

IN THE SUPREME COURT OF THE STATE OF NEVADA

ZOE MARIE MARTIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50902

FILED

DEC 03 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of third-offense driving under the influence (DUI). First Judicial District Court, Carson City; William A. Maddox, Judge. The district court sentenced appellant Zoe Marie Martin to serve a prison term of 12-30 months and ordered her to pay a fine of \$2,000.

First, Martin contends that the district court erred by denying her motion to suppress evidence and dismiss the charges against her.¹ Specifically, Martin claims that driving with studded snow tires in violation of NRS 484.6425(2)(c) was not sufficient, by itself, to provide the arresting officer with probable cause to conduct a traffic stop. Pursuant to

¹Martin was initially charged with one count each of third-offense DUI, driving on a revoked license, and failure to remove studded snow tires. See NRS 484.3792(1)(c); NRS 483.560(1); NRS 484.6425(2)(c).

the guilty plea agreement, Martin expressly reserved the right to raise this issue on appeal.² We disagree with Martin's contention.³

A police officer may initiate an investigatory stop if the officer has a reasonable articulable suspicion that an individual "has committed, is committing or is about to commit a crime."⁴ In determining whether reasonable suspicion exists, the district court must consider the totality of the circumstances.⁵ The district court's factual findings in a suppression hearing will not be disturbed if supported by substantial evidence.⁶

In this case, we conclude that there is substantial evidence in support of the district court's finding that the officer had a reasonable articulable suspicion for initiating the traffic stop. At the suppression hearing, Trooper Chava Rothschild of the Nevada Highway Patrol testified that she was traveling westbound on Fifth Street in Carson City when she heard the sound of studded snow tires. Trooper Rothschild made a U-

²See NRS 174.035(3).

³We note that the procedural history and fact sections in the fast track statement submitted by counsel for Martin do not contain any citations to the record. See NRAP 3C(e)(2) ("Every assertion in the fast track statement regarding matters in an appendix shall cite to the page of the appendix that supports that assertion."). We caution counsel that in the future, such disregard for the rules of this court may result in the striking of the fast track statement or the imposition of sanctions. See NRAP 3C(n).

⁴NRS 171.123(1); Terry v. Ohio, 392 U.S. 1 (1968).

⁵See United States v. Arvizu, 534 U.S. 266, 273 (2002).

⁶State v. Harnisch, 113 Nev. 214, 219, 931 P.2d 1359, 1363 (1997).

turn, stopped Martin, and visually confirmed that she was driving with studded snow tires. The incident occurred on May 19, 2006. Pursuant to NRS 484.6425(2)(c), driving with studded snow tires is prohibited after April 30 and punishable as a misdemeanor offense.⁷ Therefore, we conclude that the district court did not err by denying Martin's motion to suppress evidence and dismiss the charges.

Second, Martin contends that the district court erred by denying her application for deferral of judgment and treatment pursuant to recently enacted NRS 484.37941. In its order denying the application, the district court found that Martin "should be precluded" from benefiting from the treatment program option provided for in NRS 484.37941 because she committed the instant offense prior to the statute's enactment.

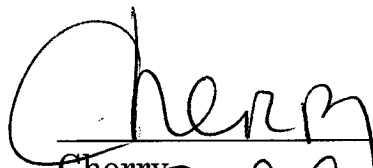
We conclude that the district court erred by rejecting Martin's application for the reason stated in its order. NRS 484.37941 became effective on July 1, 2007.⁸ Martin's guilty plea was entered on September 25, 2007. In Picetti v. State, this court stated: "NRS 484.37941 applies to those defendants entering guilty pleas on or after the statute's effective date."⁹ Therefore, because Martin entered her guilty plea after the statute's enactment, she was eligible to apply for treatment. Accordingly, we

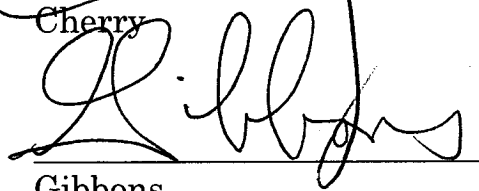
⁷See NRS 484.999(1).

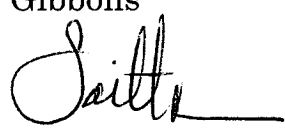
⁸2007 Nev. Stat., ch. 288, § 6, at 1064.

⁹124 Nev. ___, ___, 192 P.3d 704, 712 (2008).

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


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Saitta

cc: Hon. William A. Maddox, District Judge
Osborne, Ohlson & Hall, Chtd.
Attorney General Catherine Cortez Masto/Carson City
Carson City District Attorney
Carson City Clerk