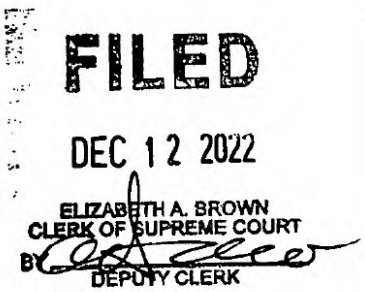
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TYRAN MOLLETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84017-COA



ORDER OF AFFIRMANCE

Tyran Mollett appeals from a judgment of conviction, entered pursuant to a jury verdict, of conspiracy to commit burglary; burglary while in possession of a firearm; first-degree murder with the use of a deadly weapon, victim 60 years of age or older; attempted murder with the use of a deadly weapon, victim 60 years of age or older; and discharging a firearm at or into an occupied structure, vehicle, aircraft, or watercraft. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Mollett argues the district court erred by denying his motion to suppress statements obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). Specifically, Mollett argues that he requested an attorney after a probation officer read him his *Miranda* rights and that the police violated *Miranda* when they initiated an interrogation the following day without making counsel available to him. Whether a defendant requested an attorney prior to being questioned by police is a question of fact, and this court will not disturb a district court's decision if supported by substantial evidence. *Tomarchio v. State*, 99 Nev. 572, 575, 665 P.2d 804, 806 (1983). "Substantial evidence is that evidence which a reasonable mind might

accept as adequate to support a conclusion." *State v. McKellips*, 118 Nev. 465, 469, 49 P.3d 655, 659 (2002).

The district court held an evidentiary hearing on this claim, and the probation officer and Mollett testified. The probation officer testified that he read Mollett his *Miranda* rights and Mollett invoked his right to remain silent. The probation officer further testified that Mollett did not request an attorney and that if Mollett had requested an attorney, he would have indicated that fact in his report. The probation officer's report contains a checked box indicating Mollett's rights were "invoked" rather than "waived," and the report states Mollett "invoked his right to remain silent regarding the current matter." The report does not state Mollett requested an attorney.

Mollett testified that the probation officer read him his *Miranda* rights and that he invoked both his right to remain silent and his right to an attorney. The district court found that Mollett did not invoke his right to an attorney. We conclude that substantial evidence supports the district court's conclusion. *See State v. Rincon*, 122 Nev. 1170, 1177, 147 P.3d 233, 238 (2006) (stating "the district court is in the best position to adjudge the credibility of the witnesses and the evidence").

Mollett also argues that the probation officer may not have been the person who advised him of his *Miranda* rights because the report indicates a different person informed him of his rights. Mollett did not raise this argument below. "The failure to specifically object on the grounds urged on appeal preclude[s] appellate consideration on the grounds not raised below unless the defendant demonstrates plain error." *Lamb v. State*, 127 Nev. 26, 40, 251 P.3d 700, 709 (2011) (internal citation and quotation marks omitted). Mollett fails to argue plain error on appeal, and

we therefore decline to exercise our discretion to review this claim. *See Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005) (stating it is the appellant's burden to demonstrate plain error).

Finally, Mollett argues the district court erred by denying his motion to suppress statements because he did not voluntarily, knowingly, or intelligently waive his *Miranda* rights. Specifically, Mollett argues the detective that interviewed him was aggressive and employed various forms of subterfuge while interrogating him. Mollett also contends that he was not aware of the consequences of waiving his rights as indicated by his belief that fines and community service were a reasonable punishment for the shooting.

"A valid waiver of rights under *Miranda* must be voluntary, knowing, and intelligent." *Mendoza v. State*, 122 Nev. 267, 276, 130 P.3d 176, 181 (2006). A waiver is voluntary if it "was the product of a free and deliberate choice rather than coercion or improper inducement." *Id.* at 276, 130 P.3d at 181-82 (quotation marks omitted); *accord Moran v. Burbine*, 475 U.S. 412, 421 (1986). A waiver is knowing and intelligent if it was "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran*, 475 U.S. at 421. The totality of the circumstances must be considered in determining whether a defendant's waiver was voluntary, knowing, and intelligent. *See Koger v. State*, 117 Nev. 138, 141, 17 P.3d 428, 430 (2001); *Moran*, 475 U.S. at 421. We review a district court's determination as to whether a waiver was voluntary de novo and as to whether a waiver is knowing and intelligent for clear error. *Mendoza*, 122 Nev. at 276, 130 P.3d at 181.

Mollett testified that he was 17 years old at the time of the interview and had not yet graduated from high school. The interview

transcript indicates the detective read Mollett his *Miranda* rights and asked him if he understood his rights, and Mollett indicated he did. Mollett also testified that he understood his *Miranda* rights and had been read his *Miranda* rights at least once in the past. The detective then asked Mollett if he wanted "a parent or guardian or anybody to be present during questioning" or if he was okay talking to them, to which Mollett responded "nah." Mollett testified that his response meant he did not want to talk. At a separate evidentiary hearing, the detective testified that Mollett was "fully willing to continue the interview process without a parent or guardian or attorney present" after he read Mollett his *Miranda* rights and that Mollett never indicated he did not want to talk to him during the interview.

The interview transcript indicates the detective told Mollett that he had video of Mollett at the scene of the crime, the interview was Mollett's only opportunity to explain his side of the story, and that if Mollett expressed remorse, he could relay that information to the district attorney's office. The detective testified that the interview lasted approximately 30 minutes and that Mollett never indicated he was not feeling well, was hungry, or was in any kind of physical distress.

Mollett fails to demonstrate that the detective was aggressive toward him. Based on the foregoing, we conclude that Mollett voluntarily waived his *Miranda* rights. To the extent the police employed various forms of subterfuge during the interview, such as by lying about the existence of video evidence, these practices occurred after Mollett had waived his rights, and Mollett failed to demonstrate any deception by the police constituted improper coercion. *See Sheriff, Washoe Cty. v. Bessey*, 112 Nev. 322, 325, 914 P.2d 618, 620 (1996) (stating "the general rule that confessions obtained

through the use of subterfuge are not vitiated so long as the methods used are not of a type reasonably likely to procure an untrue statement").

Moreover, Mollett admitted that he understood his rights, he had been read his rights in the past, and he had invoked his right to remain silent the day prior to the interview. Although Mollett told the detective that he believed fines and community service were a reasonable punishment for the shooting, this belief does not in itself render his waiver unknowing or unintelligent. *See Colorado v. Spring*, 479 U.S. 564, 574 (1987) ("The Constitution does not require that a criminal suspect know and understand every possible consequence of a waiver of the Fifth Amendment privilege."); *see also Moran*, 475 U.S. at 422-23 (stating a suspect need only know his rights and be aware of "the State's intention to use his statements to secure a conviction"). Therefore, we conclude that Mollett has failed to demonstrate that the district court's decision was clearly erroneous.

For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Tierra Danielle Jones, District Judge
Brian S. Rutledge
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk