

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL SHANE PANKRANTZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78552-COA

FILED

FEB 19 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Michael Shane Pankrantz appeals from a judgment of conviction, pursuant to a guilty plea, of carrying a concealed weapon. First Judicial District Court, Carson City; James Todd Russell, Judge.

Pankrantz challenges the denial of a motion to suppress evidence, which he preserved as part of his guilty plea. *See* NRS 174.035(3). Pankrantz was riding with a group of motorcyclists during Street Vibrations, a motorcycle festival.¹ Street Vibrations was known to attract outlaw motorcycle gangs to the area. While on duty, Sheriff's Deputy Stetler pulled over five motorcyclists, including Pankrantz, for collectively failing to signal a lane change as they passed in front of his vehicle. There were also two passengers riding with the motorcyclists, and it appeared that the motorcyclists were being followed by a "chase" vehicle with two additional passengers.² Before stopping the motorcyclists, Stetler called for a backup unit as a safety precaution due to the number of individuals he was stopping, and his suspicion that they were members of an outlaw

¹We recount the facts only as necessary to our disposition.

²The chase vehicle's driver did signal the lane change when passing Stetler.

motorcycle gang because of their attire and the chase vehicle that accompanied them.

Stetler waited for the second deputy to notify him that it was nearby before conducting the traffic stop on a public road. When Stetler activated his vehicle's emergency lights, the motorcyclists pulled over but the chase vehicle did not. The chase vehicle pulled over further down the road before eventually parking at a gas station about 200 yards away.

Stetler approached Pankrantz first and collected Pankrantz's license, registration, and insurance. Stetler also asked Pankrantz if he had any weapons. Pankrantz replied that he did not. Stetler repeated this sequence with each motorcyclist. To control the scene, Stetler required each motorcyclist to balance his bike with the kickstand up and with their hands placed on the handlebars.

Deputy Jones with the Tri-County Gang Unit responded to Stetler's call, arriving just as Stetler returned to his patrol car with the motorcyclists' documents. Stetler described the situation to Jones, and told Jones that the motorcyclists denied possessing weapons other than those that were visible. Jones decided to conduct a pat-down search for weapons for officer safety while Stetler wrote the citations.³

Jones strongly suspected that the group members were part of an outlaw motorcycle gang based on his own experience with gang-related activities. The group members were wearing various different patches, stickers, colors, and visible knives indicating their status as members of an

³The preliminary hearing testimony differed as to whether Stetler asked Jones to conduct the pat-down search or whether Jones independently decided to conduct the pat-down search. However, there was a consensus that a pat-down search was necessary for officer safety.

outlaw motorcycle gang. In particular, Jones also observed that Pankrantz was both positioned in the back of the group and missing part of the three-piece patch on the back of his vest, marking him as either a prospective member or a member being punished for bad conduct. Based on his training and experience, Jones knew that both prospective and penalized members were often required to carry weapons for other members.

Jones approached Pankrantz first. He asked Pankrantz to exit his motorcycle and interlace his fingers behind his helmet. Jones asked Pankrantz, "do you have weapons on your person, do you have any guns or needles, knives, that kind of thing"? Pankrantz responded that he had a firearm. Jones conducted the pat-down search, found, and seized a .380 caliber firearm. Pankrantz pleaded guilty to carrying a concealed weapon.

On appeal, Pankrantz argues that the pat-down search violated his Fourth Amendment right against unreasonable searches and seizures because it was based solely on his appearance. Pankrantz also argues that Jones' question violated his Fifth Amendment right to remain silent because Jones did not first read him his *Miranda* rights. We address the Fourth Amendment issue first.

A challenge to an order denying a motion to suppress presents a mixed question of law and fact. *See State v. Lloyd*, 129 Nev. 739, 743, 312 P.3d 467, 469 (2013). We review the district court's factual findings for clear error and the legal consequences of those findings de novo. *Id.*; *see also Cortes v. State*, 127 Nev. 505, 509, 260 P.3d 184, 187 (2011). "The Fourth Amendment prohibition against unreasonable searches and seizures extends to investigative traffic stops." *State v. Rincon*, 122 Nev. 1170, 1173, 147 P.3d 233, 235 (2006) (citing U.S. Const. amend. IV; Nev. Const. art. 1 § 18; *Gama v. State*, 112 Nev. 833, 836, 920 P.2d 1010, 1012 (1996)). Where

the traffic stop includes a pat-down search for weapons, courts determine first whether the investigatory traffic stop is lawful and, second, whether the subsequent pat-down search is supported by reasonable suspicion. See *Arizona v. Johnson*, 555 U.S. 323, 326-27 (2009).

First, a traffic stop complies with the Fourth Amendment when the officer has a reasonable, articulable suspicion that a crime has occurred. See NRS 171.123(1); *Walker v. State*, 113 Nev. 853, 865, 944 P.2d 762, 770 (1997) (citing *Terry v. Ohio*, 392 U.S. 1, 22 (1969)). It is a crime in Nevada to change lanes while driving without using a turn signal. NRS 484B.413(1) (“A driver shall not turn a vehicle from a direct course upon a highway unless and until . . . giving an appropriate signal if any other vehicle may be affected by such movement.”). Here, Stetler testified that he initiated a traffic stop after the motorcyclists failed to signal a lane change, which caused him to have to slow down. Importantly, Pankrantz does not contest the lawfulness of the traffic stop or its duration on appeal. See *Cortes*, 127 Nev. at 511, 260 P.3d at 188-89. Therefore, we conclude that Pankrantz was legitimately seized for the duration of the stop.

Second, a police officer’s “limited pat-down search for weapons,” *Somee v. State*, 124 Nev. 434, 442, 187 P.3d 152, 158 (2008), is permissible when the officer reasonably believes the suspect is “armed with a dangerous weapon and is a threat to the safety of the peace officer or another,” *id.* (quoting NRS 171.1232(1)). The officer’s “reasonable belief . . . must be based on specific articulable facts” rather than a mere hunch. *Id.* (citing *Terry*, 392 U.S. at 21); *State v. Lisenbee*, 116 Nev. 1124, 1128, 13 P.3d 947, 949 (2000). “Reasonable suspicion is measured by an objective standard.” *Cortes*, 127 Nev. at 511, 260 P.3d at 189. “This is a fact-specific inquiry that looks at the totality of the circumstances in light of common sense and

practicality.” *Id.* (internal quotation marks omitted). The evidence should also be considered within the context of the police officer’s training and experience. *Rincon*, 122 Nev. at 1173-74, 147 P.3d at 235.

A police officer with specialized experience and training in gang activity may reasonably suspect that someone is a gang member when that person is stopped in an area frequented by gang members while also dressed like a gang member. *State v. Johnson*, 207 P.3d 804, 808 (Ariz. Ct. App. 2009) (providing that it was reasonable for a gang task force officer to suspect that a detainee was a gang member after the detainee was stopped in a neighborhood known for gang activity while wearing that gang’s colors). Here, Jones was part of the gang unit and was trained to identify outlaw motorcycle gangs, which were anticipated to be in the area due to the Street Vibrations festival.⁴ Jones also knew that these types of gangs were known to carry weapons—which in fact some of the motorcyclists here displayed—and some were known to engage in violence.

Additionally, Jones observed that the motorcyclists were wearing three-piece patches with a common symbol and name: One Percenter diamond patches, “DFFD” patches, and the colors red and white demonstrating support for the Hells Angels. The deputy also saw motorcycles and helmets with stickers denoting the common symbol and name. Jones was trained to know that the combination of these patches, stickers, and colors indicated that the group were members of an outlaw motorcycle gang. Jones was also aware of the presence of a chase vehicle parked nearby. Therefore, we conclude that it was reasonable for Jones to suspect that this group were members of an outlaw motorcycle gang.

⁴A shoot-out between the Hells Angels and a rival outlaw motorcycle gang occurred during Street Vibrations in 2012.

The group's status as an outlaw motorcycle gang or the group's presence at Street Vibrations alone would likely be an impermissible generalized suspicion and would not justify a pat-down search. *See State v. Miglavs*, 63 P.3d 1202, 1205 (Or. Ct. App. 2003). However, when accompanied by other factors, such as those discussed below, group status and stop location may demonstrate reasonable suspicion justifying a pat-down search. *See id.*; *Johnson*, 207 P.3d at 808-09.

For example, in this situation, the number of people involved in the traffic stop was a legitimate matter of concern to the deputies. *See Maryland v. Wilson*, 519 U.S. 408, 414-15 (1997) (providing that officers face greater danger during a traffic stop when a passenger is also present). Here, the group included five people driving the motorcycles and two motorcycle passengers, and there was a chase vehicle with two additional people parked a short distance away from the stop. Initially, the number of motorcyclists exceeded the number of officers on the scene. And while the deputies testified that ultimately five to seven law enforcement personnel were present at the scene (potentially equaling the number of detainees), the record is not clear as to how many deputies were actually present when Jones initiated the pat-down search. We also recognize that the chase vehicle's passengers likely added additional pressure to the traffic stop. Therefore, we conclude that the number of detainees involved in the traffic stop properly factor into the totality of the circumstances.

Additionally, one of the motorcyclists, who was wearing a patch that said "president," was angry and yelling at Jones. *See Rice v. State*, 113 Nev. 425, 428-29, 936 P.2d 319, 321 (1997) (providing that one factor contributing to reasonable suspicion for a pat-down search was that the suspect was shouting). And Jones saw multiple motorcyclists wearing

visible knives and a visible knife mounted on at least one motorcycle. See *Cortes*, 127 Nev. at 512, 260 P.3d at 189 (“[T]he presence of a knife in plain view in a lawfully stopped car contributes to [a] reasonable suspicion that other weapons may be present, making the person armed and dangerous even if the knife is moved out of reach.”).

Moreover, Jones had a reasonable, articulable suspicion that Pankrantz in particular was armed. Jones knew that Pankrantz was riding in the very back of the motorcyclist’s riding formation and he saw that Pankrantz was missing his center patch, both factors indicating that Pankrantz was either a prospective member trying to earn his place in the group, or a member being punished for bad conduct. Jones also knew that both types of members might be required to carry weapons for the outlaw motorcycle gang, supporting his suspicion that Pankrantz might be armed, independent of what Pankrantz told Stetler earlier. Based on the totality of the circumstances, we conclude that Jones had a reasonable suspicion that Pankrantz was armed and, therefore, the district court did not err by finding that the pat-down search was proper.

Pankrantz also argues that Jones violated his Fifth Amendment right to remain silent because he was not Mirandized before Jones asked whether he had a weapon. However, Pankrantz was not “in custody” and, therefore, *Miranda* does not apply here.⁵ See *Berkemer v.*

⁵We note that even if *Miranda* did apply, Jones’ question was likely proper under the public safety exception. See *New York v. Quarles*, 467 U.S. 649, 659 (1984); *Lamb v. State*, 127 Nev. 26, 33, 251 P.3d 700, 704 (2011); see also *United States v. Fortenberry*, No. 2:14-cr-00387-JAD-NJK, 2015 WL 4937962, at *3 (D. Nev. Aug. 19, 2015). We also note that the failure to give a suspect *Miranda* warnings does not require the suppression of the nontestimonial evidence acquired as a result of the suspect’s unwarned,

McCarty, 468 U.S. 420, 440 (1984) (“[P]ersons temporarily detained pursuant to [an ordinary traffic stop] are not ‘in custody’ for the purposes of *Miranda*.”). Furthermore, law enforcement officers “may ask the detainee a moderate number of questions to . . . obtain information confirming or dispelling the officer’s suspicions.” *Id.* at 439. And the questioning may expand beyond the initial justification for the stop as long as the questioning does not prolong the stop’s duration. See *Muehler v. Mena*, 544 U.S. 93, 101 (2005); *United States v. Mendez*, 476 F.3d 1077, 1080-81 (9th Cir. 2007).

Here, Pankrantz was subject to a valid traffic stop, and Jones’ question regarding whether he was carrying a weapon was proper and did not extend the duration of the stop. Therefore, Pankrantz’s admission of carrying a concealed firearm could be used to justify the pat-down search and seizure of the firearm. Thus, we conclude that the district court did not err by failing to find a Fifth Amendment violation.

Accordingly, based on the foregoing, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

voluntary statement. *United States v. Patane*, 542 U.S. 630, 637-38 (2004). Thus, even if Pankrantz’s response to Jones’ question was suppressed, the district court could still properly admit the discovered firearm.

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