

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED MILES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38046

FILED

DEC 17 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *J. R. R. R.*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of trafficking in a controlled substance. The district court sentenced appellant to a prison term of 25 years, with parole eligibility after 10 years.

On July 3, 1997, Reno Police Officer Cameron Green observed appellant asleep in a car which was blocking a travel lane. Officer Green woke appellant and asked him to get out of the car. Appellant explained that he had run out of gas and fell asleep in his car because he did not know what else to do. Appellant's speech was slurred and Officer Green testified that appellant did not seem to be fully aware of what was going on. Based on appellant's demeanor and the fact that appellant's car was parked in a travel lane, Officer Green believed that appellant was under the influence of a controlled substance. Another officer arrived on the scene and administered a preliminary drug recognition test to appellant. Appellant showed signs and symptoms of having used a controlled substance within the previous twelve hours. The second officer then searched appellant and found methamphetamine in his shirt pocket.

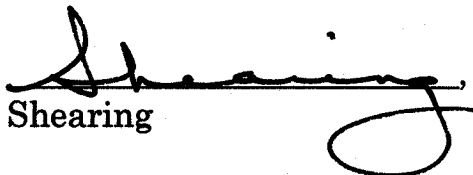
Appellant filed a motion to suppress the methamphetamine, arguing that the search was not consensual and was also not a proper search incident to arrest. Following a hearing, the district court denied appellant's motion to suppress, concluding that the officers had probable cause to arrest appellant when the search occurred, and that it was therefore a valid search incident to arrest. Appellant subsequently pleaded guilty to trafficking, but reserved the right to appeal the denial of the motion to suppress.

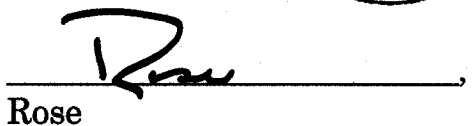
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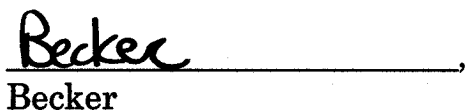
We conclude that the district court did not err. The district court's finding that the officers had probable cause to arrest appellant at the time of the search is supported by substantial evidence, and will not be disturbed on appeal.¹ Moreover, we conclude that it is not significant, in this case, that the search preceded the arrest. At the time the officers searched appellant, they had probable cause to arrest him, and the arrest was made moments after the search.² The district court therefore correctly concluded that the search was a valid search incident to arrest.

Having considered appellant's contention and concluded it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. James W. Hardesty, District Judge
Attorney General/Carson City
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk

¹See State v. Johnson, 116 Nev. 78, 80, 993 P.2d 44, 45-46 (2000).

²See Rawlings v. Kentucky, 448 U.S. 98, 111 (1980) ("Where the formal arrest followed quickly on the heels of the challenged search of petitioner's person, we do not believe it particularly important that the search preceded the arrest rather than vice versa."); cf. Schmitt v. State 88 Nev. 320, 497 P.2d 891, 894 (1972) (where officers do not have probable cause to arrest prior to a search, the search is not valid because the arrest may not be justified by what is found in the search).