

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,  
Appellant,  
vs.  
RICHARD LEE CORDOVA,  
Respondent.

No. 44444

**FILED**

MAY 19 2005

ORDER OF REVERSAL AND REMAND

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

This is a State's appeal from a district court order granting respondent's motion to suppress. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

On February 16, 2004, respondent Richard Lee Cordova was pulled over for committing several traffic violations and, ultimately, arrested for suspicion of driving while under the influence of alcohol (DUI). The arresting officer advised Cordova of the Nevada Implied Consent Law, and Cordova elected to submit to a breath test. During transport to the Washoe County Jail, the arresting officer was informed by dispatch that Cordova had a prior arrest in New Mexico for "driving while intoxicated, a fourth or subsequent offense." The arresting officer, however, was unable to confirm whether Cordova actually had prior DUI convictions because the New Mexico court records office was closed. Consequently, without advising Cordova of his Miranda rights,<sup>1</sup> the arresting officer asked Cordova if he had prior DUI convictions, and Cordova responded affirmatively. Because Cordova admitted that he had

---

<sup>1</sup>Miranda v. Arizona, 384 U.S. 436 (1966).

prior DUI convictions, the arresting officer had Cordova submit to a blood test pursuant to NRS 484.383(4)(c)(2)(1).<sup>2</sup>

Thereafter, Cordova filed a motion to suppress the results of the blood test, alleging that it was the fruit of an illegal custodial interrogation conducted in violation of Miranda. The State opposed the motion. The district court held a suppression hearing and, thereafter, granted the motion to suppress finding that the arresting officer: "learned that [Cordova] had been convicted of a previous DUI offense only after he questioned [him] in violation of Miranda." The district court suppressed the blood test evidence, ruling that "patent violation of constitutional safeguards cannot be ignored in order to further public policy." The State filed this timely appeal.

The State argues that the district court erred in granting the motion to suppress. Specifically, the State argues that, even assuming there was a Miranda violation, the district court erred in applying the fruit of the poisonous tree doctrine to suppress non-testimonial blood evidence pursuant State v. Smith<sup>3</sup> and United States v. Patane.<sup>4</sup> We agree.

In Smith, the appellant argued that the district court erred in denying her motion to suppress the result of her Breathalyzer test because

---

<sup>2</sup>NRS 484.383(4)(c)(2)(1) provides that a police officer may require a person to submit to a blood test if the officer has reasonable grounds to believe the person has been convicted of a DUI within the past seven years.

<sup>3</sup>105 Nev. 293, 774 P.2d 1037 (1989).

<sup>4</sup>\_\_\_ U.S. \_\_\_, 124 S. Ct. 2620 (2004) (plurality opinion).

her consent to the test was given in violation of Miranda.<sup>5</sup> This court held that the district court did not err in denying the motion because Miranda violations "result only in the suppression of compelled testimonial evidence" and do "not bar the forced production of 'real' or 'physical' evidence, such as blood or breath samples."<sup>6</sup> Similarly, in Patane, the United States Supreme Court held that physical evidence was admissible even though it was the fruit of appellant's statement given without Miranda warnings because it was non-testimonial in nature.<sup>7</sup>

Cordova argues that Smith and Patane are inapposite because those cases involved a "good faith mistake," while this case involved an officer acting in bad faith and deliberately violating the law. Our review of the record on appeal indicates that the district court did not make an express finding that the arresting officer acted deliberately or in bad faith. Nonetheless, even assuming that the district court made a finding that the arresting officer acted in bad faith, there is no evidence in the record in support of such a finding.<sup>8</sup> To the contrary, the arresting officer testified at the suppression hearing that he did not Mirandize Cordova because he

---

<sup>5</sup>105 Nev. at 296, 774 P.2d at 1039.

<sup>6</sup>Id.


<sup>7</sup>\_\_\_ U.S. at \_\_\_, 124 S. Ct. at 2629-30 ("Introduction of the nontestimonial fruit of a voluntary statement, such as respondent's Glock, does not implicate the Self-Incrimination Clause. The admission of such fruit presents no risk that a defendant's coerced statements (however defined) will be used against him at a criminal trial.").


<sup>8</sup>See State v. Harnisch, 113 Nev. 214, 219, 931 P.2d 1359, 1363 (1997) (findings of fact in a suppression hearing will not be disturbed where supported by substantial evidence), clarified on rehearing, 114 Nev. 225, 954 P.2d 1180 (1998).


did not believe he was asking "an interrogation type of question" since he was not trying to elicit a "confession." We conclude that the officer's mistaken belief was reasonable.<sup>9</sup> Accordingly, the arresting officer's failure to Mirandize Cordova cannot serve as a basis for suppressing the results of his blood alcohol test because that evidence was not testimonial.<sup>10</sup>

Having considered the State's argument and concluded that the district court erred in denying the motion to suppress, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

---

<sup>9</sup>Cf. Brockett v. State, 107 Nev. 638, 640-41, 817 P.2d 1183, 1184-85 (1991) (reasonable, but incorrect interpretation of DUI laws does not amount to bad faith or deliberate violation of the law).

<sup>10</sup>In light of our conclusion, we need not address the State's two remaining arguments: (1) whether the arresting officer had reasonable grounds for the blood draw under NRS 484.383; and (2) whether the district court erred in ruling that Miranda warnings were required.

cc: Hon. Steven R. Kosach, District Judge  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Larry K. Dunn & Associates  
Washoe District Court Clerk