IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN MATTHEW TUCKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82308-COA

ORDER OF AFFIRMANCE

Brian Matthew Tucker appeals from a judgment of conviction entered pursuant to a jury verdict of driving under the influence (DUI) with a prior felony conviction. First Judicial District Court, Carson City; James Todd Russell, Judge.

First, Tucker challenges the district court's denial of his pretrial motion to suppress evidence obtained during the execution of a search warrant. Tucker contends that the magistrate did not issue the search warrant upon a finding of probable cause, but rather improperly issued the warrant based only upon a finding of "reasonable grounds." Tucker further contends that the information provided in support of the warrant was insufficient to establish probable cause.[1]

"Suppression issues present mixed questions of law and fact. This court reviews findings of fact for clear error, but the legal consequences

[1]The State contends that Tucker did not argue before the district court that there were insufficient facts to support a finding of probable cause. However, the State's contention lacks merit. A review of Tucker's motion to suppress reveals that Tucker urged the district court to suppress the blood evidence because the warrant was not supported by facts sufficient to support a finding of probable cause.

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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). A magistrate may issue a search warrant if the magistrate "is satisfied that grounds for the application exist or that there is probable cause to believe that they exist." NRS 179.045(1). When evaluating a magistrate's decision to issue a search warrant, "[t]he duty of a reviewing court is simply to determine whether there is a substantial basis for concluding that probable cause existed." *Doyle v. State*, 116 Nev. 148, 158, 995 P.2d 465, 472 (2000). "Whether probable cause is present to support a search warrant is determined by the totality of circumstances." *Id.* at 158, 995 P.2d at 471.

The record reveals the magistrate was informed that a sheriff's deputy observed a vehicle that did not come to a complete stop at a stop sign. The deputy initiated a traffic stop of the vehicle. The deputy observed the driver of the vehicle exit it and stumble. The deputy further informed the magistrate that he could smell alcohol from the driver and stated that the driver had slurred speech. The driver of the vehicle became combative with the deputy and the deputy placed the driver into wrist restraints. The deputy asked the driver if he had consumed alcohol and the driver responded that he had not consumed that much alcohol. The deputy stated that, based upon his training and experience, he believed that the driver was intoxicated. The deputy informed the magistrate that he subsequently identified the driver of the vehicle as Brian Tucker. The magistrate orally concluded that the information provided by the deputy constituted "reasonable grounds" to issue a telephonic search warrant to draw Tucker's blood. The magistrate subsequently issued a written order that stated that

the information provided by the deputy amounted to probable cause sufficient to authorize the blood draw.

The district court reviewed the record concerning the issuance of the search warrant and found that the magistrate's use of the phrase "reasonable grounds" when authorizing the telephonic search warrant was synonymous with probable cause. The district court also found that the warrant was issued based upon a proper finding of probable cause. We conclude from the record that the district court did not err by determining the magistrate did not use an improper standard when reviewing the request for the warrant and that the totality of the circumstances demonstrate there was a substantial basis for the magistrate's finding of probable cause. Accordingly, the district court did not err by denying Tucker's motion to suppress evidence.

Second, Tucker argues that the district court erred by declining to suppress the blood-test evidence. Tucker contends that the warrant merely authorized seizure of his blood but not testing of his blood after it was collected. Tucker therefore contended that any testing of the blood after its collection amounted to an improper warrantless search of his blood sample and thus violated his Fourth Amendment rights.

As stated previously, for claims related to suppression of evidence "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." *Beckman*, 129 Nev. at 485-86, 305 P.3d at 916 (internal quotation marks and citations omitted). In order for an unreasonable search or seizure to exist, the complaining individual must have a reasonable expectation of privacy, which requires both a subjective and an objective expectation of privacy in the place searched or the item seized. *Osburn v. State*, 118 Nev.

323, 327, 44 P.3d 523, 526 (2002). Moreover, if a blood sample was lawfully collected, "the subsequent performance of a blood-alcohol test has no independent significance for fourth amendment purposes." *United States v. Snyder*, 852 F.2d 471, 474 (9th Cir. 1988).

The district court concluded that Tucker did not demonstrate that he had a reasonable expectation of privacy in the blood sample after it was collected by the State. Thus, the district court found the blood testing performed after the lawful collection of Tucker's blood sample did not amount to an illegal search in violation of the Fourth Amendment. The record supports the district court's decision, and we conclude that the district court did not err by denying Tucker's motion to suppress. Therefore, Tucker is not entitled to relief based upon this claim.

Third, Tucker argues that the State committed misconduct by eliciting testimony from a deputy indicating that Tucker had prior contact with law enforcement. Tucker contends that the deputy's comment was improper because it indicated Tucker had previously come into contact with law enforcement or been involved in additional criminal activity.

Tucker did not object to this testimony, and thus, he is not entitled to relief absent a demonstration of plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018). To demonstrate plain error, an appellant must show there was an error, the error was plain or clear, and the error affected appellant's substantial rights. *Id.* at 50, 412 P.3d at 48.

The record reveals that, during a pretrial hearing, the district court noted the deputy might testify that he was familiar with Tucker for identification purposes, *see* NRS 48.045(2), but ordered witnesses to refrain from testifying concerning Tucker's prior DUIs. During trial, the deputy

testified that he had prior contact with Tucker and had the ability to recognize him on sight. The deputy subsequently testified that he recognized Tucker when Tucker exited the vehicle. The deputy also identified Tucker in court as the person that he viewed exit the driver-side door of the vehicle. Additional testimony and evidence established that Tucker's blood alcohol level was .116 within two hours of when he drove his vehicle.

Based on the record concerning the identification of Tucker as the driver of the vehicle and his blood alcohol level, there was significant evidence of Tucker's guilt presented at trial. In light of the significant evidence of Tucker's guilt, Tucker does not demonstrate that, to the extent it was error, the deputy's testimony concerning his prior contacts with Tucker amounted to error that was plain from the record and that affected his substantial rights. Therefore, we conclude Tucker is not entitled to relief based upon this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

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