# IN THE SUPREME COURT OF THE STATE OF NEVADA

BRADLEY ALAN ALLDREDGE A/K/A BRADLEY ALAN ALLREDGE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42176

FILED

MAY 18 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

## ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of battery constituting domestic violence. The district court sentenced appellant to a prison term of 14 to 40 months.

Appellant first contends that the State failed to prove at the preliminary hearing that appellant had twice been previously convicted of domestic battery. Specifically, appellant argues that the two prior battery convictions that were admitted at the preliminary hearing failed to show that there was a domestic relationship between appellant and the victim. This issue was raised in a pretrial petition for a writ of habeas corpus filed by appellant.

Appellant has failed to include a copy of his pretrial petition in the appendix, and has failed to provide copies of the prior convictions for this court to review. The State informs this court that the State provided municipal court notes and judgments of conviction to the district court, which demonstrated that the prior convictions were for domestic battery. Prior to the start of trial, the district court concluded that the State properly proved the prior convictions.

"The burden to make a proper appellate record rests on [the] appellant."[1] Appellant has failed to provide an appellate record upon which this court can conclude that the district court erred, and we therefore conclude that the State adequately proved the two prior convictions.

Appellant next contends that the district court erred by admitting statements made by appellant without the benefit of Miranda[2] warnings. Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him "in custody."[3] An individual is deemed to be "in custody" "where there has been a formal arrest, or where there has been a restraint on freedom of movement of the degree associated with a formal arrest so that a reasonable person would not feel free to leave."[4] To determine whether a custodial interrogation has taken place, a court must consider the totality of circumstances, including "(1) the site of the interrogation, (2) whether the investigation has focused on the subject, (3) whether the objective indicia of arrest are present, and (4) the length and form of questioning."[5] "[N]o single factor is

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[1]Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980).

[2]Miranda v. Arizona, 384 U.S. 436 (1966).

[3]Oregon v. Mathiason, 429 U.S. 492, 495 (1977).

[4]State v. Taylor, 114 Nev. 1071, 1082, 968 P.2d 315, 323 (1998); see also California v. Beheler, 463 U.S. 1121, 1125 (1983).

[5]Alward v. State, 112 Nev. 141, 154-55, 912 P.2d 243, 252 (1996).

dispositive."[6] A district court's determination as to whether a defendant is "in custody" will not be disturbed where there is substantial evidence to support it.[7]

In this case, a police officer who responded to a domestic battery call at about 12:15 a.m., was informed by the victim that she had been involved in a physical altercation with her husband, appellant. The victim further informed the officer that her husband had left the apartment where the battery occurred approximately 15 minutes earlier. The officer then left the apartment and located appellant, who was walking down the street at approximately 1:00 a.m. The police officer approached appellant, stopped his squad car and activated his emergency flashers while he exited the car to speak with appellant. Appellant informed the police officer that his name was Bradley Alldredge, and admitted that he was the husband of the victim. Appellant further informed the officer that he and his wife had had an argument much earlier in the afternoon and that he left the apartment immediately after the argument to avoid a physical altercation. Finally, appellant told the officer that he had spent the entire evening at a local bar.

After the conversation with the police officer, the officer spoke to his partner on the radio who relayed the information that the victim had been battered by appellant. At that point, appellant was arrested.

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[6]Id. at 154, 912 P.2d at 252.

[7]Mitchell v. State, 114 Nev. 1417, 1423, 971 P.2d 813, 817 (1998) (citing Alward, 112 Nev. at 154, 912 P.2d at 252), overruled on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002).

The district court found that appellant was not in custody prior to his arrest, and that no Miranda warnings were therefore required. Based on the totality of the circumstances, the district court's determination is supported by substantial evidence. Although appellant was the focus of the investigation when he was approached by the officer, the questioning took place on a public street, there were no indicia of arrest, and the questioning only lasted for about 5 minutes. We therefore conclude that the district court did not err by admitting evidence of appellant's statements.

Appellant next contends that the district court erred by allowing the testimony of Dr. Louis Mortillaro as an expert in the dynamics of domestic violence. Appellant argues:

> Dr. Mortillaro was not involved in the investigation of this case, and has not interviewed the alleged victim. No offer of proof is given to the defense as to the content of his testimony other than testifying to the "dynamics of domestic violence." Based on prior experience and a review of relevant case law, it can be deduced that the State would like Dr. Mortillaro to comment on the veracity of the alleged victim in this case, especially since she has not made herself available to testify at trial. This is vouching and is inadmissible under Nevada law. Vouching includes any testimony that suggests to the jury that based [on] his "expert opinion" of the behavior and demeanor of domestic violence "victims" in general, the testimony of the alleged victim in this case is "consistent" with her telling the truth as to any allegation against the Defendant, and is "consistent" with her making herself unavailable to testify at trial. If there is another purpose for

> this testimony, than [sic] the State must make a full offer of proof as to the proposed testimony and the defense would like an opportunity to respond.

Unfortunately, this argument is of absolutely no use on appeal. Despite the assertions of appellant, the victim did actually testify. Additionally, Dr. Mortillaro testified, so it is unclear what "offer of proof" and "opportunity to respond" are desired by appellant. There is no identification of any error that occurred at trial. Indeed, appellant's argument appears to have been drafted in advance of trial.

"It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."[8] Although appellant cites to authority relevant to the issue of vouching, appellant has entirely failed to provide any cogent argument on this issue, and this court will not address it. As an aside, this court notes that Dr. Mortillaro testified that he had no opinion as to the veracity of the victim in this case, and his testimony could not therefore be characterized as improper vouching in any event.

Finally, appellant contends that the district court erred by admitting a tape of a 911 phone call. Specifically, appellant argues that the tape should not have been admitted because the person who made the call did not testify. On the tape, the caller informs the operator that there is an argument going on in the apartment upstairs, and that a woman is screaming that someone has broken her nose. We conclude that the tape was admissible pursuant to NRS 51.085, the present sense impression

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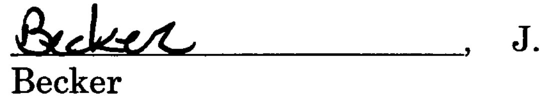
[8]Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

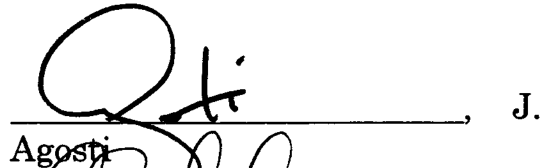
exception to the hearsay rule, as the statements by the caller were made while she was perceiving the event. We therefore conclude that the district court did not err by admitting the tape.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.



_____________________, J.
Becker



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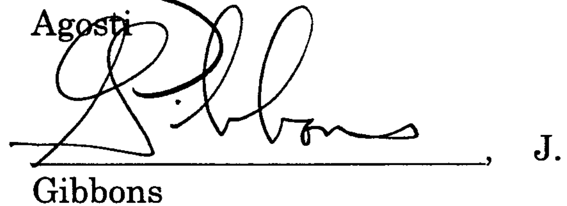
Agosti



_____________________, J.
Gibbons

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