

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES GARY OLIER A/K/A JAMES
GARY OILER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43237

FILED

JUN 01 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea, of one count of level-two trafficking in a controlled substance. The district court sentenced appellant James Gary Olier to serve a prison term of 24 to 60 months. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Olier contends that the district court erred in denying the motion to suppress the methamphetamine evidence seized incident to his arrest.¹ Olier first contends that the police officers had no reasonable articulable suspicion to detain him because he was legally parked on private property and not engaging in suspicious behavior. We conclude that Olier's contention lacks merit.

A police officer may initiate an investigatory stop if he or she has a reasonable articulable suspicion that an individual "has committed,

¹Under the terms of the plea bargain, Olier expressly reserved the right to appeal the district court's ruling denying his pretrial motion to suppress. See NRS 174.035(3).

is committing or is about to commit a crime."² "A reasonable suspicion may be justified even if there are innocent explanations for a defendant's behavior when the circumstances are considered in the totality."³

In this case, we conclude that there is sufficient evidence supporting a finding that there was reasonable articulable suspicion for the brief investigative detention of Olier.⁴ At the suppression hearing, Sparks Police Officer Erick Atkins testified that, on June 29, 2003, around midnight, he and his partner responded to a fight at a nightclub in a high-crime area. After the fight had ended and Officer Atkins was preparing to leave the area, he observed a vehicle parked in a dark alley behind the bar. The bar was closed, and the vehicle was parked near the back entrance of the bar. Although it was dark, Officer Atkins could see the shadows of two people sitting in the vehicle and observed that the vehicle's taillights were on. Officer Atkins explained:

²See NRS 171.123(1).

³U.S. v. Tuley, 161 F.3d 513, 515 (8th Cir. 1998).

⁴To the extent that the district court ruled that the initial encounter with police was consensual and not a seizure, we conclude that the district court erred in so ruling because blocking a defendant's egress with a police vehicle amounts to a Fourth Amendment seizure since a reasonable person would not feel free to leave. See id. However, because there was reasonable suspicion in support of the initial detention, the district court reached the right result in denying the motion to suppress. See generally Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

[W]e determined that we were going to check out on it, due to the fight that had just occurred and the circumstances, security stating that they were closing the business down, I pulled in behind the vehicle and turned on my overhead flashing lights.

Officer Atkins approached the vehicle and informed the driver, Olier, that he had earlier "responded to a fight and basically . . . was trying to find out why his vehicle was parked in the rear of the business." Olier told the officer that he was not doing anything wrong. Although Olier notes that Officer Atkins testified that when he blocked in the vehicle he had no reason to believe the driver was committing a crime, Officer Atkins also testified that he had "a reasonable suspicion to believe that there might be some sort of suspicious circumstances occurring." More specifically, Officer Atkins explained: "I was not sure if the vehicle had been involved in the fight, if they were possibly one of the many people that had been told to leave the premises and were trespassing." We conclude that the totality of the circumstances support a conclusion that Officer Atkins had a reasonable articulable suspicion to believe that the individual in the vehicle had or was about to commit the crime of trespassing. Accordingly, we conclude that the initial investigatory detention of Olier did not violate his Fourth Amendment rights.⁵

Assuming there was a reasonable articulable suspicion supporting the initial detention, Olier next contends that the district court

⁵Tuley, 161 F.3d at 515 ("Blocking a vehicle so its occupant is unable to leave during the course of an investigatory stop is reasonable to maintain the status quo while completing the purpose of the stop.").

erred in denying the motion to suppress because his subsequent arrest for the misdemeanor offenses of open container and resisting arrest was unlawful. In particular, Olier contends that the arrest was unlawful because: (1) Sparks Municipal Code 9.3.6.010, the open container law, is unconstitutionally vague and overbroad; (2) NRS 484.448, Nevada's open container law, was inapplicable because Olier was parked in a private parking lot, not on a public highway; and (3) NRS 199.280, Nevada's resisting a public officer law, did not apply because the actions of the police officer in illegally detaining Olier were not a legal duty of his office. Additionally, Olier contends that his arrest for committing misdemeanors offenses was unlawful because there was no evidence that he would ignore the written citation to appear in court. We conclude that Olier's contentions lacks merit.

First, we decline to consider Olier's challenge to Sparks Municipal Code 9.3.6.010 because the record in this appeal indicates that the Olier was not arrested or convicted for violating that particular code. Olier lacks standing to challenge the constitutionality of a criminal statute defining a criminal offense under which he was not convicted.⁶ Moreover, we need not decide whether Olier was properly arrested for possessing an open container under NRS 484.448, because we conclude that Olier was

⁶Harris v. State, 83 Nev. 404, 407, 432 P.2d 929, 930-31 (1967).

lawfully arrested for resisting a public officer, as set forth in NRS 199.280.⁷

NRS 199.280 defines the offense of resisting a public officer as "willfully resist[ing], delay[ing] or obstruct[ing] a public officer in discharging or attempting to discharge any legal duty." Olier argues that the he had the right to refuse Officer Atkins' request to exit the vehicle because there was no basis to investigate whether he was driving under the influence of alcohol and, therefore, when the officer ordered him out of the car, he was not discharging a legal duty. In support of his argument, Olier notes that, at the suppression hearing, Officer Atkins conceded that Olier did not have bloodshot eyes or slurred speech. We conclude that there was sufficient evidence in support of a finding that Officer Atkins acted lawfully in ordering Olier out of the vehicle.

At the suppression hearing, Officer Atkins testified that, after he approached Olier, he smelled the odor of alcohol coming from the vehicle and observed a half-full bottle of vodka in the console area between the seats. Because Olier told Officer Atkins that he was on his way home, Officer Atkins asked him to step out of the vehicle so that he could determine whether Olier was under the influence of alcohol before he drove away from the scene. Olier twice refused to step out of the vehicle, so Officer Atkins eventually opened the car door, grabbed Olier's left hand,

⁷See U.S. v Bookhardt, 277 F.3d 558, 567 (D.C. Cir. 2002) ("[I]f a police officer arrests a defendant on a ground that ultimately proves invalid, the arrest is nonetheless lawful if the same officer had probable cause to arrest the defendant for a different criminal offense.").

placed it in a rear wrist lock and told him once again to step out of the vehicle. Officer Atkins then placed Olier under arrest for the misdemeanor offenses of resisting a public officer and open container. We conclude that Officer Atkins' decision to determine whether Olier was under the influence of alcohol was reasonable under the circumstances, and we therefore disagree with Olier that he had the right to refuse the request. Further, once Olier refused Officer Atkins' order to exit the vehicle, he subjected himself to lawful arrest for violating NRS 199.280 by resisting a public officer in attempting to discharge his duty. Accordingly, we conclude that there was probable cause that Olier committed the offense of resisting arrest.

We further conclude that Officer Atkins acted lawfully in arresting Olier for committing a misdemeanor offense, instead of issuing him a written citation. This court has held that a police officer shall arrest an individual for a misdemeanor traffic offense when the officer has reasonable grounds to believe that the individual will disregard a written citation to appear in court.⁸ Here, the district court found that the arrest was lawful because Olier was uncooperative and, therefore, the police officer had reasonable grounds to believe he would not appear in court. The district court's findings are supported by substantial evidence. We conclude that there was sufficient evidence presented that Officer Atkins had reasonable grounds to believe that Olier would disregard the written


⁸Morgan v. State, 120 Nev. 219, 88 P.3d 837 (2004); State v. Bayard, 119 Nev. 241, 71 P.3d 498 (2003).

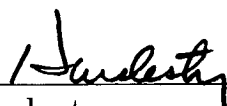
notice to appear in court, namely, the fact that Olier refused to cooperate with Officer Atkins' investigation to determine whether Olier was driving while under the influence of alcohol.

In sum, we conclude that the district court did not err in denying the motion to suppress the methamphetamine evidence seized incident to arrest because there was reasonable suspicion supporting the initial detention of Olier, and his subsequent arrest for the misdemeanor offense of resisting an officer was lawful. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Jerome Polaha, District Judge
Karla K. Butko
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk