IN THE SUPREME COURT OF THE STATE OF NEVADA

REYES MURGUIA OLIVARES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86966

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction of first-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Appellant Reyes Murguia Olivares was convicted of first-degree murder with the use of a deadly weapon following a bench trial in September 2022. He was sentenced to an aggregate term of incarceration of 40–100 years. Olivares now appeals his conviction, claiming that his right to a speedy trial was violated, the admission of his statement to police violated his federal and state constitutional rights, and the State failed to prove beyond a reasonable doubt that he did not act in self-defense. We disagree and affirm.

Olivares' right to a speedy trial was not violated

Olivares contends his Sixth Amendment right to a speedy trial was violated when his case was delayed over a 14-year period. He argues that he filed a motion to dismiss the case on speedy trial grounds following his bench trial, but the district court did not resolve this motion as his defense counsel subsequently moved to have Olivares' competency re-evaluated. In the absence of a district court order, we address Olivares' Sixth Amendment challenge de novo. *See State v. Inzunza*, 135 Nev. 513,

516, 454 P.3d 727, 730-31 (2019). In *Barker v. Wingo*, the United States Supreme Court provided factors for a court to balance in determining whether a particular defendant has been deprived of his right to a speedy trial. 407 U.S. 514 (1972). These factors are "[(1)] [the] [l]ength of the delay, [(2)] the reason for the delay, [(3)] the defendant's assertion of his right, and [(4)] prejudice to the defendant" as a result of the delay. *Id.* at 530. "Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance." *Id.*

Here, Olivares faced a 14-year delay from the time his first conviction was vacated and the case was remanded to the time of his bench trial—invoking a presumption of prejudice and triggering inquiry into the remaining *Barker* factors. When reviewing the record, however, it is apparent that Olivares failed to assert his speedy trial right which "make[s] it difficult for a defendant to prove that he was denied a speedy trial." *Id.* at 532. Contrary to Olivares' suggestion that his 15 motions to dismiss were assertions of his speedy trial right, his motions instead argued that his counsel was ineffective for not communicating with him more often and for failing to investigate his self-defense theory. Nowhere did he assert that his speedy trial right was violated or that he was actively seeking a speedy trial.[1] Those same motions to dismiss caused considerable delay, as they resulted in counsel changes on four occasions and further highlighted competency issues that caused additional delay. While some delay was attributable to the State, it was Olivares' motion practice that caused much of the delay. Olivares' competency proceedings and COVID-19 delays were justifiable and do not weigh in Olivares' favor.

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[1]Olivares alluded to his speedy trial right on three occasions, but none were to assert the right.

Finally, although a presumption of prejudice attaches in Olivares's favor, the presumption is severely diminished. Though 20 years passed since the crime took place, Olivares fails to point to any specific witness that could have testified to his self-defense theory and cannot identify any witnesses that provided testimony to law enforcement at the time of the investigation that would corroborate his self-defense theory. Thus, on balance, the *Barker* factors do not weigh in Olivares' favor. Therefore, Olivares' speedy trial right was not violated.

The admission of Olivares' statement to police did not violate his federal and state constitutional rights

Olivares argues that (1) the admission of his statement to law enforcement violated his federal and state constitutional rights as the State did not prove by a preponderance of the evidence that his *Miranda* waiver was voluntary, knowing, and intelligent, and (2) admission of his statement violated his federal and state due process rights as his statement was not freely and voluntarily given. The alleged *Miranda* violation arose when Las Vegas Metropolitan Police Detective Phil Ramos interviewed Olivares the night of the shooting.[2] Olivares' first language is Spanish and he only knows limited English, but the interrogation by Ramos was conducted in English without the aid of an interpreter. Olivares was given his *Miranda* rights and was asked if he understood his rights to which he responded: "No problem because you know if somebody wants, try to kill you, you have to

[2]Both parties agree a custodial interrogation took place, and thus, *Miranda* requirements attached.

do something." Olivares sought to exclude his statement through a motion in limine prior to his bench trial. The motion was denied.[3]

This court reviews de novo, as a mixed question of fact and law, a district court's determination as to whether a waiver was voluntary. *Mendoza v. State*, 122 Nev. 267, 276, 130 P.3d 176, 181 (2006). However, "[t]he district court's purely historical factual findings pertaining to the 'scene- and action-setting' circumstances surrounding an interrogation is entitled to deference and will be reviewed for clear error." *Rosky v. State*, 121 Nev. 184, 190, 111 P.3d 690, 694 (2005). "[W]hether a waiver is knowing and intelligent is a question of fact, which is reviewed for clear error." *Mendoza*, 122 Nev. at 276, 130 P.3d at 181.

Olivares' Miranda waiver was voluntarily, knowingly, and intelligently made

The Fifth Amendment provides that "[n]o person shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V; Nev. Const. art. 1, § 8; *see Malloy v. Hogan*, 378 U.S. 1, 8 (1964) (the privilege against self-incrimination is made applicable to the states via the Fourteenth Amendment). "[T]he accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored." *Miranda v. Arizona*, 384 U.S. 436, 467 (1966).

Before an incriminating statement made by a defendant may be introduced by the State, it must be proved by a preponderance of the evidence that a voluntary, knowing, and intelligent waiver of the accused's *Miranda* rights was made. *Colorado v. Connelly*, 479 U.S. 157, 175 (1986).

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[3]The lower court understood that "a trier of fact may still render an independent judgment of the voluntariness of a confession," but ultimately concluded that Olivares waived his *Miranda* rights and that the statement was voluntarily given.

The court considers the totality of circumstances to determine the voluntariness of a valid waiver, including "the youth of the accused; his lack of education or his 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." *Passama v. State*, 103 Nev. 212, 214, 735 P.2d 321, 323 (1987).

Olivares contends his waiver was not proven to be knowing and intelligent by a preponderance of the evidence because his response to Detective Ramos' *Miranda* warning did not affirm comprehension of the warning. Olivares adds that English is his second language and that he suffered from mental illness, including delusions. However, in light of the *Passama* factors, it appears that Olivares' waiver was voluntary, knowing, and intelligent.

As the district court found, when Olivares was interrogated by law enforcement, he was 35 years old. Further, the court concluded that although his education does not formally exceed 6th grade, his intelligence does not appear limited, either—especially when looking at the form and substance of his pro se motions to dismiss (entirely in English, and mostly coherent).[4] His detention only lasted 40 minutes, and there was no conduct by law enforcement that suggested any of the statements were extracted by means of coercion, manipulation, or exploitation. Olivares was advised of his constitutional rights and had previously been interrogated by law

[4]Olivares had also previously purchased a home and negotiated a mortgage in English—demonstrating, at worst, a moderate understanding of English.

enforcement for other suspected criminal activity—further indicating Olivares understood his rights and his ability to freely waive them.

We conclude Olivares' waiver was voluntarily made and the district court did not commit clear error when it found Olivares' waiver knowing and intelligent.

Olivares' confession did not violate his due process rights

Olivares further argues that the admission of his statement violated his federal and state due process rights as it was not freely and voluntarily given. If a criminal defendant's conviction is based, in whole or part, on an involuntary confession, he is deprived of due process of law. *Jackson v. Denno*, 378 U.S. 368, 376 (1964). A confession is admissible only if given voluntarily. *Steese v. State*, 114 Nev. 479, 488, 960 P.2d 321, 327 (1998).

A voluntary confession is one of "rational intellect and a free will." *Blackburn v. Alabama*, 361 U.S. 199, 208 (1960). In *Miller v. Fenton*, the United States Supreme Court concluded,

> [T]he admissibility of a confession turns as much on whether the techniques for extracting the statements, as applied to *this* suspect, are compatible with a system that presumes innocence and assures that a conviction will not be secured by inquisitional means as on whether the defendant's [free] will was in fact overborne.

474 U.S. 104, 116 (1985). As previously discussed, there is no indication that unconstitutional techniques were used to extract statements from Olivares. Olivares does not point to any such facts, and only argues that English is his second language and that he suffered from mental illness and delusions. Thus, Olivares' confession was freely and voluntarily given. We therefore conclude that Olivares' federal and state constitutional rights were not violated, and his statement was properly admitted at trial.

The State proved beyond a reasonable doubt that Olivares did not act in self-defense

Olivares argues that because the prosecution failed to disprove his self-defense theory, it also failed to prove his first-degree murder conviction beyond a reasonable doubt, warranting reversal. Specifically, Olivares points to his testimony that he believed Russell attacked him with two knives and that Russell requested one of the men nearby to bring Russell his gun. Because of Russell's conduct leading up to the event, Olivares highlights that he was in imminent danger of being killed or suffering great bodily injury, so it was necessary for him to use his gun in self-defense.

When reviewing the sufficiency of the evidence supporting a conviction, the court considers "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

When reviewing the record, it is clear that any rational trier of fact could have come to the same conclusion as the district court judge in this case. Jorge Hernandez, Olivares' co-worker, testified that the morning of the shooting Olivares told him that he was going to shoot Russell and to not interfere. Another co-worker, Arles De Jesus Rizo Rodriquez, testified that Olivares told him the morning of the shooting that he had a gun and was going to fix what was going on with the boss. These facts paint Olivares as the initial aggressor, demonstrating his willingness to engage in a quarrel without provocation.

Further, the two eyewitnesses at the scene denied ever seeing any weapons near the scene of the shooting or ever being told to grab a

weapon for Russell—contrary to Olivares' assertion. This testimony is consistent with Detective Long's testimony that no other knife or gun was found on the scene besides the one knife in Russell's pocket—again, contradicting Olivares' assertion that Russell had two knives.

The district court determined the two eyewitnesses, Rodriguez and Hernandez, provided consistent and credible testimony that ran contrary to Olivares' assertion. "When there is conflicting testimony presented, it is for the jury to determine what weight and credibility to give to the testimony. 'Where there is substantial evidence to support a verdict in a criminal case, as the record indicates in this case, the reviewing court will not disturb the verdict nor set aside the judgment.'" *Hankins v. State*, 91 Nev. 477, 477-78, 538 P.2d 167, 168 (1975) (quoting *Sanders v. State*, 90 Nev. 433, 434, 529 P.2d 206, 207 (1974)). Here, there is sufficient evidence for a rational trier of fact to conclude that Olivares was the initial aggressor and therefore cannot avail himself of his self-defense theory. We therefore conclude the State proved Olivares did not act in self-defense beyond a reasonable doubt. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Hon. Carli Lynn Kierny, District Judge
Kirsty E. Pickering Attorney at Law
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk