

IN THE SUPREME COURT OF THE STATE OF NEVADA

JON JERRY BRIDENBAKER, JR.,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
STEWART L. BELL, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 45761

FILED

NOV 16 2005

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

ORDER DENYING PETITION

This is a petition for a writ of certiorari challenging a misdemeanor DUI conviction of having a concentration of blood alcohol of .08 or more within two hours after driving. Petitioner Jon Jerry Bridenbaker, Jr., argues that NRS 484.382(2) is unconstitutional because it allows an arrest of a person without probable cause in order to test the person's blood alcohol. We decline to reach this issue and deny the petition because we conclude that there was probable cause to arrest in this case.

The basic facts are as follows. On the evening of March 6, 2004, Sergeant Thomas Lawson of the Nevada Highway Patrol stopped Bridenbaker as he drove his pickup south on Interstate 15 in North Las Vegas. Before the stop, Sgt. Thomas observed Bridenbaker change lanes without signaling, drive 80 miles an hour in a 70- and then a 65-mile-an-hour zone, and swerve out of his lane. After the stop, Sgt. Lawson smelled the odor of alcohol inside the pickup and saw an unopened can of beer on

the front seat. Bridenbaker's eyes were red and watery, his breath smelled of alcohol, and his speech was slow and slurred. Bridenbaker told Sgt. Lawson that he had drunk four or five beers about an hour and a half before the stop.

NHP Trooper Loy Hixson was called to the scene and gave field sobriety tests to Bridenbaker. The trooper administered the horizontal gaze nystagmus test, one-leg-stand test, and walk-and-turn test. Trooper Hixson observed distinct nystagmus in Bridenbaker's eyes and three faults in his performance of the walk-and-turn test. Nevertheless, he testified that at the end of the three field tests he did not believe there was probable cause to arrest Bridenbaker for DUI. Sgt. Lawson testified that he thought probable cause existed to arrest Bridenbaker at the completion of the nystagmus test. Trooper Hixson arrested Bridenbaker after he refused to take the preliminary breath test. Bridenbaker's blood was drawn and eventually tested. It showed an alcohol content of .13 percent.

The justice court also watched a videotape of the roadside tests. It did not find probable cause for an arrest but concluded that there were reasonable grounds under NRS 484.382 to require Bridenbaker to have his blood tested. The justice court adjudged Bridenbaker guilty of DUI, "the per se violation of being over .08." It also adjudged him guilty of speeding and of failing to signal a lane change.

Bridenbaker appealed, and the district court affirmed his conviction. Like the justice court, the district court believed that the officer had enough evidence to seek a preliminary breath test, but not enough to establish probable cause to arrest. The district court concluded that no relief was warranted because the State lawfully obtained the

blood-alcohol evidence from the detention of Bridenbaker pursuant to NRS 484.382(2), not from his arrest.

"A writ of certiorari is an extraordinary remedy that lies entirely within the discretion of this court."¹ NRS 34.020(2) provides that certiorari is appropriate where an inferior tribunal has exceeded its jurisdiction and there is no appeal or any plain, speedy, and adequate remedy. Bridenbaker has no appeal or other adequate legal remedy, but he fails to show that the justice or district court exceeded its jurisdiction.

Bridenbaker challenges the constitutionality of NRS 484.382² because it requires a police officer to arrest and have tested a person who fails to submit to a preliminary breath test if the officer has "reasonable grounds to believe" that the person was driving while intoxicated.

¹Garcia v. Dist. Ct., 117 Nev. 697, 700, 30 P.3d 1110, 1112 (2001).

²NRS 484.382 provides in part:

1. Any person who drives or is in actual physical control of a vehicle on a highway or on premises to which the public has access shall be deemed to have given his consent to a preliminary test of his breath to determine the concentration of alcohol in his breath when the test is administered at the direction of a police officer . . . if the officer has reasonable grounds to believe that the person to be tested was:

(a) Driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance

2. If the person fails to submit to the test, the officer shall seize his license or permit to drive as provided in NRS 484.385 and arrest him and take him to a convenient place for the administration of a reasonably available evidentiary test under NRS 484.383.

Bridenbaker contends that the statute allows an arrest and a seizure of evidence under a laxer standard than probable cause and is therefore unconstitutional. The State disputes this contention, but we decline to reach it because we conclude that there was probable cause to arrest Bridenbaker for DUI.

The courts below did not believe probable cause existed to arrest Bridenbaker for DUI. But those courts did conclude on other grounds that the blood-alcohol evidence was lawfully obtained, and we will uphold the decision of a lower court if it reached the correct result, albeit for different reasons.³ We should review de novo a determination of probable cause for a warrantless arrest, but review related findings of fact for clear error and give due weight to inferences drawn from the facts by the district court and police officers.⁴ "Probable cause to conduct a warrantless arrest exists when police have reasonably trustworthy information of facts and circumstances that are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been or is being committed by the person to be arrested."⁵

It may be that the justice and district courts were influenced by Trooper Hixson's opinion that probable cause did not exist to arrest Bridenbaker for DUI, but that opinion had little probative value. The United States Supreme Court has stated: "Subjective intentions play no

³See Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987); Franco v. State, 109 Nev. 1229, 1241, 866 P.2d 247, 255 (1993).

⁴See Ornelas v. United States, 517 U.S. 690, 699 (1996).

⁵Doleman v. State, 107 Nev. 409, 413, 812 P.2d 1287, 1289 (1991) (citing Beck v. Ohio, 379 U.S. 89, 91 (1964)).

role in ordinary, probable-cause Fourth Amendment analysis."⁶ And just as an officer's subjective good faith in making an arrest is not the test to sustain Fourth Amendment protections,⁷ an officer's subjective belief that he lacks probable cause is not the test. This court has stated, "It is not imperative that the arresting officer at the time of arrest have a subjective belief that the arrestee is guilty of a particular crime in order to establish probable cause to arrest for that crime."⁸ And in a case similar to this one, the Eighth Circuit Court of Appeals explained,⁹ "Because probable cause for an arrest is determined by objective facts, it is immaterial that [the arresting officer] . . . testified that he did not think that he had 'enough facts' upon which to arrest [the defendant] for armed robbery."

The record shows that the justice court gave little or no weight to the results of the nystagmus or other roadside tests or to the testimony that Bridenbaker's speech was slurred. Even disregarding this evidence, we conclude that the other relevant evidence was more than sufficient to provide probable cause to arrest Bridenbaker for DUI. First, there was Bridenbaker's speeding, changing lanes without signaling, and erratic driving, especially the last: he was unable to stay in the fast lane on a left curve, first drifting into the lane to his right and then overcorrecting and

⁶Whren v. United States, 517 U.S. 806, 813 (1996). The Court noted that "the Constitution prohibits selective enforcement of the law based on considerations such as race. But the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment." Id.

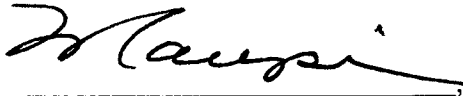
⁷Terry v. Ohio, 392 U.S. 1, 22 (1968).


⁸Surianello v. State, 92 Nev. 492, 497, 553 P.2d 942, 945 (1976).

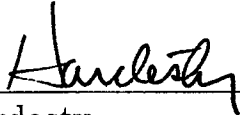
⁹Klingler v. United States, 409 F.2d 299, 304 (8th Cir. 1969).

crossing onto the median line. Second, there was the indisputable evidence that Bridenbaker had been drinking a substantial amount of alcohol. Sgt. Lawson smelled the odor of alcohol from within the vehicle and then from Bridenbaker's breath. An unopened can of beer was on the front seat of his pickup. His eyes were bloodshot and watery, and he admitted that he had drunk as many as five beers just an hour or an hour and a half before the stop. This record establishes that the trooper had reasonably trustworthy information of facts and circumstances that were sufficient in themselves to warrant a person of reasonable caution to believe that Bridenbaker had committed the offense of DUI. We conclude therefore that there was probable cause to arrest Bridenbaker and consequently to test his blood.¹⁰ Accordingly, we

ORDER the petition DENIED.

 J.

Maupin
 J.
Gibbons

 J.
Hardesty

¹⁰See Schmerber v. California, 384 U.S. 757, 770-71 (1966) (concluding that the facts providing probable cause for a DUI arrest also supported the relevance and likely success of a blood test and that a warrant was unnecessary for the test because the passage of time could cause the loss of the blood-alcohol evidence).

cc: Hon. Stewart L. Bell, District Judge
Law Offices of John G. Watkins
Attorney General George Chanos/Las Vegas
Clark County Clerk