

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEANGELO LAMONT MITCHELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37531

FILED

JUL 10 2002

ANNETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Deangelo Lamont Mitchell appeals from his judgment of conviction for crimes pertaining to the murder and robbery of an elderly Las Vegas couple. Since none of Mitchell's arguments on appeal have merit, we affirm his judgment of conviction.

First, Mitchell asserts that his right to due process was violated when he was, at age sixteen, automatically placed under the jurisdiction of the district court as a result of the murder charge against him. Mitchell argues that since he was a minor and did not actually shoot the victims, due process dictates that jurisdiction over him be first in the juvenile court. He argues he should have received a certification hearing before being charged as an adult in the district court. Additionally, Mitchell argues that he was subjected to cruel and unusual punishment, given his tenuous connection with the crime.

Questions of law are subject to de novo review.¹ Whether Mitchell was deprived of his right to due process and subjected to cruel and unusual punishment by the operation of NRS 62.040 is a question of law. NRS 62.040 removes from the jurisdiction of the juvenile courts those

¹Mitchell v. State, 114 Nev. 1417, 1423, 971 P.2d 813, 817 (1998).

charged with murder, attempted murder and crimes arising from the same facts.

We conclude that Mitchell's rights to due process were not violated nor was he subjected to cruel and unusual punishment. The juvenile court system is a creation of statute, and accordingly, it is within the province of the legislature to determine the jurisdiction of the juvenile court system.² We have repeatedly upheld the legislature's decision embodied in NRS 62.040 to exclude juveniles charged with murder from the juvenile courts.³ Mitchell's argument that this case is distinguishable because the jury may have found him guilty by relying upon a felony-murder theory of guilt ignores the fact that the jury may have also relied upon an aiding and abetting theory of guilt. Additionally, the application of NRS 62.040 did not result in cruel and unusual punishment because the district court has wide discretion when sentencing a defendant, and the sentence was within the accepted statutory limits of NRS 200.030(4).⁴ Accordingly, we conclude that the application of NRS 62.040 did not deprive Mitchell of his rights to due process or subject him to cruel and unusual punishment.

²Kell v. State, 96 Nev. 791, 792-93, 618 P.2d 350, 351 (1980).

³See Shaw v. State, 104 Nev. 100, 102-03, 753 P.2d 888, 889 (1988), overruled on other grounds by Alford v. State, 111 Nev. 1409, 1415, 906 P.2d 714, 717 (1995); Poole v. State, 97 Nev. 175, 177, 625 P.2d 1163, 1164 (1981).

⁴See Castillo v. State, 110 Nev. 535, 544, 874 P.2d 1252, 1258 (1994) (holding that minor's sentence of life imprisonment with the possibility of parole was not cruel and unusual).

Second, Mitchell asserts that the district court erred by refusing to supply the jury with two of his proposed instructions on reasonable interpretations of evidence and second-degree murder.

A defendant in a criminal case has a right to have the jury instructed on his theory of the case whenever there is evidence to support that theory, no matter how weak that evidence may be.⁵ However, it is not error for a district court to refuse to give an instruction if the law encompassed therein is already substantially covered by other instructions.⁶ Here, it was not necessary to supply the jury with Mitchell's instruction on reasonable interpretations of evidence because the jury was already instructed on the reasonable doubt standard.⁷ Similarly, it was not necessary to supply the jury with Mitchell's proposed instruction on second-degree murder because the jury was already adequately instructed about second-degree murder in another instruction. Accordingly, we conclude that the district court did not err when it refused to supply the jury with Mitchell's proposed instructions.

Third, Mitchell asserts that the district court abused its discretion when it denied his motion for a mistrial because the State improperly commented upon two instances when Mitchell chose to remain silent. He further asserts that the prosecutor, during closing argument, made improper comments upon Mitchell's silence when he was first approached by Officer Linton and upon his failure to inquire about the fate of the elderly victims during his statement to Detective Mesinar.

⁵Hooper v. State, 95 Nev. 924, 926, 604 P.2d 115, 116 (1979).

⁶Id.

⁷See id. at 927, 604 P.2d at 117.

A district court's decision to deny a motion for a mistrial rests within the district court's sound discretion.⁸ Accordingly, absent a clear showing of abuse, the district court's decision will not be overturned.⁹ The prosecutor's first comment was proper because it was in reference to Mitchell's silence at a time when he was not yet under arrest or in custody.¹⁰ The prosecutor's second comment was also proper because Mitchell chose not to exercise his right to silence by freely engaging in a conversation with Detective Mesinar after being advised of his Miranda rights. Mitchell waived his right to silence, and accordingly, the State was free to comment on the fact that Mitchell failed to inquire into the fate of the victims. Based on the above, we conclude that the district court did not abuse its discretion when it denied Mitchell's motion for a mistrial.

Fourth, Mitchell asserts that the district court erred in admitting his confession to Detective Mesinar because the confession was involuntary. In particular, Mitchell argues that his confession was coerced because he was only sixteen years old and he did not have a parent or guardian present during the interrogation. A confession cannot be admitted into evidence unless it was freely and voluntarily given.¹¹ For a confession to be voluntary, it must be determined that the confession

⁸McKenna v. State, 114 Nev. 1044, 1055, 968 P.2d 739, 746 (1998).

⁹Id.

¹⁰See Coleman v. State, 111 Nev. 657, 663, 895 P.2d 653, 657 (1995) (holding that the State could not comment upon a defendant's post-arrest silence).

¹¹Elvik v. State, 114 Nev. 883, 891, 965 P.2d 281, 286 (1998).

was the result of a free will and a rationale intellect.¹² In making this determination, the court will examine the totality of the circumstances to determine whether the defendant's will was overcome when he confessed.¹³ When obtaining a confession from a minor, the government must be especially careful not to mislead the youth and should inform him of the possibility of an adult trial.¹⁴ Finally, a district court's decision regarding the voluntariness of a defendant's confession "is final unless such [a] finding is plainly untenable."¹⁵

Here, while Mitchell was a minor and he did not have a parent present, the facts support the district court's conclusion that Mitchell's confession was voluntary under the totality of the circumstances. As in Elvik,¹⁶ there is no evidence that Mitchell was misled or subjected to undue physical or psychological intimidation. Additionally, as in Elvik, Mitchell was aware of the adversarial police atmosphere because he was arrested shortly after the crime and was informed by Detective Mesinar of the purpose behind the investigation.¹⁷ Accordingly, we conclude that the district court did not err when it found that Mitchell's confession was made voluntarily.

¹²Id. at 892, 965 P.2d at 286.

¹³Id. at 892, 965 P.2d at 287.

¹⁴Quiriconi v. State, 96 Nev. 766, 771, 616 P.2d 1111, 1114 (1980).

¹⁵Boggs v. State, 95 Nev. 911, 913, 604 P.2d 107, 109 (1979).

¹⁶114 Nev. at 892, 965 P.2d at 287.

¹⁷See id. at 891, 965 P.2d at 286.

Finally, Mitchell asserts that the district court abused its discretion when it permitted Officer McClary to testify about Mitchell's admission to him made while McClary transported Mitchell. Mitchell argues that McClary's testimony was unreliable because at a preliminary hearing McClary attributed the statement to Mitchell's accomplice. Mitchell posits that McClary changed his testimony only because of pressure from the prosecutors and the detectives on the case. Additionally, Mitchell asserts that McClary should have given him fresh Miranda warnings before speaking to him in the elevator.

Under Nevada law, the decision to admit or exclude evidence rests within the sound discretion of the district court.¹⁸ Accordingly, absent a manifest abuse of that discretion, the district court's determination will not be disturbed on appeal.¹⁹ Here, the district court did not abuse its discretion by admitting McClary's testimony because it bore sufficient indicia of reliability.²⁰ Following McClary's initial misidentification, he consistently stated that Mitchell was the individual he transported and that it was Mitchell who made the statement in the elevator. Additionally, both Detective Mesinar and a corrections assistant at the detention center corroborated McClary's testimony by testifying that Mitchell was transported by McClary. Finally, the statement Mitchell made in the elevator to McClary was not barred by Miranda because Mitchell was aware of what his rights were when he was in the

¹⁸Johnson v. State, 113 Nev. 772, 776, 942 P.2d 167, 170 (1997).

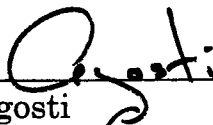
¹⁹Hughes v. State, 112 Nev. 84, 88, 910 P.2d 254, 256 (1996).


²⁰See Gehrke v. State, 96 Nev. 581, 584, 613 P.2d 1028, 1030 (1980).

elevator with McClary.²¹ Mitchell was aware of his rights because Detective Mesinar had advised him of them only fifteen to twenty minutes earlier, preceding Mesinar's interrogation of Mitchell. Moreover, McClary was present with Mitchell during Mesinar's earlier interrogation. Based on the above, we conclude that the district court did not abuse its discretion by permitting McClary to testify about Mitchell's admission to him. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Lee A. Gates, District Judge
Patti & Sgro
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk

²¹See Taylor v. State, 96 Nev. 385, 386-87, 609 P.2d 1238, 1239 (1980) (holding that Miranda warnings do not need to be repeated each time questioning is commenced when the accused was initially advised of his rights and understands them at the time of his interrogation).