

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK WALKLIN,

No. 37694

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUL 12 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of driving under the influence, a violation of NRS 484.379 and 484.3792(1)(c). The district court sentenced appellant to serve 18 to 48 months in prison and ordered appellant to pay a \$2,000.00 fine.

Appellant contends that the district court erred in refusing to suppress evidence obtained as the result of a traffic stop.¹ In particular, appellant argues that the police officer lacked reasonable suspicion to support the stop. We disagree.

In Terry v. Ohio,² the United States Supreme Court held that a police officer may conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.³ Nevada has codified the Terry stop in NRS 171.123. The United States Supreme Court has explained that "reasonable suspicion" is "a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence," but that "the Fourth Amendment requires at least a minimal level

¹Appellant reserved his right to appellate review of this issue as part of the plea negotiations. See NRS 174.035(3).

²392 U.S. 1 (1968).

³Id. at 30.

of objective justification for making the stop."⁴ In determining the reasonableness of the stop, a court must take into consideration the totality of the circumstances.⁵

Based on our review of the record, we conclude that the district court did not err in concluding that the police officer had articulated a reasonable suspicion sufficient to justify the traffic stop. The officer testified that he saw appellant's vehicle with the front tires over the curb and on a sidewalk and the back tires in the street. From the officer's position, it appeared that appellant had either driven onto the sidewalk or backed off of the sidewalk. Such conduct is prohibited by NRS 484.451⁶ and the Reno Municipal Code.⁷ At that point, the officer decided to conduct a traffic stop. The fact that the officer did not notice that there was a driveway in the area and that appellant's vehicle may have been partially or wholly in the driveway does not necessarily render the stop invalid; it is merely a factor to consider in the reasonable suspicion analysis.⁸ Even after learning that there was a driveway in the area, the officer again testified that what drew his attention to the vehicle was that the front tires were on the sidewalk over the curb.

⁴Illinois v. Wardlow, 528 U.S. 119, 123 (2000).

⁵See United States v. Cortez, 449 U.S. 411, 417-18 (1981).

⁶NRS 484.451 states, "The driver of a vehicle shall not drive upon or within any sidewalk area except at a permanent or temporary driveway or alley entrance."

⁷Reno Municipal Code § 6.06.630 provides, "The driver of a vehicle shall not drive or park upon or within any sidewalk area . . . , except at a permanent or temporary driveway or alley entrance." Similarly, Reno Municipal Code § 12.10.040 provides, "It shall be unlawful for any person to drive or propel any vehicle over or across any curbs, gutters or sidewalks in the city, unless driveways . . . have been constructed across the same."

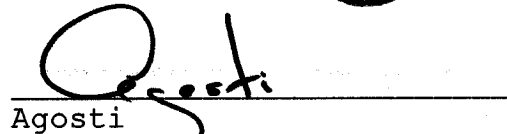
⁸See State v. Kinkead, 570 N.W.2d 97, 101 (Iowa 1997).

It therefore appears that the officer had an objectively reasonable basis for believing that appellant had violated a traffic law. Accordingly, we conclude that the district court did not err in refusing to suppress the evidence of appellant's intoxication that the officer discovered upon stopping appellant for the apparent traffic violation.

Having considered appellant's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


Shearing, J.


Agosti, J.


Rose, J.

cc: Hon. Steven R. Kosach, District Judge
Attorney General
Washoe County District Attorney
Karp & Co., Ltd.
Washoe County Clerk