IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER HOPPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37787

FILED
JUL 31 2001
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of carrying a concealed weapon. The district court sentenced appellant to time served and a fine in the amount of $250.00.

Appellant's sole contention is that the district court erred in denying his motion to suppress because the police officer violated the Fourth Amendment of the United States Constitution in seizing him without reasonable suspicion that he was involved in criminal activity.[1] We conclude that the district court did not err in denying appellant's motion to suppress because the police officer's encounter with appellant was not a seizure within the purview of the Fourth Amendment.

It is well recognized that the Fourth Amendment to the United States Constitution prohibits police officers from detaining individuals without a warrant unless they have a reasonable and articulable suspicion that criminal activity is afoot.[2] However, not all interactions between policemen and

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[1]In the plea agreement, appellant expressly reserved the right to appellate review of the district court's order denying his motion to suppress.

[2]See Terry v. Ohio, 392 U.S. 1, 27 (1968); see also NRS 171.123.

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citizens involve a "seizure" under the Fourth Amendment.[3] This court has held that a person is seized "'only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.'"[4]

Applying the Stinnett test to the instant matter, we conclude that appellant was not seized. At the preliminary hearing, Carson City Sheriff's Officer Anthony Yager testified about his encounter with appellant. Yager testified that one night, around 12:00 a.m., Yager and another officer were investigating a report that a prowler was seen in a particular northwest Carson City neighborhood. Officer Yager drove around the neighborhood several times, and then observed appellant and two other individuals gathered on a sidewalk in front of a residence. When Officer Yager approached the group, appellant began to walk toward the residence. Officer Yager testified that he said to appellant: "hey, can I talk to you for a second."[5] Appellant then immediately raised his arms and informed the officer that he had a gun. Markedly absent from the record before us is any evidence that Officer

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[3]See State v. Lisenbee, 116 Nev. ___, ___, 13 P.3d 947, 949 (2000) (recognizing that mere questioning by a police officer does not constitute a seizure within the purview of the Fourth Amendment).

[4]State v. Stinnett, 104 Nev. 398, 401, 760 P.2d 124, 126 (1988) (quoting Michigan v. Chesternut, 486 U.S. 567, 573) (1988) (quoting United States v. Mendenhall, 446 U.S. 544, 554 (1980))).

[5]We recognize that that there is some inconsistency in Officer Yager's testimony about the statement that he made to appellant. At an earlier point in the preliminary examination, Yager testified that he said to appellant: "hey, you might want to come back and talk to me." However, because the historical chronology of events surrounding the police encounter are a factual issue for the district court's determination, we defer to the district court's implied finding that Officer Yager asked appellant a question, rather than commanded appellant to stop. We conclude that such a finding is not clearly erroneous in light of Officer Yager's testimony that he asked appellant to talk to him. See Lisenbee, 116 Nev. at ___, 13 P.3d at 949.

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Yager restrained appellant physically or otherwise through show of authority. Because appellant volunteered the information about the gun in response to a single question from an officer, we conclude that appellant was not seized, and therefore that the protections and rights afforded by the Fourth Amendment were not implicated.

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

ORDER the judgment of the district court AFFIRMED.

Young, J.
Young

Leavitt, J.
Leavitt

Becker, J.
Becker

cc: Hon. Michael R. Griffin, District Judge
Attorney General
Carson City District Attorney
State Public Defender
Carson City Clerk