IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY DONALD HANNEMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39421

FILED

MAY 0 6 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a plea of guilty, of ten counts of sexual assault on a child, three counts of lewdness with a child under the age of fourteen, unlawful use of a child to produce pornography, and possession of a visual presentation depicting sexual conduct of a person under sixteen years of age.

FACTS

On February 23, 2001, Reno Police Detective J. Holladay conducted an interview with a three-year-old child named Joey G. regarding possible molestation. Joey G. told his mother Hanneman had subjected him to numerous acts of sexual perversion and misconduct.

Holladay and Reno Police Detective Broome then drove to Hanneman's place of employment, a child day care facility. Plain-clothed detectives asked Hanneman to come to their office located in the Washoe County Government Complex to discuss a sensitive matter. Hanneman voluntarily agreed to speak with them and followed the detectives to the complex in his own vehicle. Hanneman retained his keys and entered the building, which bore no indicia of being affiliated with the Reno Police Department. Holladay and Hanneman went into an interview room measuring approximately nine feet by ten feet. The room was equipped with a video camera and a door that could be closed and locked.

Almost immediately into the four-hour interview, Holladay told Hanneman he was not under arrest, was free to leave, and did not have to answer any questions. Holladay then began her questioning about Joey G. While accusatorial, Holladay consistently told Hanneman he was not under arrest and could leave at any time.

After three hours, Hanneman confessed to a number of sexually related crimes with numerous children at his house and the day care facility. The sexual acts included orally copulating children, digitally penetrating the anus of children, masturbating and ejaculating on children, and making the children orally copulate him. Police then told Hanneman he was no longer free to leave, arrested him, and read him Miranda warnings. Hanneman signed a waiver of those warnings, as well as a consent form to search his residence and to have samples taken from his mouth and penis.

Police interviewed Hanneman again on February 27, 2001. Police reminded him of his Miranda rights, which he again voluntarily waived. Further, he described additional crimes with additional children. Specifically, he anally penetrated children with his finger; attempted to anally penetrate Joey G. with his penis; attempted being anally penetrated with a child's penis; licked and digitally penetrated the vaginas of several female children; ejaculated on children, including in their mouths; licked feces off Joey G.'s buttocks and from his diaper; attempted to have children urinate in his mouth; and videotaped many of these crimes.

The district court denied Hanneman's motion to suppress his statements and all derivative evidence obtained. Hanneman then pleaded guilty to ten counts of sexual assault on a minor, three counts of lewdness

with a child under the age of fourteen years, one count of unlawful use of a child to produce pornography and/or as a subject of sexual portrayal in a pornographic performance, and one count of possession of a visual presentation depicting sexual conduct of a person under sixteen years of age. He reserved his right to appeal the order denying his motion to suppress. We conclude that his claims on appeal are without merit.

DISCUSSION

First, Hanneman argues he was in custody during his interview on February 23, 2001, and thus entitled to Miranda warnings.

A suspect in custody must be advised of his Miranda rights.[1] The test for determining custody is whether a reasonable person in a similar situation would have felt free to leave.[2] A "totality of the circumstances" analysis is used to determine what a reasonable person would have believed.[3] We consider the site of the interrogation, degree of focus of the investigation on the suspect, presence of other objective indicia of arrest, and the duration and type of questioning.[4]

Hanneman drove his own vehicle to a building not directly associated with the Reno Police Department and voluntarily submitted to a police interview. He was not restrained from movement and was told he was not under arrest and could leave at any time. Because a reasonable

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[1]Alward v. State, 112 Nev. 141, 154, 912 P.2d 243, 251 (1996).

[2]Id. at 154, 912 P.2d at 252 (citing Berkemer v. McCarty, 468 U.S. 420, 442 (1984)).

[3]Mitchell v. State, 114 Nev. 1417, 1423, 971 P.2d 813, 818 (1998) (citing Alward, 112 Nev. at 154-55, 912 P.2d at 252)).

[4]Id.

person would have believed he was free to leave and was not in police custody, Miranda warnings were unnecessary prior to arrest.

Second, Hanneman contends his statement on February 23, 2001, was taken involuntarily.

"A confession is inadmissible unless freely and voluntarily given."[5] Voluntariness is reviewed under the "totality of the circumstances," including the age of the accused, education and intelligence level of the accused, police advisement of the accused's constitutional rights, length of detention, nature of questioning, and use of any physical punishment.[6] Hanneman was coherent, well educated, and not under the influence of any substance affecting his mental capacities. He was also aware of his rights, having taken courses in law and criminal justice at the University of Nevada. Hanneman voluntarily provided his statement without police coercion. The voluntariness of Hanneman's statement, combined with a lack of per se coercion, makes the statement admissible.

Third, Hanneman asserts he did not voluntarily, knowingly, and intelligently waive his Miranda rights on February 23, 2001.

"In order to admit statements made during custodial interrogation, the defendant must knowingly and voluntarily waive the Miranda rights."[7] After arresting Hanneman, police explained verbally

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[5]Elvik v. State, 114 Nev. 883, 891, 965 P.2d 281, 286 (1998) (citing Rowbottom v. State, 105 Nev. 472, 482, 779 P.2d 934, 940 (1989)).

[6]Passama v. State, 103 Nev. 212, 214, 735 P.2d 321, 323 (1987) (citing Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973)).

[7]Koger v. State, 117 Nev. 138, 141, 17 P.3d 428, 430 (2001).

and in writing Hanneman's Miranda rights. Hanneman signed the Miranda waiver of his own volition and proceeded to make further inculpatory remarks. His waiver of Miranda rights was valid.

Fourth, Hanneman maintains the interview on February 23, 2001, was an illegal detention under NRS 171.123.

NRS 171.123 applies to detentions. A consensual encounter "is completely voluntary and . . . a police officer needs no justification."[8] Hanneman's encounter with police was consensual. Thus, the length of the interview has no effect on the admissibility of Hanneman's statement to police.

Fifth, Hanneman argues his subsequent statement on February 27, 2001, was involuntary and taken without proper Miranda advisement.

"[T]he most relevant factor in analyzing whether a former Miranda admonition has diminished is the amount of time elapsed between the first reading and the subsequent interview."[9] We also consider whether the location of the interview was the same or different, whether the interrogators were the same or different, inconsistencies between the first and second statements, and the physical and emotional state of the defendant.[10]

The same detectives interviewed Hanneman in the same location. He elaborated on the first statement without any

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[8]Arterburn v. State, 111 Nev. 1121, 1125, 901 P.2d 668, 670 (1995) (citing U.S. v. Hooper, 935 F.2d 484, 490 (2d. Cir. 1991)).

[9]Koger, 117 Nev. at 142, 17 P.3d at 431.

[10]Id. (citing State v. Beaulieu, 359 A.2d 689, 693 (R.I. 1976)).

inconsistencies. The detectives asked Hanneman twice if he remembered his rights, including the right to remain silent and the right to counsel. Hanneman indicated he understood his rights and voluntarily agreed to provide more information. He also told police he felt fine, although he had been placed on suicide watch. Thus, another Miranda warning prior to the second interview was not required.

Sixth, Hanneman suggests he did not voluntarily, knowingly, and intelligently provide the February 27, 2001, statement to police.

If a defendant provides a statement after receiving Miranda warnings, he cannot "successfully challenge the voluntariness of the statements based solely on the passage of time."[11] Hanneman admits voluntarily giving the second statement. Further, he admits never telling police of being suicidal or cold, only that he had been on suicide watch. Most importantly, at the end of his second statement, he offered to help the police in the future if necessary.

Finally, Hanneman contends all evidence obtained as a result of his February 23, 2001, statement should be barred as "fruit of the poisonous tree."

If a defendant provides a voluntary statement prior to Miranda warnings, the "fruit of the poisonous tree" doctrine does not apply to evidence derived from the voluntary statements.[12] Hanneman

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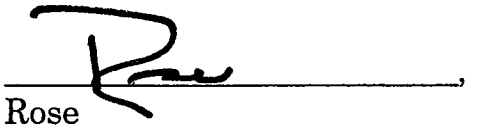
[11]Id. at 143, 17 P.3d at 432.

[12]United States v. Gonzalez-Sandoval, 894 F.2d 1043, 1048 (9th Cir. 1990) (citing Oregon v. Elstad, 470 U.S. 298, 318 (1985)).

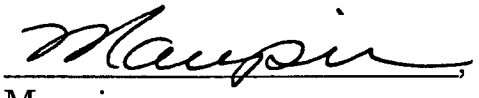
voluntarily consented to the search of his home and other premises. Thus, his claims in this connection are without merit.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Rose



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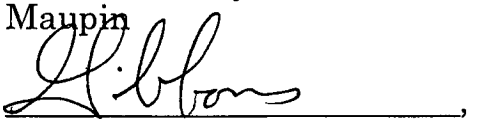

_____, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Law Office of David R. Houston
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk