

IN THE SUPREME COURT OF THE STATE OF NEVADA

CESAR JAVIER SALVADOR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55338

FILED

JUN 08 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY H. Argersoll  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of first-degree kidnapping with the use of a deadly weapon, second-degree kidnapping with the use of a deadly weapon, five counts of sexual assault with the use of a deadly weapon, and sexual assault of a minor under 16 years of age with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge. Appellant Cesar Salvador raises three issues.

First, Salvador claims that the district court erred in granting the State's motion to join the charges related to one sexual assault victim to the charges related to the other two victims. Salvador did not object to the joinder in the district court and is therefore precluded from raising this claim for the first time on appeal. Rogers v. State, 101 Nev. 457, 465-66, 705 P.2d 664, 670 (1985). Moreover, Salvador used the same methods and weapons to lure and assault all three victims and thus joinder would be appropriate even had he objected below. See Floyd v. State, 118 Nev. 156, 163-64, 42 P.3d 249, 254-55 (2002), abrogated on other grounds by Grey v. State, 124 Nev. 110, 178 P.3d 154 (2008).

Second, Salvador claims that the district court erred in denying his motion to suppress a statement he gave to police detectives.

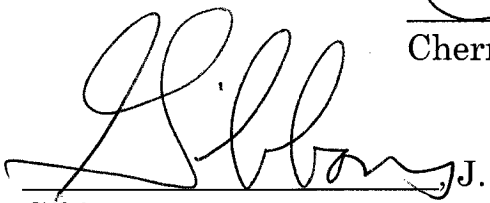
We disagree. Salvador was read his rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), waived those rights, and responded to police questioning. After the interview was concluded, the detectives placed Salvador in their vehicle for transport. While en route, Salvador gave a second statement, which he claimed should have been suppressed because the detectives failed to first reiterate his Miranda rights where four hours had elapsed since his first warning. Where, as here, the defendant does not challenge the sufficiency of the first Miranda warning, the mere passage of hours does not require suppression of further statements. See Koger v. State, 117 Nev. 138, 142-43, 17 P.3d 428, 431-32 (2001) (listing cases and concluding that 12-day lapse between statements did not require re-warning). Further, to the extent that Salvador claims that his silence at the end of the interview should be interpreted as an invocation of his Miranda rights, he errs. See Berghuis v. Thompkins, 560 U.S. \_\_\_, \_\_\_, 130 S. Ct. 2250, 2259-60 (2010).

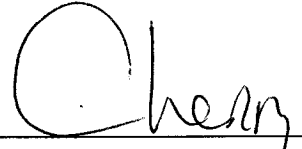
Third, Salvador argues that the district court erred in admitting eight box cutters of the type that each of the victims testified was used against her in their respective assaults. Salvador contends that the weapons should have been suppressed because they were taken from his car without probable cause and after he was detained for longer than permitted by NRS 171.123(4). Salvador neither moved to suppress this evidence nor objected to their admission and consequently there is no factual determination made by the district court for this court to review. See Wilson v. State, 86 Nev. 320, 326, 468 P.2d 346, 350 (1970). Further, we discern no plain error as the vehicle stop was based upon the victims' description of Salvador's distinctive sports car and the search of the

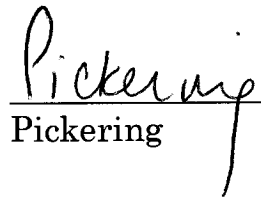
vehicle was conducted pursuant to a warrant. See NRS 178.602; Richmond v. State, 118 Nev. 924, 935, 59 P.3d 1249, 1256 (2002).

Having considered Salvador's claims and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.

  
Gibbons

  
Cherry

  
Pickering

cc: Hon. Jennifer Togliatti, District Judge  
Kocka & Bolton  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk