

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIK FLORES-GONZALEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42285

FILED

APR 05 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a plea of nolo contendere, of one count of trafficking in a controlled substance. The district court sentenced appellant to a prison term of 25 years, with parole eligibility after 10 years. The district court further ordered appellant to pay a fine in the amount of \$5,000.00.

Appellant's sole contention is that the district court erred by denying his motion to suppress his confession.¹ Specifically, appellant argues that his confession was involuntary.

"A confession is admissible only if it is made freely and voluntarily."² To be voluntary, a confession must be the result of a "rational intellect and a free will."³ Thus, a confession that is coerced by physical intimidation or psychological pressure is involuntary.⁴

¹Appellant preserved this issue for appeal pursuant to NRS 174.035(3).

²Passama v. State, 103 Nev. 212, 213, 735 P.2d 321, 322 (1987).

³Id. at 213-14, 735 P.2d at 322 (quoting Blackburn v. Alabama, 361 U.S. 199, 208 (1960)).

⁴Id. at 214, 735 P.2d at 322-23; see also Thompson v. State, 108 Nev. 749, 753, 838 P.2d 452, 455 (1992) ("a confession obtained by physical

continued on next page . . .

The voluntariness of a confession must be determined based on the effect of the totality of the circumstances on the defendant's will.⁵ Factors to be considered include: the accused's youth; the accused's lack of education or low intelligence; the lack of any advice of constitutional rights; the length of detention; the repeated and prolonged nature of questioning; and the use of physical punishment such as the deprivation of food or sleep.⁶ Because the voluntariness of a confession is primarily a factual question, the district court's determination that a confession is admissible will not be disturbed on appeal so long as it is supported by substantial evidence.⁷

Here, the district court's finding that appellant's statements were voluntary is supported by substantial evidence. The totality of the circumstances demonstrate that appellant's statements were the product of a rational intellect and a free will. Appellant was approximately twenty-three years of age at the time, and did not appear to suffer from any intellectual deficiencies. Appellant was informed of and waived his constitutional rights before the interview. The interviews lasted approximately fifteen minutes. Appellant was not deprived of food or sleep or subjected to any physical punishment or coercion. Given the

... continued

intimidation or psychological pressure is inadmissible"), overruled on other grounds by *Collman v. State*, 116 Nev. 687, 7 P.3d 426 (2000).

⁵Passama, 103 Nev. at 214, 735 P.2d at 323.

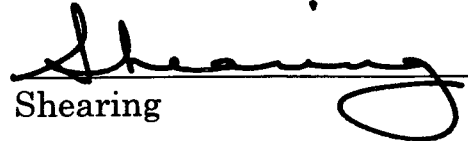
⁶Id.

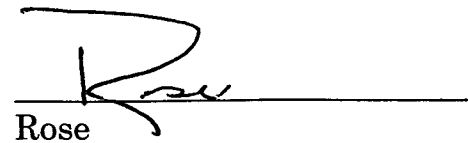
⁷Chambers v. State, 113 Nev. 974, 981, 944 P.2d 805, 809 (1997).

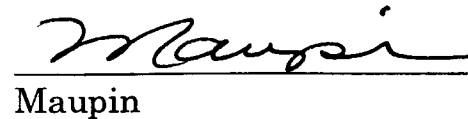
totality of the circumstances, we conclude that the district court did not err in denying the motion to suppress appellant's statements.

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of conviction affirmed.

 C.J.
Shearing

 J.
Rose

 J.
Maupin

cc: Hon. Andrew J. Puccinelli, District Judge
Marvel & Kump, Ltd.
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Elko County Clerk