

IN THE SUPREME COURT OF THE STATE OF NEVADA

THEODORE STEVENS A/K/A  
MICHAEL SABATINO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50190

**FILED**

**APR 08 2009**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Hingasu*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of first-degree murder. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. Appellant Theodore Stevens was sentenced to serve a term of life in the Nevada State Prison without the possibility of parole.

Stevens' conviction arises from the beating death of his girlfriend's five-month-old daughter. His sole claim on appeal is that the district court erred when it denied his pretrial motion to suppress two statements that he made to the police.

On the morning of March 23, 2005, Stevens and his girlfriend, Duchess Davis, were preparing to leave Buffalo Bill's Hotel and Casino in Primm, Nevada. At some point that morning, Davis called her father and told him that her baby daughter, Russia Davis, was dead. The police were contacted, and emergency response personnel determined that the baby had been dead for some time. Stevens was interviewed about the baby's death and told police that the child's injuries were the result of falling off

the bed. After further investigation, detectives decided to arrest both Stevens and Davis for child neglect.

Stevens was transported to the Clark County Detention Center for booking by Officer Jeffrey Hodgkinson. During the trip, Stevens initiated a conversation with Officer Hodgkinson by asking what he was being charged with and what would happen to him. Officer Hodgkinson replied that he did not know the exact charges but that they would probably be serious and the penalty could be anything up to a death sentence. Officer Hodgkinson also told Stevens that he had heard Stevens' prior statements and he did not think Stevens' story was believable. After five minutes of silence, Stevens said that he was ready to "tell the real story." Officer Hodgkinson told Stevens he had already wasted enough of the investigators' time but that he would listen to Stevens when they got to the detention center and decide whether or not to call them. At the hearing on Stevens' motion to suppress, Officer Hodgkinson testified that he thought Stevens just wanted another opportunity to bolster his previous story. They had no further conversation until they arrived at the detention center.

At the detention center, Officer Hodgkinson asked Stevens if he still wanted to "give this confession." Stevens said, "Yes, I'm ready. I'll tell you what happened." Officer Hodgkinson informed Stevens that if he wanted to make a statement he would be required to sign a Miranda card and that the statement would be recorded. Officer Hodgkinson told Stevens that he did not want to waste any more of the investigators' time and that he did not want to call them down to the jail just to hear the same story again. He then asked Stevens not to tell him the whole story but to just briefly explain what he was going to say, and, if it sounded

credible, he would contact detectives about conducting a recorded interview. He informed Stevens that it was his choice whether or not to give a statement. Stevens gave a brief statement that differed from his previous explanations of what had happened to Russia and admitted to killing her. Officer Hodgkinson did not ask any questions, and when Stevens finished his statement, Officer Hodgkinson stated that he would contact Detective Sauchuck to take Stevens' statement. About 15 minutes later, Detective Sauchuck came to the detention center, read Stevens his Miranda rights, and conducted a recorded interview.

Prior to trial, Stevens filed a motion to suppress his pre-Miranda statements to Officer Hodgkinson as well as his post-Miranda statement to Detective Sauchuck. The district court held an evidentiary hearing and, after further briefing, denied Stevens' motion.

A district court's decision to admit evidence is generally reviewed for an abuse of discretion. See, e.g., McClellan v. State, 124 Nev. \_\_\_, \_\_\_, 182 P.3d 106, 109 (2008). However, "issues regarding the admissibility of evidence that implicate constitutional rights" are typically "mixed questions of law and fact subject to de novo review." Hernandez v. State, 124 Nev. \_\_\_, \_\_\_, 188 P.3d 1126, 1131 (2008); see also Rosky v. State, 121 Nev. 184, 190, 111 P.3d 690, 694 (2005) ("[A] trial court's custody and voluntariness determinations present mixed questions of law and fact subject to this court's de novo review.").

Incriminating statements made by a suspect during a custodial interrogation should be suppressed unless Miranda warnings have been given. E.g., Miranda v. Arizona, 384 U.S. 436, 444 (1966); Somee v. State, 124 Nev. \_\_\_, \_\_\_, 187 P.3d 152, 159 (2008). Here, it is undisputed that Stevens was in custody when he communicated with

Officer Hodgkinson; therefore the relevant inquiry is whether Stevens' statement was the result of an interrogation. An interrogation occurs when a defendant is "subjected to either express questioning or its functional equivalent." Rhode Island v. Innis, 446 U.S. 291, 300-01 (1980). In other words, a defendant's statements are the result of an interrogation, and thus inadmissible, if they were the result of "words or actions" that the police "should have known were reasonably likely to elicit an incriminating response." Id. at 302. "[N]ot . . . all statements obtained by the police after a person has been taken into custody are to be considered the product of interrogation." Id. at 299. "Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by [Miranda]." Id. at 300 (quoting Miranda, 384 U.S. at 478).

We first conclude that Stevens' statements to Officer Hodgkinson were volunteered and were not the product of an "interrogation" within the meaning of Miranda. Stevens twice initiated conversations with Officer Hodgkinson by asking questions, which were answered. Then, after a period of silence, Stevens announced his desire to tell the "real story." Officer Hodgkinson did not inquire further until they arrived at the detention center and then only to determine whether Stevens intended to share new information before calling investigators. Officer Hodgkinson did not question Stevens. Nothing in the record indicates that Stevens' pre-Miranda statements were anything other than voluntary.

We likewise conclude that Stevens' post-Miranda statement to Detective Sauchuck was admissible. Stevens claims that the statement was inadmissible because it was the product of an illegal "question first"

strategy employed by law enforcement. In Missouri v. Seibert, 542 U.S. 600 (2004), the United States Supreme Court disapproved of a two-stage interrogation technique in which police officers deliberately conduct an interrogation without providing Miranda warnings until they obtain a confession and then later administer Miranda warnings and get the suspect to repeat his prior confession. The Supreme Court concluded that such procedures did not comply with the constitutional requirements of Miranda. Id. at 604. However, because we conclude that Stevens' statements to Officer Hodgkinson were not the result of an illegal custodial interrogation, Seibert is inapplicable. This is not a case where police officers deliberately conducted an unconstitutional interrogation and then used the results of that interrogation to obtain a second post-Miranda confession. Accordingly, we conclude that the district court did not err in denying Stevens' motion to suppress.

Having considered Stevens' claim and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

Cherry J.  
Cherry

Saitta J.  
Saitta

Gibbons J.  
Gibbons

cc: Hon. Donald M. Mosley, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk