

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID LAMOR GIBBS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45971

FILED

JUL 14 2006

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DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge. The district court sentenced appellant David Lamor Gibbs to serve a prison term of 48-120 months.

First, Gibbs contends that the district court erred by failing to suppress involuntary and inculpatory statements he made to Wal-Mart security officers because the officers acted as agents of the State, and therefore, were required to read him his rights pursuant to Miranda.¹ We disagree. The Wal-Mart security officers were statutorily authorized to apprehend and detain Gibbs after observing him shoplifting.² As this

¹Miranda v. Arizona, 384 U.S. 436 (1966).

²NRS 597.850(3), in part, provides –

Any merchant who has reason to believe that merchandise has been wrongfully taken by a person and that he can recover the merchandise by taking the person into custody and detaining him may, for the purpose of attempting to effect

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court has previously held, the private security officers were not required to advise Gibbs of his rights because "Miranda applie[s] only to 'custodial interrogation initiated by police officers.'"³ Therefore, we conclude that Gibbs' contention is without merit.

Second, Gibbs contends that his post-Miranda confession to the arresting police officer should have been excluded because it was involuntary. Gibbs claims that an exchange during the trial between the prosecutor and LVMPD Officer J. Bernstein indicates that he was improperly induced to confess by a promise of immunity, specifically, that he would not be charged with burglary. Gibbs, however, did not raise the issue in either his pretrial motion to suppress or petition for a writ of habeas corpus; and thus, the district court was not required to make a factual determination. Gibbs raises this argument for the first time on appeal, and the record is insufficient for this court to determine that the district court erred by failing to sua sponte exclude Gibbs' confession based on an allegedly improper inducement.⁴

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such recovery or for the purpose of informing a peace officer of the circumstances of such detention, take the person into custody and detain him, on the premises, in a reasonable manner and for a reasonable length of time.

³Silks v. State, 92 Nev. 91, 94-95, 545 P.2d 1159, 1161 (1976) (quoting Schaumberg v. State, 83 Nev. 372, 374, 432 P.2d 500, 501 (1967)).

⁴See generally Passama v. State, 103 Nev. 212, 213, 735 P.2d 321, 322 (1987) ("A confession is admissible only if it is made freely and voluntarily, without compulsion or inducement."); see also McKenna v.

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Finally, Gibbs contends that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt because the State failed to prove the corpus delicti of the crime prior to the admission of his confessions. We disagree. Tracy Lawson, a loss prevention agent for Wal-Mart, testified that he, along with his partner, watched Gibbs via videotaped surveillance, select and conceal various clothing items and then attempt to leave the store without paying. The video was admitted into evidence at trial. After Gibbs was apprehended by the security officers, he immediately admitted that he entered the Wal-Mart with the intent to steal. The security officers soon discovered that Gibbs had approximately \$2.00 in cash and more than \$22.00 of concealed merchandise in his possession and no other way to pay for the items. This court has stated that circumstantial evidence alone may satisfy the corpus delicti rule.⁵ Therefore, we conclude that the State sufficiently established the corpus delicti of the crime charged.⁶

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State, 114 Nev. 1044, 1054, 968 P.2d 739, 746 (1998) ("Where a defendant fails to present an argument below and the district court has not considered its merit, we will not consider it on appeal.").

⁵See West v. State, 119 Nev. 410, 416, 75 P.3d 808, 812 (2003).

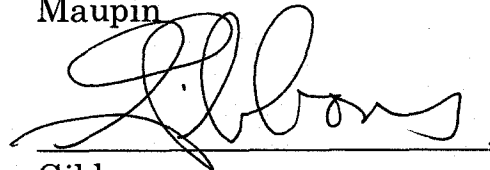
⁶See generally Doyle v. State, 112 Nev. 879, 892, 921 P.2d 901, 910 (1996), overruled on other grounds by Kaczmarek v. State, 120 Nev. 314, 333, 91 P.3d 16, 29 (2004); see also Smith v. United States, 348 U.S. 147, 154 (1954) (holding that when there is no tangible injury to prove that a crime has been committed, the corpus delicti can be proved through the accused's statement, which is supported by corroborative evidence); Azbill v. State, 84 Nev. 345, 351, 440 P.2d 1014, 1018 (1968).

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

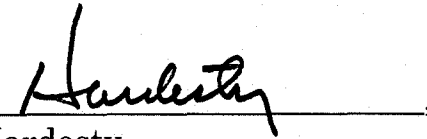
ORDER the judgment of conviction AFFIRMED.⁷

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Michael A. Cherry, District Judge
Clark County Public Defender Philip J. Kohn
David Lamor Gibbs
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁷Because Gibbs is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to Gibbs unfiled all proper person documents he has submitted to this court in this matter.