

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CESAR GUADALUPE RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67253

FILED

DEC 18 2015

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of driving or being in actual physical control of a motor vehicle while under the influence of an intoxicating liquor with a prior DUI felony conviction. First Judicial District Court, Carson City; James E. Wilson, Judge.

Suppression motion

Appellant Cesar Rodriguez claims the district court erred by denying his pretrial motion to suppress evidence obtained through an unconstitutional seizure.¹ He presents two, alternative arguments: (1) the trooper did not have reasonable suspicion he was driving under the influence and unlawfully prolonged his detention beyond the time needed to issue a traffic citation, or (2) the trooper had reasonable suspicion he was driving under the influence and unlawfully prolonged his detention by waiting for another trooper to arrive and sniff him for alcohol before conducting any DUI investigation.

¹This claim was preserved for appeal pursuant to NRS 174.035(3).

“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. The reasonableness of a seizure is a matter of law reviewed de novo.” *State v. Beckman*, 129 Nev. ___, ___, 305 P.3d 912, 916 (2013) (internal quotation marks and citations omitted).

Here, the district court conducted an evidentiary hearing, considered a video recording of the traffic stop, and made the following findings: Trooper John Jessee encountered Rodriguez at about 11:30 p.m. when Rodriguez turned right onto Koontz Lane and allowed his vehicle’s left wheels to cross over the center line and to remain over the center line for some time. Rodriguez continued to weave back and forth within his travel lane, initiated a turn onto Ponderosa Drive before actually reaching Ponderosa Drive, came to a complete stop before making the turn, and applied the brakes with so much force that the vehicle’s front end tilted downward.

After observing this driving pattern, Trooper Jessee initiated an investigative traffic stop. Trooper Jessee saw Rodriguez’s eyes were bloodshot and glassy, and he knew from his training that bloodshot and glassy eyes could be an indication of being under the influence. Trooper Jessee was unable to smell any alcohol because his sense of smell was impaired. He was concerned with the inherent danger of allowing a drunk driver on the roadways. And he tried to balance this concern with a minimally invasive investigation. To this end, Trooper Jessee attempted to check the smooth pursuit of Rodriguez’s eyes in a non-standard manner.

Following two unsuccessful attempts to check the smooth pursuit of Rodriguez’s eyes, Trooper Jessee returned to his patrol car. He ran Rodriguez’s identifying information, entered some information into an

electrical device, and called for assistance because he could not smell anything. Trooper Shook arrived about ten minutes later, and both he and Trooper Jessee approached Rodriguez's vehicle. Trooper Shook smelled alcohol on Rodriguez and Trooper Jessee observed a partially consumed 12-pack of beer in the vehicle and noticed Rodriguez's speech was slurred.

Trooper Jessee asked Rodriguez to get out of the vehicle and attempted to administer a Horizontal Gaze Nystagmus test. Rodriguez appeared frustrated, indicated he just wanted to submit to a blood test, and agreed to take a preliminary breath test. Ultimately, the results of the preliminary breath test indicated that Rodriguez was under the influence of alcohol and he was placed under arrest. The time from the initial traffic stop through the administration of the field sobriety tests was approximately 20 minutes.

The district court's factual findings are supported by the record and are not clearly wrong. We conclude from these facts that Trooper Jessee had reasonable suspicion that Rodriguez was operating his vehicle in a criminal manner. *See State v. Rincon*, 122 Nev. 1170, 1173, 147 P.3d 233, 235 (2006). Trooper Jessee's actions throughout the investigative traffic stop were reasonably related to the purpose of the stop: to "ensur[e] that vehicles on the road are operated safely and responsibly." *Rodriguez v. State*, ___ U.S. ___, 135 S. Ct. 1609, 1615 (2015). And the stop did not exceed "the time needed to handle the matter for which the stop was made." *Id.* at ___, 135 S. Ct. at 1612. Accordingly, the district court did not err by denying Rodriguez's pretrial suppression motion.


Sentencing

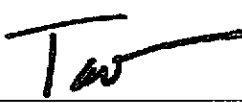
Rodriguez also claims the district court erred by imposing a higher sentence than the one recommended by the parties and the Division of Parole and Probation.

We review a district court's sentencing decision for abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). Rodriguez's 36- to 90-month prison term falls within the parameters of the relevant statute. See NRS 484C.410(1)(a). The record does not suggest the district court's sentencing decision was based on impalpable or highly suspect evidence. See *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). And the court was not required to follow the sentencing recommendations of the parties or the Division of Parole and Probation. See *Collins v. State*, 88 Nev. 168, 171, 494 P.2d 956, 957 (1972).

The record reveals the district court reached its sentencing decision after observing that Rodriguez's alcohol addiction caused him to be a danger to other people, this was his fifth DUI conviction, his blood-alcohol content was two and a half times the legal limit, and his imprisonment was necessary to prevent him from hurting or killing others. Given this record, we conclude the district court did not abuse its sentencing discretion.

Having concluded Rodriguez is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. James E. Wilson, District Judge
State Public Defender/Carson City
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk