

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLOS ANDRES MATUTE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41631

FILED

JUN 03 2004

THE CLERK OF THE SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of seven counts of statutory sexual seduction, two counts of attempted home invasion, one count of attempted burglary, and one count of first-degree kidnapping. The district court sentenced appellant to serve eight concurrent prison terms of two to five years, and a consecutive term of life with the possibility of parole after five years served.

Appellant first argues that a confession he made to police during his interrogation should not have been admitted at trial because he did not knowingly and voluntarily waive his Fifth Amendment Miranda¹ rights. Specifically, appellant argues that after he was advised of his rights, the interrogating detective failed to ask appellant if he understood his rights, and failed to secure appellant's signature on the written waiver of rights.

Statements made during custodial interrogation are inadmissible unless freely and voluntarily given after the waiver of rights

¹Miranda v. Arizona, 384 U.S. 436 (1966).

04-10174

pursuant to Miranda.² "In order to be voluntary, a confession must be the 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 Moreover, "[t]he question of the admissibility of a confession is primarily a factual question addressed to the district court: where that determination is supported by substantial evidence, it should not be disturbed on appeal."⁷

In the instant case, in a hearing outside the presence of the jury, the interrogating officer averred that after advising appellant of his

²Steese v. State, 114 Nev. 479, 488, 960 P.2d 321, 327 (1998); see also Floyd v. State, 118 Nev. 156, 171, 42 P.3d 249, 259 (2002), cert. denied 537 U.S. 1196 (2003).

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

⁴Thompson 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).

⁵Floyd, 118 Nev. at 171, 42 P.3d at 259; Falcon v. State, 110 Nev. 530, 534, 874 P.2d 772, 775 (1994).

⁶Edwards v. Arizona, 451 U.S. 477, 482 (1981) (quoting Johnson v. Zerbst, 304 U.S. 458, 464 (1938)); 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").

⁷Chambers v. State, 113 Nev. 974, 981, 944 P.2d 805, 809 (1997).

rights from memory in appellant's native language, Spanish, he asked appellant if he understood those rights, and appellant affirmed that he understood them and indicated that he wished to waive them. The interrogating officer further stated that the interview lasted slightly over one hour and that during the interview appellant was "very open and very willing to talk." Although appellant claimed that the interrogating officer informed him of his right to remain silent, but not of his right to speak with an attorney prior to questioning, the district found that appellant was not credible and had a motive to fabricate. In contrast, the district court found that the interrogating officer was credible, had no motive to fabricate, and had advised appellant of his Miranda rights appropriately. Additionally, the court found that appellant understood and waived his rights, and that appellant's statement to the interrogating officer was made voluntarily. The district court's findings, as well as its determination that appellant's confession was voluntary and admissible, are sufficiently supported by substantial evidence. Therefore, we reject appellant's contention that the district court erred in admitting his confession.


Next, appellant argues that the minor victim's testimony should not have been admitted at trial because the State allegedly violated her right to privacy and the doctor-patient privilege by compelling her to testify. Appellant did not object to the victim's testimony at trial on the grounds of privacy or doctor-patient privilege. The failure to object to the admission of witness testimony generally precludes appellate review absent plain or constitutional error.⁸ Moreover, appellant has not

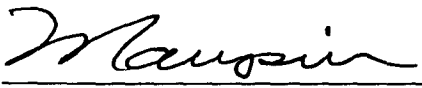
⁸See Sterling v. State, 108 Nev. 391, 394, 834 P.2d 400, 402 (1992).

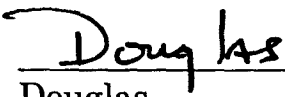
demonstrated that the doctor-patient privilege was even applicable in this case, that he has standing to assert the privilege, or that the victim invoked the privilege. Thus, we conclude that appellant has failed to demonstrate that any plain or constitutional error occurred in this case. Thus, appellant's contention is without merit.

Having considered appellant's arguments and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Stewart L. Bell, District Judge
Andrew S. Wentworth
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk