IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JIMMY BETANCOURT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67685

FILED

DEC 16 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction for conspiracy to commit robbery and robbery of a victim 60 years of age or older. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Detective Bruno and Temporary Duty ("TDY") Detective LaRosa of Las Vegas Metropolitan Police Department ("LVMPD") arrested Appellant Jimmy Betancourt pursuant to a valid arrest warrant for his involvement in a robbery of an elderly woman. The detectives advised Betancourt of his *Miranda*[1] rights and initially interrogated him in an unmarked police car. Thereafter, the detectives transported Betancourt to LVMPD headquarters for a more thorough interrogation. The detectives did not re-advise Betancourt of his *Miranda* rights at LVMPD headquarters. Betancourt confessed in more detail to the crime during a taped interrogation.

On appeal, Betancourt contends the district court erred by admitting his confession. First, Betancourt argues that the *Miranda* warnings in the police vehicle were stale by the time he was interrogated at LVMPD headquarters. Second, Betancourt complains that he did not

[1]*Miranda v. Arizona*, 348 U.S. 436 (1966).

voluntarily or intelligently waive his *Miranda* rights because he was intoxicated.

Betancourt raises the issue of whether the *Miranda* warnings were stale for the first time on appeal. Failure to raise an argument before the district court generally precludes our consideration of that issue on appeal. *See Rippo v. State,* 113 Nev. 1239, 1260, 946 P.2d 1017, 1030 (1997). But, we may nevertheless address an alleged error if it was plain and affected the appellant's substantial rights. *See* NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.").

In analyzing whether the original *Miranda* warnings were stale by the time Betancourt was interrogated a second time, we review the totality of the circumstances determining whether the warnings were properly given and whether the accused voluntarily waived those rights. *Koger v. State,* 117 Nev. 138, 141, 17 P.3d 428, 430 (2001). In doing so, we consider

> "the time elapsed between the warnings and the interrogation which elicited the damaging response; whether the warnings and interrogations were conducted in the same or in different locales; whether the warnings and/or initial interrogation were conducted by the same person or persons who conducted the suspect interrogation; the extent to which the statements made by the accused in the later interrogation differ in any substantial respect from those made at the former; the apparent emotional, physical and intellectual state of the accused at the later questioning."

Id. at 142, 17 P.3d at 431 (quoting *State v. Beaulieu,* 359 A.2d 689, 693 (R.I. 1976), *abrogated on other grounds by State v. Lamoureux,* 623 A.2d 9,

14 (R.I. 1993). We further note that so long as the accused is initially advised of his *Miranda* rights and understands them at the time of questioning, "there is no requirement that the warnings be repeated each time the questioning is commenced." *Taylor v. State*, 96 Nev. 385, 386, 609 P.2d 1238, 1239 (1980).[2]

Here, the totality of the circumstances surrounding Betancourt's interrogations reflect Detectives Bruno and LaRosa advised Betancourt of his *Miranda* rights before the initial interrogation in the police car and that Betancourt indicated he understood those rights. Thereafter, Betancourt waived his rights and voluntarily cooperated with the detectives. Further, the same detectives were present during both interrogations, and both testified that Betancourt's demeanor was cooperative and comprehensible during both. Although the interviews were conducted in different locales, only an hour and a half, at most, elapsed between the time the detectives advised Betancourt of his rights and when he was interrogated a second time at LVMPD headquarters. *See Koger*, 117 Nev. at 141, 17 P.3d at 430 (noting the most significant factor in determining whether a former *Miranda* admonition has diminished is the amount of time elapsed between the first reading and subsequent interview). We therefore conclude that the *Miranda* warnings

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[2]*See e.g., U.S. v. Roriguez-Preciado*, 399 F.3d 1118, 1128-29 (9th Cir. 2005) (defendant did not need to be re-advised of his *Miranda* rights when original warning was sixteen hours prior); *Guam v. Dela Pena*, 72 F.3d 767, 770 (9th Cir. 1995) (upholding admissibility of statements made fifteen hours after *Miranda* warnings administered); *Puplampu v. United States*, 422 F.2d 870 (9th Cir. 1970) (upholding admissibility of statements made two days after *Miranda* warnings administered); *Maquire v. United States*, 396 F.2d 327, 331 (9th Cir. 1968) (upholding admissibility of statements made three days after *Miranda* warnings were administered).

given by the detectives to Betancourt were not stale by the time of the second interrogation, and thus plain error does not exist.

Next, we consider Betancourt's argument that he was too intoxicated to voluntarily waive his *Miranda* rights. We conclude this argument is also without merit.

After conducting a Jackson v. Denno[3] hearing, the district court concluded Betancourt's confession was voluntary. We review the district court's factual findings for clear error and its legal conclusions de novo. *Gonzales v. State*, 131 Nev. ___, ___, 354 P.3d 654, 661 (Ct. App. 2015). We will not disturb the district court's determination if it is supported by substantial evidence. *Chambers v. State*, 113 Nev. 974, 981, 944 P.2d 805, 809 (1997). A confession is inadmissible if it is not freely and voluntarily given. *Id.* To be voluntary, a confession must be the product of free will, and we look to "whether the defendant's will was overborne by government actions." *Gonzales*, 131 Nev. at ___, 354 P.3d at 658. In so doing, we employ a totality of the circumstances test. *Chambers*, 113 Nev. at 981, 944 P.2d at 809.

Here, the district court reviewed both the actual recording of the interrogation and its transcription after holding a *Denno* hearing. The district court concluded Betancourt's statements to Detective LaRosa during the second interrogation were cogent, comprehensible, and, consequently, voluntary. The district court found that Detective LaRosa did not promise Betancourt withdrawal medication in exchange for continuing the interrogation.

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[3]378 U.S. 368 (1964).

Our review of the record supports the district court's conclusion that Betancourt's confession was voluntary. At the *Denno* hearing, the district court observed Detectives Bruno and LaRosa testify that Betancourt understood his *Miranda* rights and voluntarily waived those rights, and agreed to freely speak with the detectives. Further, the court noted that Betancourt never invoked his right to remain silent or right to counsel. *See Mendoza v. State*, 122 Nev. 267, 276-77, 130 P.3d 176, 182 (2006) (holding that a *Miranda* waiver may be inferred when the defendant understands his rights and fails to express a desire not to speak with police); *see also Dewey v. State*, 123 Nev. 483, 488, 169 P.3d 1149, 1152 (2007) (noting that police officers "have no obligation to stop questioning" a suspect under *Miranda* unless the suspect exercises the right to remain silent or makes an "unambiguous and unequivocal" request for an attorney) (quoting *Davis v. United States,* 512 U.S. 452, 461-62, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994)).

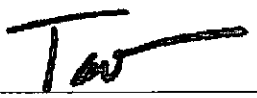
Although Betancourt claims he was experiencing heroin withdrawals during the interrogation and therefore his confession was not knowing and voluntary, both detectives testified there was no indication Betancourt was impaired. Nothing in the record suggests Betancourt was intoxicated such that he lacked understanding his statements or rights. *See Stewart v. State*, 92 Nev. 168, 170-71, 547 P.2d 320, 321 (1976) (mere intoxication will not preclude the admission of a defendant's statements unless it is shown that the intoxication was so severe as to prevent the defendant from understanding his statements or his rights).

Under these facts, we conclude the detectives' original *Miranda* warnings to Betancourt were not stale by the time of the second interrogation. Further, the district court's determination to admit

Betancourt's confession at trial is supported by substantial evidence. Therefore, the district court did not err. *See Chambers*, 113 Nev. at 981, 944 P.2d at 809. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Silver

cc: Hon. Douglas W. Herndon, District Judge
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