IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN M. STINCHFIELD, JR.,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37227

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of first-degree murder and one count of attempted murder. The district court sentenced appellant John Stinchfield, Jr., to serve two consecutive terms of life in prison without the possibility of parole and a consecutive term of 96 to 240 months in prison. Pursuant to NRAP 34(f)(1), we conclude that oral argument is not warranted in this appeal.

Stinchfield first argues that the district court abused its discretion by excluding evidence of a prior bad act by Stinchfield's father, John Stinchfield, Sr., to show his motive or identity as the killer. In particular, Stinchfield argues that the district court erred in concluding that the prior bad act was not proven by clear and convincing evidence, and argues that a lesser burden of proof should be applied where a defendant seeks to introduce evidence of prior bad acts by an alternative suspect. We disagree and conclude that the district court reached the correct result for two reasons.

First, we conclude that the district court did not err in applying the clear and convincing evidence burden of proof and did not

abuse its discretion in concluding that Stinchfield had not proved the other act by clear and convincing evidence.[1] Second, even assuming that the district court should have applied a lesser burden of proof and that Stinchfield met that burden, we conclude that the district court nonetheless reached the right result because the other act was not relevant to some fact of consequence in the trial other than criminal propensity.[2] In particular, we conclude that the evidence was not admissible as proof of motive or identity.[3] The only purpose for offering the evidence was to show Stinchfield, Sr.'s bad character, and his predisposition to commit violent acts when drunk. Such evidence is not admissible under NRS 48.045(2). For these reasons, we conclude that the district court did not abuse its discretion in excluding the evidence offered by the defense.

Stinchfield next contends that the district court erred in denying his motion to suppress his statements to police. In particular, Stinchfield argues that his statements were involuntary. We disagree.

"A confession is admissible only if it is made freely and voluntarily."[4] To be voluntary, a confession must be the result of a

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[1]See Collman v. State, 116 Nev. 687, 702-04, 7 P.3d 426, 435-37 (2000), cert. denied, 121 S. Ct. 1617 (2001); Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

[2]See Williams v. State, 95 Nev. 830, 832-33, 603 P.2d 694, 696 (1979) (explaining that other act evidence is admissible under NRS 48.045(2) if it is relevant to some fact of consequence other than criminal propensity); accord Huddleston v. United States, 485 U.S. 681 (1988).

[3]See Mortensen v. State, 115 Nev. 273, 280-81, 986 P.2d 1105, 1110 (1999).

[4]Passama v. State, 103 Nev. 212, 213, 735 P.2d 321, 322 (1987).

"'rational intellect and a free will.'"[5] Thus, a confession that is coerced by physical intimidation or psychological pressure is involuntary.[6]

The voluntariness of a confession must be determined based on the effect of the totality of the circumstances on the defendant's will.[7] Factors to be considered include: the accused's youth; the accused's lack of education or low intelligence; the lack of any advice of constitutional rights; the length of detention; the repeated and prolonged nature of questioning; and the use of physical punishment such as the deprivation of food or sleep.[8] Because the voluntariness of a confession is primarily a factual question, the district court's determination that a confession is admissible will not be disturbed on appeal so long as it is supported by substantial evidence.[9]

Here, the district court's finding that Stinchfield's statements were voluntary is supported by substantial evidence. The totality of the circumstances demonstrate that Stinchfield's statements were the product of a rational intellect and a free will. Stinchfield was approximately twenty-five years of age at the time, and did not appear to suffer from any intellectual deficiencies. Stinchfield was informed of and waived his constitutional rights before each interview. He was interviewed twice--the second time at his request. The interviews each lasted less than two hours. Stinchfield was not deprived of food or sleep or subjected to any

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[5]Id. at 213-14, 735 P.2d at 322 (quoting Blackburn v. Alabama, 361 U.S. 199, 208 (1960)).

[6]Id. at 214, 735 P.2d at 322-23; see also Thompson v. State, 108 Nev. 749, 753, 838 P.2d 452, 455 (1992) ("a confession obtained by physical intimidation or psychological pressure is inadmissible"), overruled on other grounds by Collman v. State, 116 Nev. 687, 7 P.3d 426 (2000).

[7]Passama, 103 Nev. at 214, 735 P.2d at 323.

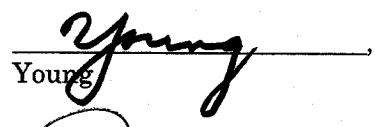
[8]Id.

[9]Chambers v. State, 113 Nev. 974, 981, 944 P.2d 805, 809 (1997).

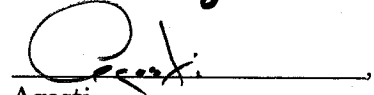
physical punishment or coercion.[10] Although Stinchfield suggests that his intoxication affected the voluntariness of his statements, the interviewing officer testified that Stinchfield did not appear to be intoxicated and that he was lucid and coherent, and answered questions in an appropriate manner. Given the totality of the circumstances, we conclude that the district court did not err in denying the motion to suppress Stinchfield's statements.

Having considered the contentions raised in this appeal and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Young



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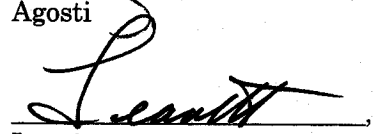

_____, J.
Leavitt

cc: Hon. Archie E. Blake, District Judge
Attorney General/Carson City
Lyon County District Attorney
Law Office of Kenneth V. Ward
Lyon County Clerk

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[10]We note that Stinchfield places much significance on the fact that jail officers had to restrain him and that three minutes after he was restrained, he asked to speak with the officer who had previously interviewed him. The record indicates that Stinchfield was restrained because he was destroying a holding cell in the jail and that he spontaneously asked to speak to the investigating officer. There is absolutely no evidence in the record to support Stinchfield's suggestion that he was restrained in an attempt to coerce him into making the second statement. Stinchfield was released from his restraints some time before the interviewing officer arrived and the interviewing officer was not informed that Stinchfield had been restrained.