

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRY RAY COCHRANE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56835

**FILED**

SEP 19 2011

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

ORDER OF AFFIRMANCE

This an appeal from a judgment of conviction entered pursuant to a jury verdict of possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

Appellant Terry Ray Cochrane contends that the district court erred by denying his suppression motion because the police officer's reasons for initiating the traffic stop were invalid.<sup>1</sup> We evaluate Fourth Amendment challenges by reviewing the district court's factual findings for clear error and reviewing the legal consequences of those factual findings de novo. Somee v. State, 124 Nev. 434, 441, 187 P.3d 152, 157-58 (2008).

Evidence was presented at the preliminary hearing that the officer initiated the traffic stop after observing Cochrane operating a

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<sup>1</sup>Cochrane filed a pretrial petition for a writ of habeas corpus. The Honorable Kathy Hardcastle, District Judge, treated the habeas petition as a suppression motion and denied both the petition and the motion.

scooter at night, in the rain, without any eye protection, traveling about 10 miles under the speed limit, wiping his eyes as he drove, and crossing multiple lanes to make a left turn without signaling. Cochrane attached a copy of the preliminary hearing transcript to his motion and argued that the scooter was a moped pursuant to NRS 486.038, moped drivers are not required to wear eye protection pursuant NRS 486.231(2), and he was not required to use a turn signal pursuant to NRS 484B.413(1) because no other vehicle was affected by his movement.


The district court heard argument on the petition/motion, but did not conduct an evidentiary hearing and did not make specific factual findings in support of its ruling. Nonetheless, we conclude that based on the preliminary hearing testimony, the State met its burden of production by presenting testimony showing that the officer had reasonable suspicion to stop Cochrane for changing lanes to make a left turn without signaling. See U.S. v. Willis, 431 F.3d 709, 715 n.5 (9th Cir. 2005). Cochrane did not seek an evidentiary hearing to introduce contrary evidence. See id. Accordingly, the district court did not err in denying the motion.


Cochrane also contends that the district court erred by denying his motion in limine to exclude evidence that he was in possession of a methamphetamine pipe when he was arrested. We conclude that this issue was preserved for appeal, see Richmond v. State, 118 Nev. 924, 929-32, 59 P.3d 1249, 1252-54 (2002), and the district court abused its discretion by admitting the pipe into evidence under the *res gestae* doctrine. See NRS 48.035(3); Weber v. State, 121 Nev. 554, 574, 119 P.3d 107, 121 (2005) (limiting the admission of evidence under NRS 48.035(3) to the statute's express provisions). However, the error was harmless

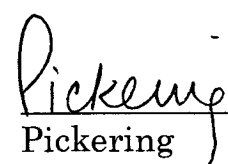
because there is overwhelming evidence of Cochrane's guilt. See Valdez v. State, 124 Nev. 1172, 1188-90, 196 P.3d 465, 476-77 (2008) (discussing non-constitutional harmless-error review). In particular, we note that the jury heard testimony that Cochrane was found in possession a stolen scooter; the scooter's ignition cylinder was missing and it had been "hot-wired;" Cochrane told the officer that the scooter belonged to a friend, but was unable to provide the friend's last name, address, or telephone number; and when the officer asked if the scooter was stolen, Cochrane responded, "good luck proving it."

Having considered Cochrane's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Cherry

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

cc: Hon. Valorie Vega, District Judge  
Hon. Kathy Hardcastle, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk