IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE ARTHUR GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54040

FILED

JAN 08 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of felony driving under the influence. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge.

First, appellant George Arthur Garcia contends that the district court erred by denying his motion to suppress evidence of his intoxication because the arresting officer lacked reasonable suspicion to initiate an investigatory traffic stop. See NRS 171.123(1); Terry v. Ohio, 392 U.S. 1 (1968). We disagree.

The district court conducted a hearing, considered the totality of the circumstances, and found that reasonable suspicion existed to support the traffic stop. State v. Rincon, 122 Nev. 1170, 1173, 147 P.3d 233, 235 (2006) ("In order for a traffic stop to comply with the Fourth Amendment, there must be, at a minimum, reasonable suspicion to justify the intrusion."); see also U.S. Const. amend. IV; Nev. Const. art. 1, § 18. The district court specifically found that the anonymous tip was

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sufficiently reliable. See State v. Sonnenfeld, 114 Nev. 631, 958 P.2d 1215 (1998) (the articulable facts supporting reasonable suspicion may be based on an informant's tip so long as the tip is sufficiently reliable); People v. Polander, 41 P.3d 698, 703-04 (Colo. 2001); see also Florida v. J.L., 529 U.S. 266, 276 (2000) (noting that "the ability of the police to trace the identity of anonymous telephone informants may be a factor which lends to reliability") (Kennedy, J., concurring). We conclude that the district court's findings were not clearly erroneous and that the court did not err by denying Garcia's motion to suppress. Somee v. State, 124 Nev. ___, ___, 187 P.3d 152, 157-58 (2008) ("We review the district court's findings of historical fact for clear error but review the legal consequences of those factual findings de novo.").

Second, Garcia contends that the district court erred by denying his motion to dismiss based on the destruction of the videotaped recording of the traffic stop. We disagree. "The State's failure to preserve evidence does not warrant dismissal unless the defendant can show bad faith by the government and prejudice." See Williams v. State, 118 Nev. 536, 552, 50 P.3d 1116, 1126 (2002); see also Arizona v. Youngblood, 488 U.S. 51, 57-58 (1988). The district court conducted a hearing and found that Garcia failed to demonstrate that the recording had any exculpatory value, that the State acted in bad faith, or that he "suffered undue prejudice." See Williams, 118 Nev. at 552-53, 50 P.3d at 1126-27. The district court's findings were not clearly erroneous and we conclude that the court did not err by denying Garcia's motion to dismiss. See Leonard v. State, 117 Nev. 53, 68, 17 P.3d 397, 407 (2001).

Having considered Garcia's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.[1]

_______________________, J.
Hardesty

_______________________, J.
Douglas

_______________________, J.
Pickering

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

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[1]Pursuant to the guilty plea agreement, Garcia expressly reserved the right to raise these issues on appeal. See NRS 174.035(3).