

IN THE SUPREME COURT OF THE STATE OF NEVADA

HARRY MARTIN BYARS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42871

FILED

APR 22 2005

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 jury verdict, of one count of failure to stop on the signal of a police officer, one count of grand larceny auto, and one count of possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Valorie Vega, Judge. The district court adjudicated appellant a habitual criminal and sentenced him to a prison term of 5 to 20 years for each count. The district court ordered that two of the counts were to run consecutively and the third concurrently. The district court further ordered appellant to pay restitution to the victim in the amount of \$3,350.00.

Appellant first contends that the district court erred by denying his motion to suppress. Specifically, appellant argues that, although he was given Miranda¹ warnings, he was not specifically asked whether he was willing to waive his right to an attorney and the right to remain silent. A waiver of Miranda rights need not be explicit, but may be

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

inferred from "the particular facts and circumstances surrounding [the] case."² In this case, the arresting officer read appellant his rights from a card prepared for that purpose. Thereafter, appellant did not request an attorney, and he did not invoke his right to remain silent. We conclude that appellant's waiver of rights was voluntarily made. Accordingly, the district court did not err by denying appellant's motion to suppress.

Appellant also contends that the district court should not have admitted evidence that a hypodermic needle was found in the stolen car after appellant's arrest. Even assuming that evidence of the hypodermic needle could be characterized as evidence of other bad acts which the jury could infer were committed by appellant, any error in its admission is subject to review for harmless error.³ We note that the references to the hypodermic needle were extremely brief. Additionally, there was overwhelming evidence of appellant's guilt, including eyewitness testimony of the victim and various other witnesses. We therefore conclude that any error was harmless beyond a reasonable doubt.


²Edwards v. Arizona, 451 U.S. 477, 482 (1981); see also U.S. v. Cazares, 121 F.3d 1241, 1244 (9th Cir. 1997) (holding that to 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").


³See Qualls v. State, 114 Nev. 900, 903, 961 P.2d 765, 767 (1998) ("We have routinely treated the erroneous admission of evidence of other bad acts as subject to review for harmless or prejudicial error.").

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Valorie Vega, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk