

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
CARL ANTHONY HACKETT,
Respondent.

No. 73205-COA

FILED

MAY 15 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF REVERSAL

The State appeals from a district court order granting a pretrial motion to suppress evidence. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

The State claims the district court erred by granting respondent Carl Anthony Hackett's motion to suppress evidence because Hackett was lawfully stopped for jaywalking and, even if the pedestrian traffic stop was unlawful, its unlawfulness was sufficiently attenuated by the discovery of a valid, preexisting arrest warrant.

"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. 481, 485-86, 305 P.3d 912, 916 (2013) (internal quotation marks and citations omitted).

The district court conducted an evidentiary hearing. The parties agreed the following sequence of events occurred. Officer Kirwin observed Hackett crossing Decatur Boulevard near its intersection with Alexander Road. He initiated a pedestrian traffic stop, he patted Hackett down for officer safety, and he conducted a records check. He learned there

was an outstanding warrant for Hackett's arrest, he arrested Hackett pursuant to the warrant, and he conducted a search incident to the arrest. The search produced methamphetamine and several credit cards that did not have Hackett's name on them.

Hackett argued he did not violate the jaywalking statute by crossing Decatur Boulevard without using a crosswalk. Consequently, Officer Kirwin did not have reasonable suspicion to justify making the traffic stop and the evidence seized during the traffic stop must be suppressed. Hackett further argued the attenuation exception to the exclusionary rule does not apply in this situation because Officer Kirwin's motive for making the traffic stop was to see if Hackett had an outstanding arrest warrant and such a motive constitutes flagrant misconduct.


The district court made the following factual findings. Officer Kirwin did not make a lawful traffic stop because Hackett did not cross the road between adjacent intersections with official traffic-control devices. Officer Kirwin believed that Hackett was jaywalking and thought he made a lawful traffic stop. And Officer Kirwin's motivation for making the traffic stop was to search Hackett and determine whether he had an outstanding warrant. This last finding is not supported by any evidence in the record and is clearly wrong.


In *Utah v. Strieff*, the United States Supreme Court identified three factors for evaluating the admissibility of evidence based on the attenuation exception to the exclusionary rule: (1) "[T]he temporal proximity between the unconstitutional conduct and the discovery of evidence to determine how closely the discovery of evidence followed the unconstitutional search," (2) "the presence of intervening circumstances," and (3) "the purpose and flagrancy of the official misconduct." 579 U.S. ___,


___, 136 S. Ct. 2056, 2061-62 (2016) (internal quotation marks omitted). The Court held “the evidence the officer seized as part of the search incident to arrest is admissible because the officer’s discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized incident to arrest.” *Id.* at ___, 136 S. Ct. at 2059.

Even assuming without deciding that Officer Kirwin lacked reasonable suspicion to make the lawful traffic stop, we conclude the evidence he seized is admissible under the attenuation exception to the exclusionary rule. The evidence was discovered after Hackett was arrested on an outstanding warrant and there is no evidence that Officer Kirwin engaged in purposeful or flagrant police misconduct. *See id.* at ___, 136 S. Ct. at 2064 (“For the violation to be flagrant, more severe police misconduct is required than the mere absence of proper cause for the seizure.”). Accordingly, we conclude the district court erred by granting Hackett’s suppression motion, and we

ORDER the order granting the pretrial motion to suppress evidence REVERSED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kathleen E. Delaney, District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Eighth District Court Clerk