

IN THE SUPREME COURT OF THE STATE OF NEVADA

REDDY MANDRY MARTINEZ A/K/A
REDDY MANDRI
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59870

FILED

SEP 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of possession of a stolen vehicle and possession of burglary tools. Eighth Judicial District, Clark County; Carolyn Ellsworth, Judge.

Appellant Reddy Mandry Martinez contends that the district court erred by denying his motion to suppress evidence obtained during an investigatory traffic stop because the arresting officer lacked reasonable suspicion to initiate the stop. We disagree.

The district court conducted an evidentiary hearing, considered the totality of the circumstances, and found that reasonable suspicion existed to support the investigatory traffic stop. The district court stated that it relied upon three factors in its decision: (1) the propensity for crime in the area in which the car was originally parked, including the fact that a stolen vehicle had been previously recovered from the exact lot in question, (2) the time of the incident, and (3) the fact that the vehicle did not immediately pull over when the officer initiated contact.

Martinez argues that the police officer's statement that, in his experience, the area was one of high crime—including recovering a stolen vehicle in the specific lot in question—requires corroborating evidence.

Martinez also argues that 4:30 a.m. is not a suspicious time in a 24-hour city like Las Vegas, and similarly, with the city's plethora of recent foreclosures, it is impossible not to park near an abandoned home. Finally, Martinez argues that the vehicle's failure to immediately stop cannot be considered under the totality of the circumstances because it happened after the officer made the decision to pull Martinez over and traveling 200 yards before pulling over is not suspicious.

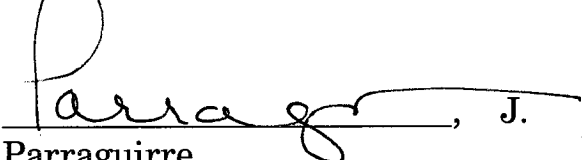
We review findings of fact under the clearly erroneous standard, but the legal consequences of those facts are questions of law which we review de novo. State v. Lisenbee, 116 Nev. 1124, 1127, 13 P.3d 947, 949 (2000). We conclude that there was substantial evidence to support the district court's findings of fact and affirm the denial of Martinez' motion to suppress. An area's propensity for crime, State v. Stinnett, 104 Nev. 398, 401-02, 760 P.2d 124, 127 (1988), the time of day, Lisenbee, 116 Nev. at 1129, 13 P.3d at 950, and an officer's personal experience, Stuart v. State, 94 Nev. 721, 722, 587 P.2d 33, 34 (1978), are all factors that can and should be considered by a court in determining the totality of the circumstances. Lisenbee, 116 Nev. at 1128, 13 P.3d at 950, (citing Alabama v. White, 496 U.S. 325 (1990)). The State is not required to buttress an officer's testimony with statistical or empirical evidence. See Illinois v. Wardlow, 528 U.S. 119, 124-25 (2000). Additionally, the district court's finding that the vehicle's failure to immediately stop created additional suspicion is not clearly in error. As the State correctly asserts, a seizure of a vehicle does not occur until the vehicle submits to an officer's request to stop. Any suspicious activity up until the vehicle is seized for the purposes of the Fourth Amendment can be considered in determining whether the decision to seize is based upon reasonable

suspicion, even if the decision has already been made. See California v. Hodari D., 499 U.S. 621, 624, (1991) (noting that an officer's observations after a display of authority but before submission can provide reasonable suspicion for the seizure even though the decision to seize has already been made); see also Lisenbee 116 Nev. at 1129-30, 13 P.3d at 951. While 200 yards may not be a significant distance, the district court's finding that it created additional suspicion is not clearly erroneous. Therefore, having considered Martinez' contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


Gibbons, J.

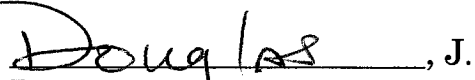
Gibbons


Parraguirre, J.

Parraguirre

DOUGLAS, J., dissenting:

I dissent because the investigatory traffic stop was pretextual and not based on reasonable suspicion.


Douglas, J.

Douglas

cc: Hon. Carolyn Ellsworth, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk