivera-Zavala explained that he took the photograph using an iPhone 14 and that it did not do any type of image enhancement. This photograph was admitted into evidence over Kanvick's objection.

Reno Police Department Patrol Officer Gabriel Smith testified that he met with Melzo and observed her bruised and swollen eyes. He described taking the photographs of Melzo that were previously admitted which showed her injuries the day after the incident.

During his testimony, Officer Smith explained that he tried to locate Kanvick after speaking with Melzo. He described driving around for two hours checking various locations where Melzo “said he would sleep, because he was homeless living out of his vehicle.” Kanvick did not contemporaneously object to the reference to his homelessness. Officer Smith was ultimately unsuccessful in locating Kanvick and another officer testified to arresting Kanvick after receiving a tip from Kanvick’s employer.

In its closing argument, the State referenced the photographs that were admitted into evidence. The State argued that the photographs showed Melzo’s injuries as they progressed from the night of the incident. The State did not reference or utilize the metadata during its closing and rebuttal arguments. In his closing argument, Kanvick did not argue that the photographs were digitally altered.

The jury found Kanvick guilty of both counts. Thereafter, he was sentenced to an aggregate term of incarceration of four to ten years. This appeal followed.

On appeal, Kanvick argues that the State committed a discovery violation by failing to timely disclose the photograph exhibits in their native file format with the metadata intact. Based on this premise, Kanvick argues that the State committed prosecutorial misconduct by not disclosing the metadata and that the district court abused its discretion by not dismissing the case or granting a mistrial. Kanvick further argues that the district court abused its discretion by permitting Officer Smith to testify about Kanvick’s homelessness. Upon review, we disagree and thus affirm. *The State’s failure to disclose the native files with metadata does not present a basis for relief*

Kanvick argues “the State committed prosecutorial misconduct by converting the photographs to PDFs and not turning the images over to Kanvick in their native format, with the metadata intact.” He further

argues the district court abused its discretion by not dismissing the action or granting a mistrial based on the State's untimely disclosure. These interrelated arguments require us to assess the relevant discovery statutes to determine whether the State had a duty to provide the native files with metadata to Kanvick prior to his request for the same at trial.

"Statutory interpretation is a question of law subject to de novo review." *State v. Catanio*, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004).

NRS 174.235(1)(c) states that

at the request of a defendant, the prosecuting attorney shall permit the defendant to inspect and to copy or photograph any: . . . [b]ooks, papers, documents, tangible objects, or copies thereof, which the prosecuting attorney intends to introduce during the case in chief of the State and which are within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney.

(Emphases added.); see *Thompson v. State*, 93 Nev. 342, 343, 565 P.2d 1011, 1012 (1977) ("[V]oluntary disclosure is not contemplated by our statutory provisions concerning criminal discovery."). Additionally, the State has an ongoing duty upon discovering "additional material *previously requested* which is subject to discovery or inspection" to "promptly notify the other party or the other party's attorney or the court of the existence of the additional material." NRS 174.295(1) (emphasis added).

Here, Kanvick fails to demonstrate the State was required to disclose the metadata prior to trial. NRS 174.235(1)(c) plainly requires the State to permit a defendant to inspect and copy written discovery only if it intends to use the discovery in its case in chief.¹ See *Ramos v. State*, 137

¹We note that Kanvick's reliance on the supreme court's unpublished decision in *Kendrick v. State* is misguided because *Kendrick* discusses the

Nev. 721, 722, 499 P.3d 1178, 1180 (2021) (stating the court “will enforce [a statute] as written if the language is clear and unambiguous”). Notably, the State did not introduce the metadata at trial or attempt to use it in any way, and thus the State was not required to disclose the metadata pursuant to NRS 174.235.

Moreover, Kanvick did not clearly request that the State disclose the metadata prior to trial. Although the district court referenced a motion for “full discovery” at a pretrial hearing, Kanvick has not included a copy of this motion in his appendix on appeal. At that hearing, the district court indicated that the motion merely requested that the State be ordered to follow the law; the district court made no mention that Kanvick’s motion requested the metadata at that time, and the district court expressly asked Kanvick at trial why he did not request the metadata earlier. Thus, we presume the motion supports the district court’s determination that Kanvick did not specifically request the photographs’ metadata. See *Morrison v. State*, 140 Nev., Adv. Op. 24 n.10, 548 P.3d 431, 442 n.10 (Ct. App. 2024) (“[B]ecause it is the appellant’s burden to ensure that a proper appellate record is prepared, we necessarily presume that the missing documents support the challenged decisions.” (citing *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007))). The district court also specifically asked Kanvick if there was “something else you would like me to ask or order the State to do under the circumstances,” and Kanvick answered in the negative. In light of the foregoing, Kanvick fails

State’s obligation to disclose a defendant’s own statements under NRS 174.235(1)(a) rather than general discovery material. *Kendrick v. State*, No. 78352, 2020 WL 2575745, at *1 (Nev. May 20, 2020) (Order of Affirmance) (“The State has an obligation to provide those statements to the defendant regardless of whether the State intends to use the statements during its case in chief.”).

to demonstrate that he requested the State to disclose the metadata prior to trial or that the State violated NRS 174.235 when it failed to disclose the metadata prior to trial.

Similarly, the State did not violate NRS 174.295. Like the statute mentioned above, NRS 174.295(1) applies to discovery “material previously requested.” Because Kanvick fails to demonstrate that he previously requested the metadata, and the district court did not enter an order requiring the State to produce the metadata, Kanvick necessarily fails to demonstrate that the State violated NRS 174.295. *See Donovan v. State*, 94 Nev. 671, 673, 584 P.2d 708, 710 (1978) (stating NRS 174.295 “is only operative in situations where a previous defense motion has been made and a court order issued”). Thus, the State’s failure to disclose the files with metadata until Kanvick for the first time requested it during trial was not a discovery violation.²

Because Kanvick fails to show that the State committed a discovery violation, his claims based on this premise necessarily fail. To the extent Kanvick alleges that the nondisclosure of the metadata constituted prosecutorial misconduct, we conclude that Kanvick fails to show that the prosecutor’s actions were improper. *See Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008) (stating a defendant alleging prosecutorial misconduct must demonstrate that the prosecutor’s conduct was improper and that the improper conduct warrants reversal). Similarly, to the extent

²To the extent Kanvick suggests the applicability of *Brady v. Maryland*, 373 U.S. 83 (1963), we note that he fails to cogently argue that the metadata was exculpatory or otherwise constituted *Brady* material. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant’s argument that is not cogently argued or lacks the support of relevant authority). Therefore, we do not consider whether the State was required to disclose the metadata pursuant to *Brady*.

Kanvick alleges the district court abused its discretion by failing to dismiss the case or grant a mistrial, he is not entitled to relief because he has not shown any error requiring such a remedy. *See Langford v. State*, 95 Nev. 631, 635, 600 P.2d 231, 234 (1979) (“A trial court is vested with broad discretion in fashioning a remedy when, during the course of the proceedings, a party is made aware that another party has *failed to comply fully with a discovery order*.” (emphasis added)); *see also* NRS 174.295(2) (stating that if a party fails to comply with the pretrial discovery provisions, “the court may order the party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances”). Accordingly, we conclude that Kanvick is not entitled to relief on his claims based on the State’s failure to disclose the native files with metadata.³

³Kanvick also argues that the photographs did not accurately depict Melzo’s injuries. However, the photographs were admitted only after the relevant witnesses testified as to the times the photographs were taken and that they were fair and accurate depictions of Melzo’s injuries. *See* NRS 52.015(1) (“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence or other showing sufficient to support a finding that the matter in question is what its proponent claims.”). Kanvick also does not describe or explain how he believes the photographs were altered, and instead merely comments that they appeared altered to appeal to the passions of the jury. Thus, Kanvick’s argument that the photographs could have been digitally enhanced is speculative and unsupported by the record, and we conclude the district court did not abuse its discretion by admitting the photographs of Melzo’s injuries. *See Thomas v. State*, 122 Nev. 1361, 1370, 148 P.3d 727, 734 (2006) (explaining that this court reviews a district court’s decision to admit or exclude evidence for an abuse of discretion).

The district court did not abuse its discretion by permitting testimony about Kanvick's homelessness

Kanvick argues the district court abused its discretion by allowing reference to his homelessness at the time of the crime because “[i]t is inappropriate for the [S]tate to make remarks belittling or disparaging the defendant” and because the term “homeless” has a negative connotation that prejudiced his trial. Kanvick claims “[t]he homelessness reference should have been excluded as either bad character evidence, under NRS 48.045(1) or as bad act evidence, under NRS 48.045(2).” The State agrees that a prosecutor should not belittle or disparage a defendant but contends that this did not occur. Instead, the State argues that it did not use the reference to Kanvick’s homelessness against him but rather “to explain Officer Smith’s investigative actions and why he went to certain locations.” We agree with the State.

This court reviews a district court’s decision to admit or exclude evidence for an abuse of discretion. *Thomas v. State*, 122 Nev. 1361, 1370, 148 P.3d 727, 734 (2006). Generally, NRS 48.045(1) provides that “[e]vidence of a person’s character or a trait of his or her character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion,” subject to certain inapplicable exceptions. Similarly, NRS 48.045(2) provides that “[e]vidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith.” However, evidence of other acts may be used “for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Id.*

Kanvick fails to show that being homeless is either a character trait under NRS 48.045(1) or a crime, wrong, or act under NRS 48.045(2) such that it should be precluded. Even accepting his allegation that the

mere mention of Kanvick's homelessness and the fact that he was living out of his truck would qualify under NRS 48.045, the comment was not used for any propensity purpose; rather, Officer Smith's testimony merely provided context for his investigation into the crime and was not used to suggest a negative inference as to Kanvick's character.

To the extent Kanvick argues that the State made inappropriate or disparaging remarks, we note that the only reference to Kanvick's homelessness throughout the entire trial was Officer Smith's lone comment explaining his investigation. Indeed, the State did not comment on Kanvick's homelessness during testimony and did not reference his homelessness during closing or rebuttal arguments. Further, to the extent Kanvick suggests that the comment about his homelessness should have been excluded as irrelevant, we disagree. *See* NRS 48.025(2) (stating that "[e]vidence which is not relevant is not admissible"). The brief testimony was relevant in the context of discussing Officer Smith's investigation and search for Kanvick. *Cf. Chaparro v. State*, 137 Nev. 665, 673, 497 P.3d 1187, 1195 (2021) (determining that inconclusive DNA evidence was relevant because it "showed the thoroughness of the investigation and completed the 'story' of the evidence already presented"). Additionally, the evidence that Kanvick and Melzo were living together in Kanvick's vehicle is relevant to the relationship between the defendant and victim that is a necessary element of domestic battery. *See* NRS 200.485(3); *see also* NRS 33.018(1). Similarly, Kanvick fails to cogently demonstrate how this one comment was unfairly prejudicial such that it should be excluded.⁴ *See* NRS 48.035(1) ("Although relevant, evidence is not admissible if its probative value is

⁴Insofar as Kanvick has raised other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief."

substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury."); *see also Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Barry L. Breslow, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk