IN THE SUPREME COURT OF THE STATE OF NEVADA

MIGUEL SISNEROZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39540

FILED

SEP 12 2002

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 jury verdict, of one count of possession of a controlled substance for sale. The district court sentenced appellant Miguel Sisneroz to serve a prison term of 12-34 months; he was given credit for 148 days time served.

First, Sisneroz contends that the district court erred in denying his motion to suppress incriminating statements he made to the police. More specifically, Sisneroz argues that no evidence was presented by the State demonstrating that he knowingly, voluntarily, or expressly waived his Fifth Amendment privilege against self-incrimination, and therefore his rights pursuant to Miranda v. Arizona[1] were violated. We disagree with Sisneroz's contention.

Statements made during custodial interrogation are inadmissible unless freely and voluntarily given after the waiver of rights pursuant to Miranda.[2] "In order to be voluntary, a confession must be the

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[1]384 U.S. 436, 479 (1966); Koger v. State, 117 Nev. 138, 141, 17 P.3d 428, 430-31 (2001).

[2]Steese v. State, 114 Nev. 479, 488, 960 P.2d 321, 327 (1998); see also Floyd v. State, 118 Nev. ___, ___, 42 P.3d 249, 259 (2002).

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product of a 'rational intellect and a free will.'"[3] "[A] confession obtained by physical intimidation or psychological pressure is inadmissible."[4] Further, the State must prove by a preponderance of the evidence that the defendant's waiver of Miranda rights was knowing and intelligent.[5] The waiver need not be explicit, but may be inferred from "the particular facts and circumstances surrounding [the] case."[6]

In determining whether a confession is the product of free will, this court employs a "totality of the circumstances test" to determine "whether the defendant's will was overborne when he confessed."[7] Relevant factors include: the age of the accused; his level of education and intelligence; whether he was advised of his constitutional rights; the length of any detention; the repeated or prolonged nature of the questioning; and the use of physical punishment, such as the deprivation

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[3]Passama v. State, 103 Nev. 212, 213-14, 735 P.2d 321, 322 (1987) (quoting Blackburn v. Alabama, 361 U.S. 199, 208 (1960)).

[4]Thompson v. State, 108 Nev. 749, 753, 838 P.2d 452, 455 (1992), overruled on other grounds by Collman v. State, 116 Nev. 687, 7 P.3d 426 (2000), cert. denied 532 U.S. 978 (2001).

[5]Floyd, 118 Nev. at ___, 42 P.3d at 259; Falcon v. State, 110 Nev. 530, 534, 874 P.2d 772, 775 (1994).

[6]Edwards v. Arizona, 451 U.S. 477, 482 (1980); see also United States v. Cazares, 121 F.3d 1241, 1244 (9th Cir. 1997) (holding that "[t]o solicit a waiver of Miranda rights, a police officer need neither use a waiver form nor ask explicitly whether the defendant intends to waive his rights").

[7]Passama, 103 Nev. at 214, 735 P.2d at 323; see also Schneckloth v. Bustamonte, 412 U.S. 218, 225-27 (1973).

of food or sleep.[8] While each factor should be evaluated in assessing voluntariness, no single factor is in and of itself determinative.[9] Where the district court's determination is supported by substantial evidence, it will not be disturbed on appeal.[10]

Upon consideration of the totality of the circumstances attendant to Sisneroz's statements, we conclude that the district court's determination that Sisneroz knowingly and voluntarily waived his Miranda rights is supported by substantial evidence. Sisneroz concedes that his rights pursuant to Miranda were read and explained to him in Spanish, his primary language, on two distinct occasions prior to his confession, and that he understood those rights. We also note that Sisneroz has two felony convictions and has been arrested several times in California over the past five years, and thus, is no stranger to the criminal process. While in custody, Sisneroz was provided with food and was not deprived of sleep. A review of the transcript of the interview with the police officers reveals that: (1) after being informed of his rights, Sisneroz answered the officers' questions without hesitation; (2) the interview was of a short duration; and (3) there was no indication that Sisneroz was coerced or intimidated by the officers. Further, even though most of the interview was conducted in English, the officers were careful to ensure that Sisneroz understood the questions. Therefore, we conclude that

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

[9]See Schneckloth, 412 U.S. at 226-27.

[10]Steese, 114 Nev. at 488, 960 P.2d at 327.

substantial evidence supports the district court's determination that Sisneroz's statements were voluntary.

Second, Sisneroz contends that the district court erred by not admitting into evidence at trial a copy of the State's notice voluntarily dismissing the forfeiture proceedings brought against Sisneroz. Sisneroz argues that his theory of the case was that he did not possess the drugs, and therefore, the district court's evidentiary ruling prejudiced his defense. We disagree.

"The decision to admit or exclude evidence rests within the trial court's discretion, and this court will not overturn that decision absent manifest error."[11] When arrested, Sisneroz was in possession of $1,257.83, which was seized by the police as evidence. The State initiated a civil forfeiture proceeding, but eventually filed a notice of voluntary dismissal without prejudice. During trial, after hearing arguments from counsel, the district court refused to admit into evidence the copy of the notice, ruling that pursuant to NRS 48.035, "its probative value is substantially outweighed by the danger of unfair prejudice." We conclude that the district court did not commit manifest error. We also note that the State never argued during their case-in-chief that the money in question was drug money. In fact, the State conceded during closing arguments that Sisneroz's explanation regarding the money seized was likely the truth - that he borrowed the money from his boss in order to care for his mother. Therefore, pursuant to NRS 48.015, we further conclude that a copy of the notice of voluntary dismissal without prejudice was not relevant.

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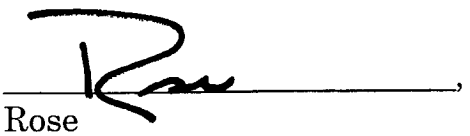
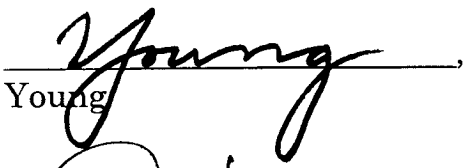
[11]Collman, 116 Nev. at 702, 7 P.3d at 436.

Having considered Sisneroz's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Rose



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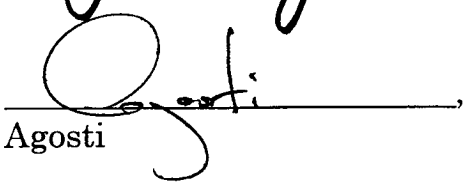
Young



_____, J.
Agosti

cc: Hon. Jerry V. Sullivan, District Judge
Steve E. Evenson
Attorney General/Carson City
Pershing County District Attorney
Pershing County Clerk