IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN HOWARD RADKE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59549

FILED

MAY 10 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Kevin Howard Radke appeals from a judgment of conviction, pursuant to a jury verdict, of statutory sexual seduction. Fourth Judicial District Court, Elko County; Jack B. Ames, Senior Judge.

Radke argues that the district court abused its discretion by admitting into evidence un-Mirandized statements he made to Elko police officers. We disagree.

Warnings against self-incrimination under Miranda v. Arizona, 384 U.S. 436, 444 (1966), are only necessary when a suspect has experienced custodial interrogation. In determining whether a custodial interrogation has occurred, we consider the totality of the circumstances, including the site of the interrogation, the focus of the investigation, objective indicia of arrest, and the form and length of questioning. See State v. Taylor, 114 Nev. 1071, 1081-82, 968 P.2d 315, 323 (1998). We have stated that an individual is not in custody where police officers only

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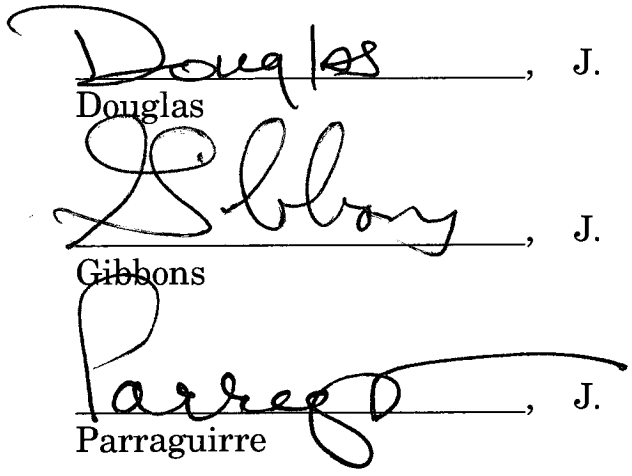
question him "on-scene regarding the facts and circumstances of a crime." Id. at 1082, 968 P.2d at 323.

Here, an Elko police officer spoke with the victim at the hospital. She told him that Radke had sexually assaulted her and described where he lived. In response, the officer, his sergeant, and another officer went to Radke's apartment complex and found his apartment. Radke answered his door and invited them in. The police officers told Radke "we're not here to necessarily arrest you, we're here to get your side of the story." Radke was then questioned in his apartment. While Radke was the "focus" of the investigation, this focus was not equivalent of "focus" for Miranda purposes, which involves "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." Avery v. State, 122 Nev. 278, 287, 129 P.3d 664, 670 (2006) (internal quotations omitted). Radke let the officers search his bedroom for evidence corroborating the victim's earlier statement. And when they found a bloodstain on the mattress, Radke got up from the couch and came to see what the officers found. During the interrogation, Radke was neither handcuffed nor arrested. There is no evidence that his freedom was inhibited. Rather, after Radke was questioned, the officers left his apartment and told him that they would file the case with the district attorney. Finally, the entire exchange lasted just over 30 minutes. Given

these considerations, we conclude that Radke was not subject to custodial interrogation and the district court properly admitted his statements.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Douglas

_____, J.
Gibbons

_____, J.
Parraguirre

cc: Chief Judge, Fourth Judicial District Court
Hon. Jack B. Ames, Senior Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk