IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 41888

STATE OF IDAHO,	)	**2015 Unpublished Opinion No. 399**
	)	
Plaintiff-Respondent,	)	**Filed: March 9, 2015**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
BRIAN KENNETH TAYLOR,	)	**THIS IS AN UNPUBLISHED**
	)	**OPINION AND SHALL NOT**
Defendant-Appellant.	)	**BE CITED AS AUTHORITY**
	)	

Appeal from the District Court of the Second Judicial District, State of Idaho, Latah County. Hon. Jeff M. Brudie, District Judge.

Order denying motion to suppress, affirmed; judgment of conviction and cumulative unified sentences of life, with a minimum period of confinement of twenty-five years, for four counts of sexual abuse, four counts of lewd conduct with a minor, and one count of sexual exploitation of a child, affirmed.

Sara B. Thomas, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Mark W. Olson, Deputy Attorney General, Boise, for respondent.

GRATTON, Judge

Brian Kenneth Taylor appeals from the judgment of conviction entered upon his conditional guilty pleas to four counts of sexual abuse of a child under the age of sixteen years, Idaho Code § 18-1506(1)(a); four counts of lewd conduct with minor child under sixteen, I.C. § 18-1508; and one count of sexual exploitation of a child, I.C. § 18-1507(2)(b). Taylor claims that the district court erred in denying his motion to suppress, contending his statements disclosing the location of camera memory cards were not voluntarily given. Taylor also argues that the district court abused its discretion by imposing an excessive sentence. We affirm.

I.

FACTUAL AND PROCEDURAL BACKGROUND

This summary of facts is from the evidence underlying the district court's decision rendered following a hearing on the motion to suppress: On May 21, 2013, two officers from the Moscow Police Department went to Taylor's house to talk with him about allegations of sexual abuse of a child. Taylor denied the allegations and declined to speak with the officers further. The officers obtained a search warrant and searched Taylor's house. While a host of sexually-explicit material was located, Taylor was not arrested and no charges were filed.

On June 10, 2013, the officers obtained another search warrant based on new information from the child victim. Taylor agreed to leave work to allow officers to enter his house without forced entry. Before arriving, Taylor picked up his five-year-old son from daycare. Four officers conducted the search of Taylor's house. During the search, officers asked Taylor to stay in the living room while another officer took his son outside. A detective provided Taylor with *Miranda*[1] warnings prior to questioning. Taylor ultimately disclosed the location of a camera as well as memory cards. The officers took the memory cards to the police department for examination. Finding pictures of Taylor engaged in various sexual acts with children, the officers returned and arrested Taylor.

The State charged Taylor with a number of offenses relating to the sexual abuse of four minors, and also charged Taylor with possession of methamphetamine. Taylor moved to suppress his statements made during the officers' execution of the second search warrant and evidence resulting from those statements. Taylor argued that the statements relative to the location of the camera and memory cards were coerced and involuntary.[2] The district court denied Taylor's motion to suppress. Taylor then agreed to plead guilty, conditioned on his ability to appeal the district court's denial of his motion to suppress. Pursuant to the agreement, Taylor pled guilty to four counts of sexual abuse of a child, four counts of lewd conduct with

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[1] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

[2] Taylor also argued his *Miranda* rights were violated during the June questioning because he asserted his right to remain silent during the May interrogation. However, he does not challenge the district court's conclusion that his *Miranda* rights were not violated due to the substantial time that passed between his assertion of his right in May and the later questioning in June.

minor child, and one count of sexual exploitation of a child. The district court imposed unified life sentences, with ten years determinate for each charge of lewd conduct with minor child, to run concurrently; a consecutive five-year determinate term for sexual exploitation of a child; and ten years determinate for each charge of sexual abuse of a child to run concurrently with each other, but consecutively with the other charges. Ultimately, the sentence resulted in a cumulative unified life sentence with twenty-five years determinate. Taylor timely appeals.

II.

ANALYSIS

A. Motion to Suppress

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact that are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

In *State v. Stone*, 154 Idaho 949, 303 P.3d 636 (Ct. App. 2013), we stated:

> In order to find a violation of a defendant's due process rights by virtue of an involuntary confession, coercive police conduct is necessary. *Colorado v. Connelly*, 479 U.S. 157, 167 [107 S. Ct. 515, 521-22, 93 L. Ed. 2d 473, 484-85] (1986); *State v. Whiteley*, 124 Idaho 261, 268, 858 P.2d 800, 807 (Ct. App. 1993). The state must show by a preponderance of the evidence that the defendant's statements were voluntary. *Whiteley*, 124 Idaho at 268, 858 P.2d at 807.
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> The proper inquiry is to look to the totality of the circumstances and then ask whether the defendant's will was overborne by the police conduct. *Arizona v. Fulminante*, 499 U.S. 279, 287 [111 S. Ct. 1246, 1252-53, 113 L. Ed. 2d 302, 316-17] (1991); [*State v. Troy*, 124 Idaho 211, 214, 858 P.2d 750, 753 (1993)]. In determining the voluntariness of a confession, a court must look to the characteristics of the accused and the details of the interrogation, including: (1) whether *Miranda* warnings were given; (2) the youth of the accused; (3) the accused's level of education or low intelligence; (4) the length of the detention; (5) the repeated and prolonged nature of the questioning; and (6) deprivation of food or sleep. *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 [93 S. Ct. 2041, 2047, 36 L. Ed. 2d 854, 862] (1973); *Troy*, 124 Idaho at 214, 858 P.2d at 753.

Stone, 154 Idaho at 953, 303 P.3d at 640 (quoting *State v. Valero*, 153 Idaho 910, 911-12, 285 P.3d 1014, 1015-16 (Ct. App. 2012)).

As to the *Schneckloth* factors, the district court found no evidence in the record to establish that Taylor was uneducated or unintelligent, that the detention was of any significant length, that the questioning was repetitive or prolonged, or that Taylor was deprived of sleep or food. The district court concluded that Taylor was in custody based on the number of officers at the scene and because the officers provided Taylor with *Miranda* warnings.[3] Taylor does not challenge these findings and conclusions. Instead, Taylor argues the statements that led the officers to the memory cards were obtained through coercion and were involuntarily made. Taylor contends the officers threatened to search every inch of the house if Taylor did not tell them the location of the camera and memory cards. The district court found that while speaking to Taylor regarding the camera and memory cards, the detective told Taylor that the officers would search every inch of Taylor's home if he did not tell them where the camera and memory cards were located. However, the district court concluded that because the search warrant allowed the officers to search for the camera and memory cards, it was not an unlawful threat.[4] Based on the totality of circumstances, the district court concluded Taylor provided the location of the memory cards voluntarily. A transcript was admitted at the motion to suppress hearing that set forth the dialogue between the detective and Taylor. The first detective, unable to locate the camera described by the victim, confronted Taylor about the missing camera. The detective stated:

> Detective: If you help me out, man, this is going to go a lot faster than if you don't. If not, I will be back there all night. I will tear that room apart from one square inch to the other.
> Taylor: Yeah.
> Detective: All right. This is not going to go well. I'm going to find this camera. Where is it at?

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[3] The State does not challenge this conclusion on appeal.

[4] Taylor argued below that the threat to obtain the camera itself was unlawful but he concedes, on appeal, that the search warrant allowed the officers to inform Taylor they would search until finding the camera.

Taylor then told the detective where the camera was located. After locating the camera, the same detective asked Taylor about the memory card that goes with the camera. Taylor denied that any memory cards existed.

Subsequently, a second detective began speaking with Taylor and ensured that Taylor was willing to talk with him. The detective confirmed with Taylor that anything he said could be used against him. After Taylor agreed to talk, the detective explained the potential danger to the victim if the photographs were discovered by someone else and how this could harm the victim even more. The detective told Taylor he was speaking to him man-to-man and that Taylor could already be arrested for possession of methamphetamine. However, the detective said he did not want to arrest Taylor to allow him to be there for his son. Taylor then claimed to have destroyed the memory cards after the officers searched his house in May. The detective told Taylor he had too much respect for him to believe that lie. After the detective stated he believed Taylor to be an honest person, Taylor asked if the judge would look at that information. The detective responded by explaining that a judge would see that Taylor is addicted to pornography and that he was trying to get help for that problem. The detective also indicated that there were ways for Taylor to get help with this pornography addiction. The detective then explained that taking responsibility would show the judge he was seeking help and had stepped up to help protect the child from further harm. Taylor expressed that he wanted to protect the victim. The two further discussed how the victim may be harmed. Taylor also expressed that he would be arrested no matter what he did. The detective responded that the decision had not yet been made. The detective then explained that if Taylor was arrested and his son was placed in protective custody, without the memory cards being found, someone could break into the house and take the memory cards. Taylor then disclosed the location of the memory cards.

Taylor argues the district court erroneously found that the second warrant allowed officers to search for a memory card, and thus the detective's statement that he would tear the house apart until the memory cards were found was an unlawful threat. We begin by noting the first detective's statement that he would be back in the room all night and would tear the room apart was simply a promise to thoroughly search the house pursuant to the warrant. *See United States v. Wilkinson*, 926 F.2d 22, 25 (1st Cir. 1991) (affirming district court's finding that the officers' threat to "tear the place apart" amounted to "no more than a permissible promise to search the house thoroughly") *overruled on other grounds by Bailey v. United States*, 516 U.S.

137 (1995); *United States v. Green*, 678 F.2d 81, 83 (8th Cir. 1982) (consent to search held voluntary where officers indicated they could obtain a warrant and then tear apart the defendant's house). Further, as argued by the State, the officers' statement regarding the thorough search of the house related only to the camera, which Taylor concedes was authorized by the search warrant. The first detective's statement was made in regard to the camera, and not made in relation to the memory cards which, at the time, were not known to be missing. After the camera was found, neither detective expressed that they would continue to search the house unless Taylor disclosed the location of the memory cards. The statements by the detectives, under the totality of the circumstances, were not overly coercive.

Even assuming the statement regarding tearing the house apart was coercive, and assuming it was made in relation to the memory cards, the district court did not err in finding that the warrant authorized a search for the memory cards. The warrant authorized the search for "camera-capable devices." The detective noted that the memory cards for the camera were not within the camera itself. The detective also knew the camera used an obsolete memory card unique to that model. There is substantial, competent evidence to support the district court's finding that the memory cards fell within the scope of the warrant. Taylor has failed to show the district court abused its discretion in concluding he voluntarily disclosed the location of the memory cards.

B. Taylor's Sentence

An appellate review of a sentence is based on an abuse of discretion standard. *State v. Burdett*, 134 Idaho 271, 276, 1 P.3d 299, 304 (Ct. App. 2000). Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable, and thus a clear abuse of discretion. *State v. Brown*, 121 Idaho 385, 393, 825 P.2d 482, 490 (1992). A sentence may represent such an abuse of discretion if it is shown to be unreasonable upon the facts of the case. *State v. Nice*, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary "to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case." *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). Where an appellant contends that the sentencing court imposed an excessively harsh sentence, we conduct an independent review of the record, having regard for the nature of the offense, the character of the offender, and the protection of the public

interest. *State v. Reinke*, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

The district court sentenced Taylor to a cumulative unified life sentence with twenty-five years determinate. Taylor sexually abused and photographed his abuse of four minor children. Applying the aforementioned standards, and having reviewed the record in this case, the district court did not abuse its discretion.

III.

CONCLUSION

The district court properly denied Taylor's motion to suppress, and the court did not impose an excessive sentence. Therefore, Taylor's judgment of conviction and sentence are affirmed.

Judge LANSING and Judge GUTIERREZ **CONCUR.**