

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEREMY KEVIN COX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47345

FILED

SEP 07 2006

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 child abuse resulting in substantial bodily harm. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge. The district court sentenced appellant Jeremy Kevin Cox to serve a prison term of 56 to 155 months.

Cox contends that the district court erred by denying his pretrial motion to suppress evidence of his confession to police. In particular, Cox alleges that he was incapable of understanding his Miranda¹ rights because he was borderline mentally retarded. Citing to a law review article for support,² Cox alleges that confessions made by the mentally retarded should be subject to stricter scrutiny because individuals with low intelligence are more susceptible to coercive police tactics, more likely to give a false confession in order to please authority

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

²See Morgan Cloud et. al., Words Without Meaning: The Constitution, Confessions, and Mentally Retarded Suspects, 69 U. Chi. L. Rev. 495 (2002).

figures, and less likely to understand the meaning and the significance of Miranda warnings. We conclude that Cox's contention lacks merit.

"A confession is admissible only if it is made freely and voluntarily, without compulsion or inducement."³ "The question of the admissibility of a confession is primarily a factual question addressed to the district court: where that determination is supported by substantial evidence, it should not be disturbed on appeal."⁴ In determining whether a confession is voluntary, the court looks at the totality of the circumstances, including the defendant's age, education level, and intelligence, as well as the length and nature of the detention and the advisement of constitutional rights.⁵

In the instant case, the district court found that, despite Cox's low intelligence, his confession was voluntary. We conclude that the district court's finding is supported by substantial evidence. In particular, the interviewing police officer testified at the suppression hearing that she personally advised Cox of his Miranda rights, he acknowledged that he understood, signed a written waiver form, and agreed to speak with her. The police officer also testified that Cox provided appropriate answers to her questions, did not appear to be afraid, and did not exhibit any behavior indicative of a person of low intelligence. Finally, the police officer testified about the circumstances of the interview, explaining that it lasted one hour and fifteen minutes; Cox was offered food and drink,

³Passama v. State, 103 Nev. 212, 213, 735 P.2d 321, 322 (1987).


⁴Chambers v. State, 113 Nev. 974, 981, 944 P.2d 805, 809 (1997).


⁵Id.


was free to leave and, in fact, left the police station for approximately ten minutes to smoke a cigarette. A transcript of the police interview and a signed written waiver form, which were in the record before the trial court, corroborated the police officer's testimony. Accordingly, we conclude that the district court did not err by denying the motion to suppress because the totality of the circumstances indicates that the confession was voluntary.⁶

Having considered Cox's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. J. Michael Memeo, District Judge
Elko County Public Defender
Attorney General George Chanos/Carson City
Elko County District Attorney
Elko County Clerk

⁶Because we conclude that the confession was voluntary, we need not address Cox's contention that the district erred in finding that he was not in custody.