

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRIS KELLY, A/K/A, CHRIS KELLEY,
A/K/A CHRISTOPHER KEITH KIMBLE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73185

FILED

JUN 22 2018

EMILIE H.A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Chris Kelly appeals from a judgment of conviction, pursuant to a jury verdict, of possession of stolen property. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Kelly was charged with possession of stolen property for allegedly possessing or withholding property stolen from Ana Kwan at the Sands Regency in Reno.¹ Prior to trial, Kelly moved to suppress statements he made to police prior to receiving *Miranda*² warnings. The district court denied the motion, and the matter proceeded to trial. The jury found Kelly guilty, and the court sentenced him to serve 24 to 60 months in prison.

At the hearing on the motion to suppress, the district court heard testimony from Detective Jason Welch and Officer Michael Guider of the Reno Police Department, both of whom had been dispatched to the Sands Regency because an individual "was possibly in custody for defrauding an innkeeper." Detective Welch testified that once he and Officer Guider arrived at the hotel, they went to a security holding room where they met with a security officer who had detained Kelly. The security

¹We do not recount the facts except as necessary to our disposition.

²*Miranda v. Arizona*, 384 U.S. 436 (1966).

officer informed Detective Welch that a housekeeper had told him that there was a suspicious individual on the eighth floor who had been "going in and out of guests' rooms and peering around corners suspiciously." The security officer went to the eighth floor, confronted Kelly, asked him for identification, and when he could provide none, the security officer detained him.

Detective Welch further testified that he wanted to make sure that Kelly was being detained for a lawful reason, so he began to question Kelly "on what he was doing there, why he was there, and why security was detaining him." Detective Welch was "trying to determine if [Kelly] ha[d] committed a crime or what the deal [wa]s, what his purpose was for being there." He asked Kelly for personal identifying information, including his name, birthdate, and social security number. He asked Kelly why he was being detained by security. Kelly responded that the registered occupants of room 977—whom he did not know personally—had provided him with their room key so that he could sleep and shower there because they were checking out. He told Detective Welch that he had personal items and luggage in room 977, including a black suitcase and gray duffel bag, "and he made it very clear to [Detective Welch] that he wanted to go upstairs and get his things." He further stated that he was locked out of the room. He also told Detective Welch that the reason he was on the eighth floor was that he was meeting a different guest there that was going to allow him to use that guest's room to shower.

After hearing Kelly's version of events, Detective Welch was approached by another hotel employee who informed him that there was a guest staying a few doors down from room 977 whose luggage had been stolen from her room the day before. The employee told Detective Welch

that the guest, Ana Kwan, was at the checkout counter preparing to leave at that moment. Detective Welch left Kelly in the security holding room with Officer Guider to meet with Kwan, who described her stolen bag as a black, carry-on suitcase. Detective Welch, the hotel employee, and Kwan—after verifying that room 977 was technically unoccupied because the registered guest had checked out two days earlier—went to the room. Upon entry, Detective Welch saw a piece of jewelry on the bed that Kwan immediately identified as hers. They also discovered the black suitcase and gray duffel bag that Kelly had described, and Kwan identified the black suitcase as the bag that was stolen from her. Detective Welch immediately began to inventory the contents of Kwan's suitcase, which contained some of Kwan's personal effects as well as items that did not belong to her, including a Greyhound bus ticket bearing the name, "Chris Kelly." Detective Welch called Officer Guider to ask Kelly if he would describe his bags again and allow Detective Welch to search his gray duffel bag, and Kelly obliged. The gray duffel bag was filled almost exclusively with Kwan's belongings.

Detective Welch returned to the security holding room and read Kelly *Miranda* warnings. Kelly stated that he understood the warnings, and Detective Welch questioned him about why he was in possession of Kwan's property. According to Detective Welch, Kelly responded, "I've already told you what happened," and he refused to speak with Detective Welch any further. Detective Welch then formally arrested Kelly.

Following the officers' testimony and arguments of counsel, the district court made oral findings of fact and conclusions of law. The court noted that while it believed that Kelly was in custody for purposes of

Miranda, the officers' questioning never amounted to interrogation that would necessitate giving *Miranda* warnings.

On appeal, Kelly argues that the district court erred in denying his motion to suppress because he was subjected to custodial interrogation prior to receiving *Miranda* warnings. He specifically argues that the district court wrongly focused on the content of Kelly's statements rather than the content of the police officers' questions in determining that he was not interrogated. We disagree.³

"The Fifth Amendment privilege against self-incrimination provides that a suspect's statements made during custodial interrogation are inadmissible at trial unless the police first provide a *Miranda* warning." *Rosky v. State*, 121 Nev. 184, 191, 111 P.3d 690, 695 (2005) (quoting *State v. Taylor*, 114 Nev. 1071, 1081, 968 P.2d 315, 323 (1998)). Under *Miranda*, an interrogation "refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Archanian v. State*, 122 Nev. 1019, 1038, 145 P.3d 1008, 1022 (2006) (quoting *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980) (footnote omitted)). However, the *Miranda* Court made clear that "[g]eneral on-the-scene questioning as to facts surrounding a crime . . . is not affected by our holding." 384 U.S. at 477.

We conclude that the questioning by the officers in this case constituted general investigatory questioning that did not require the

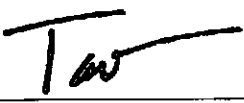
³The State argues that the district court erred in concluding that Kelly was in custody, but because we hold that no interrogation occurred, we need not address the custody determination.

giving of *Miranda* warnings. Detective Welch was merely inquiring into why Kelly was being detained by security and whether Kelly might have committed any crime to justify the detention. In so doing, he simply asked Kelly why he was there, and Kelly, in so explaining, ultimately volunteered that he had two bags in room 977 that he wished to obtain. *See State v. Billings*, 84 Nev. 55, 59, 436 P.2d 212, 214 (1968) (“Volunteered statements of any kind are not barred by the Fifth Amendment” (quoting *Miranda*, 384 U.S. at 478)).

Moreover, even if we were to conclude that the questioning constituted custodial interrogation in violation of *Miranda*, any error in admitting Kelly’s statements was harmless beyond a reasonable doubt. *See Carroll v. State*, 132 Nev. ___, ___, 371 P.3d 1023, 1035 (2016) (applying harmless error analysis to statements admitted at trial in violation of *Miranda*). The jury heard testimony from Detective Welch that Kwan’s bag was found with dirty men’s clothing and a Greyhound bus ticket in the name of “Chris Kelly” inside of it. The jury also heard testimony from a housekeeper who had seen Kelly in room 977 and identified pictures of the two bags at issue as the bags she had observed in the room. Consequently, we conclude that a rational jury would have found Kelly guilty even if his unwarned statements were not admitted at trial.

Based on the foregoing, we


ORDER the judgment of conviction AFFIRMED.


_____, J.
Tao


_____, J.
Gibbons

SILVER, C.J., concurring:

I respectfully concur with the majority in this case. I would affirm the district court's denial of Kelly's motion to suppress because under these facts, Kelly was not in custody when the officers asked initial investigatory questions. *See Silva v. State*, 113 Nev. 1365, 1370, 951 P.2d 591, 594 (1997), *distinguished by Carroll v. State*, 132 Nev. ___, ___, 371 P.3d 1023, 1032-33 (2016). Here, Kelly was merely being detained by hotel security for a police investigation to see if a crime had been committed. I agree with the State that because Kelly was not in formal custody, the district court's ultimate conclusion to deny Kelly's motion to suppress based on a *Miranda*⁴ violation was proper. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) ("This court will affirm a district court's decision if the district court reached the correct result, even if for the wrong reason.").


_____, C.J.
Silver

cc: Hon. Lynne K. Simons, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

⁴*Miranda v. Arizona*, 384 U.S. 436 (1966).