

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE ANGEL ORTEGA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51971

FILED

JUN 30 2009

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

This is an appeal from a judgment of conviction pursuant to a jury verdict, of principal to trafficking in a controlled substance (methamphetamine) and possession of a controlled substance (cocaine) and a district court order denying motion for a new trial. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge.

This case arises out of a routine traffic stop in which Nevada Highway Patrol Trooper Richard Pickers stopped appellant Jose Ortega's vehicle. After briefly speaking with Ortega, Pickers returned to his vehicle to check Ortega's license and registration. During the check, Pickers contacted Trooper Robert Sneed to assist in a possible search of Ortega's vehicle. Sneed arrived shortly thereafter. Pickers then asked to speak with Ortega outside the vehicle. Once outside the vehicle, Pickers warned Ortega to slow down and dim his lights. Pickers briefly questioned Ortega and asked to search his car. Ortega consented and the troopers discovered cocaine in a vehicle compartment. Following the arrest of the four occupants, including Ortega, Pickers opened an airbag compartment with a screwdriver and discovered methamphetamine.

On appeal, Ortega raises the following challenges: (1) the district court erred when it denied Ortega's motion to suppress the evidence because Pickers did not have reasonable suspicion to question

him, (2) the district court erred when it denied Ortega's motion to suppress evidence because Pickers violated the scope of his consensual search by opening the airbag compartment, and (3) the district court erred when it denied Ortega's motion for a new trial because the jury's verdict was inconsistent. We conclude that the district court did not err, and we affirm the judgment of conviction.

The parties are familiar with the facts and we do not recount them here except as necessary to our disposition.

The district court properly denied Ortega's motion to suppress evidence

Ortega argues that the district court erred in finding that Pickers had reasonable suspicion to briefly detain and question Ortega, and therefore the evidence obtained from the search was inadmissible. We disagree and conclude that Pickers had reasonable suspicion to briefly detain and question Ortega.

In reviewing Fourth Amendment seizure issues, this court reviews questions of fact for an abuse of discretion and the legal consequences of those facts de novo. State v. Lisenbee, 116 Nev. 1124, 1127, 13 P.3d 947, 949 (2000). Here, neither party is challenging the legal conclusion that reasonable suspicion allows a law enforcement officer to briefly detain and question a person. See id. (recognizing that mere police questioning does not constitute a seizure and asking a person, in a public place, for consent to search does not require reasonable suspicion). Instead, the issue here is whether there were sufficient facts to support the district court's conclusion that the police had a reasonable suspicion to briefly detain and question Ortega. Therefore, this court reviews the district court's findings for an abuse of discretion.

Whether there is sufficient evidence to support the district court's findings requires a review of the reasonableness of the temporary

detention under the totality of the circumstances. Id. at 1128, 13 P.3d at 950. Here, Ortega concedes that Pickers had probable cause to stop Ortega's vehicle for speeding. But Ortega asserts that once Pickers decided to only issue a verbal warning, Pickers no longer had probable cause or reasonable suspicion to continue detaining and questioning him. Ortega's assertion is incorrect.

An officer may detain a driver after a traffic stop so long as the questioning relates to the purpose of the stop and is temporary and not intrusive. U.S. v. Rojas-Millan, 234 F.3d 464, 469-70 (9th Cir. 2000). Whether the questioning relates to the purpose of the stop and is temporary and not intrusive depends on the totality of the circumstances as they existed at the time of the questioning. Lisenbee, 116 Nev. at 1128, 13 P.3d at 950.

Here, Pickers only questioned Ortega for a minute, and he asked Ortega where he was coming from and where he was going. Also, at the time of the questioning Pickers had observed the following particular and objective facts of suspicious activity: (1) Ortega's claim that the car was his despite the fact that Ortega had a California license and the vehicle had a Utah registration in someone else's name; (2) the strong scent of air fresheners, which suggested the presence of drugs; and (3) Ortega's nervous manner. These facts are sufficient to establish reasonable suspicion, warranting Pickers' post-stop detention and questioning. See Rojas-Millan, 234 F.3d at 470 (holding that the defendant's odd answers, the unusually strong odor of perfume, and the police officer's training combined to establish sufficient reasonable suspicion for post-stop detention and questioning). Therefore, the temporary detention and questioning was reasonable, and does not

constitute an unlawful detention. As a result, the district court did not err in finding that Pickers had sufficient particular and objective facts to constitute a reasonable and articulable suspicion of criminal activity, which justified Pickers' brief detention and questioning of Ortega.

Ortega also argues that the scope of his consent to search did not include prying open the airbag compartment, and therefore the district court should have suppressed the methamphetamine evidence. We disagree because the automobile exception to warrantless searches applied.¹

“Warrantless searches ‘are per se unreasonable under the Fourth Amendment subject only to a few specifically established and well delineated exceptions.’” Hughes v. State, 116 Nev. 975, 979, 12 P.3d 948, 951 (2000) (quoting Barrios-Lomeli v. State, 113 Nev. 952, 957, 944 P.2d 791, 793 (1997)). One such exception is the “automobile exception,” which applies if there is “probable cause to believe that criminal evidence was located in the vehicle” and sufficient exigent circumstances necessitate dispensing with the need for a warrant. Id.

Here, there is no dispute that Ortega's consent was voluntary. Thus, whether a law enforcement officer violates the scope of a consensual search is determined under the totality of the circumstances. State v. Ruscetta, 123 Nev. 299, 303-04, 163 P.3d 451, 454 (2007). The mere fact that an officer dismantles a portion of the vehicle does not make the

¹The fact that Pickers did not tell Ortega he was free to go and Pickers did not provide Miranda warnings before receiving consent to search does not invalidate the search. U.S. v. Torres-Sanchez, 83 F.3d 1123, 1130 (9th Cir. 1996).

search per se unreasonable. Id. Especially if the two requirements for an automobile search are present.

First, the law enforcement officer must have probable cause to believe that contraband is located in the vehicle. Id. Here, the initial consent search discovered cocaine in the vehicle and tool marks near the airbag compartment. Thus, Pickers and Sneed had probable cause to believe that other controlled substances were located in the airbag compartment, which satisfies the first prong.

Second, there must be exigent circumstances that negate the need to wait for a warrant. Id. This court has held that an arrest which leaves the vehicle “on the roadside subject to a police inventory search and later impoundment” is an exigent circumstance negating the need to wait for a warrant. Id. at 980, 12 P.3d at 951 (quoting Fletcher v. State, 115 Nev. 425, 430, 990 P.2d 192, 195 (1999)). Here, the discovery of the cocaine created probable cause to arrest the vehicle’s occupants, including Ortega. Because the vehicle would have remained on the side of the highway until a police inventory search and impoundment were completed, the second prong of the automobile exception is satisfied. See Fletcher, 115 Nev. at 430, 990 P.2d at 195 (concluding that the roadside arrest created sufficient exigent circumstances for the police to search the vehicle).

In sum, the facts of this case trigger the automobile exception to a warrantless search. Therefore, opening the airbag compartment was not an unreasonable search and seizure, and the district court did not err in admitting the methamphetamine evidence.

The district court properly denied Ortega’s motion for a new trial

The State charged Ortega with three counts. Count 1: trafficking in a Schedule I controlled substance, or alternatively, Count 2:

principal to trafficking in a schedule I controlled substance, and Count 3: possession of a controlled substance. The jury convicted Ortega on Counts 2 and 3. Ortega argues that the jury verdict was inconsistent because it did not convict him of Count 1, and therefore the district court erred in denying his motion for a new trial. We conclude that Ortega's argument lacks merit because he failed to present sufficient evidence of an inconsistent verdict.


This court reviews allegations of inconsistent verdicts for "sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact." Rice v. State, 108 Nev. 43, 44, 824 P.2d 281, 282 (1992). When supporting the allegation of inconsistent verdicts, the challenger cannot rely on juror testimony or affidavits that impeach their own verdict unless the evidence addresses extrinsic information or contact with the jury. Meyer v. State, 119 Nev. 554, 562, 80 P.3d 447, 454 (2003). In other words, any intrinsic information regarding the deliberative process is generally inadmissible evidence. Id.

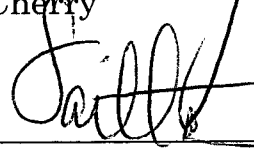
Here, Ortega's argument regarding inconsistent verdicts fails for two reasons. First, to support his assertion of inconsistent verdicts, Ortega relies on juror affidavits and testimony. The fact that such testimony addresses the jury's deliberation and state of mind during the deliberative process makes the evidence inadmissible to support Ortega's assertion. Second, Ortega argues that the jury misunderstood the charges and had doubts about whether Ortega knew the quantity and type of drug he was trafficking. This court has previously held that the State is not required to prove the defendant knew the quantity of the controlled substance or that the quantity could subject him to trafficking charges. State of Nevada v. District Court, 108 Nev. 1030, 1033, 842 P.2d 733, 735

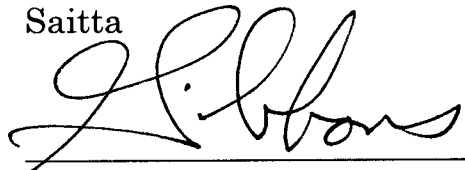
(1992). Ortega failed to prove inconsistent verdicts because his proffered evidence is inadmissible, his assertions are contrary to this court's precedent, and there was sufficient evidence for a rational juror to support the conviction—namely the seized cocaine and methamphetamine. As a result, the district court did not err in denying Ortega's motion for a new trial.

In conclusion, the district court did not err when it dismissed Ortega's motion to suppress evidence and his motion for a new trial. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. J. Michael Memeo, District Judge
Elko County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Elko County District Attorney
Elko County Clerk