IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTOR RIVERA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40166

FILED

DEC 23 2005

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of eight counts of sexual assault of a minor under fourteen years of age. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge. The district court sentenced appellant to serve three consecutive and five concurrent terms of life with the possibility of parole after serving twenty years for each count.

On appeal, Rivera claims that the district court erred in denying a motion to suppress his son's statement to the police. Specifically, Rivera claims that the district court should have suppressed his son's statement because the statement was taken inside his apartment, his son did not have authority to consent to a search of his apartment, and the police did not obtain a warrant to search his apartment. Rivera further claims that the statement should have been suppressed because it was obtained without parental consent or parental presence. Rivera contends that the taking of his son's statement under these circumstances violated his Fourth Amendment rights.[1]

[1]See U.S. Const. amend. IV.

On January 23, 2001, detectives with the Las Vegas Metropolitan Police Department took a report from an eight-year-old victim who accused Rivera of sexually assaulting him. The victim specifically identified Rivera as the perpetrator and informed the detectives that Rivera's son had witnessed the assault. Acting on this information, the detectives went to Rivera's apartment to look for Rivera and to interview Rivera's ten-year-old son. When the detectives arrived at the apartment, Rivera's son answered the door and informed the detectives that his father was at work and his mother was out of the apartment, but on the premises doing laundry. The detectives asked the son if they could enter the house and ask him some questions. The son agreed, and the detectives went to the kitchen table where they proceeded to interview the son. The detectives recorded that interview. It appears that Rivera's wife did not return to the apartment until the interview was completed or nearly completed, and neither Rivera nor his wife consented to the interview of their son.

Prior to trial, Rivera moved to suppress his son's statement to the police arguing that the statement was obtained in violation of his Fourth Amendment rights. After hearing argument, the district court denied the motion.

"Suppression issues present mixed questions of law and fact. While this court reviews the legal questions de novo, it reviews the district court's factual determinations for sufficient evidence."[2]

First, Rivera claims that the district court should have suppressed his son's statement because the statement was taken inside

---

[2]Johnson v. State, 118 Nev. 787, 794, 59 P.3d 450, 455 (2002).

his apartment, his son did not have authority to consent to a search of his apartment, and the police did not obtain a warrant to search his apartment. Both the United States and Nevada Constitutions forbid unreasonable searches and seizures.[3] There is nothing in the record to indicate that Rivera's son did not have authority to invite the detectives to enter the kitchen of the apartment for the purposes of an interview.[4] Further, it was not necessary to obtain a warrant to interview a witness.[5] Although the police entered Rivera's apartment, they did not search the premises or seize any evidence from the premises. Even assuming that the taking of the son's statement could be considered a "seizure," it was a "seizure" from the son, and Rivera lacks standing to challenge the taking of his son's statement.[6] Therefore, we conclude that Rivera's rights were not violated and suppression of his son's statement was not warranted because there was no search or seizure of Rivera's person or property.

---

[3]U.S. Const. amend. IV; Nev. const. art. 1, § 18.

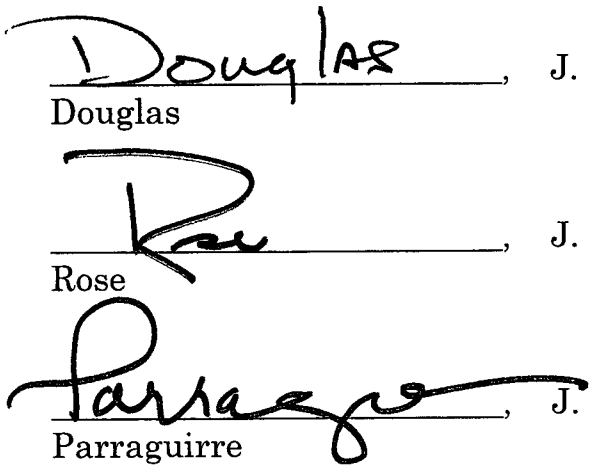
[4]See Davis v. U.S., 327 F.2d 301 (1964) (holding that defendant's eight-year-old daughter could validly consent to police entry of the home when police intention was to interview defendant, not search the home).

[5]See State v. Burkholder, 112 Nev. 535, 538, 915 P.2d 886, 888 (1996) (holding that "[m]ere police questioning does not constitute a seizure.") (citing Florida v. Bostick, 501 U.S. 429, 434 (1991)).

[6]See Rakas v. Illinois, 439 U.S. 128, 133-34 (1978) ("'Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted.'") (quoting Alderman v. United States, 394 U.S. 165, 174 (1969)); see also Harper v. State, 84 Nev. 233, 237, 440 P.2d 893, 896 (1968) (holding that Harper was not an aggrieved person and therefore lacked "standing to raise the constitutional protection of the Fourth Amendment and [was precluded] from suppressing the evidence found").

Second, Rivera claims his son's statement should have been suppressed because it was taken without parental consent or presence. This claim lacks merit. There is no requirement that a parent be present or consent to the interrogation of a juvenile suspect,[7] let alone a juvenile witness. We therefore conclude that the district court did not err in denying Rivera's motion to suppress his son's statement. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Douglas

_____, J.
Rose

_____, J.
Parraguirre

cc: Hon. John S. McGroarty, District Judge
Gregory L. Denue
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

---

[7]See Elvik v. State, 114 Nev. 883, 890-91, 965 P.2d 281, 286 (1998) (stating that there is no authority requiring the presence of a parent during the interrogation of a juvenile suspect, but holding that the juvenile's age and lack of parental presence will bear on the voluntariness of the statement); see also NRS 62C.010(2) (requiring only parental notification when a juvenile has been taken into custody).