

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TULY LEPOLO, A/K/A TUTAMUA  
LEPOLO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85631-COA

FILED  
MAR 18 2024  
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY [Signature]  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Tuly Lepolo appeals from a judgment of conviction, entered pursuant to a jury verdict, of first-degree murder with use of a deadly weapon and assault with a deadly weapon. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Lepolo argues the district court erred by denying his motion to suppress his statements to police because they were involuntary. The question of whether statements to police are voluntary presents a mixed question of law and fact. *Rosky v. State*, 121 Nev. 184, 190, 111 P.3d 690, 694 (2005). The district court's purely historical factual findings are given deference and thus reviewed for clear error, but the district court's legal determination of whether the statement was voluntary is reviewed de novo. *Id.*

"In order to satisfy due process requirements, a confession must be made freely and voluntarily, without compulsion or inducement." *Dewey v. State*, 123 Nev. 483, 492, 169 P.3d 1149, 1154 (2007) (internal quotation marks omitted). "Voluntariness [is] determined by reviewing the totality of the circumstances, including such factors as the defendant's age, education, and intelligence; his knowledge of his rights; the length of his detention; the

nature of the questioning; and the physical conditions under which the interrogation was conducted.” *Gonzales v. State*, 131 Nev. 481, 488, 354 P.3d 654, 658 (Ct. App. 2015).

On appeal, Lepolo challenges the district court’s findings regarding his education and intelligence. Lepolo argues that he demonstrated a lack of education and low intelligence during the police interview through his “inability to finish a sentence” and “non-responsiveness at times” and because he slurred his words and expressed confusion about the aliases contained in his criminal record.

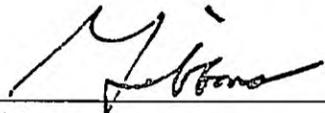
The district court found that Lepolo did not demonstrate a lack of education or low intelligence because he was very responsive to the questions asked, answered appropriately, and asked appropriate questions. These findings are supported by the record. In addition, Lepolo’s speech did not impair his ability to ask or respond to questions. And Lepolo questioned why he was booked under Tuly Lepolo when he never used that name as an alias despite inferring he used aliases in his “younger days.” We conclude Lepolo failed to demonstrate that, considering the totality of the circumstances, he did not make his statements freely and voluntarily. Accordingly, we further conclude that the district court did not err by denying his motion to suppress his statements to police.<sup>1</sup>

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<sup>1</sup>The district court also found that Lepolo’s age was a “non-element” because he was “somewhere north of 50 during this interaction”; Lepolo was advised of his rights almost immediately; the interview was 24 minutes in length; there was no repeated or prolonged questioning; and the physical conditions of the interrogation supported it being voluntary because it was only 24 minutes long and there was no deprivation of food or sleep. Lepolo does not challenge these findings on appeal.

Lepolo also argues the district court erred by failing to exclude his statements to police on the grounds that they were obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). Lepolo waived this claim by explicitly informing the district court that he was not seeking suppression of his statement on *Miranda* grounds. *See Ford v. State*, 122 Nev. 796, 805, 138 P.3d 500, 506 (2006) (recognizing that a waiver is an intentional relinquishment of a known right). Therefore, we conclude Lepolo is not entitled to relief based on this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Jacqueline M. Bluth, District Judge  
Jean J. Schwartzner  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk