IN THE SUPREME COURT OF THE STATE OF NEVADA

DAIMON MONROE A/K/A DAIMON DEVI HOYT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52234

FILED

SEP 10 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of burglary, one count of grand larceny, and one count of possession of burglary tools. Eighth Judicial District Court, Clark County; David Wall, Judge. The district court adjudicated appellant Daimon Monroe as a habitual criminal and sentenced him to concurrent terms totaling 96 to 240 months in prison.

On appeal, Monroe raises claims related to the district court's denial of his motion to suppress evidence seized from a van he was driving when he was arrested for the instant offenses. Regarding the underlying merits of the motion, he argues that the stop of the van was not supported by probable cause; the investigation exceeded the scope of the initial stop; the protective sweep of the van constituted an unlawful search; the warrantless search of the van violated the Fourth Amendment; and absent the suppressed evidence, there was insufficient evidence to sustain the conviction.

Monroe argues that the district court erred in refusing to conduct an evidentiary hearing on the suppression motion. In particular,

he asserts that factual disputes existed that neither the preliminary hearing nor the oral argument on the motion adequately resolved. We agree.

"The interplay of the factual circumstances surrounding a search or seizure and the constitutional standards for when searches and seizures are reasonable requires the two-step review of a mixed question of law and fact . . . . We review the district court's findings of historical fact for clear error but review the legal consequences of those factual findings de novo." Somee v. State, 124 Nev. ___, ___, 187 P.3d 152, 157-58 (2008). For this court to conduct this analysis, "district courts must make specific factual findings." Id. at ___, 187 P.3d at 158. We "cannot review a district court's decision to admit or suppress evidence" absent such findings. Id.; see also State v. Ruscetta, 123 Nev. 299, 304, 163 P.3d 451, 455 (2007) (noting that while certain facts may be inferred from ruling, this court will not speculate about factual inferences drawn by district court).

"An automobile stop by police is a seizure within the meaning of the Fourth Amendment." U.S. v. Garcia, 205 F.3d 1182, 1186 (9th Cir. 2000); see also Whren v. United States, 517 U.S. 806, 809-10 (1996). 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." NRS 171.123(1); Terry v. Ohio, 392 U.S. 1 (1968). The detention must be limited in scope and duration. Florida v. Royer, 460 U.S. 491, 500 (1983). During such a detention, a limited search for weapons is permitted so long as the police reasonably believe the suspect is armed and dangerous. Somee, 124 Nev. at ___, 187 P.3d at 158; see also NRS 171.1232(1).

In addition, a police officer may conduct a warrantless search of a vehicle under the "automobile exception" to the warrant requirement if two conditions exist: "first, there must be probable cause to believe that criminal evidence was located in the vehicle; and second, there must be exigent circumstances sufficient to dispense with the need for a warrant." State v. Harnisch, 113 Nev. 214, 222-23, 931 P.2d 1359, 1365 (1997) (citation omitted); see also State v. Harnisch, 114 Nev. 225, 228-29, 954 P.2d 1180, 1183 (1998), clarified on remand, 114 Nev. 225, 954 P.2d 1180 (1998). This court has defined exigent circumstances as conditions which would cause a reasonable person to believe that a search was necessary "'to prevent physical harm to the officers and other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.'" Camacho v. State, 119 Nev. 395, 400, 75 P.3d 372, 374 (2003) (quoting Howe v. State, 112 Nev. 458, 466, 916 P.2d 153, 159 (1996)).

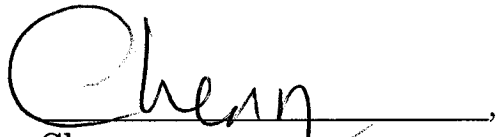
Here, the district court heard argument but did not conduct an evidentiary hearing on Monroe's motion to suppress. In making its decision, the district court apparently relied on conclusions it reached during an evidentiary hearing concerning Monroe's codefendant in the same incident. It is not clear if Monroe was present or participated in that evidentiary hearing. Further, without a record of the codefendant's evidentiary hearing, it is unclear if the district court's factual findings from that hearing are supported by the evidence or are clearly erroneous. In addition, in resolving Monroe's motion, the district court did not make specific factual findings concerning whether reasonable suspicion existed to stop the van that Monroe was driving or perform a protective sweep of the van. The district court also failed to make findings regarding the

amount of time that Monroe was detained and when the police officers learned specific information regarding the suspected burglaries.

Given the district court's failure to conduct an evidentiary hearing respecting Moore's motion and the lack of specific findings, we cannot conclude that the State met its burden of proving that the stop of the van was supported by reasonable suspicion, the investigation of the van did not exceed the scope of the stop, the protective sweep of the van was supported by reasonable suspicion, and the search of the van fell within an exception to the warrant requirement. See Somee, 124 Nev. at ___, ___, 187 P.3d at 158, 161 (reversing district court order denying motion to suppress where district court did not conduct evidentiary hearing or make written findings); cf. Ruscetta, 123 Nev. at 302, 163 P.3d at 453 (similar); State v. Rincon, 122 Nev. 1170, 1177, 147 P.3d 233, 238 (2006) (similar).

Having determined that the district court erred in denying Monroe's motion to suppress evidence, we

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



_____, J.
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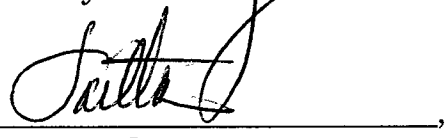

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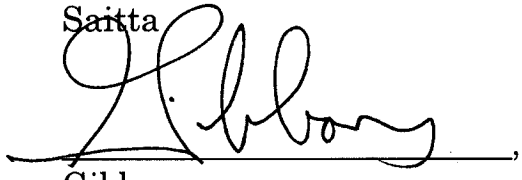

_____, J.
Gibbons

cc: Hon. David Wall, District Judge
Law Offices of Martin Hart, LLC
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk