IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID KEITH SCHULT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53754

FILED

MAY 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of lewdness with a child under 14 years of age, child abuse and neglect, and sexual assault of a child. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge. Appellant David Schult raises three issues on appeal.

Schult first claims that the district court erred in denying his pretrial petition for a writ of habeas corpus, which he based on a lack of probable cause and double jeopardy. We conclude that because a jury found Schult guilty beyond a reasonable doubt of the crimes alleged, probable cause existed to bind him over for trial, and any error was harmless beyond a reasonable doubt. See U.S. v. Mechanik, 475 U.S. 66, 70 (1986); Lisle v. State, 114 Nev. 221, 224-25, 954 P.2d 744, 746-47 (1998). Additionally, the district court did not err in denying Schult's double jeopardy claim as "lewdness with a child under the age of fourteen cannot be deemed an included offense of the crime of sexual assault." See

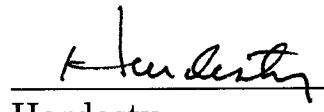
Townsend v. State, 103 Nev. 113, 120, 734 P.2d 705, 710 (1987); NRS 201.230.

Next, Schult claims that the district court erred when it ruled his confession voluntary and admitted it into evidence. We disagree. Schult walked into his apartment while officers were searching it, pursuant to a warrant. Surprised, they drew guns on him and handcuffed him. He then agreed to speak with investigators in an unmarked patrol car. A detective subsequently advised him of his rights under Miranda v. Arizona, 384 U.S. 436 (1966), which he waived. Schult's handcuffs were removed and he confessed to one instance of sexual assault. Although Schult claims the police used coercive tactics, looking at the totality of the circumstances, we conclude that his confession was freely and voluntarily given, see Schneckloth v. Bustamonte, 412 U.S. 218, 224-27 (1973); Rosky v. State, 121 Nev. 184, 190, 111 P.3d 690, 694 (2005), and the district court did not err in admitting it at trial.

Finally, Schult argues that insufficient evidence was adduced at his trial to support his convictions because of the victim's inconsistent prior testimony—including one sworn recantation. However, at trial the victim testified to several instances of sexual abuse and lewdness and Schult confronted him with these prior inconsistencies in an exhaustive cross-examination. Further, Schult admitted to sexually assaulting the victim. Therefore, viewed in the light most favorable to the State, there was sufficient evidence for a rational juror to find the essential elements of the charged crimes beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

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

ORDER the judgment of conviction AFFIRMED.



_____, J.
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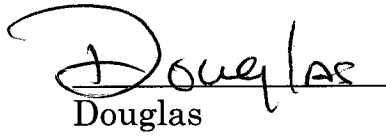

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Kenneth C. Cory, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk