

IN THE SUPREME COURT OF THE STATE OF NEVADA

STUART WILLIAM VANTREASE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52334

FILED

NOV 04 2009

ORDER OF AFFIRMANCE

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of possession of a controlled substance (Count 1) and possession of a firearm by an ex-felon (Count 2). Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge. The district court sentenced appellant Stuart William Vantrease to a prison term of 19 to 48 months on Count 1 and a consecutive term of 28 to 72 months on Count 2.

Vantrease's conviction for possession of a controlled substance resulted from an incident in which he was a passenger in a vehicle stopped by two officers from the Las Vegas Metropolitan Police Department. Vantrease was found in possession of marijuana, methamphetamine, and oxycodone pills. On appeal, Vantrease contends that both the initial stop of the vehicle and the subsequent search of his person were unconstitutional, and therefore the evidence upon which he was convicted should have been suppressed. Vantrease's claims are without merit.

Prior to trial, Vantrease filed a motion to suppress the evidence on the grounds that (1) the initial stop of the vehicle was pretextual and (2) there was no reasonable suspicion to support the subsequent pat-down search of his person. The district court denied the motion. Vantrease renewed his claims in a post-trial motion for acquittal, and the district court again rejected Vantrease's claims. We conclude that the district court did not err.

Vantrease first claims that the district court erred in denying his motions to suppress because the police did not have probable cause to stop the vehicle in which he was a passenger and their stated reasons for the stop were pretextual. Vantrease's claim is without merit.

"[A] vehicle stop that is supported by probable cause to believe that the driver has committed a traffic infraction is 'reasonable' under the Fourth Amendment, even if a reasonable officer would not have made the stop absent some purpose unrelated to traffic enforcement." Gama v. State, 112 Nev. 833, 836, 920 P.2d 1010, 1012-13 (1996). In this case, Officer Jeremy Landers testified that he pulled the vehicle over because he did not see any tags on it and thought it was unregistered. He stated that as he and Officer Elliot Castile approached the vehicle, he noticed an altered temporary tag in the window. Officer Castile testified that he saw the temporary tag right away and was suspicious because it looked like the numbers on it had been altered. Ultimately, the driver of the vehicle was arrested for altering his tags and driving an unregistered vehicle. Accordingly, even though Officers Castile and Elliott admitted that they

were patrolling for prostitution and the sale of narcotics, we conclude that the officers had probable cause to believe an infraction had occurred.

Vantrease also claims that the district court erred in denying his motions to suppress because evidence of narcotics was discovered through illegal searches of his person. This claim is also without merit.

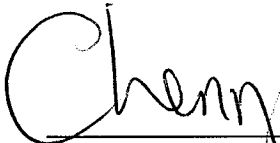
After the initial stop, Vantrease provided officers with false information about his identity and was asked to step out of the vehicle. As he got out, Officer Landers witnessed him drop a baggy on the floor of the car. When Officer Castile saw the baggy and inquired about it, Vantrease admitted that it contained marijuana. Vantrease consented to a pat-down search and as Officer Castile moved toward his left pocket, Vantrease started “fidgeting around.” At that point, Officer Castile placed Vantrease in handcuffs and recovered two baggies of methamphetamine from Vantrease’s left pocket. A subsequent search by Officer Landers revealed 25 oxycodone pills in Vantrease’s right pocket.


We conclude that Vantrease’s Fourth Amendment rights were not violated. An officer making a traffic stop is permitted to order passengers out of a vehicle. Maryland v. Wilson, 519 U.S. 408, 414-15 (1997). And when Vantrease exited the vehicle and it became apparent he was in possession of marijuana, there was probable cause to arrest him, and “a full search incident to arrest [became] permissible.” Rice v. State, 113 Nev. 425, 429, 936 P.2d 319, 321 (1997). Although Castile conducted a pat-down search prior to the arrest and the subsequent discovery of narcotics, we conclude that pat-down search was not improper because Vantrease consented to it. See Davis v. State, 99 Nev. 25, 27, 656 P.2d


855, 856 (1983) ("Consent exempts a search from the probable cause and warrant requirements of the Fourth and Fourteenth Amendments."). Therefore, the district court did not err in denying Vantrease's motions to suppress.

Having considered Vantrease's claims and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Special Public Defender David M. Schieck
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk