

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT L. CARTER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41720

FILED

NOV 04 2004

ORDER OF AFFIRMANCE

JANETTE M BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On June 16, 2003, the district court convicted appellant Robert Carter, pursuant to a jury verdict, of one count of murder with the use of a deadly weapon, one count of burglary while in the possession of a firearm, and one count of home invasion. The district court sentenced Carter to two consecutive prison terms of life without the possibility of parole for murder, two consecutive prison terms of 40 to 180 months for burglary, and one prison term of 40 to 120 months for home invasion. The district court imposed the terms for burglary to run consecutively with the terms for murder, and the term for home invasion to run concurrently with the terms for murder and burglary.

As a preliminary matter, we note that Carter relied upon testimony presented at trial to support his claims on appeal, but failed to provide this court with a copy of the trial transcript. "It is the appellant's responsibility to provide the materials necessary for this court's review."<sup>1</sup>

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<sup>1</sup>Jacobs v. State, 91 Nev. 155, 158, 532 p.2d 1034, 1036 (1975); see also NRAP 30(b)(3).

Moreover, this court specifically ordered Carter to include a file-stamped copy of the transcript in the appendix to his opening brief if he cited to any portion of the transcript.<sup>2</sup> However, since the parties agree on the basic facts we conclude that this appeal can be resolved without the benefit of the trial transcript.

Carter claims that a statement he made to Police Detective Brent Becker was admitted at trial in violation of Miranda v. Arizona.<sup>3</sup> The Fifth Amendment privilege against self-incrimination provides that statements made by a suspect during a custodial interrogation are inadmissible unless the police first provide a Miranda warning.<sup>4</sup> An individual is deemed in custody where there has been a formal arrest or where there has been a restraint on freedom of movement of the degree associated with a formal arrest so that a reasonable person would not feel free to leave.<sup>5</sup> The term interrogation is defined as not only express questioning, but any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response.<sup>6</sup> "The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police."<sup>7</sup>

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<sup>2</sup>Carter v. State, Docket No. 41720 (Order, September 10, 2003).

<sup>3</sup>384 U.S. 436 (1966).

<sup>4</sup>State v. Taylor, 114 Nev. 1071, 1081, 968 P.2d 315, 323 (1998); see also Miranda, 384 U.S. at 478-79.

<sup>5</sup>Taylor, 114 Nev. at 1082, 968 P.2d at 323.

<sup>6</sup>Rhode Island v. Innis, 446 U.S. 291, 301-02 (1980); see also Koza v. State, 102 Nev. 181, 186, 718 P.2d 671, 674-75 (1986).

<sup>7</sup>Innis, 446 U.S. at 301.

Carter was in custody at the time he made the statement. He had turned himself in to the Clark County Detention Center, where he was placed in handcuffs and held in the intake area. A reasonable person in these circumstances would not feel free to leave. Carter was also subject to an interrogation. Becker asked Carter, "Would you like to tell me what happened out at Royal Court?" A suspect hearing this question could reasonably perceive that Becker was asking an open question in order to promote discussion of the events at Royal Court. Becker should have known that his question was reasonably likely to elicit an incriminating response. Because Carter was subjected to a custodial interrogation and was not informed of his Miranda rights, his statement was inadmissible at trial.

Having concluded that the district court erred in admitting Carter's pre-Miranda statement at trial, we next consider whether the error was harmless. The admission of a statement obtained in violation of Miranda is subject to harmless error analysis.<sup>8</sup> "An error is harmless when it is 'clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error.'"<sup>9</sup> In addition to Becker's testimony, the jury heard the testimony of one witness who saw Carter shoot the victim and the testimony of two other witnesses to whom Carter had admitted he killed the victim. Based on this testimony, we are satisfied that a rational jury would have found Carter guilty of murder

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<sup>8</sup>See Arizona v. Fulminate, 499 U.S. 279, 295-96 (1991).


<sup>9</sup>Wegner v. State, 116 Nev. 1149, 1155, 14 P.3d 25, 30 (2000) (quoting Neder v. United States, 527 U.S. 1, 18 (1999)).


even without the admission of Carter's statement, and we therefore conclude that the error was harmless beyond a reasonable doubt.

Having considered Carter's claims and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Donald M. Mosley, 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