

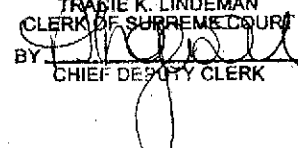
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
DEON DERRICK DERRICO, A/K/A
DERRICK DEON DERRICO, A/K/A
MARLO ABBOTT,
Respondent.

No. 68546

FILED

JUL 26 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

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 Deon Derrico's motion to suppress because Derrico 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 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

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

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 Derrico’s in-custody status were limited to the following five findings: (1) Derrico 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 Derrico was in custody for purposes of *Miranda*, and we have found nothing in the record on appeal to indicate that Derrico’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 Derrico was not questioned while in custody and therefore *Miranda* warnings were unnecessary.

Voluntariness determination

The State claims the district court erred by granting Derrico's motion to suppress because Derrico'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 did not make any factual findings relevant to the voluntariness of Derrico's statements, and it is not apparent from our review of the record on appeal that Derrico'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 Derrico's statements to the State's investigators were not involuntary.

Having concluded that Derrico 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


_____, J.
Tao


_____, J.
Silver

cc: Hon. Jessie Elizabeth Walsh, District Judge
Attorney General/Carson City
Attorney General/Las Vegas
Kang & Associates PLLC
Eighth District Court Clerk

²We have considered Derrico's arguments regarding a shift from a friendly interview to a custodial interrogation as was discussed in *Krueger v. State*, 92 Nev. 749, 557 P.2d 717 (1976), and the existence of a two-step interrogation as was addressed in *Missouri v. Seibert*, 542 U.S. 600 (2004), and conclude they lack merit.