

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT FRANCIS GUY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68784

FILED

JUN 22 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY J. Hendrich
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of possession of a forged instrument. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Appellant Robert Francis Guy argues the district court erred in permitting the State to present evidence of a detective's interview with Guy because the interview violated Guy's Sixth Amendment right to counsel. The parties do not dispute that Guy's Sixth Amendment right to counsel had attached and the record demonstrates Guy was in custody, represented by counsel in this matter, and awaiting trial when the interview took place. Guy argues the district court erred in concluding he validly waived his right to have his counsel present because the detective improperly informed Guy that Guy's counsel wanted Guy to talk with the detective, causing Guy to believe he should speak without his counsel present.

"Suppression issues present mixed questions of law and fact. This court reviews findings of fact for clear error, but the legal

consequences of those facts involve questions of law that we review de novo.” *State v. Beckman*, 129 Nev. ___, ___ 305 P.3d 912, 916 (2013) (internal quotation marks and citations omitted). “The Sixth Amendment right to counsel, which applies to the states by way of the Fourteenth Amendment’s Due Process Clause, prevents admission at trial of a defendant’s statements which police have deliberately elicited after the right has attached and without obtaining a waiver or providing counsel.” *Kaczmarek v. State*, 120 Nev. 314, 326, 91 P.3d 16, 24 (2004) (footnote omitted). “Once a defendant invokes the Sixth Amendment right to counsel, the government must cease further attempts to obtain his statements until he has been provided counsel, unless he initiates the conversation and waives his rights.” *Id.*

Here, the district court conducted a hearing and was informed Guy had wished to talk with the detective, but that defense counsel had left a message with the detective requesting to be present during the interview. After reviewing the interview recording and hearing testimony from Guy, the district court concluded Guy wanted to speak with the detective because he wished to “clear up this matter” and hoped he would receive favorable treatment if he provided information regarding a different person. The district court further concluded the detective properly read the *Miranda*¹ rights to Guy, Guy had the opportunity to say that he wanted his attorney to be present, yet chose to speak to the


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


detective without the presence of his counsel. *See Patterson v. Illinois*, 487 U.S. 285, 296, (1988) (explaining that the *Miranda* warnings are sufficient to make a criminal defendant aware of his Sixth Amendment right to have counsel present during post-indictment questioning and aware of the possible consequences of a decision to answer questions without the aid of counsel). The district court concluded Guy properly waived his right to have his counsel present for the interview and permitted the State to introduce evidence related to the interview at trial. Substantial evidence supports the district court's findings in this regard.


Moreover, any error in admitting evidence from Guy's interview was harmless considering the substantial evidence of Guy's guilt, even excluding that evidence. *See Arizona v. Fulminante*, 499 U.S. 279, 295-96 (1991) (concluding admission of a statement obtained in violation of *Miranda* is subject to harmless-error analysis). The evidence established that Guy and another person attempted to cash checks at the Atlantis casino, but the checks were rejected. Guy was later discovered at the Sands casino in possession of the counterfeit checks and stated he had tried to cash the checks at different casinos, that those attempts were denied, and the Sands casino was his last resort for cashing the checks. In addition, multiple witnesses testified the checks were readily identifiable as counterfeit, particularly in light of the improper texture of the checks. Given the evidence produced at trial, it is clear beyond a reasonable doubt a rational jury would have found Guy guilty even excluding evidence related to his interview with the detective. *See Collman v. State*, 116 Nev. 687, 722-23, 7 P.3d 426, 449 (2000); *see also* NRS 205.110 (elements of

possession of a forged instrument). Accordingly, Guy is not entitled to relief for this claim and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Scott N. Freeman, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk