

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEVELL MOORE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55527

FILED

JUN 08 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Ingersoll
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of three counts of sexual assault of a minor under 14 years of age and one count of lewdness with a minor under 14 years of age. Eighth Judicial District Court, Clark County; James M. Bixler, Judge. Appellant Devell Moore raises four issues.

First, Moore contends that the district court erred by denying his motion to suppress his confession because it was involuntary and obtained in violation of Miranda v. Arizona, 384 U.S. 436 (1966). We disagree. After the interviewing detective recited Moore's Miranda rights, Moore stated that he understood them and never unambiguously invoked his right to remain silent. See Berghuis v. Thompkins, 560 U.S. ___, ___, 130 S. Ct. 2250, 2259-60 (2010). Further, a review of the factors he cites in support of his brief argument that his confession was involuntary do not lead us to conclude that substantial evidence does not support the district court's conclusion. See Rosky v. State, 121 Nev. 184, 190, 111 P.3d 690, 694 (2005).

Second, Moore claims that the district court erred in denying his motion for a mistrial pursuant to Batson v. Kentucky, 476 U.S. 79 (1986). In his motion, Moore alleged that the State used two of its four

peremptory challenges in a discriminatory manner. The State offered the following explanations for striking the two minority panel members: (1) juror Barber because her brother was tried for pandering and drug trafficking and she believed he was treated unfairly by police and (2) juror Enriquez because she appeared gullible and easily persuaded by the defense's theory of the case. The district court ruled that these rationales were not pretextual, and we also conclude that, because "discriminatory intent is not inherent in the State's explanation[s]," and those explanations are not "implausible or fantastic," the district court did not clearly err in rejecting Moore's Batson challenge. Ford v. State, 122 Nev. 398, 403, 404, 132 P.3d 574, 578 (2006).


Third, Moore argues that the district court erred in allowing the State to present evidence of a prior bad act—a fight between Moore and the victim's mother that occurred in 2003. The district court held a pretrial hearing pursuant to Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985). At the hearing, the State argued that evidence of domestic violence was relevant to show motive and opportunity, as creating a family environment of violence and intimidation was essential to controlling a child for molestation purposes and dissuading her from speaking about the continuing abuse. Under those circumstances, we cannot conclude that the district court manifestly erred in admitting this evidence. See Ledbetter v. State, 122 Nev. 252, 259, 129 P.3d 671, 676 (2006).


Fourth, Moore claims that the district court erred in denying his motion for mistrial based upon "irrelevant vouching." Upon redirect examination of the interviewing detective, the prosecutor asked if the detective had encountered other suspects who initially denied accusations of sexual abuse. The record supports the State's argument that this was


rehabilitation—not vouching—in response to Moore’s attempts on cross-examination to discredit the detective’s leading interview techniques. Therefore, the district court did not clearly abuse its discretion in denying Moore’s motion for mistrial. See Abram v. State, 95 Nev. 352, 355, 594 P.2d 1143, 1144 (1979). Moreover, even if this were clear error, it would be harmless given the overwhelming evidence of Moore’s guilt, including his confession where he admitted to “too many” instances of sexually abusing the victim and the victim’s detailed trial testimony about the abuse.

Having considered Moore’s claims and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.

 _____, J.
Gibbons

 _____, J.
Cherry

 _____, J.
Pickering

cc: Hon. James M. Bixler, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk