

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID GATHERIGHT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52943

**FILED**

JAN 08 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; Michael Villani, Judge. Appellant was convicted, pursuant to jury verdict, of possession of a stolen vehicle and possession of a controlled substance with the intent to sell and sentenced to definite prison terms. He raises three issues on appeal.

First, appellant argues that the State presented insufficient evidence to support the jury's verdict. We disagree. The evidence shows that a police officer discovered appellant slouching in the driver's seat of a vehicle, without lights on, in a high narcotics activity area of Las Vegas late at night. Suspicious of this activity, the officer questioned appellant, who stated that he did not live in the area. Further investigation revealed that the vehicle had been reported stolen. When the police officer attempted to handcuff appellant, he wrestled free and fled but was eventually apprehended. Upon retracing appellant's flight, police officers discovered nearly two grams of packaged cocaine lying on the spot where an officer observed appellant pause briefly during his getaway.

Approximately \$160 was also found in appellant's pocket. After receiving Miranda v. Arizona<sup>1</sup> warnings, appellant denied owning the vehicle and the cocaine and explained that he was in the area to buy marijuana. Based on this evidence, considered in the light most favorable to the State, a rational trier of fact could have found beyond a reasonable doubt that appellant was guilty of possession of a stolen vehicle and possession of a controlled substance with the intent to sell. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Second, appellant argues that the admission of a video of an episode of "Cops" in which his encounter with police was televised violated several constitutional rights. Because appellant did not object to the admission of this evidence, we review for plain error affecting his substantial rights. Mclellan v. State, 124 Nev. \_\_\_, \_\_\_, 182 P.3d 106, 110 (2008). The trial transcript reveals that the video recording was introduced through the apprehending police officer and essentially mirrored that officer's testimony, although the recording contained some superfluous information. We conclude that appellant fails to demonstrate plain error.

Third, appellant contends that the district court admitted evidence obtained through an illegal seizure. Once again we review for plain error as appellant did not object in this instance. Id.; see Hardison v. State, 84 Nev. 125, 128, 437 P.2d 868, 870 (1968) (failure to file motion to suppress under NRS 174.125 generally precludes appellate

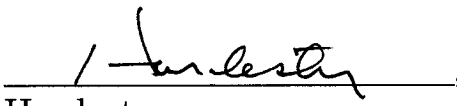
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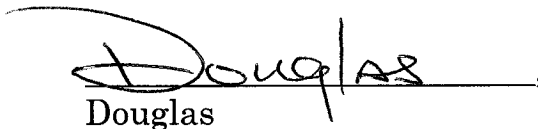
<sup>1</sup>384 U.S. 436 (1966).

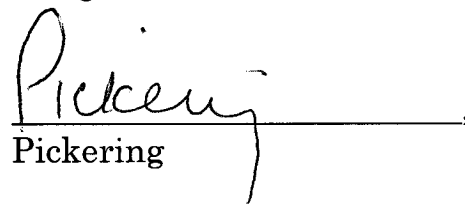
consideration of issue). Based on the evidence elucidated above, we conclude that the police officer conducted a permissible investigative stop, see Terry v. Ohio, 392 U.S. 1, 22-27 (1968); NRS 171.123; State v. Lisenbee, 116 Nev. 1124, 1127-28, 13 P.3d 947, 949-50 (2000), and the evidence derived thereafter was not illegally obtained, see Somee v. State, 124 Nev. \_\_\_, \_\_\_, 187 P.3d 152, 159-60 (2008); see also Lisenbee, 116 Nev. at 1130, 13 P.3d at 951 (controlled substance abandoned by defendant after flight from police was not fruit of poisonous tree although initial detention of defendant was illegal). Accordingly, appellant fails to demonstrate plain error in this regard.

Having considered appellant's arguments and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Michael Villani, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk