IN THE SUPREME COURT OF THE STATE OF NEVADA

EDDIE HECKARD,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35083

FILED

AUG 9 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of trafficking in a controlled substance. The district court sentenced appellant Eddie Heckard to 24 to 72 months in prison.

Appellant first contends that the district court erroneously refused to suppress a wad of currency found during a search of appellant's person. Specifically, he argues that the money was inadmissible as the fruit of an unlawful detention and search. We conclude that appellant's argument lacks merit.

A "peace officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing, or is about to commit a crime."[1] Further, an "officer may conduct a reasonable search for weapons . . . where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime."[2] If probable cause matures during the course of the detention, then the detention can ripen into an arrest and "a full search incident to arrest

[1]NRS 171.123(1); see also Terry v. Ohio, 392 U.S. 1 (1968).

[2]Rice v. State, 113 Nev. 425, 427, 936 P.2d 319, 321 (1997).

is permissible."[3] A search is deemed to be incident to arrest so long as the search is substantially contemporaneous with the arrest, and the search is confined to the immediate vicinity of the arrest.[4] Moreover, even where evidence is obtained through an unlawful search, it may be admitted at trial where the government demonstrates that the evidence would have inevitably been discovered by lawful means.[5]

Here, the record shows that law enforcement officers received a tip from a reliable informant that a man driving a white Cadillac was selling drugs out of the Desert Moon Motel room number six. Officers placed the motel room under surveillance and subsequently observed appellant in a white Cadillac coming and going from the motel room with numerous individuals in a manner consistent with drug-related activity. Officers then obtained a search warrant for the motel room. While one team of officers executed the search warrant, other officers stopped appellant as he was driving his vehicle in close proximity to the motel. During a pat-down search of appellant's person, the detaining officers discovered the wad of currency. The initial detention lasted for no more than a few minutes. Once the search team at the motel informed the detaining officers that the motel room contained a sufficient amount of narcotics to charge appellant with trafficking in a controlled substance, he was arrested.

We conclude that the initial detention and pat-down search of appellant were properly supported by a reasonable suspicion that he was engaged in criminal activity and might

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[3]Id. (citing Terry, 392 U.S. at 10).

[4]See Chimel v. California, 395 U.S. 752 (1969).

[5]See Proferes v. State, 116 Nev. ___, ___, 13 P.3d 955, 958 (2000).

be armed and dangerous. Further, once officers discovered the narcotics in the motel room, they had probable cause to arrest him. Officers were then justified in performing a search incident to arrest that would have inevitably revealed the wad of currency. Accordingly, even if recovery of the currency exceeded the permissible bounds of a frisk for weapons, this evidence was nevertheless admissible under the inevitable discovery rule.

Appellant next contends that the district court abused its discretion in admitting evidence of appellant's 1998 arrest for drug trafficking. We disagree.

NRS 48.045(2) provides that "[e]vidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith." However, such evidence may be admissible "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."[6] Prior to admission of other act evidence, the State must establish to the satisfaction of the district court that: "(1) the incident is relevant to the crime charged; (2) the act is proven by clear and convincing evidence; and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice."[7] Moreover, this court has held that the determination of whether to admit evidence of other acts rests with the discretion of the trial court, and such a decision "will not be disturbed on appeal unless manifestly wrong."[8]

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[6]NRS 48.045(2).

[7]Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064 (1997).

[8]Mortensen v. State, 115 Nev. 273, 280, 986 P.2d 1105, 1110 (1999).

The district court admitted evidence of appellant's prior trafficking arrest because the court found it to be "relevant to the issue of knowledge and intent as to mistake or accident." We conclude that the court did not abuse its discretion.

The prior arrest provided evidence that appellant was familiar with cocaine distribution near the Desert Moon Motel, and the prior arrest made it less likely that he frequented room number six - where such activity was observed - by mistake or accident.[9] Further, the prior arrest was proven by clear and convincing evidence through the testimony of the arresting officer. Lastly, we conclude that the probative value of the prior arrest was not substantially outweighed by the danger of unfair prejudice. Although admitting evidence of the previous trafficking arrest may have created some degree of prejudice, the evidence was highly probative because appellant denied knowledge of the drugs.

Having concluded appellant's contentions lack merit, we,

ORDER the judgment of the district court AFFIRMED.

Young, J.

Leavitt, J.

Becker, J.

[9]Cf. United States v. Rogers, 918 F.2d 207, 210 (D.C. Cir. 1990) (holding that prior convictions of drug trafficking were admissible to prove knowledge and lack of mistake; "[t]he oftener a like act has been done, the less probable it is that it could have been done innocently").

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
Robert G. Lucherini, Chtd.
Clark County Clerk