

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM MAURICIO RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40648

FILED

AUG 29 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of battery causing substantial harm. The district court sentenced appellant William Mauricio Rodriguez to serve a prison term of 16 to 40 months.

Rodriguez was charged with burglary, attempted murder, and battery with the use of a deadly weapon causing substantial harm for attacking his estranged wife, Sylvia Medina.¹ Medina testified that, on October 20, 2002, between 2:30 a.m. and 3:00 a.m., Medina arrived home to her apartment and discovered Rodriguez waiting in the dark in her bedroom. Medina testified that Rodriguez hit her, choked her, threatened to kill her, and then cut her wrist and head with "something shiny." Medina broke free and called 9-1-1, and Rodriguez fled.

Although Medina initially refused medical treatment, the day after the attack, Medina went to Lake Mead Hospital for treatment because she felt dizzy and her head hurt. At the hospital, Medina received

¹The jury found Rodriguez not guilty of burglary and attempted murder. The jury also found that Rodriguez did not use a deadly weapon in the course of the battery.

three staples in her head, behind her right ear. Medina visited the hospital again several months after the attack because her head still hurt; during that visit, Medina was given a CAT scan.

At trial, the State sought to admit Medina's medical records from her two hospital visits. Defense counsel objected, arguing that the records were inadmissible hearsay and should be excluded because they concerned the issue of whether Medina suffered substantial bodily harm, contained the doctor's diagnosis, and the district court had earlier prohibited the doctor from testifying due to the State's failure to provide timely notice of the expert testimony.² Defense counsel argued that admission of the medical records violated Rodriguez's right to cross-examine the witness against him because defense counsel could not "cross-examine a piece of paper." The district court thereafter admitted the records into evidence, explaining: "[y]ou could have cross-examined the doctor had you so chosen, but you elected not to, and the records meet with the statute and the exceptions to the hearsay rule."³

Rodriguez first contends that the district court erred in admitting the medical records of the victim, Sylvia Medina, because they

²We note that neither party to this appeal has provided this court with the medical records at issue for this court's review. On appeal, however, neither party disputes the contents of the records. Accordingly, we have resolved this issue without reviewing the medical records based on the parties' discussion of the contents of the medical records at trial.

³The district court was referring to the State's offer to call the doctor who prepared the medical records as a witness so that Rodriguez could conduct a cross-examination. Rodriguez declined the State's offer to call the doctor, and he had previously successfully moved to exclude that medical testimony based on the State's failure to provide Rodriguez with timely notice of his testimony.

constituted inadmissible hearsay. We conclude that Rodriguez's contention lacks merit.

A district court has considerable discretion in determining the relevance and admissibility of evidence.⁴ Moreover, a district court has considerable discretion in determining whether the requisite foundation has been laid to deem evidence admissible at trial as a business record exception to the proscriptions against hearsay.⁵ The business records exception "generally permits a party to introduce as evidence reports made during the regularly conducted course of business."⁶ "The basis for the business record exception is that accuracy is assured because the maker of the record relies on the record in the ordinary course of business activities."⁷

In this case, we conclude that the district court did not err in ruling that Medina's medical records were admissible. The medical records were properly authenticated and were prepared by a treating physician in the ordinary course of regularly conducted business at Lake Mead Hospital. Further, there is no allegation that the medical records at issue were made at the instigation of law enforcement for an investigatory

⁴See Sterling v. State, 108 Nev. 391, 395, 834 P.2d 400, 403 (1992).

⁵Thomas v. State, 114 Nev. 1127, 1147-48, 967 P.2d 1111, 1124-25 (1998).

⁶Miranda v. State, 101 Nev. 562, 566, 707 P.2d 1121, 1124 (1985).

⁷DeRosa v. Dist. Ct., 115 Nev. 225, 232, 985 P.2d 157, 161 (1999) (quoting Clark v. City of Los Angeles, 650 F.2d 1033, 1037 (9th Cir. 1981)) (citation omitted).

purpose.⁸ We therefore conclude that the records were presumptively reliable and were admissible under the business records exception to the hearsay rule.

Relying on Ramirez v. State,⁹ Rodriguez next contends that, even if the medical records were admissible under a hearsay exception, the Sixth Amendment bars their admission. Specifically, Rodriguez argues that the records were inadmissible because the doctor who prepared them was not subject to cross-examination at trial. Rodriguez contends that the medical records acted as a “phantom witness” that should not have been allowed because, due to untimely notice, the State had been precluded from calling a medical expert witness at trial. We conclude that Rodriguez’s contention lacks merit.

“To satisfy the requirements of the Confrontation Clause, if the State seeks to introduce hearsay statements against a criminal defendant, such evidence must bear adequate indicia of reliability by either falling within a firmly rooted hearsay exception, or the State must demonstrate that the statement possesses particularized guarantees of trustworthiness.”¹⁰ As discussed above, the statements contained in Medina’s medical records were presumptively reliable and fell within a firmly rooted exception to the hearsay rule, namely the business records exception. Further, Rodriguez has failed to show that the medical records,

⁸Cf. Ramirez v. State, 114 Nev. 555, 958 P.2d 724 (1998) (holding that medical records constituted inadmissible hearsay and were admitted in violation of the Confrontation Clause because they were made at the instigation of law enforcement for an investigatory purpose).

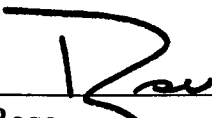
⁹Id.


¹⁰Id. at 557-58, 958 P.2d at 729.

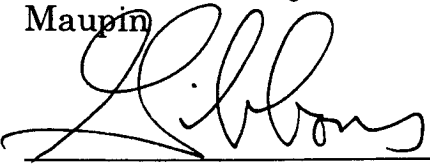
of which Rodriguez was given timely notice and which were properly authenticated by the custodian of records, should have been excluded merely because the State was precluded from calling the medical expert witness who prepared the records.¹¹ Finally, we note that after Rodriguez objected to the admission of the records based on Confrontation Clause grounds, the State offered to produce the witness the next day; Rodriguez did not accept the State's offer. Accordingly, we conclude that the requirements of the Confrontation Clause were satisfied.

Having considered Rodriguez's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Valorie Vega, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹¹See generally Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985) (noting that the district court has broad discretion in deciding whether to admit evidence).