

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN RUSSELL ODIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66806

FILED

AUG 05 2015

TRACIE K. LINDEMANN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of driving under the influence of intoxicating liquor. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

Appellant John Russell Odin argues the district court erred by denying his motion to suppress the blood evidence because the district court erred in concluding Odin consented to the blood draw.¹ “Suppression issues present mixed questions of law and fact. This court reviews findings of fact for clear error, but the legal consequences of those facts involve questions of law that we review de novo.” *State v. Beckman*, 129 Nev. ___, ___, 305 P.3d 912, 916 (2013) (internal quotation marks and citations omitted). For consent to a blood draw to be valid, it must be voluntary and “voluntariness is a question of fact to be determined from

¹Odin preserved this claim for appeal. See NRS 174.035(3).

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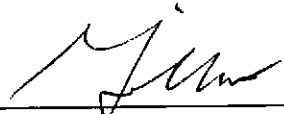
the totality of the surrounding circumstances.” *Davis v. State*, 99 Nev. 25, 27, 656 P.2d 855, 856 (1983).

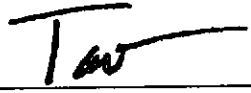
The district court conducted an evidentiary hearing on Odin’s suppression motion. A deputy sheriff testified that he responded to a report of an impaired driver and discovered Odin was the driver. The deputy stated he requested Odin undergo a blood or breath test to determine Odin’s blood alcohol level and informed Odin that Odin had a right to refuse the test, but that the deputy would then seek a court order authorizing the test. Odin then stated he consented to a blood test, but that he “verbally disagreed with it.” The deputy decided to clarify Odin’s response and again asked Odin if he consented to the blood draw and Odin stated “Yes, but I verbally disagree.” The deputy then transported Odin to the jail and Odin again said “I verbally disagree with this,” but Odin politely followed the directions of the phlebotomist and permitted the blood draw. The State also presented evidence that approximately two weeks prior to the incident at issue in this case, Odin had been stopped for suspicion of driving under the influence and he had refused to consent to blood alcohol testing at that time. Odin testified at the hearing and stated he did not mean to consent and he was confused during the conversation with the deputy.


The district court found Odin was well aware of his right to refuse consent, particularly in light of his recent refusal. *See id.* at 27, 656 P.2d at 856 (stating consent must not be the “product of coercion”). The district court further concluded the totality of the circumstances demonstrated Odin consented to the blood draw. Substantial evidence

supports the district court's finding and we affirm the district court's denial of the motion to suppress. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Lidia Stiglich, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk