FILED
11/13/2026
ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

DYLAN THOMAS BROWN, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 90913

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of three counts of battery by a prisoner, probationer, or parolee. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Facts

Valerie Bourquin-Brown called 911 late in the evening on August 27, 2024, to report that her son, appellant Dylan Brown ("Brown"), had attempted to punch her. By the time police arrived, Brown had gone. Officers determined that probable cause existed to believe Brown had committed assault, and either that night or the following day, Valerie signed a form that police provided her. That document is not included in the appellate record, but according to the State it was a citizen's complaint against Brown for assault.

Valerie reported a second disturbance the following afternoon, and officers arrived to find Brown in front of the residence. Believing the prior night's assault provided probable cause for an arrest, officers arrested Brown and placed him in the back of a police car. When Brown became violent, officers restrained him. Brown then stated that he thought he was

having a seizure, at which point he was transported to the hospital. During these events, Brown spat at officers and a nurse.

Brown was charged under NRS 200.481(2)(f) with three counts of battery by a prisoner, probationer, or parolee. NRS 200.481(2)(f) only applies if the person was in lawful custody while committing the battery. Before trial, the State sought to admit res gestae evidence to establish Brown's lawful custody. In response, Brown argued he was unlawfully arrested, because NRS 171.124 does not allow an officer to arrest a defendant without a warrant for a misdemeanor assault not committed in the officer's presence. The district court agreed that law enforcement's response to the assault was res gestae, but it permitted only limited testimony that referred "generally to the arrest being based upon a good faith belief from prior contact with the Defendant." Brown's counsel sought to elicit testimony that the probable cause arrest was for a misdemeanor, which would support Brown's defense theory that he had not been lawfully arrested. The district court cautioned that such questioning might open the door to other act evidence.

At trial, Brown argued that, because officers had no warrant and the law did not otherwise authorize an arrest, his arrest was illegal, he was not in lawful custody, and he therefore did not commit battery by a prisoner. The State's first witness, a police officer, testified that the decision to arrest Brown was based on prior probable cause. On cross examination, defense counsel asked whether officers had an arrest warrant or probable cause that Brown had committed a felony or domestic battery, or whether officers had observed Brown commit a misdemeanor. The witness responded in the negative. On redirect, the prosecutor asked why officers

had arrested Brown, and the witness explained they had probable cause for an arrest for assault. Brown objected, but the court overruled the objection.

The prosecution also called Valerie as a witness, to ask whether she had signed a citizen's arrest form for Brown. Valerie acknowledged signing a form, but she testified that she did not know what it was for, that she signed it after Brown had been arrested, and that the form did not say she wanted Brown arrested. The limited information in the appellate record suggests the form, dated August 27th, contained Valerie's complaint that Brown had assaulted her. In response, defense counsel sought to introduce police body camera footage from August 27th to show that Valerie signed a witness statement rather than a citizen's complaint. The State objected on the basis that the footage depicted only a part of officers' interactions with Valerie, and the district court excluded that evidence based on irrelevance and confusion of the issues.

Among other jury instructions addressing warrantless arrests, the district court gave the following instruction: "officers who arrest a defendant pursuant to a citizen's complaint for arrest is a valid arrest and constitutes 'involuntary restraint, confinement or custody' as used in the definition of prisoner." The jury convicted Brown on all three counts of battery by a prisoner, probationer, or parolee. Brown timely appealed.

Discussion

On appeal, Brown argues that the district court improperly admitted prior bad act evidence by allowing the State to elicit testimony that Brown was arrested for a prior assault; that insufficient evidence established he had committed a battery while in lawful custody, and, relatedly, that the district court improperly instructed the jury on citizen's arrests; and that the district court erred by excluding body camera evidence

supporting that Valerie did not sign the citizen's complaint until after Brown was taken into custody.

Testimony about the prior assault does not warrant dismissal

Brown first argues the State improperly elicited prior bad act testimony about the prior assault. He contends that the district court should have allowed defense counsel to question the witness on the legal distinctions between assault and battery, to avoid confusing the jury, without the State being allowed to inquire into the domestic component of the assault. Brown argues the "assault" testimony was otherwise prejudicial and inadmissible, particularly where the district court did not first conduct a hearing on its admissibility. The district court's decision to allow evidence is reviewed for an abuse of discretion. *Mclellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008).

Before admitting evidence of prior bad acts under NRS 48.045(2), the district court must hold a hearing to address several factors, including the danger of unfair prejudice. *See Bigpond v. State*, 128 Nev. 108, 116-17, 270 P.3d 1244, 1249-50 (2012); *see also Tinch v. State*, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997) (outlining the substantive criteria for admitting prior bad act evidence). But the failure to conduct this hearing will not warrant reversal if the record shows the evidence was nevertheless admissible or that the result would have been the same even without the evidence. *King v. State*, 116 Nev. 349, 354, 998 P.2d 1172, 1175 (2000). Further, "ordinarily inadmissible evidence may be rendered admissible when the complaining party is the party who first broached the issue." *Chadwick v. State*, 140 Nev. 104, 113, 546 P.3d 215, 226 (Ct. App. 2024) (addressing the invited error doctrine).

Even if testimony of the prior assault were prior bad act evidence (and not res gestae, as the State contends), its admission does not warrant reversal. The record shows that defense counsel repeatedly questioned the witness as to whether probable cause existed to arrest Brown for various other crimes, and therefore opened the door to that witness's clarifying statement, on redirect, that the probable cause arose from the prior assault. Moreover, though Brown argues the evidence was prejudicial as it could lead a juror to conclude Brown acted in conformity with the prior assault, Brown has not disputed that he battered the officers and nurse by spitting on them, only that the offense did not rise to the level of battery by a prisoner. Given the other evidence adduced at trial established those batteries, the outcome here would have been the same even without this evidence.

Brown does not show that the evidence was insufficient or that the district court improperly instructed the jury on citizen's arrests

Brown argues there is insufficient evidence that he was in lawful custody because officers did not have a warrant, did not have probable cause for a felony or gross misdemeanor arrest, and did not witness Brown commit the misdemeanor assault alleged. Relatedly, he contends the district court improperly instructed the jury on citizen's arrests where the officers testified to a probable cause arrest. He further argues that no citizen's arrest occurred here because NRS 171.126 and NRS 171.104 do not contemplate a "citizen's complaint" as the basis for an arrest, Valerie did not effectuate a citizen's arrest because she neither attempted to take Brown into custody nor asked to have him arrested, and policy concerns weigh against citizen's arrests generally. The State counters that Brown reads the citizen's arrest statutes too narrowly and that officers were acting on Valerie's behalf to effectuate a lawful citizen's arrest.

NRS 200.481(2)(f) makes battery a category B felony if it is committed by "a prisoner who is in lawful custody or confinement." The State therefore had to prove beyond a reasonable doubt that Brown was in lawful custody or confinement when he committed the batteries. *Id.* Sufficiency of the evidence is reviewed on appeal for "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) *quoting Jackson v. Virginia*, 443 U.S. 307, 319 (1979). A district court's decision settling jury instructions is generally reviewed for an abuse of discretion, but "whether the instruction was an accurate statement of the law is a legal question that is reviewed de novo." *Funderburk v. State*, 125 Nev. 260, 263, 212 P.3d 337, 339 (2009).

"In defining the scope of [a] citizen's arrest, we look first to the plain language of the statute[s]." *Ser v. State*, 141 Nev., Adv. Op. 57, 579 P.3d 559, 565 (2025) (citation modified). An arrest is defined simply as a lawful "taking of a person into custody," and may be made by an officer or private person. NRS 171.104. NRS 171.126 expressly authorizes citizen's arrests, and NRS 171.132 allows the person making the arrest to "orally summon as many persons" as necessary to aid in the arrest. These statutes do not expressly require the citizen to personally take the defendant into custody, or to physically attempt to take the person into custody as part of the arrest process. They do not expressly bar a citizen from calling a peace officer to make the arrest. They also do not expressly preclude the person summoned to aid the citizen from relying on a written complaint. Yet, Brown's argument largely relies on these statutes and, aside from *Ser*—which does not address officer-assisted citizen's arrests—does not expand

on other caselaw or sources that address the nuances of citizen's arrests, such as what actions demonstrate a citizen's intent to arrest or when and how an officer may assist with a citizen's arrest. And although *Ser* raised concerns about the breadth of the citizen's arrest statutes, the task of limiting those statutes falls to the legislature, not the courts. 141 Nev., Adv. Op. 57, 579 P.3d at 566. Absent authority supporting that a citizen may not summon an officer to assist in making an arrest or that the officer cannot rely on a written citizen's complaint to make a valid arrest, Brown's argument fails. *See Fairman v. State*, 87 Nev. 627, 629, 491 P.2d 1283, 1284 (1971) (explaining appellant bears the burden to show error); *State v. Maher*, 25 Nev. 465, 62 P. 236, 236 (1900) (same).

Turning to the facts, at trial the officers testified they believed they had probable cause to arrest Brown, *and* that they could also arrest him based on a complaint to affect the arrest signed by the victim, raising the citizen's arrest issue. On that point, Valerie admitted "cops were called to my house" and that she signed a form for the officers and dated it August 27. From these facts, the jury could conclude Valerie called officers to assist in arresting Brown. And, although Valerie also testified she had not wanted Brown to be arrested, it was for the jury to determine her credibility. *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

The "citizen's complaint" was not included in the appellate record, and its absence makes Valerie's intent and the officers' beliefs about a citizen's arrest difficult if not impossible to adequately review on appeal. *See Thomas v. Hardwick*, 126 Nev. 142, 147, 231 P.3d 1111, 1115 (2010), (recognizing that not having the records "needed to decide the issues raised on appeal . . . hamstrings our review") (*citing Riggins v. State*, 107 Nev. 178, 182, 808 P.2d 535, 538 (1991), *reversed on other grounds by Riggins v.*

Nevada, 504 U.S. 127, 138 (1992)). However, the missing record is presumed to support the district court's decision to give the contested jury instruction. *Id.* at 147-48, 231 P.3d at 1115. Thus, on this record and briefing, Brown has not shown the district court erred by instructing the jury on citizen's arrests, that the jury could not reasonably conclude that the officers assisted Valerie in making a lawful citizen's arrest, or that the verdict is unsupported by sufficient evidence.[1]

Brown fails to show the excluded body camera footage warrants reversal

Last, Brown argues that the district court erred by excluding body camera footage that he argues was relevant to support Valerie's testimony that she had not signed the citizen's complaint on the evening of August 27th. He contends that the timing of that complaint "was the ultimate issue in this case" and that he was entitled to present evidence supporting the credibility of Valerie's testimony.

The decision to exclude evidence is reviewed for an abuse of discretion, *McLellan*, 124 Nev. at 267, 182 P.3d at 109, and "[t]he burden to make a proper appellate record rests on appellant," *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980). The body camera footage was not provided on appeal. The record, however, indicates that it was a muted video of Valerie's interactions with one officer on the evening of the 27th, and that defense counsel wanted to use it to bolster Valerie's testimony that she had not signed the citizen's complaint that evening. But the record does

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[1]Brown additionally argues that his custodial status was "not appropriate" because NRS 171.1772 and NRS 171.1774 require a peace officer to issue a misdemeanor citation and here the officers instead immediately placed Brown in custody. This argument is unpersuasive given the record facts and the fact those statutes do not require officers to immediately issue a citation.

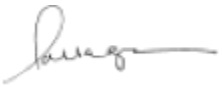
not show this video captured the entirety of Valerie's interactions with officers on the evening of the 27th, making it of limited value where—as the district court noted below—the jury had other evidence from which to judge the citizen's complaint's timing. *See* NRS 48.035(1) (relevant evidence is not admissible if any probative value is substantially outweighed by its danger of confusing the issues). On the record provided, Brown has not shown that the district court abused its discretion by excluding that body camera footage.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Pickering, J.



Parraguirre, J.



Bell, J.

cc: Hon. Egan K. Walker, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk