

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARL LAMAR WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43044

FILED

NOV 15 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of conspiracy to commit robbery, one count of possession of a stolen vehicle, one count of burglary while in possession of a firearm, four counts of second-degree kidnapping with the use of a deadly weapon, one count of robbery with the use of a deadly weapon, and one count of failure to stop on the signal of a police officer. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

Appellant first contends that the kidnapping charges should have been dismissed. Specifically, appellant argues that the kidnapping charges merged with the robbery charge. Evidence at trial showed that appellant and his accomplice forced five restaurant employees into the break room. Appellant's accomplice then held four of the employees in the break room at gunpoint, while appellant forced a fifth employee to go into another room and open the safe. Under the facts of this case, we conclude that appellant was guilty of four counts of kidnapping, but that the robbery actually involved only the fifth victim.¹ Because there was no underlying offense with which the four kidnapping charges could merge, the district court did not err by refusing to dismiss them.

¹See Langford v. State, 95 Nev. 631, 639, 600 P.2d 231, 237 (1979).

Appellant next contends that the district court erred by denying his motion to suppress statements made approximately an hour after he had been informed of his rights under Miranda v. Arizona.² This court has held that in considering the totality of the circumstances, there are various factors to be considered in determining whether Miranda warnings have become stale. Specifically, those factors are: (1) the time elapsed between the warnings and the interrogation; (2) whether the warnings and interrogation took place in the same or different locales; (3) whether the same person gave the warnings and conducted the interrogation; (4) whether the statements given in the later interrogation differ from statements made at the time the warnings were given; and (5) the apparent state of the accused during the interrogation.³ "[T]he most relevant factor in analyzing whether a former Miranda admonition has diminished is the amount of time elapsed between the first reading and the subsequent interview."⁴

In the instant case, we note that only an hour had passed between the giving of the warnings and the interrogation. Moreover, the same person gave the warnings and conducted the interrogation, and although there was evidence that appellant was experiencing some slight discomfort due to an injury to his foot, there is not evidence that he was in any physical or mental distress. We therefore conclude that under the

²384 U.S. 436 (1966)

³Koger v. State, 117 Nev. 138, 142, 17 P.3d 428, 431 (2001) (citing State v. Beaulieu, 359 A.2d 689, 693 (1976)).

⁴Id.

totality of the circumstances, appellant validly waived his Miranda rights, and the district court did not err by denying the motion to suppress.

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

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. John S. McGroarty, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk