

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJAMIN DAVID COCA, III,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39855

FILED

OCT 29 2002

ORDER OF AFFIRMANCE

JANETH A. BLOOM  
CLERK OF SUPREME COURT  
By: *J. Richards*  
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to violate the Uniform Controlled Substances Act (count I) and possession of a controlled substance not for the purpose of sale (count II). The district court sentenced appellant Benjamin David Coca, III, to serve a prison term of 12 to 36 months for count I and a concurrent prison term of 12 to 32 months for count II. The district court then suspended execution of the sentence imposed in count II and placed Coca on probation for a period not to exceed one year.

Coca first contends that the district court erred in admitting his confession because he did not validly waive his Miranda rights.<sup>1</sup> In particular, Coca alleges his waiver of his Miranda rights was involuntary because, at the time of the interrogation, Coca was under the influence of methamphetamine, had not slept for a week, and was threatened with the "the harsh realities of prison life" if he did not cooperate.

"The question of the admissibility of a confession is primarily a factual question addressed to the district court: where that

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<sup>1</sup>See Miranda v. Arizona, 384 U.S. 436 (1966).

determination is supported by substantial evidence, it should not be disturbed on appeal."<sup>2</sup> Moreover, in determining whether a confession is voluntary, the court looks at the totality of the circumstances.<sup>3</sup>

In the instant case, after listening to the audiotape of Coca's confession and conducting a Jackson-Denno hearing,<sup>4</sup> the district court found that Coca's confession was voluntary. The district court's finding is supported by substantial evidence. In particular, Nevada Department of Investigation Detective Sergeant Matt Hibbs testified that he read Coca his Miranda rights and that Coca agreed to speak with him. Hibbs testified that, although Coca was under the influence of methamphetamine, Coca was coherent and able to answer Hibbs' questions appropriately. Notably, there was no testimony that Hibbs or the other officers withheld food or water from Coca, threatened Coca, detained Coca for an unreasonable amount of time, or made promises that would render Coca's confession involuntary. Although, at the time of the interview, Coca was under the influence of methamphetamine and afraid of going to prison, that is not sufficient to render the waiver of his Miranda rights invalid where the totality of the circumstances indicate that Coca's statement was voluntary.<sup>5</sup>

Coca next contends that the district court erred in permitting the testimony of James Stewart, one of the State's witnesses. Specifically,

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<sup>2</sup>Chambers v. State, 113 Nev. 974, 981, 944 P.2d 805, 809 (1997).

<sup>3</sup>Id.

<sup>4</sup>See Jackson v. Denno, 378 U.S. 368 (1964).

<sup>5</sup>Cf. Allan v. State, 118 Nev. \_\_\_, 38 P.3d 175 (2002); Tucker v. State, 92 Nev. 486, 488, 553 P.2d 951, 952 (1976).

Coca alleges that Stewart suffered brain damage and hallucinations and, therefore, was not competent to testify. We disagree.

A witness is presumed to be competent unless proven otherwise.<sup>6</sup> A non-expert witness may not testify, however, unless that testimony is based on personal knowledge.<sup>7</sup> The competency of a witness is a matter within the discretion of the district court.<sup>8</sup>

Here, the district court found that Stewart was competent to testify. The district court's finding is supported by the record. In particular, Stewart testified that he recalled the events surrounding Coca's arrest and was able to explain the meaning of a witness taking an oath. Although Stewart had been hearing voices for the last fifteen years and had sustained a head injury, Stewart was able to coherently testify about his recall of the events leading to Coca's arrest. Accordingly, the district court did not err in finding that Stewart was competent to testify.

Finally, Coca contends that his due process and equal protection rights were violated when the district court did not compel Stewart to wear jail garb when testifying on behalf on the State. Specifically, Coca argues that by allowing Stewart to wear regular clothing, instead of jail garb, the prosecutor was vouching for his credibility and unfairly using the way the prisoner was dressed to his own advantage. We conclude that Coca's contention lacks merit.

At trial, the district court allowed Stewart to wear regular clothing because it did not find that he was a security risk. We conclude

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<sup>6</sup>NRS 50.015.

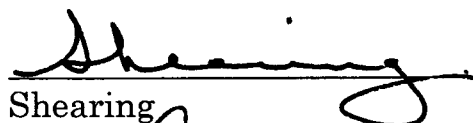
<sup>7</sup>NRS 50.025.


<sup>8</sup>Shuff v. State, 86 Nev. 736, 738, 476 P.2d 22, 24 (1970).

that the district court acted within its discretion in allowing Stewart to wear regular clothing.<sup>9</sup> Notably, there is no authority or rule supporting Coca's contention that an incarcerated State's witness should be required to wear jail garb. Moreover, Coca was not prejudiced by the fact that Stewart was not wearing jail garb because, on cross-examination, Coca elicited from Stewart that Stewart was incarcerated in White Pine County Jail and charged with both sale of controlled substances and conspiracy to sell drugs. Accordingly, Coca's constitutional rights were not violated when the district court refused to compel Stewart to wear jail garb.

Having considered Coca's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

 J.

 J.  
Leavitt

 J.  
Becker

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<sup>9</sup>Cf. Grooms v. State, 96 Nev. 142, 144, 605 P.2d 1145, 1146 (1980) (citations omitted) (“[A] criminal defendant clearly has the right, barring exceptional circumstances . . . to appear before his jurors clad in the apparel of an innocent person.”).

cc: Hon. Steve L. Dobrescu, District Judge  
State Public Defender/Carson City  
State Public Defender/Ely  
Attorney General/Carson City  
White Pine County District Attorney  
White Pine County Clerk