

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH TARIN REGALA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54974

FILED

DEC 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury trial, of conspiracy to commit robbery, first-degree murder with the use of a deadly weapon, four counts of attempted robbery with the use of a deadly weapon, and three counts of attempted murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge. Appellant Joseph Regala raises two issues.

First, Regala claims that the district court erred by denying his motion to suppress his confession and in its jury instruction on the voluntariness of that confession. Detectives conducted an eighty-minute interview with Regala, the last twenty minutes of which were transcribed. Regala was twice read his rights under Miranda v. Arizona, 384 U.S. 436 (1966), and signed an acknowledgement card, after which he spoke with the detectives. In addition, Regala never expressed difficulty understanding the rights he was waiving and appeared to be alert and sober. Though at one point one of the detectives got angry and stormed out of the interview room in an attempt to play "bad cop" to his partner's "good cop," Regala was never threatened. In fact, he was given water and allowed to smoke during the short interview. Despite Regala's contention that his history of mental health issues renders his waiver invalid, we conclude that the totality of the circumstances indicates that he knowingly

and intelligently waived his rights, see Anderson v. State, 109 Nev. 1129, 1133, 865 P.3d 318, 320 (1993), and that his confession was voluntarily given, see Passama v. State, 103 Nev. 212, 214, 735 P.2d 321, 323 (1987). Accordingly, the district court did not err by denying his motion to suppress. Further, we reject his argument that the district court abused its discretion by including a jury instruction that defined voluntariness. See Berry v. State, 125 Nev. ___, ___, 212 P.3d 1085, 1091 (2009).

Second, Regala claims that the district court erred in permitting the State to present evidence of the circumstances underlying its allegation of a prior-felony-conviction aggravator in the penalty phase of his trial. Because Regala did not receive a sentence of death, his argument about the validity of the aggravator is moot. See Phenix v. State, 114 Nev. 116, 119, 954 P.2d 739, 740 (1998) (holding that any error in jury instruction on aggravator harmless as a matter of law where defendant not sentenced to death). Likewise moot is Regala's claim that another aggravator failed to sufficiently narrow death penalty eligibility. See id.

Having considered Regala's arguments and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

Cherry J.
Cherry

Saitta J.
Saitta

Gibbons J.
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge
Attorney General/Carson City
Clark County District Attorney
Law Office of Patricia M. Erickson
Eighth District Court Clerk