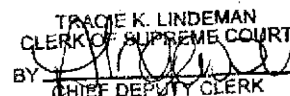
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
OLUJUWON DEVIN BRYANT,
Respondent.

No. 68547

FILED

JUL 26 2016



ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting respondent's motion to suppress evidence.[1] Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

In-custody determination

The State claims the district court erred by granting respondent Olujuwon Bryant's motion to suppress because Bryant was not in custody for purposes of *Miranda v. Arizona*, 384 U.S. 436 (1966).

"The Fifth Amendment privilege against self-incrimination provides that a suspect's statements made during custodial interrogation are inadmissible at trial unless the police first provide a *Miranda* warning." *State v. Taylor*, 114 Nev. 1071, 1081, 968 P.2d 315, 323 (1998). A suspect is in custody for purposes of *Miranda* "where there has been a formal arrest, or where there has been a restraint on freedom of movement of the degree associated with a formal arrest so that a

[1]This appeal has been submitted for decision without oral argument. NRAP 34(f)(1).

16-900846

reasonable person would not feel free to leave." *Id.* at 1082, 968 P.2d at 323. Custody is determined by considering the totality of the circumstances, "including the site of the interrogation, whether the objective indicia of an arrest are present, and the length and form of questioning." *Id.* at 1081-82, 968 P.2d at 323 (footnote omitted).

A trial court's in-custody determination presents mixed questions of law and fact which we review de novo. *Rosky v. State*, 121 Nev. 184, 190, 111 P.3d 690, 694 (2005). "The proper inquiry requires a two-step analysis [in which] [t]he district court's purely historical factual findings pertaining to the 'scene- and action-setting' circumstances surrounding an interrogation [are] entitled to deference and will be reviewed for clear error," but "the district court's ultimate determination of whether a person was in custody . . . will be reviewed de novo." *Id.* "For this standard to function properly, trial courts must exercise their responsibility to make factual findings when ruling on motions to suppress." *Id.* at 191, 111 P.3d at 695 (internal quotation marks omitted).

Here, despite having conducted a suppression hearing, the district court's factual findings regarding Bryant's in-custody status were limited to the following five findings: (1) Bryant was the focus of a criminal investigation, (2) he was questioned at the Nevada Attorney General's Office, (3) he made statements in the presence of a lead investigator and a peace officer who wore a gun and handcuffs, (4) the lead investigator and the peace officer did not advise him of his *Miranda* rights, and (5) he did not waive his *Miranda* rights.

The totality of the district court's findings does not support its legal conclusion that Bryant was in custody for purposes of *Miranda*, and

we have found nothing in the record on appeal to indicate that Bryant's freedom was restricted to a degree tantamount to a formal arrest. *See Minnesota v. Murphy,* 465 U.S. 420, 431 (1984) ("The mere fact that an investigation has focused on a suspect does not trigger the need for *Miranda* warnings in noncustodial settings."); *Silva v. State,* 113 Nev. 1365, 1370, 951 P.2d 591, 594 (1997) ("*Miranda* rights need not be provided simply because the questioning took place at the police station or because appellant was the person the police suspected of the crime."); *Taylor,* 114 Nev. at 1082 n.1, 968 P.2d at 323 n.1 (providing a list of objective indicia of an arrest and observing all of these indicia need not be present to determine whether a suspect was in custody). Accordingly, we conclude Bryant was not questioned while in custody and therefore *Miranda* warnings were unnecessary.

Voluntariness determination

The State claims the district court erred by granting Bryant's motion to suppress because Bryant's statements were made voluntarily.

"In order to satisfy due process requirements, a confession must be made freely and voluntarily, without compulsion or inducement." *Dewey v. State,* 123 Nev. 483, 492, 169 P.3d 1149, 1154 (2007) (internal quotation marks omitted). "Voluntariness [is] determined by reviewing the totality of the circumstances, including such factors as the defendant's age, education, and intelligence; his knowledge of his rights; the length of his detention; the nature of the questioning; and the physical conditions under which the interrogation was conducted." *Gonzales v. State,* 131 Nev. ___, ___, 354 P.3d 654, 658 (Nev. App. 2015). "A confession is

involuntary if it was coerced by physical intimidation or psychological pressure." *Id.* (internal quotation marks omitted).

As with in-custody determinations, "voluntariness determinations present mixed questions of law and fact subjected to this court's de novo review." *Rosky*, 121 Nev. at 190, 111 P.3d at 694. "The district court's purely historical factual findings pertaining to the 'scene- and action-setting' circumstances surrounding an interrogation [are] entitled to deference and will be reviewed for clear error," but "the district court's ultimate determination of . . . whether a statement was voluntary will be reviewed de novo." *Id.* "For this standard to function properly, trial courts must exercise their responsibility to make factual findings when ruling on motions to suppress." *Id.* at 191, 111 P.3d at 695 (internal quotation marks omitted).

Here the district court made the following factual findings regarding the voluntariness of Bryant's statements:

> That Olujuwon Bryant is 21 years of age and lacked the requisite level of comprehension to voluntarily waive his rights. That Mr. Bryant was not asked by law enforcement officers if he understood that he was free to leave the interrogation room, Mr. Bryant never acknowledged if he understood he was free to leave the interrogation room, and Mr. Bryant was never asked if he understood the nature of the proceedings. That Mr. Bryant was interrogated with his misled father figure, Mr. Derrico, which added to the coercive pressure of the interrogation.

Although these factual findings are not clearly erroneous, they fail to adequately set forth the circumstances under which Bryant made his

statements and they do not support the district court's legal conclusion that Bryant's statements were made involuntarily.

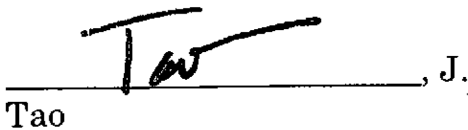
The record demonstrates the interview was conducted at the Attorney General's Office in an interview room on April 3, 2013. At the beginning of the interview, Compliance Investigator Kali Ewing explained to both Bryant and Derrico that they were free to leave at any point, they did not have to answer questions, and they were not under arrest. Investigator Ewing further explained she primarily worked on fraud investigations, she was working on an investigation now, and she was going to ask some preliminary questions. The transcript of the interview suggests the interview was conducted in a casual manner and everyone was allowed to speak freely; it does not suggest Bryant's statements were coerced by physical intimidation or psychological pressure.

It is not apparent from our review of the record on appeal that Bryant's statements were anything less than a product of rational intellect and free will. *See Chambers v. State*, 113 Nev. 974, 981, 944 P.2d 805, 809 (1997) ("In order to be voluntary, a confession must be the product of a rational intellect and a free will." (internal quotation marks omitted)). Accordingly, we conclude Bryant's statements to the State's investigators were not involuntary.

Having concluded that Bryant was not in custody for purposes of *Miranda* and his statements to the State's investigators were not involuntary, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[2]

_______________, C.J.
Gibbons



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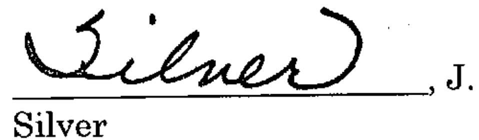

_______________, J.
Silver

cc: Hon. Jessie Elizabeth Walsh, District Judge
Attorney General/Carson City
Attorney General/Las Vegas
Sandra L. Stewart
Eighth District Court Clerk

[2]We have considered Bryant's Confrontation Clause argument that his statements were properly excluded because Investigator Ewing was not present for questioning at the suppression hearing, and we conclude it lacks merit. *See Sheriff, Clark County v. Witzenburg*, 122 Nev. 1056, 1060 & n.15, 145 P.3d 1002, 1005 & n.15 (2006) (observing the right to confrontation is a trial right and does not attach to pretrial suppression hearings).