IN THE SUPREME COURT OF THE STATE OF NEVADA

UBALDO URBINA-MALDONADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51848

FILED

SEP 10 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal of a judgment of conviction, pursuant to a jury verdict, of 11 counts of sexual assault on a child and two counts of lewdness with a child under the age of fourteen years. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant Ubaldo Urbina-Maldonado to a term of life in prison with the possibility of parole after 20 years for each of the sexual assault counts and to a life term in prison with the possibility of parole after 10 years for each of the lewdness counts. The district court ordered three of the sexual assault counts and one of the lewdness counts to run consecutively to each other and all other counts, with the remaining counts to run concurrently.

Appellant's sole issue on appeal is that the district court erred in denying his motion to suppress statements made during two police interrogations because he did not understand his rights under Miranda v. Arizona, 384 U.S. 436 (1966), and did not knowingly, intelligently and voluntarily waive them. As a result, he argues, any incriminating

statements made after the administration of warnings in the first interrogation must be suppressed and, because no further warnings were administered before the second interrogation, statements made during the second interrogation must be suppressed.

A defendant's statements made during custodial interrogation may be admitted only after Miranda rights have been administered and validly waived. Koger v. State, 117 Nev. 138, 141, 17 P.3d 428, 430 (2001) (citing Miranda, 384 U.S. at 479). We look to "the totality of circumstances to determine whether the Miranda warnings were properly given and whether the defendant waived his Miranda rights." Id. (citing Wyrick v. Fields, 459 U.S. 42, 48 (1982)). We review de novo the district court's finding that a warning was adequate. U.S. v. Williams, 435 F.3d 1148, 1151 (9th Cir. 2006).

To be valid, a waiver of Miranda rights must have been made knowingly, intelligently and voluntarily. Koger, 117 Nev. at 141, 17 P.3d at 430. We review a district court's findings of fact as to a knowing and intelligent waiver for clear error and its finding of voluntariness de novo. Mendoza v. State, 122 Nev. 267, 276, 130 P.3d 176, 181 (2006). The State must prove voluntariness by a preponderance of the evidence. Dewey v. State, 123 Nev. 483, 492, 169 P.3d 1149, 1154 (2007). A waiver is voluntary when it is "the product of a free and deliberate choice rather than coercion or improper inducement." Mendoza, 122 Nev. at 276, 130 P.3d at 181-82 (quoting U.S. v. Doe, 155 F.3d 1070, 1074 (9th Cir. 1998)). Factors relevant to voluntariness include "the youth of the accused; his lack of education or his low intelligence; the lack of any advice of constitutional rights; the length of detention; the repeated and prolonged

nature of questioning; and the use of physical punishment such as the deprivation of food or sleep." Passama v. State, 103 Nev. 212, 214, 735, P.2d 321, 323 (1987) (citing Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973)). Once valid warnings have been administered, new ones are required after a break in questioning only if the earlier warning has become stale or diluted. Koger, 117 Nev. at 142, 17 P.3d at 431.

Sheriff's deputies first made contact with appellant on August 11, 2006, when they received a call that he and his wife were arguing in a driveway in Incline Village. They had received a complaint two days prior that appellant had sexually abused two of his stepdaughters. After separating appellant and his wife, deputies asked appellant if he would be willing to talk with detectives at the nearby Sheriff's substation. Appellant agreed and, because he did not know where the substation was located, followed deputies to it in his own vehicle. Once there, a deputy bought appellant a candy bar and a soda, and appellant waited in the public lobby for approximately an hour while a detective drove in from Reno. Prior to beginning her interrogation, Detective Penny Bernardy provided appellant with water and confirmed with him that he was there voluntarily and that he could stop questioning and leave at any time.

Initially during this first interrogation, appellant denied any inappropriate contact with his stepdaughters. However, approximately 45 minutes into the interrogation, it became apparent that appellant was about to make incriminating statements, so Detective Bernardy advised him of his rights pursuant to Miranda. In doing so, she read him his rights in what the district court found to be a "relatively rapid speed" and asked him, "Do you understand that?" He nodded yes, and she directed

him to sign the form. Then, after verifying that appellant did not read English, Detective Bernardy rapidly read to him the portion of the form pertaining to waiver of those rights. She again asked him if he understood and, when he again nodded yes, asked him if he wanted to sign the next signature line, which he then signed. The parties do not contest that the warnings were administered at the appropriate time, when the interrogation became custodial. Subsequently, appellant confessed to some instances of sexual contact and touching with his stepdaughters. At the conclusion of the interrogation, he was placed under arrest and transported to the Washoe County Detention Facility in Reno.

Four days later, appellant was still in custody at the Washoe County Detention Facility when Detective Dennis Carry initiated an interrogation (second interrogation). Detective Carry did not administer Miranda warnings to appellant but rather showed him the form he had signed during the first interrogation and asked him whether he remembered the form and his rights. Appellant said he remembered the form, and Detective Carry had him initial it.[1] Appellant asked Detective Carry if he could get an interpreter for the interrogation because he only understood about 70% of spoken English and spoke even less. Detective Carry said that no interpreters were available and directed appellant to tell him if he did not understand something. Appellant never indicated to Detective Carry that there was anything he did not understand. Although

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[1]Neither the transcript of the second interrogation nor the video tape was provided to this court for review.

appellant was not fluent in English, both interrogations were conducted in English and without the aid of an interpreter.

Appellant does not argue that the content of the Miranda warnings administered by Detective Bernardy were deficient but rather, in light of his poor English skills, they were delivered at too rapid a pace for him to understand. Appellant's expert testified that his English oral comprehension skills are at only a second grade level and his English reading skills are at a first grade level. The district court, while acknowledging the expert's opinion, found that appellant had in fact used English for years and was able to engage in business transactions and enter contracts in English. The district court further found that the taped interviews showed that appellant understood the subjects under discussion, he asked questions when he did not understand something, and there were times when he corrected the interrogator, all of which showed English capabilities sufficient to understand his rights under Miranda. In addition, appellant's expert witness testified that appellant understood three of the four Miranda rights, but that he did not appear to understand what the phrase "right to remain silent" meant. However, the expert also testified that appellant did understand that he did not have to speak to detectives, which is the heart of a defendant's right to remain silent. Finally, we note that when Detective Bernardy asked appellant if he understood the rights that she had just read to him, he unequivocally answered in the affirmative. Under the totality of the circumstances, it is clear that appellant spoke sufficient English to understand his Miranda rights as administered, and we hold that they were properly given.

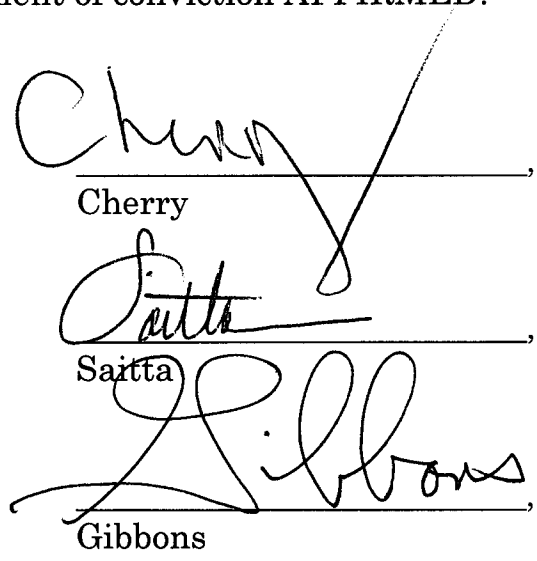
Appellant also argues that he did not knowingly, intelligently and voluntarily waive his Miranda rights because he did not understand the significance of his signature on the waiver form. However, a signed waiver form is not essential to a valid Miranda waiver. Mendoza, 122 Nev. at 276, 130 P.3d at 182. The district court, based on the findings stated above regarding appellant's English abilities, also found that appellant knowingly and intelligently waived his Miranda rights. After reviewing the detailed factual findings of the district court, we hold that the district court did not clearly err in finding a knowing and intelligent waiver of appellant's Miranda rights.

Appellant's waiver must be not only knowing and intelligent but also voluntary. Applying the factors outlined in Passama, we hold that appellant's waiver was voluntary. Appellant was in his early 30s and therefore was not a youth. Although he had completed less than nine years of education, appellant was within the average range of intelligence, albeit on the low side of the range. Miranda rights were administered to him, and the interrogation lasted for less than two hours. The nature of the questioning was neither prolonged nor repetitious and was devoid of any physical punishments. In fact, appellant was provided with a snack and beverages. Further, there is no allegation or evidence that appellant was coerced or improperly induced into admitting to his crimes. Rather, the confession was a product of his free will and deliberate choice. As such, we hold that appellant voluntarily waived his Miranda rights.

Finally, in regard to the second interrogation, appellant does not argue on appeal that it must be suppressed because the warnings administered in the first interrogation had become stale or diluted.

Rather, he argues that the administration of rights during the first interview was improper and, therefore, could not be relied upon for the second interrogation. As we have held that the administration and waiver of appellant's Miranda rights in the first interrogation were valid, his argument on this point fails. We therefore

ORDER the judgment of conviction AFFIRMED.[2]



_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

cc: Hon. Brent T. Adams, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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[2]Appellant asserts that playing his recorded statements to the jury was error. However, he makes no arguments as to why this was inappropriate, nor does he cite to anything in the record from which we could infer error. Accordingly, we deny relief on this claim.