IN THE SUPREME COURT OF THE STATE OF NEVADA

RODRIGO AGUIRRE PEREZ,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37995

FILED

JAN 02 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of driving under the influence of alcohol, third offense.[1] The district court sentenced appellant Rodrigo Aguirre Perez to a term of 30 months in the Nevada State Prison, with a minimum parole eligibility of 12 months.

First, appellant contends that the police lacked reasonable grounds to administer field sobriety tests on appellant after stopping his pickup truck to cite him for minor traffic violations.[2] Police Officer David Schimmel testified at trial that on October 29, 2000, at about 9:30 a.m., he pulled over Perez. When he approached Perez's truck, he noticed that Perez's eyes were red and watery. Based on Perez's eyes and on the erratic driving he had observed, Officer Schimmel suspected Perez might be driving under the influence. He called for a backup unit. When the other officers arrived, one of them, Officer Tygard, noticed an odor of

[1]NRS 484.3792(1)(c).

[2]Perez concedes that the police had reasonable grounds to pull his truck over for the traffic infractions.

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alcohol on Perez's breath. At that point, the police initiated field sobriety tests. Perez failed the tests, and so the police took breath analysis readings, arrested Perez, and then took blood tests. The three blood tests yielded blood-alcohol levels of .111, .100, and .092.

We conclude that the district court properly determined that the police had reasonable grounds to initiate the field sobriety tests after the backup unit arrived. In State, Department of Motor Vehicles v. McLeod,[3] this court held that a suspect's bloodshot eyes and the odor of alcohol on the suspect's breath were reasonable grounds to initiate sobriety tests. The same facts in the instant case constitute reasonable grounds. Therefore, we conclude this argument lacks merit.

Perez argues next that the district court erroneously denied his motion to suppress the use of the blood test results obtained by the police. When reviewing the denial of a motion to suppress, this court will uphold the district court's findings unless this court is "'left with the definite and firm conviction that a mistake has been committed.'"[4] In this case, the district court denied the motion to suppress on the basis that reasonable grounds existed for the police to administer field sobriety tests, as discussed above. The district court found that when Perez failed the field tests, the police properly arrested him and then conducted blood tests. We conclude that the district court was not mistaken, and therefore its decision to deny the motion must be upheld.[5]

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[3]106 Nev. 852, 801 P.2d 1390 (1990).

[4]State v. Harnisch, 113 Nev. 214, 219, 931 P.2d 1359, 1363 (1997) (quoting U.S. V. Traynor, 990 F.2d 1153, 1157 (9th Cir. 1993)), clarified on other grounds, 114 Nev. 225, 954 P.2d 1180 (1998).

[5]In a related argument, Perez contends speculatively that the evidence adduced at trial would have been insufficient to convict him if his motion to suppress the blood tests had been granted. Because we conclude that the motion to suppress was properly denied, we need not reach this claim.

Lastly, Perez argues that the prosecutor in this case committed misconduct amounting to reversible error. Specifically, Perez claims that the prosecutor improperly vouched for the testimony of Officer Schimmel by: (1) making comments about the officer's nervousness about testifying, (2) allowing him to consult his notes frequently to refresh his recollection; (3) asking him leading questions on direct examination; (4) visiting the scene of Perez's arrest with Schimmel; and (5) altering his testimony between the preliminary hearing and the suppression hearing.

Prosecutorial statements can constitute reversible error if the "statements so infected the proceedings with unfairness as to make the results a denial of due process."[6] Moreover, it is improper for a prosecutor to vouch for the credibility of a government witness.[7]

In this case, we conclude that no improper vouching occurred and that the alleged prosecutorial misconduct was harmless error if any. The comments about Schimmel's nervousness were justified – he explained he had never testified in court before the preliminary hearing, and he seemed to have trouble expressing himself on the stand. It appears Schimmel was so nervous he could barely explain what happened, and he had trouble remembering, thus making it appropriate for the prosecutor to allow him to consult his notes several times. While it is generally inappropriate to ask leading questions on direct examination, it is within the discretion of the district court to allow it, and the abuse of this rule is not ordinarily a ground for reversal.[8] Here, the district court sustained Perez's objections, when made, to the leading questions. There was nothing improper about the prosecutor visiting the scene of Perez's arrest to help Officer Schimmel prepare his testimony, and Perez's counsel cites

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[6]Rippo v. State, 113 Nev. 1239, 1260, 946 P.2d 1017, 1030 (1997).

[7]See United States v. Roberts, 618 F.2d 530 (9th Cir. 1980).

[8]Barcus v. State, 92 Nev. 289, 291, 550 P.2d 411, 412 (1976).

no authority for the contention that it was improper. Last, Schimmel's testimony that was allegedly "altered" by the prosecution between the preliminary hearing and the suppression hearing did not differ in substance from his prior testimony; it was simply more polished due to preparation and the fact that Schimmel had gained some experience in testifying. We conclude that Perez's claim of prosecutorial misconduct is meritless.

Having considered Perez's claims and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. James W. Hardesty, District Judge
Attorney General/Carson City
Washoe County District Attorney
Karla K. Butko
Washoe County Clerk