

IN THE SUPREME COURT OF THE STATE OF NEVADA

EFRAIN LOPEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65236

FILED

MAR 11 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of trafficking in a controlled substance and two counts of transport of a controlled substance. Eighth Judicial District Court, Clark County; Jerome T. Tao, Judge.

Appellant Efrain Lopez first argues that he is entitled to a new trial because the district court failed to administer the oath to the venire panel before commencing any questioning. Because Lopez failed to object below, we review his claims for plain error. *See Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003). Lopez must demonstrate that the district court's failure was error, that it was plain from the record, and that "the error affected his . . . substantial rights; by causing actual prejudice or a miscarriage of justice." *Mendoza-Lobos v. State*, 125 Nev. 634, 644, 218 P.3d 501, 507 (2009) (internal quotations omitted) (citation omitted).

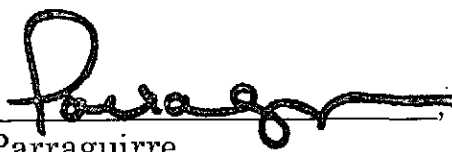
The district court plainly erred when it failed to administer the oath prior to beginning the questioning of the potential jurors as required by NRS 16.030(5). However, Lopez fails to demonstrate that the error resulted in actual prejudice or a miscarriage of justice. He argues that the jurors may have untruthfully responded to questions that would have demonstrated bias, prejudice, or discriminatory viewpoints. However, the questions asked prior to the administration of the oath—whether anyone had ever been convicted of any felonies; was not a United States citizen; or had any language, hearing, or serious medical issues—did not implicate Lopez’s concerns, and he fails to argue or demonstrate that any empaneled juror was biased, prejudiced, or held discriminatory viewpoints. We therefore conclude that Lopez fails to demonstrate that the error affected his substantial rights.

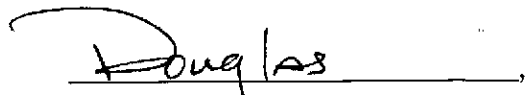
Lopez also argues that the district court must suppress his statements in a new trial because he was not properly advised of his rights to remain silent and to counsel as required by *Miranda v. Arizona*, 384 U.S. 436 (1966). Because this court has determined that Lopez is not entitled to a new trial, this claim is moot. To the extent he is arguing that the district court plainly erred in admitting his statements at trial, his claim still fails. A knowing, voluntary, and intelligent waiver of *Miranda* rights may be inferred from the totality of the circumstances. *Mendoza v. State*, 122 Nev. 267, 276, 130 P.3d 176, 181-82 (2006). Like Mendoza, Lopez was advised of his rights in Spanish and did not express difficulty in understanding the nature of his rights or the content of any questioning.

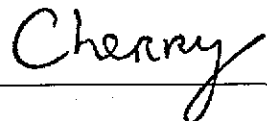
Rather, Lopez demonstrated that he understood his right to remain silent when he stopped the questioning by refusing to answer any more questions. We therefore conclude that Lopez fails to demonstrate error.

For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Cherry

cc: Eighth Judicial District Court Dept. 20
Carl E. G. Arnold
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk