IN THE SUPREME COURT OF THE STATE OF NEVADA

JODY ALEXANDER FURNARE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47714

FILED

JUN 27 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of five counts of sexual assault of a child under the age of 16. Sixth Judicial District Court, Humboldt County; John M. Iroz, Judge. The district court sentenced appellant Jody Furnare to five terms of life imprisonment with the possibility of parole after 20 years on each count. The district court further ordered two of the counts to run consecutively and the remainder to run concurrently.

Furnare contends that the district court erred by denying his motion to suppress statements made during questioning at his home without the benefit of Miranda[1] warnings and statements made after his arrest.

Furnare was originally questioned in his home by Deputy Rorex. Prior to the questioning, Furnare was not given Miranda warnings. A suspect's statements made during custodial interrogation are inadmissible at trial unless the police first inform the suspect of his Fifth

[1]Miranda v. Arizona, 384 U.S. 436, 479 (1966).

Amendment privilege against self-incrimination.[2] The ultimate question of whether a person is "in custody" is a question of law reviewed de novo.[3] Furnare had not been formally arrested when he was initially questioned, and therefore the test is "whether a reasonable person in [Furnare's] position would feel at liberty to terminate the interrogation and leave."[4]

In this case, we conclude that although Furnare was not in custody when the interview at his home began, the questioning evolved into a custodial interrogation. In particular, we note that after interviewing Furnare for a period of time, during which Furnare repeatedly denied the accusations, Deputy Rorex informed Furnare that he could not let him go. Subsequent to being told that he could not go, Furnare made some incriminating statements, and Furnare was, in fact, arrested at the end of the interview based on those incriminating statements.

We conclude that based on the totality of the circumstances, a reasonable person in Furnare's position would not have felt free to leave, and that Furnare was therefore in custody after being told that Deputy Rorex could not let him go.[5] Because he was not informed of his Miranda

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[2]Id.

[3]Rosky v. State, 121 Nev. 184, 190, 111 P.3d 690, 694 (2005).

[4]Id. at 191, 111 P.3d at 695 (quoting Thompson v. Keohane, 516 U.S. 99, 112 (1995)).

[5]See State v. Taylor, 114 Nev. 1071, 1082 n.1, 968 P.2d 315, 323 n.1 (1998) (setting forth the objective indicia of arrest, including whether the suspect was told that he was free to leave, and whether the suspect was arrested at the termination of questioning).

rights, all of Furnare's statements after that point should have been suppressed.

Because we conclude that Furnare's initial statements were obtained in violation of his constitutional rights, we further conclude that statements he made after his arrest were fruit of the poisonous tree and should have been suppressed.[6] Moreover, we cannot conclude beyond a reasonable doubt that the guilty verdict is not attributable to the admission of the statements.[7] Accordingly, Furnare's conviction is reversed.

Finally, Furnare contends that the district court erred by refusing to consider at sentencing a letter submitted by Furnare's mother. The State objected to consideration of the letter because Furnare's mother was unable to attend the sentencing hearing and the State was therefore unable to cross-examine her. NRS 176.015(2) provides, in part, that a defendant shall be allowed "to present any information in mitigation of punishment." The State argues, without citation to any authority, that to allow consideration of the letter would "allow unfettered introduction of evidence with total disregard to the rules of evidence."

This court has held, however, that a sentencing court retains the discretion "to consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the

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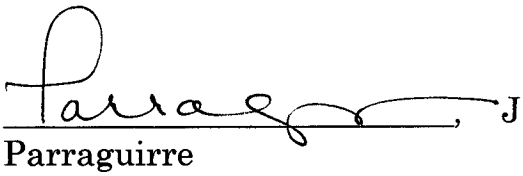
[6]See Mapp v. Ohio, 367 U.S. 643, 655 (1961).

[7]See Chapman v. California, 386 U.S. 18, 24 (1967); see also Sullivan v. Louisiana, 508 U.S. 275, 279 (1993).

individual defendant."[8] Further, "'judges spend much of their professional lives separating the wheat from the chaff and have extensive experience in sentencing, along with the legal training necessary to determine an appropriate sentence.'"[9] We conclude that the district court erred by denying Furnare the opportunity to present the letter.

Based on the foregoing, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



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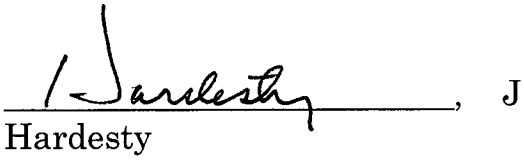

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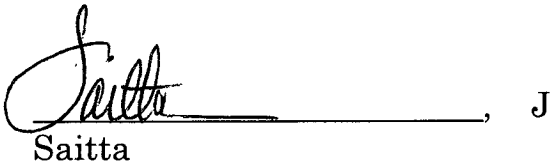

_____, J.
Saitta

cc: Hon. John M. Iroz, District Judge
State Public Defender/Carson City
State Public Defender/Winnemucca
Attorney General Catherine Cortez Masto/Carson City
Humboldt County District Attorney
Humboldt County Clerk

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[8]Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998).

[9]See Randell v. State, 109 Nev. 5, 7-8, 846 P.2d 278, 280 (1993) (quoting People v. Mockel, 276 Cal. Rptr. 559, 563 (Ct. App. 1990)).