IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS LEE SINGLETON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35168

FILED

AUG 30 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of robbery with the use of a firearm. The district court sentenced appellant to two consecutive prison terms of 26 to 120 months.

Appellant first argues that the district court erred in denying his pretrial motion to suppress. Appellant asserts the casino chip found in his pocket was the fruit of an illegal search. We disagree.

> [W]here a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, [and] where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries,

the officer may conduct a limited search for weapons of the individual's outer clothing. Terry v. Ohio, 392 U.S. 1, 30 (1968). In the course of conducting a weapons search under Terry, the officer may also seize any contraband "where its identification as contraband is 'immediately apparent' to the officer." State v. Conners, 116 Nev. ___, ___, 994 P.2d 44, 45-46 (2000). At that point, the officer conducting the pat-down search has probable cause to reach into the individual's

pocket to seize the contraband. See Minnesota v. Dickerson, 508 U.S. 366, 378-79 (1993).

Considering all of the factual circumstances, we conclude that the officer had probable cause to seize the casino chip from appellant's pocket. The officer was investigating the attempted redemption of a stolen casino chip. The individual attempting to cash in the chip identified appellant as the one who gave him the chip, instructing him to redeem the chip in exchange for a percentage of the money. The officer then encountered appellant while conducting a consensual search of the individual's apartment. While conducting a lawful weapons search of appellant, the officer felt casino chips in appellant's pocket. In light of the above facts, and from the testimony at the suppression hearing, we conclude that the officer had probable cause to believe that the chips in appellant's pocket were stolen and, therefore, contraband. Therefore, the district court did not err in denying appellant's motion to suppress.

Appellant next argues that he did not knowingly and voluntarily waive his Fifth Amendment right to remain silent after his arrest and that his statements denying culpability were admitted in violation of that right.

> When the State seeks to introduce a statement obtained from a defendant by the police, the State must demonstrate, by a preponderance of the evidence, that the defendant's alleged waiver of his fifth and sixth amendment rights was knowing and voluntary. Laursen v. State, 97 Nev. 568, 634 P.2d 1230 (1981); Scott v. State, 92 Nev. 552, 554 P.2d 735 (1976). However, where the trial court's determination that a defendant was not improperly induced to make the statement is supported by substantial evidence . . . such a finding will not be disturbed on appeal. Brimmage v. State, 93 Nev. 434, 567 P.2d 54 (1977).

Barren v. State, 99 Nev. 661, 664, 669 P.2d 725, 727 (1983).

Here, a review of the tape recorded interview of appellant by Officer Burke reveals that appellant clearly and unequivocally waived his right to remain silent. Therefore, we conclude substantial evidence exists to support the district court's determination that appellant waived his right to remain silent.

Finally, and for the first time on appeal, appellant argues that his right to a speedy trial was violated. The record belies appellant's claim. At the arraignment, appellant's counsel stated, "I've advised him of his right to trial within 60 days. We're going to be waiving that statutory right." Moreover, appellant later filed a motion to continue the trial date. Therefore, appellant's argument is without merit.

Having considered appellant's contentions on appeal and concluded that they are without merit, we

ORDER this appeal dismissed.

Young, J.

Agosti, J.

Leavitt, J.

cc: Hon. James W. Hardesty, District Judge
Attorney General
Washoe County District Attorney
Steven L. Sexton
Washoe County Clerk