

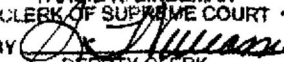
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VERNON R. THOLKE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65338

FILED

MAY 22 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
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DEPUTY CLERK

ORDER OF AFFIRMANCE


This is an appeal from a judgment of conviction entered pursuant to a jury verdict of lewdness with a child under the age of fourteen years. Second Judicial District Court, Washoe County; David A. Hardy, Judge.


Appellant Vernon Tholke claims the district court committed plain error by admitting into evidence a statement he made during a police interview. He argues the statement was the product of "police intimidation and was made without a clear waiver or expression of understanding of his *Miranda* rights." However, the alleged error does not appear plainly on the record. See *Saletta v. State*, 127. ___, ___, 254 P.3d 111, 114 (2011) (describing plain error review).

Instead, the record reveals Tholke agreed to talk with the police, a friend drove him to the police station, a detective advised him of his *Miranda* rights, he indicated that he understood those rights, and he participated in a voluntary interview. See *Silva v. State*, 113 Nev. 1365, 1370, 951 P.2d 591, 594 (1997) (the mere fact an interview took place in a police station does not mean the suspect was in custody for *Miranda* purposes). Moreover, the record reveals Tholke's interview statement was

presented to the jury by way of a video recording and Tholke expressly stipulated to the admission of the video recording. *See Rhyne v. State*, 118 Nev. 1, 9 & n.12, 38 P.3d 163, 168 & n.12 (2002) (a defendant is estopped from raising alleged errors on appeal if he invited those errors in the court below). Given this record, we conclude Tholke has not demonstrated plain error, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. David A. Hardy, District Judge
Richard F. Cornell
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk