IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN STEVENS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89748

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary of a motor vehicle, first offense. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Appellant John Stevens was convicted of burglary of a motor vehicle, first offense, and sentenced to serve a prison term of 12 to 30 months after law enforcement discovered him sitting in a truck drinking a Coca-Cola. On appeal, Stevens argues the district court erred in denying his motion to suppress evidence, abused its discretion in refusing his proposed theory-of-defense instruction, abused its discretion in admitting certain exhibits, erred in denying his motion to dismiss the sole count of the information, and deprived him of a fair trial due to the accumulation of such errors. For the following reasons, we affirm the judgment of conviction.

The district court properly denied Stevens' motion to suppress evidence

Stevens challenges the district court's denial of his motion to suppress evidence, arguing that Officer Christian Acosta seized him at the outset of the encounter without reasonable suspicion, thus, all evidence obtained during that encounter should have been excluded. A district court's resolution of a motion to suppress evidence presents a mixed question of law and fact. *State v. Beckman*, 129 Nev. 481, 485, 305 P.3d 912, 916 (2013). "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." *Id.* at 486, 305 P.3d at 916.

Stevens was seized at the beginning of the encounter

The district court determined that Stevens was not seized until he was physically restrained by law enforcement. Stevens argues this holding was erroneous because he was seized by law enforcement at the beginning of the encounter. We agree.

A person is seized when a law enforcement officer, "by means of physical force or show of authority, terminates or restrains [the person's] freedom of movement." *Brendlin v. California*, 551 U.S. 249, 254 (2007) (internal quotation marks omitted). Police have seized a person "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." *State v. McKellips*, 118 Nev. 465, 469-70, 49 P.3d 655, 659 (2002) (internal quotation marks omitted). Conversely, if "a reasonable person would feel free to disregard the police and go about [their] business, the encounter is consensual" and does not implicate the Fourth Amendment. *Florida v. Bostick*, 501 U.S. 429, 434 (1991) (citation and internal quotation marks omitted).

Stevens posits that Officer Acosta seized him by a show of authority when Officer Acosta first approached and informed him that he was under investigation for driving under the influence. Stevens elaborates that based on the totality of the circumstances, a reasonable person would not have felt free to leave until law enforcement investigated the potential DUI and dispelled their suspicion. Stevens contends the United States Supreme Court conducted a similar Fourth Amendment inquiry in *United States v. Mendenhall*, 446 U.S. 544, 554 (1980), and thus, the relevant factors articulated by the Court are instructive here.

In *Mendenhall*, the Court determined that no seizure occurred when DEA agents stopped the defendant in the public concourse of an airport, identified themselves as federal agents, and asked to inspect the defendant's documents. *Id.* at 547-48, 555. The Court articulated characteristics that might indicate a seizure, including "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person[,] . . . or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *Id.* at 554. While these factors are helpful for comparison, we must consider the totality of the circumstances to determine when the seizure occurred.

Contrary to *Mendenhall*, here, Officer Acosta approached Stevens in uniform. Officer Acosta immediately blocked Stevens' path by standing in a compact space between Stevens' purported truck and another car in the lot, unlike the public concourse in an airport where the defendant in *Mendenhall* was free to roam. Instead, Stevens—seated in the driver's seat with his legs hanging out of the truck—was restricted by the truck's open door to his right, Officer Acosta to his left, and the parked car opposite him. *Cf. Stevenson v. State*, 114 Nev. 674, 678, 961 P.2d 137, 139-40 (1998) (holding that the defendant was not seized when narcotics agents boarded a bus to question passengers partly because they did not block passengers from exiting the bus).

The context and manner of the investigation here also differed from that in *Mendenhall*. Though the DEA agents in *Mendenhall* believed that the defendant was unlawfully carrying narcotics, they simply asked to see her documents and asked about her travels and place of residence. *See Mendenhall*, 446 U.S. at 547-48. Whereas here, Officer Acosta was forthright about his concern of a potential DUI, initially questioning Stevens about possible alcohol consumption and then declaring, "We're just

trying to make sure you're one good to go and two not gonna drive drunk." The officer's statement implied that Stevens was not free to leave until officers investigated the DUI and that compliance was expected until then. *See Beckman*, 129 Nev. at 488, 305 P.3d at 917 (holding that the defendant was seized when law enforcement informed the defendant he was no longer free to leave). While in the instant case there was not a direct statement limiting Stevens' freedom, as was the case in *Beckman*, Officer Acosta's statement created the same implication and effect as the show of authority in *Beckman*—that Stevens was not free to leave.

To the State's point, Officer Acosta's tone and demeanor were calm and respectful, and after his initial statement, he spoke to Stevens through requests instead of demands. But Officer Acosta's initial statement, and the nature of a DUI investigation, indicates that he sought to limit Stevens' freedom of movement until it could be determined that Stevens was capable of driving safely. Thus, we agree with Stevens that the totality of the circumstances indicates that a reasonable person would not have felt free to leave in Stevens' situation. Therefore, we conclude that the district court erred in determining that Stevens was not seized until he was physically restrained—Officer Acosta seized Stevens at the beginning of the encounter.

Law enforcement had reasonable suspicion throughout their encounter with Stevens

Nonetheless, the district court's error is negated by our conclusion that the officers had reasonable suspicion to detain Stevens at the outset of their interaction. "[A]n officer can justify a detention if he can articulate a reasonable suspicion that the citizen is about to or had committed a criminal act, or the officer has probable cause for arrest." *State v. Lisenbee*, 116 Nev. 1124, 1128, 13 P.3d 947, 950 (2000). "A law

enforcement officer has a reasonable suspicion justifying an investigative stop if there are specific, articulable facts supporting an inference of criminal activity." *State v. Rincon*, 122 Nev. 1170, 1173, 147 P.3d 233, 235 (2006). An officer must "articulate more than an 'inchoate and unparticularized suspicion or hunch' of criminal activity." *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)). Additionally, "a prolonged stop is permissible if the results of the initial stop provide an officer with reasonable suspicion of criminal conduct, thereby creating a new Fourth Amendment event." *Beckman*, 129 Nev. at 489, 305 P.3d at 918.

Stevens argues officers did not have reasonable suspicion at the outset of the interaction because neither the 911 tip regarding the intoxicated driver nor Officer Acosta's observations on scene could have provided a basis from which to infer criminal activity.

Reviewing the contents of the 911 tip and the officer's on-scene observations, reasonable suspicion existed to justify seizing Stevens at the outset of the encounter. Two officers testified that the 911 tip described an intoxicated male driver in a silver lifted pickup truck at an auto shop near the intersection of 4th Street and Sage Street. Upon arriving, Officer Acosta noticed only one vehicle matching the truck's description in the auto shop's parking lot. As he approached the vehicle, Officer Acosta saw Stevens sitting in the driver's seat drinking from a glass soda bottle, effectively corroborating the information from the 911 tip. *See Alabama v. White*, 496 U.S. 325, 332 (1990) (recognizing situations where anonymous tips, suitably corroborated by independent police work, exhibit "sufficient indicia of reliability" to provide reasonable suspicion). While the 911 tip and the officer's observations did not suggest a DUI was ongoing, law enforcement still possessed specific articulable facts to support an inference that Stevens

may have already committed or was about to commit a DUI. Therefore, the 911 call and the officer's observations on scene provided reasonable suspicion to justify seizing Stevens at the outset of the encounter.

Stevens further argues that if reasonable suspicion existed from the outset, law enforcement did not have reasonable suspicion to justify the extension of the seizure at the point of physical restraint. Stevens elaborates that the DUI suspicion was dispelled early in the encounter, thus, officers could not extend the seizure to acquire specific, articulable facts to support an inference of criminal activity relating to the truck's ownership. We disagree.

The interaction between Stevens and law enforcement indicates that reasonable suspicion existed up to the point Stevens was physically restrained. After Officer Acosta's initial statements, he repeated his question as to whether Stevens had been drinking that night. During a pat-down search, Stevens told officers that he had a needle on his person, further indicating possible intoxication. Stevens' inability to sit still and follow commands, excessive movement, and fast talking throughout the encounter potentially indicated stimulant use, to which Officer Acosta testified. Because suspicion of a DUI was not dispelled, law enforcement possessed reasonable suspicion to restrain Stevens and continue their DUI investigation. Moreover, law enforcement formed additional reasonable suspicion as it related to ownership of the truck based on Stevens' inability to prove his ownership of the truck when prompted.

In sum, we conclude law enforcement possessed reasonable suspicion throughout its encounter with Stevens, justifying the initial seizure and the extension of the seizure through physical restraint. As a result, we conclude that the district court properly denied Stevens' motion to suppress evidence, albeit for different reasons. *Wyatt v. State*, 86 Nev.

294, 298, 468 P.2d 338, 341 (1970) ("If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.").

The district court properly denied Stevens' proposed instruction

Stevens argues the district court abused its discretion in denying his proposed theory-of-defense instruction. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Id.* (quoting *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001)).

At trial, Stevens proposed the following theory-of-defense jury instruction:

> Any person who, under circumstances not amounting to burglary, goes into any motor vehicle of another with intent to vex or annoy the owner or occupant thereof or to commit any unlawful act is guilty of trespass and not burglary of a motor vehicle. If you find that the evidence shows the Defendant committed trespass and not burglary of a motor vehicle, you must return a verdict of not guilty.

The district court denied the proposed instruction, concluding that the defense failed to present sufficient evidence at trial to support giving the instruction. We disagree with the district court's reasoning.

"[T]he defense has the right to have the jury instructed on its theory of the case as disclosed by the evidence, no matter how weak or incredible that evidence may be." *Margetts v. State*, 107 Nev. 616, 619, 818 P.2d 392, 394 (1991). Albeit weak, Stevens presented *some* evidence to support his trespass theory. Namely, that he was resting in a vehicle,

drinking a soda, the keys were not in the ignition (meaning the car was not in operation), it was cold on the night of the incident, and Stevens suggested during the investigation that he did not have consistent housing. Though we agree with Stevens that he met the evidentiary requirement to support instructing the jury on his trespass theory, we nonetheless conclude that the district court properly rejected the proposed instruction because it did not accurately state the law.

Stevens further argues that the instruction should have been given because it was an accurate statement of law. Whether a proposed instruction is a correct statement of the law is reviewed de novo. *Nay v. State*, 123 Nev. 326, 330, 167 P.3d 430, 433 (2007). NRS 175.161(3) states that if the court determines that a proposed instruction "is pertinent and an accurate statement of the law, . . . it must be given."

Stevens' proposed instruction is an inaccurate statement of the law. Stevens attempts to include the following language, "goes into any motor vehicle," into the trespass-upon-land statute, as reflected in the proposed instruction. Such inclusion would effectively rewrite the trespass-upon-land statute since "motor vehicle" or its equivalent does not appear in the statute. *See generally* NRS 207.200. Therefore, the instruction was properly denied. Although we disagree with the grounds on which the district court rejected the instruction, we conclude that the district court's ruling does not constitute reversible error. *See Wyatt*, 86 Nev. at 298, 468 P.2d at 341.

The district court properly admitted exhibits 3, 4, and 5

Stevens argues that the district court abused its discretion in admitting exhibits 3, 4, and 5, claiming the exhibits were irrelevant, were not properly authenticated, and created a risk of confusing and misleading the jury. The district court has considerable discretion in determining the

relevance and admissibility of evidence. *Holmes v. State*, 129 Nev. 567, 571, 306 P.3d 415, 418 (2013). We review "claims of evidentiary error under an abuse of discretion standard." *Id.* "A decision to admit or exclude evidence will not be reversed on appeal unless it is manifestly wrong." *Id.* at 571-72, 306 P.3d at 418 (internal quotation marks omitted).

At trial, the district court admitted three of the State's exhibits that related to the truck's ownership history. Exhibits 3 and 4 are Raul Acuna's photos of the truck's certificate of title and proof of registration, respectively, issued to Acuna and his mother, Rosalina Hoof, by the Nevada Department of Motor Vehicles on April 13, 2024. Exhibit 5 is a DMV-certified copy of the truck's registration history, showing three different registration periods. Exhibit 5 shows the truck had previously been registered to Acuna's parents and, as of April 13, 2024, to Acuna.

Alleged irrelevance

Under NRS 48.015, relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Exhibits 3, 4, and 5 were offered to establish the truck's ownership history and corroborated Acuna's testimony. Given Acuna's testimony, the exhibits tend to make his assertions more probable than they would be without the evidence. While no evidence was presented showing Acuna's ownership at the time of Stevens' arrest, the evidence offered was aimed at establishing the vehicle's ownership history, which makes the fact that Stevens did not own the truck more probable. We therefore conclude that exhibits 3, 4, and 5 were relevant to material facts of consequence.

Alleged improper authentication

Authentication is a prerequisite to admissibility and "is satisfied by evidence or other showing sufficient to support a finding that

the matter in question is what its proponent claims." NRS 52.015(1). "The testimony of a witness is sufficient for authentication or identification if the witness has personal knowledge that a matter is what it is claimed to be." NRS 52.025. Furthermore, "[a] copy of an official record or report . . . is presumed to be authentic if it is certified as correct by the custodian or other person authorized to make the certification." NRS 52.125(1).

Having reviewed Acuna's testimony, we conclude that exhibits 3, 4, and 5 were properly authenticated. Acuna testified that he took the photos in accordance with the State's request to provide his certificate of title and proof of registration. Acuna also testified that, to the best of his ability and knowledge, the photos truly and accurately depicted the truck's certificate of title and proof of registration that he received from the DMV. Regarding exhibit 5, each page of the exhibit contained a stamp stating, "CERTIFIED TRUE COPY" signed by the DMV's custodian of files.

Therefore, we disagree with Stevens' claims that Acuna lacked personal knowledge as to whether the DMV issued the title and registration, and that a DMV custodian was required to authenticate the DMV custodial record. Thus, we hold exhibits 3, 4, and 5 were properly authenticated.

Alleged risk of confusing or misleading the jury

The crux of Stevens' challenge is that the three exhibits only prove title ownership and registration either before or after the date of the incident, thereby creating the risk of confusing or misleading the jury as to who had authority over the vehicle at the time of the incident. "Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury." NRS 48.035(1).

When viewing the context in which the exhibits were admitted, the exhibits did not create a risk of confusing or misleading the jury. Acuna's testimony shows that the State did not offer the exhibits to prove that Acuna owned the truck on the date of the incident. The State's examination was focused on establishing a comprehensive history of the truck's ownership from 2017 to 2024. Additionally, Acuna plainly acknowledged the issue dates on exhibits 3 and 4, as well as exhibit 5's lack of registration on the date of the incident. The jury, viewing the exhibits and hearing Acuna's testimony, could evaluate their significance and weight as it related to the truck's ownership. Thus, the exhibits created little to no risk of confusing or misleading the jury. Furthermore, any risk created by the exhibits was outweighed by the evidence's probative value.

In sum, we conclude that the district court did not abuse its discretion in admitting exhibits 3, 4, and 5 because they were relevant, were properly authenticated, and did not create a danger of confusing the issues or misleading the jury.

The district court properly denied Stevens' motion to dismiss the sole count of the information

Stevens challenges the district court's denial of his motion to dismiss the sole count of the information and his alternative request to require the State to amend its information. Constitutional challenges to the sufficiency of a charging document are reviewed de novo. *See Rimer v. State*, 131 Nev. 307, 325, 351 P.3d 697, 710 (2015). Constitutional error requires reversal "unless the State demonstrates, beyond a reasonable doubt, that the error did not contribute to the verdict." *Valdez v. State*, 124 Nev. 1172, 1189, 196 P.3d 465, 476 (2008).

The United States and Nevada Constitutions "guarantee a criminal defendant a fundamental right to be clearly informed of the nature and cause of the charges in order to permit adequate preparation of a

defense." *Jennings v. State*, 116 Nev. 488, 490, 998 P.2d 557, 559 (2000); *see also* U.S. Const. amend. VI, Nev. Const. art. 1, § 8. "The State is required to give adequate notice to the accused of the various theories of prosecution." *State v. Eighth Jud. Dist. Ct. (Taylor)*, 116 Nev. 374, 377, 997 P.2d 126, 129 (2000). "[T]he information must be a plain, concise and definite written statement of the essential facts constituting the offense charged." NRS 173.075(1).

The State's information charged Stevens with the following:

> That the said defendant, JOHN STEVENS, on or about March 25, 2024, within the County of Washoe, State of Nevada, did willfully and unlawfully, by day or night, enter or remain, in a Chevrolet pick-up belonging to RAUL ACUNA and/or ROSALINA HOOF or any part thereof, located at 1500 East 4th Street, Reno, Washoe County, Nevada, with the intent then and there to commit grand or petit larceny therein.

Stevens argues that the information does not comport with *Simpson v. Eighth Judicial District Court*, 88 Nev. 654, 503 P.2d 1225 (1972), because the State's information did not include essential facts to support the elements of the offense charged, such as the manner and means of the alleged burglary. Stevens, again relying on *Simpson*, contends that the State deprived him of notice of the theory of prosecution, stating that the evidence produced could invoke multiple theories. Alternatively, Stevens argues that, at a minimum, the district court should have required the State to amend its information.

Consistent with NRS 173.075(1) and our caselaw, we reject Stevens' argument that the information was deficient. In *Simpson*, we rejected a murder indictment that failed to allege any theory of prosecution, noting that the insufficient indictment "would allow the prosecutor absolute

freedom to change theories at will; it affords no notice at all of what petitioner may ultimately be required to meet." *Id.* at 661, 503 P.2d at 1230.

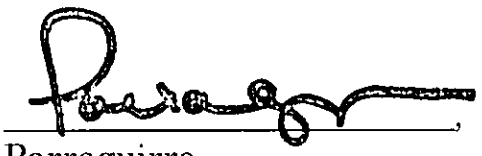
Here, the information provided enough facts to adequately apprise Stevens of the burglary charge. The information alleged that Stevens committed burglary by entering the vehicle belonging to Acuna and/or his mother with the intent to commit grand or petit larceny. Furthermore, the information does not contradict our holding in *Simpson*. Unlike the indictment in *Simpson*, the information here did not give the State any other option but to prosecute Stevens for burglary of a motor vehicle. Moreover, because there were no other theories in the information, the State had no leeway to change its prosecution theory. Therefore, we conclude that the State's information contained essential facts to apprise Stevens of the elements of the burglary charge and the prosecution's theory. As a result, we conclude the district court did not err in denying Stevens' motion to dismiss or by refusing to require the State to amend the information.

Cumulative error does not warrant reversal

Finally, Stevens argues that if the above errors are not individually reversible, the cumulative effect of the errors denied him a fair trial. *See Big Pond v. State*, 101 Nev. 1, 3, 692 P.2d 1288, 1289 (1985). Here, there were only two errors. The first was the district court's determination that Stevens was seized when the officer physically restrained him. But that error is negated by our conclusion that the officers had reasonable suspicion throughout the entire encounter with Stevens. The second error was the district court's denial of Stevens' proposed theory-of-defense instruction on the basis that Stevens did not present evidence to support giving the instruction. That error is negated by our conclusion that the proposed instruction was an inaccurate statement of law and thus was

properly denied. Because none of Stevens' other challenges were successful, there are no errors to accumulate. Accordingly, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Parraguirre

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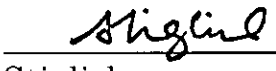

_____, J.
Stiglich

cc: Hon. Barry L. Breslow, District Judge
Attorney General/Carson City
Washoe County District Attorney
Washoe County Public Defender
Washoe District Court Clerk