IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT DEWAYNE SIOW,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 61995

FILED

JAN 21 2014

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 verdict, of sexual assault of a minor under fourteen years of age. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. Appellant Robert Dewayne Siow raises two contentions on appeal.

First, Siow contends that the district court erred in denying his motion to suppress his statement to police. He asserts that he did not specifically waive his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), when questioned by police. When determining whether a valid waiver of a defendant's *Miranda* rights occurred, "[t]he inquiry as to whether a waiver is knowing and intelligent is a question of fact, which is reviewed for clear error. However, the question of whether a waiver is voluntary is a mixed question of fact and law that is properly reviewed de novo." *Mendoza v. State*, 122 Nev. 267, 276, 130 P.3d 176, 181 (2006) (footnote omitted). This court will review the accused's characteristics and the surrounding circumstances to determine whether the defendant's will was overborne and whether he understood his rights. *See Rosky v. State*, 121 Nev. 184, 193-94, 111 P.3d 690, 696 (2005) (explaining the relevant factors); *Floyd v. State*, 118 Nev. 156, 171, 42 P.3d 249, 260 (2002) (same),

abrogated on other grounds by Grey v. State, 124 Nev. 110, 178 P.3d 154 (2008). "Only if the totality of the circumstances surrounding the interrogation reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived." *Moran v. Burbine*, 475 U.S. 412, 421 (1986) (internal quotation marks omitted). During the interview, Detective Fortunato informed Siow of each of the rights described in the *Miranda* warning. Siow specifically acknowledged that he understood each of the rights as they were read. He then agreed to questioning. Although there was some evidence that he consumed alcohol prior to questioning, his responses to questions were coherent and did not indicate any impairment. Therefore, the district court did not err in denying the motion to suppress.

Second, Siow contends that there was insufficient evidence adduced at trial to sustain his conviction because his confession was coerced and DNA from another male was present on the victim's underwear, which undermines confidence in the verdict. We disagree. When viewed in the light most favorable to the State, the evidence presented at trial is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). The victim testified that Siow licked her vagina. NRS 200.366(1). This evidence alone was sufficient to support the convictions. *See Mejia v. State*, 122 Nev. 487, 493 n.15, 134 P.3d 722, 725 n.15 (2006) ("[T]his court has 'repeatedly held that the testimony of a sexual assault victim alone is sufficient to uphold a conviction' so long as the victim testifies with 'some particularity regarding the incident.'" (quoting *LaPierre v. State*, 108 Nev. 528, 531, 836 P.2d 56, 58 (1992) (emphasis omitted))). Moreover, the

victim's testimony was corroborated by Siow's statement to police. While Siow's statement was obtained based on subterfuge by the interviewing detective in which the detective stated that DNA evidence implicated Siow in the crime, the totality of the circumstances surrounding the statement do not indicate that the statement was not "'the product of a free and deliberate choice rather than coercion or improper inducement.'" *Mendoza v. State*, 122 Nev. 267, 276, 130 P.3d 176, 181-82 (2006) (quoting *United States v. Doe*, 155 F.3d 1070, 1074 (9th Cir. 1998)); *see Sheriff v. Bessey*, 112 Nev. 322, 328, 914 P.2d 618, 622 (1996) (concluding that false lab report implicating defendant was not so coercive as to produce a false confession). The presence of male DNA that did not belong to Siow on the victim's underwear one day after the alleged abuse did not undermine the aforementioned evidence of guilt.

Having considered Siow's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Cherry

cc: Hon. Michelle Leavitt, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk