

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK M. DANIEL, JR.,

No. 35294

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

OCT 30 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of grand larceny. The district court adjudicated appellant a habitual criminal and sentenced him to serve a term of life in prison with the possibility of parole after 10 years.¹

Appellant first contends that the district court erred in denying his motion to remand for a preliminary hearing. We conclude that appellant waived this issue by pleading guilty.

The State charged appellant by criminal complaint with one count each of burglary and grand larceny. On January 20, 1999, appellant unconditionally waived his right to a preliminary examination because the parties had reached a plea agreement. By the time of his arraignment in district court, appellant had retained different counsel and decided not to go through with the plea agreement. He also filed a motion to remand for a preliminary examination. The district court

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

denied the motion. Subsequently, appellant and the State reached a new plea agreement in which appellant agreed to plead guilty to one count of grand larceny. As part of the plea agreement, appellant waived "[t]he right to a direct appeal except based upon [his] Motion to Suppress filed and argued before the District Court."

The plea agreement in this case clearly provides that appellant waived his right to a direct appeal as to all issues except the denial of his motion to suppress. Such a waiver is valid. See *Cruzado v. State*, 110 Nev. 745, 879 P.2d 1195 (1994), overruled on other grounds by *Lee v. State*, 115 Nev. 207, 985 P.2d 164 (1999). Moreover, as a general rule, the entry of a guilty plea waives all errors arising prior to the plea. See *Warden v. Lyons*, 100 Nev. 430, 683 P.2d 504 (1984); *Webb v. State*, 91 Nev. 469, 538 P.2d 164 (1975). We therefore conclude that appellant waived any challenge to the district court's denial of the motion to remand for a preliminary examination.²

²In any event, we note that this contention appears to lack merit. The justice court specifically asked appellant whether he understood that he had a right to a preliminary hearing and wished to "unconditionally waive that right to a preliminary hearing and be bound over to the district court." Appellant responded in the affirmative to both inquiries. Additionally, appellant signed a waiver form, which stated that he had been "fully advised of [his] right to a preliminary examination" and that:

I further understand that this waiver is not conditioned upon any plea agreement that I may have reached with the State of Nevada. I fully understand that in the event I decide not to enter into such agreement at the District Court, I will not be entitled to a preliminary hearing on any charge(s) filed against me upon the Criminal Complaint.

Appellant next contends that the district court erred in denying his motion to suppress evidence.³ In particular, appellant argues that evidence found as a result of a traffic stop should have been suppressed because the traffic stop was a pretext for an illegal seizure. We disagree.

Deputy Burris testified that he was on his way to investigate a burglary report when he noticed the vehicle driven by appellant approaching him from the direction of a business that had been burglarized. Burris testified that he was watching for vehicles coming from that direction and that he determined that the location of appellant's vehicle was consistent with the distance that the burglary suspect could have traveled. Burris explained that his attention also was drawn to appellant's vehicle because it appeared to be travelling in excess of the posted speed limit. Burris slowed down along the shoulder of the road, waited for appellant to pass and then turned his vehicle around to follow appellant. Burris caught up to appellant and then slowed down to seventy-miles-per-hour. Appellant's vehicle, however, continued to slowly pull away from Burris' vehicle. On this basis, Burris determined that appellant was traveling at a speed in excess of the posted speed limit and he initiated a traffic stop. Another officer testified that Burris used an appropriate method to determine whether appellant was speeding. Appellant testified that his speed never exceeded the posted limit.

³As previously noted, appellant reserved his right to appeal the district court's decision as part of the plea agreement. See NRS 174.035(3).

The district court found the officers' testimony to be credible and concluded: "[T]he defendant's vehicle was stopped after being paced. That Deputy Burris had probable cause to stop the Defendant. He could have stopped the Defendant for traffic violations." Findings of fact in a suppression hearing will not be disturbed on appeal if supported by substantial evidence. See State v. Miller, 110 Nev. 690, 694, 877 P.2d 1044, 1047 (1994).


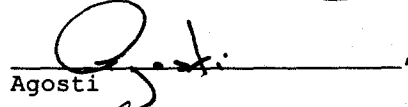
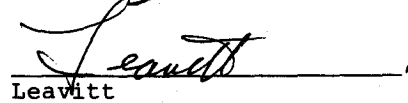
In Gama v. State, 112 Nev. 833, 836-37, 920 P.2d 1010, 1012-13 (1996), this court abandoned the "would have" test in cases involving alleged pretextual traffic stops and adopted the "could have" test approved by the United States Supreme Court in Whren v. United States, 517 U.S. 806 (1996). Pursuant to the "could have" test, "a vehicle stop that is supported by probable cause to believe that the driver has committed a traffic infraction is 'reasonable' under the Fourth Amendment, even if a reasonable officer would not have made the stop absent some purpose unrelated to traffic enforcement." Gama, 112 Nev. at 836, 920 P.2d at 1012-13. Under this test, the constitutional reasonableness of a traffic stop does not depend on the actual subjective motivations of the individual officer involved. See Whren, 517 U.S. at 813.

We conclude that the district court did not err in denying appellant's motion to suppress. The district court's factual findings are supported by substantial evidence. In particular, the district court's findings are supported by Deputy Burris' testimony that he paced appellant traveling in excess of the posted speed limit. Accordingly, Deputy Burris had probable cause to believe that appellant had committed a

traffic infraction. The stop therefore was reasonable under the Fourth Amendment regardless of whether Burris was subjectively motivated by his belief that appellant might be a suspect in the burglary that he was investigating.

Having considered appellant's contentions and concluded that they lack merit, we affirm the judgment of conviction.

It is so ORDERED.

 Shearing	J.
 Agosti	J.
 Leavitt	J.

cc: Hon. Archie E. Blake, District Judge
Attorney General
Lyon County District Attorney
Rick Lawton
Lyon County Clerk