

IN THE SUPREME COURT OF THE STATE OF NEVADA

WALTER MARTIN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55172

**FILED**

JUN 09 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Anderson*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of driving under the influence of a controlled substance causing death. Eighth Judicial District Court, Clark County; David Wall, Judge.

Appellant Walter Martin claims the district court erred by denying his motion to suppress the results of evidentiary tests showing he was under the influence of controlled substances because the evidence was obtained in violation of Nevada's implied consent statute and the Fourth Amendment to the United States Constitution.<sup>1</sup> Martin argues that police officers did not conduct field sobriety tests before conducting the evidentiary tests and did not have reasonable grounds to believe he was

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<sup>1</sup>In the plea agreement, Martin expressly reserved the right to challenge on appeal the district court's denial of his motion to suppress the evidentiary test results. See NRS 174.035(3).

driving under the influence because his physical symptoms were consistent with his involvement in a multiple vehicle collision and exposure to chemicals released when an airbag is deployed.

Because Martin's claim presents a mixed question of law and fact, "[w]e 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. 434, 441, 187 P.3d 152, 157-58 (2008). We conclude that the evidence was obtained in compliance with the implied consent statute because police officers had sufficient reasonable grounds to believe Martin was driving under the influence. See NRS 484C.160(1)(a); State, Dep't of Motor Vehicles v. Torres, 105 Nev. 558, 560, 779 P.2d 959, 960 (1989) (an officer who has reasonable grounds to believe a suspect was under the influence and in actual physical control of a vehicle could direct the suspect to submit to chemical intoxication test without conducting field sobriety test). At the suppression hearing, officers testified that Martin's eyes were bloodshot and watery, his speech was slurred, his gait was unsteady, and his breath, his person and his vehicle smelled of marijuana. Moreover, Martin had cocaine in his possession and tried to swallow it while resisting the officers' attempts to place him under arrest. We further conclude that, under these circumstances, the evidence was not obtained in violation of Martin's Fourth Amendment rights. See Schmerber v. California, 384 U.S. 757, 770-71 (1966) (it is permissible to obtain a blood sample from an arrested DUI suspect without first obtaining a warrant if police have "a clear indication" that the suspect was

driving under the influence); see also Galvan v. State, 98 Nev. 550, 554, 655 P.2d 155, 157 (1982). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

cc: Hon. David Wall, District Judge  
Justice Law Center  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk