IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL GODINEZ LOPEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49036

FILED

NOV 16 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction. Appellant Daniel Godinez Lopez was convicted, pursuant to a guilty plea, of two counts of burglary (counts 1 and 4) and sexual assault (count 3). He was also convicted, pursuant to a jury verdict, of committing counts 1 and 3 with the use of a deadly weapon and robbery with the use of a deadly weapon (count 2). Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced Lopez to serve two terms of 36 to 120 months in prison for burglary with the use of a deadly weapon (count 1), two terms of 48 to 180 months in prison for robbery with the use of a deadly weapon (count 2), two terms of life in prison with the possibility of parole for sexual assault with the use of a deadly weapon (count 3), and a term of 36 to 120 months in prison for burglary (count 4). The district court ordered the sentences for the sexual assault and robbery to run consecutively and the sentences for the remaining counts to run concurrently.

Lopez's convictions arose from two incidents involving two victims. In the early morning hours of March 28, 2004, V.M. left the



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Pacific Beach Club in Reno and walked to her car parked a few blocks away. As she entered her car, Lopez jumped in the back passenger side of the car and pointed a gun at the back of V.M.'s head. Lopez proceeded to sexually assault V.M. and take two $100 bills from her. After the attack, Lopez drove away in his car. A few days later, as Kelly Featherstone entered her car, which was parked in a mall parking lot, Lopez jumped into the back passenger side of the car. Featherstone exited her car and yelled. Lopez fled the scene in his car. Featherstone followed him and obtained a license plate number. Lopez was arrested shortly thereafter.

Lopez argues that the district court erred in denying his motion to suppress his statement made to law enforcement. He concedes that he was advised of his Miranda[1] rights. However, Lopez contends that his statement was involuntary for a host of reasons. The voluntariness of a confession is reviewed under the totality of the circumstances, including such factors as the defendant's age or low intelligence, the lack of education, the lack of any rights advisement, the length of detention, the repeated and prolonged nature of questioning, and the use of physical punishment.[2] "A suspect's prior experience with law enforcement is also a

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

[2]Rosky v. State, 121 Nev. 184, 193-94, 111 P.3d 690, 696 (2005).

relevant consideration."[3] We review de novo the voluntariness of a confession.[4]

First, Lopez contends that his statement was involuntary because he was 16 years old and inexperienced with law enforcement. Specifically, Lopez argues that no parent was present during the interrogation, which was conducted by Reno Police Department (RPD) Detective Tom Broome, "a seasoned law enforcement officer with over twenty-five years of experience." Lopez also contends that although he had prior encounters with the juvenile justice system, he had never been accused of a felony offense or subjected to a custodial interrogation. Detective Broome and RPD Detective Michael Tone testified during the suppression hearing that Lopez stated that he did not want a parent present during questioning, although he was advised that he could have a parent or another adult in attendance. We have held that the absence of a parent during questioning alone does not constitute coercion.[5] Further, nothing in the record suggests that detectives used undue pressure in questioning Lopez or that Lopez's age and alleged inexperience with law enforcement affected his ability to knowingly and freely waive his constitutional rights. Therefore, we conclude that Lopez's statement was not involuntary on these grounds.

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[3]Id. at 194, 111 P.3d at 696.

[4]Id. at 190, 111 P.3d at 694.

[5]Elvik v. State, 114 Nev. 883, 890-91, 965 P.2d 281, 286 (1998); see Ford v. State, 122 Nev. 796, 803, 138 P.3d 500, 504-05 (2006).

Lopez next argues that his statement was involuntary because he was intoxicated from having smoked marijuana several hours prior to the interrogation. Contrary to Lopez's testimony at the suppression hearing that he was under the influence of marijuana during the interrogation, Detectives Broome and Tone testified that they observed no behavior suggesting that Lopez was under the influence of alcohol or drugs. Lopez testified that he used marijuana on the morning of the interrogation, and the record suggests that the interrogation commenced in the early evening hours. After viewing a videotape of the interrogation, the district court commented that it observed no signs of drug intoxication. Based on the foregoing, we conclude that Lopez failed to show that his statement was involuntary due to marijuana intoxication.

Lopez further complains that his statement was involuntary because he was not advised that he would be questioned about the incident involving V.M. in addition to that concerning Featherstone. However, "a suspect's awareness of all the possible subjects of questioning in advance of interrogation is not relevant to determining whether the suspect voluntarily, knowingly, and intelligently waived his Fifth Amendment privilege."[6] Accordingly, we conclude that Lopez's statement was not involuntary on this basis.

Lopez also asserts that his statement was involuntary because the police ignored his request for counsel. Specifically, Lopez argues that

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[6]Colorado v. Spring, 479 U.S. 564, 577 (1987).

his repeated requests to be taken to jail constituted an invocation of his right to counsel. He further contends that considering his age, the police were obligated to explain the method by which he should exercise his rights. To cease an interrogation, "the suspect must unambiguously request counsel" in terms that a "reasonable police officer in the circumstances would understand the statement to be a request for an attorney."[7]

Here, when Detective Broome began questioning about V.M., Lopez told Detective Broome several times that he wanted to be taken to jail. He also stated that he was "sorry" and expressed concern that his girlfriend would leave him. Detective Broome continued the interview and again Lopez stated that he "just wanted to get arrested" and that "no matter what I'm going to jail." At no time during the interrogation did Lopez say anything indicating a desire to speak to a lawyer or another adult. Further, Detective Broome explained to Lopez that he could terminate questioning at any time, that he had a right to counsel and that the interrogation would end if Lopez wanted counsel. Nothing in the record before us suggests that Lopez did not understand how to invoke his rights despite his age. Under the circumstances presented here, we conclude that Lopez's repeated requests to be sent to jail did not constitute an unambiguous exercise of his right to counsel.

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[7]Harte v. State, 116 Nev. 1054, 1066, 13 P.3d 420, 428 (2000) (quoting Davis v. United States, 512 U.S. 452, 459 (1994)).

Finally, Lopez argues that his statement was involuntary because the police exploited the psychological trauma he suffered as a result of sexual abuse to secure additional information from him. During the course of the interrogation, Lopez revealed that he had been sexually abused when he was younger. Detective Broome asked Lopez how it felt when he was "trying to convince somebody that something happened" and whether Lopez felt better when his abuser admitted his wrongdoing. However, Lopez fails to explain how this exchange constituted undue coercion. Moreover, after Detective Broome's comments, Lopez denied sexually assaulting V.M., maintaining that the sexual encounter was consensual. Therefore, we conclude that Lopez's statement was not involuntary on this basis.

We conclude that the circumstances above do not individually or collectively render Lopez's statement involuntary. Accordingly, we conclude that the district court did not err in denying Lopez's motion to suppress his statement to police.

Lopez next argues that the district court erred in denying his motion to dismiss based on a speedy trial violation. Lopez acknowledges that he waived his statutory right to a speedy trial during his arraignment,[8] but argues that his constitutional right to a speedy trial was violated because he did not anticipate waiting more than two years to proceed to trial. He complains that the delays were counsel's fault and

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[8]See NRS 178.556(2).

that he was not consulted about the lengthy delays. No set time limit dictates when a defendant's constitutional right to a speedy trial has been violated.[9] "When determining whether the right to a speedy trial was violated, four factors should be considered: (1) length of delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant."[10]

During the intervening 32 months between Lopez's arrest and his jury trial, his trial was continued approximately 12 times. The State requested a delay due to the unavailability of a witness and another continuance was granted based on a stipulation of the parties. The remaining continuances were either requested by counsel or involved the separate appointments of several counsel. Lopez argues that he should not be bound by counsel's motions for continuance because he was not first consulted. In support of his claim Lopez points to a November 4, 2005, proper person motion "to produce grand jury indictment and status of case," wherein he invoked his right to a speedy trial. However, as Lopez was represented by counsel, the district court declined to consider the motion. We note that the record before us shows that on February 13, 2006, in a hearing respecting a conflict of interest issue with Lopez's counsel, the district court specifically queried Lopez about the continuance, to which Lopez responded that a continuance was necessary

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[9]Furbay v. State, 116 Nev. 481, 484, 998 P.2d 553, 556 (2000); see Barker v. Wingo, 407 U.S. 514, 521 (1972).

[10]Furbay, 116 Nev. at 484-85, 998 P.2d at 555.

to "start fresh" with new counsel. Lopez's sole argument respecting prejudice suffered from the 32-month delay is that the jury no longer saw and judged a 16-year-old boy but rather a 19-year-old man.

We conclude that the length and grounds for delay were not unreasonable under the circumstances and the bulk of the delay was attributable to Lopez.[11] Even considering Lopez's attempt to invoke his speedy trial right in proper person motion, three months later he agreed to a continuance when new counsel was appointed. And other than his argument that he aged from a minor to an adult, Lopez fails to show particularized prejudice arising from the delay. Considering all of the relevant factors, we conclude that no infringement of Lopez's constitutional speedy trial right occurred.

Lopez also argues that the evidence is insufficient to support his conviction for robbery with the use of a deadly weapon because V.M. did not observe him take two $100 bills from her car and V.M.'s trial testimony differed from her police statement respecting the location of the two $100 bills in her car. Lopez also argues that the State produced no evidence that the $100 bills admitted into evidence belonged to V.M. V.M. testified at trial that she kept two $100 bills in the console of her car, while in her police statement she reported that she kept the $100 bills in her pink wallet in the console of the car. V.M. also testified that Lopez told her that he took the money. Lopez testified at trial that he obtained

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[11]Cf. id. at 485, 998 P.2d at 555-56 (concluding that a delay of five and one-half years did not violate the defendant's speedy trial right).

the two $100 bills when he cashed his paycheck. The omissions and inconsistencies about which Lopez now complains were before the jury. It is within the jury's purview "to assess the weight of the evidence and determine the credibility of witnesses."[12] The jury apparently found V.M.'s testimony credible and disbelieved Lopez's explanation.

Finally, Lopez contends that the evidence is insufficient to support the jury's determination that he used a deadly weapon during the commission of the sexual assault and burglary (count 1) offenses. He argues that the primary evidence that he used a gun during the charged crimes came from his involuntary police statement, which should have been suppressed. We disagree. As discussed above, the district court did not err in denying Lopez's motion to suppress. Moreover, Lopez told police that he always carried a gun with him but denied using it during his encounter with V.M. Additionally, as discussed below, V.M. testified that Lopez used a firearm during the crimes perpetrated against her.

Lopez further challenges the sufficiency of the evidence because V.M.'s description of the weapon did not match the gun or any other evidence admitted at trial and that the State failed to connect him to any other gun. Counsel challenged at trial the discrepancies in the evidence of which Lopez now complains. However, the jury also heard V.M. testify that Lopez pointed a gun at her throughout the sexual assault and showed her that it was loaded by pulling the slide back, exposing a

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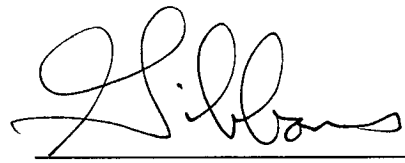
[12]McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

bullet in gold casing. Evidently, the jury found V.M.'s testimony credible.[13]

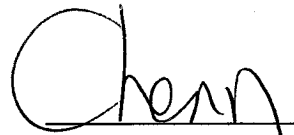
"[A] verdict supported by substantial evidence will not be disturbed by a reviewing court."[14] We conclude that the jury's findings that Lopez committed robbery with the use of a deadly weapon and that he used a deadly weapon during the commission of the sexual assault and one count of burglary are supported by substantial evidence.

Having considered Lopez's claims and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Gibbons



_____, J.
Cherry

_____, J.
Saitta

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[13]Id.

[14]Id.

cc: Hon. Steven P. Elliott, District Judge
Law Offices of Kenneth E. Lyon, III
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk