IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL JACK WILLARD,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35732

FILED

MAY 02 2000

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of felony driving under the influence in violation of NRS 484.379 and NRS 484.3792(1)(c). The district court sentenced appellant to serve twelve (12) to thirty (30) months in the Nevada State Prison.[1]

Appellant first contends that the district court erred by permitting the State to file an information by affidavit pursuant to NRS 173.035(2) after the justice court granted appellant's motion to dismiss the charge against him at the conclusion of the preliminary examination. We disagree.

NRS 173.035(2) provides that where the accused has been discharged upon preliminary examination, the district attorney may seek leave of the district court to file an information by affidavit. "NRS 173.035(2) allows the prosecutor to correct egregious errors made by a magistrate in failing to bind an accused over for trial." Cipriano v. State, 111 Nev. 534, 539, 894 P.2d 347, 351 (1995), overruled in part on other grounds by State of Nevada v. District Court, 114 Nev. 739, 964 P.2d 48 (1998).

Based on our review of the documents submitted with this appeal, we conclude that the district court did not err in concluding that the justice court committed egregious error such that the State could file an information by affidavit. The justice court's comment in granting the motion to dismiss that

[1]As part of his plea agreement, appellant reserved the right to appellate review of the two issues raised in this appeal.

"so far there was not enough evidence to believe that he's guilty as charged" indicates that the court applied an incorrect standard. As the district court observed, the justice court's role at a preliminary examination is to determine whether there is probable cause, not whether there is sufficient evidence to believe that the accused is guilty. See NRS 171.206; Thedford v. Sheriff, 86 Nev. 741, 743-44, 476 P.2d 25, 27 (1970); Marcum v. Sheriff, 85 Nev. 175, 178-79, 451 P.2d 845, 846-47 (1969). Additionally, the justice court indicated that it was granting the motion because the individual who provided the tip to police did not testify at the preliminary examination. We agree with the district court's conclusion that this individual's testimony was not necessary to establish probable cause and that the justice court committed egregious error by granting the motion to dismiss on this basis. Accordingly, we conclude that the district court did not err in permitting the State to file an information by affidavit.[2]

Appellant next contends that the district court erred by denying appellant's motion to suppress evidence. In particular, appellant argues that the police did not have reasonable suspicion to support the stop and investigatory detention, thus violating appellant's Fourth Amendment right to be free of unreasonable search and seizure. We disagree.

NRS 171.123(1) authorizes a police officer to "detain any person whom the officer encounters under circumstances which

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[2]We note that the primary argument in support of the motion to dismiss was that the stop and investigatory detention of appellant were not based on reasonable suspicion. Such an argument would support a motion to suppress the evidence. See State v. Shade, 110 Nev. 57, 867 P.2d 393 (1994). Had appellant made such a motion and the justice court granted it, the State could have appealed the order to the district court. See NRS 189.120. However, appellant did not move to suppress the evidence and the justice court did not suppress any evidence. The justice court also did not specifically address the Fourth Amendment issues raised by appellant, and its comments in dismissing the case do not reflect that the decision was based on the Fourth Amendment. Nonetheless, to the extent that the decision may have been based on the justice court's belief that the officer lacked reasonable suspicion to stop and detain appellant, we conclude that the justice court committed egregious error because, as discussed infra, the stop and detention were supported by reasonable suspicion.

reasonably indicate that the person has committed or is about to commit a crime." "[T]he police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion." Terry v. Ohio, 392 U.S. 1, 21 (1968). The articulable facts supporting reasonable suspicion may be based on an informant's tip so long as it is sufficiently reliable. See State v. Sonnenfeld, 114 Nev. 631, 958 P.2d 1215 (1998).

After reviewing the documents submitted with this appeal, we agree with the district court's conclusion that the stop and investigatory detention of appellant was supported by reasonable suspicion. The identified citizen-informant was high on the reliability scale, he supplied sufficient detail to support a stop and detention, and the officer satisfactorily corroborated the report. See Kaysville City v. Mulcahy, 943 P.2d 231, 235-38 (Utah Ct. App. 1997). We therefore conclude that the stop and investigatory detention did not violate appellant's Fourth Amendment rights. Accordingly, the district court did not err in denying appellant's motion to suppress evidence.[3]

Having considered appellant's contentions and concluded that they lack merit, we

ORDER this appeal dismissed.

Young, J.

Agosti, J.

Leavitt, J.

[3]We have considered the United States Supreme Court's recent decision in Florida v. J.L., 529 U.S. ___, 120 S. Ct. 1375 (2000), and concluded that it is not implicated in this case. The focus in J.L. was on the indicia of reliability necessary for an anonymous tip to provide reasonable suspicion to make an investigatory stop. Because anonymous tips are on the low end of the reliability scale, more information is required to raise a reasonable suspicion than would be required where, as here, the tip is provided by an identified citizen-informant. See Alabama v. White, 496 U.S. 325, 330-31 (1990).

cc: Hon. Jack B. Ames, District Judge
Attorney General
Elko County District Attorney
Elko County Public Defender
Elko County Clerk