IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KERRY MICHAEL WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89967-COA



*ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT THE JUDGMENT OF CONVICTION*

Kerry Michael Williams appeals from a judgment of conviction, pursuant to a jury verdict, of trafficking in a schedule I controlled substance, 400 grams or more; trafficking in a schedule I controlled substance, 100 grams or more but less than 400 grams; and trafficking of a schedule I controlled substance, less than 14 grams.[1] Second Judicial District Court, Washoe County; Lynne K. Jones, Judge.

Prior to this case, in August 2018, Williams was arrested at the Sands Casino in Reno after agreeing to sell methamphetamine to a confidential informant. Detectives arrested Williams before the sale could

[1]We note that there is a clerical error in the judgment of conviction. It mistakenly states that Williams was found guilty of trafficking in a schedule I controlled substance, less than 14 grams. Williams was found guilty of the crime of possession of a schedule I controlled substance, less than 14 grams, a violation of NRS 453.336(2)(a), a category E felony, as charged in count IV of the amended information. Because the district court has the authority to correct a clerical error at any time, *see* NRS 176.565, we direct the court, upon limited remand, to enter a corrected judgment of conviction accurately reflecting the offense charged under count IV of the amended information and the jury verdict.



26-09196

be completed and found methamphetamine and a large sum of cash on his person. Despite this arrest, Williams continued to engage in narcotics activity and law enforcement continued to investigate him through October of that year for trafficking, possessing, and selling narcotics to include methamphetamine, heroin, and cocaine. The investigation culminated in the service of a search warrant at two different addresses associated with Williams, leading to the recovery of 176.3 grams of methamphetamine, 302 grams of heroin, and 28.6 grams of cocaine. Williams was charged with trafficking in methamphetamine from the August 2018 sale, as well as for trafficking in methamphetamine, heroin, and cocaine pertaining to the drugs recovered from the October 2018 search. Williams ultimately pleaded guilty and was sentenced to 3-10 years in prison.

Turning to the facts of the instant case, subsequent to his release on parole, Williams was stopped in September 2022 while he was a passenger in a taxi based primarily upon a belief that he was in violation of Nevada's felon-registration statute by failing to provide law enforcement with an updated address of his residence at the Atlantis Casino Resort and Spa because he was staying there for prolonged period of time. *See* NRS 179C.110. Further, before the stop, there was also information known to law enforcement that an individual staying at the Atlantis, who matched Williams's description, was observed engaging in suspicious activity consistent with selling narcotics out of his hotel room.

Upon stopping the vehicle and confirming his status as a parolee, Williams was placed in handcuffs. The police unit that initiated the stop included a K-9 that was subsequently deployed to engage in a free-air sniff of the vehicle. After a positive K-9 alert to controlled substances, officers searched the vehicle and discovered multiple bags containing 442.26

grams of methamphetamine and 110.66 grams of heroin in total. Williams was subsequently placed under arrest, and a search of his person revealed a small amount of methamphetamine and nearly $6000 in cash, including a marked $20 bill from a controlled drug purchase that was part of a corollary investigation.

Williams was charged by information with trafficking in a schedule I controlled substance, methamphetamine, 400 grams or more; trafficking in a schedule I controlled substance, heroin, 100 grams or more but less than 400 grams; and possession of a schedule I controlled substance, methamphetamine, less than 14 grams.[2]

Williams moved to suppress the evidence seized from his person and the vehicle, arguing that the stop, arrest, and search of the vehicle and his person were unlawful because the police lacked probable cause to believe that he was in violation of Nevada's felon registration and reporting requirements under NRS 179C.100 and NRS 179C.110. The State contended in opposition that officers had reasonable suspicion to stop and probable cause to arrest Williams because of information received from multiple sources that suggested that he had been living at the Atlantis for about a month and his address was registered elsewhere.

An evidentiary hearing was conducted, and the district court denied the motion. In its order, the district court determined that

---

[2]Filed in September 2023, the State's initial information jointly charged Williams and James Plummer for separate crimes as codefendants. Therein, Williams was charged with trafficking in the controlled substances of heroin and methamphetamine, and the crime of simple possession of methamphetamine—reflecting counts I, II, and IV. Whereas count III, a charge of simple possession of heroin, was filed against Plummer. The amended information was filed in May 2024, retaining counts I, II, and IV as charged to Williams.

Williams's arrest on suspicion of violating NRS 179.110's reporting requirement was supported by probable cause because Detective Andrew Hernandez had information that Willams was "(1) a convicted felon, (2) being supervised by the Nevada Division of Parole and Probation ('the Division'), (3) registered with the Division as residing at the Desert Rose, and (4) not registered with the Division as residing at the Atlantis." The district court further noted that Det. Hernandez was provided with information from two individuals that suggested Williams was staying at the Atlantis, and that Det. Hernandez had obtained records from the Atlantis corroborating that Williams had been staying at the Atlantis for greater than 48 hours.

As a "[s]eparate and distinct" basis supporting the stop, the district court found that Det. Hernandez held reasonable suspicion that Williams was involved in narcotics activity based on articulable facts supporting an inference that he was selling controlled substances. Det. Thomas Williams informed Det. Hernandez of his contemporaneous narcotics investigation of Williams. Specifically, two individuals in a separate narcotics investigation provided information that they purchased narcotics from an individual at the Atlantis who matched Williams's description, and Atlantis security advised Det. Hernandez of suspicious activity they observed consistent with Williams selling narcotics out of his hotel room.

The district court further found that the warrantless search of the taxi was reasonable and in compliance with the automobile exception to the warrant requirement, elaborating that Deputy Aaron Lynch conducted the traffic stop at issue and that his trained drug dog was deployed and alerted Deputy Lynch of the presence of narcotics in the taxi. This alert,

the district court concluded, reasonably established probable cause to search the taxi for narcotics.

The jury trial followed resulting in guilty verdicts on all three charges. The district court sentenced Williams to serve an aggregate prison term of 18 years to life. This appeal followed.

On appeal, Williams argues the district court erred in denying his motion to suppress. Specifically, Williams contends that the Reno Narcotics Unit (RNU) officers did not have probable cause to execute the taxi stop where he did not violate Nevada's felon registration and reporting statutes. Further, the purported violation of those statutes must have necessarily occurred in the presence of the arresting officers to justify an arrest for a misdemeanor without a warrant. Additionally, the alert by the drug dog as to the presence of controlled substances was unreliable because the dog was trained to identify marijuana in addition to other controlled substances, and therefore, the subsequent search of the taxi was not supported by probable cause because marijuana possession can be legal.

The State responds that the district court did not err in finding evidence supported probable cause to arrest Williams for a violation of Nevada's felon registration and reporting statutes, as well as in finding that independent reasonable suspicion of illegal narcotics activity supported the stop. The State further contends that, to the extent Williams advances arguments concerning presence requirements for probable cause arrest for a misdemeanor or canine-search arguments, those are forfeited as they were not argued in the district court. The State also argues that Williams lacks standing to challenge probable cause for the search of the taxi under the Fourth Amendment given his lack of a possessory interest in and legal control of the taxi searched by officers.

We need not address Williams's unpreserved argument that he could not be arrested for a misdemeanor violation of NRS 179C.110 that occurred outside the officers' presence. Because the district court properly found the officers had reasonable suspicion to stop the taxi and investigate Williams's suspected violations of NRS 179C.110 and illegal narcotics activity, and because Williams did not challenge the propriety of the K-9 search below, we affirm the judgment of conviction.

*Standard of review*

Suppression issues involve mixed questions 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. Both the United States and Nevada Constitutions guarantee "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; Nev. Const. art. 1, § 18. Under these cognate provisions of our federal and state constitutions, warrantless searches "are *per se* unreasonable . . . subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967); *Hughes v. State*, 116 Nev. 975, 979, 12 P.3d 948, 951 (2000).

Determinations of probable cause for stops and warrantless searches of vehicles are reviewed de novo. *State v. Lloyd*, 129 Nev. 739, 743, 312 P.3d 467, 469 (2013); *see also Ornelas v. United States*, 517 U.S. 690, 699 (1996); *United States v. Parks*, 285 F.3d 1133, 1141 (9th Cir. 2002). Constitutional issues not raised in the district court are forfeited on appeal but may be reviewed by the court if the appellant demonstrates plain error. *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018).

*The warrantless stop of Williams was constitutional for purposes of the United States and the Nevada Constitutions*

Williams argues that Det. Hernandez did not have probable cause to stop and arrest him for violating the convicted felon reporting requirements under NRS Chapter 179C. He also urges this court to treat the State's registration theory as the sole validly supported basis for the stop and to discount the rationale of drug-suspicion as either post-hoc or unsupported by admissible pre-stop facts. The State answers that, under principles of statutory construction, Williams was compelled to register his stay at the Atlantis to comply with the reporting requirements, and he failed to do so, providing arrest authority under Nevada's felon-registration statutes, as well as asserting a reasonable suspicion of illegal narcotics activity supported the stop.

As enumerated therein, a "convicted person" must register and provide, among other things, "[t]he location and address of the person's residence, stopping place, living quarters or place of abode," and, if there is more than one, the "address of each," and "kind" of such place. NRS 179C.100(4)(g)-(h). Further, a hotel is included as a residence, "stopping place, or place of abode" as a kind of place in which a person resides. NRS 179C.100(4)(h). If there is a change of residence, the convicted person must notify the sheriff or chief of police within 48 hours of that change. NRS 179C.110.

We first note that a "change" under Nevada's felon registration and reporting statutes is not limited to the abandonment of a primary residence in favor of a new one. Rather, the statutory language could be read to include living situations such as extended hotel stays, requiring that

a convicted person must provide the sheriff or chief of police: "[t]he location and address of the person's residence, stopping place, living quarters or place of abode, and, if there is more than one, the location and address of each residence, stopping place, living quarters or place of abode." NRS 179C.110(5); *see also* NRS 179C.100(4)(g). In other words, even if a convicted person primarily resides at one location, they may still be required to update their registration if they use another address in this manner—sometimes even when that address is only used temporarily. Williams's insistence that he did not "change" his primary residence away from the Desert Rose Inn, while accurate, is not dispositive if there was more than one place of abode and other evidence of criminal activity as discussed next.

The evidence here must be evaluated to determine whether there was a reasonable suspicion to stop Williams to investigate a violation of NRS 179C.110 and illegal narcotics activity. Williams frames the facts throughout the briefing to suggest that there was no genuine registration violation under NRS 179C.110(5), and that Det. Hernandez's stated basis for the stop was the alleged failure to register only—*not* suspicion of narcotics sales. For example, Williams points to the testimony of Lowell Archer, Director of Operations at Atlantis, to assert that police had insufficient information to justify their actions because they had not contacted Archer at the Atlantis about Williams's eviction prior to the time Williams and codefendant James Plummer got into the taxi and left the property. Williams suggests that Archer first became aware of police activity involving Williams only when he saw the taxi pulled over and a commotion outside based on this testimony:

> Q: When did it come to your attention that police were involved with these two individuals?

A: After they had departed property?

Q: Yes.

A: They had been pulled over on Peckham outside of the Purple Parrot, our 24-hour restaurant. And there was a large commotion, and I got a call that there were police over there outside. So I went and took a look.

Q: Had the police been in contact with you before that point in time?

A: No.

Q: Okay. So this eviction was taking place based on your responsibilities as manager in the hotel, right?

A: Yeah. I was the shift manager that night.

Williams relies on this testimony to argue little-to-no evidence supported a probable cause showing that he "changed" his residence under Nevada's felon registration and reporting laws, and that any detailed information from Archer about his stay or suspected drug activity must have come only after the stop. In response, the State argues that Williams misreads Archer's testimony above and the sequence of events that unfolded—suggesting instead that this exchange represents only that the police had not contacted Archer about Williams *before the eviction*, not *before the taxi stop*.

Although the district court did not make specific findings pertaining to the timing, it did rely upon the record in its findings to suggest that Archer and other Atlantis staff interacted with RNU officers during the arrest in the corollary narcotics investigation occurring in the Atlantis parking lot before the taxi stop.

The district court relied on the representations of those conversations from both the preliminary and suppression hearings to support its determination that Det. Hernandez had sufficient information

to establish probable cause of Williams's failure to register his residence to support his warrantless arrest—including a report from a confidential informant that a Black male staying at the Atlantis casino was sourcing drugs, as well as a report from another individual stopped prior to Williams's taxi stop claiming that a "flashy" Black male was selling drugs while staying in an $800-per-night Atlantis room. Atlantis staff then identified Williams as the only person who matched that description and stated he had been staying in the room "in excess of 30 days."

As is relevant here, Nevada courts have long recognized that officers may stop a vehicle for a legitimate police investigation, independently of any traffic violation, when they have probable cause to believe a crime has been committed and where the vehicle matches the description or contains the suspect himself. *Franklin v. State*, 96 Nev. 417, 419, 610 P.2d 732, 734 (1980) ("An officer may stop and question an individual if the officer reasonably believes, in light of his or her experience and based upon specific, articulable facts, that criminal activity is afoot."); *see also* NRS 171.123(1) & (2) (stating a peace officer may detain any person under circumstances reasonably indicating that the person has committed a crime or a violation of parole).

The district court further found that Det. Hernandez's review of the records from the Atlantis corroborated that Williams had been staying there for more than 48 hours and that he was the only person registered to that room. Atlantis staff also informed Det. Hernandez that Williams left carrying bags and personal property—consistent with the room being a "place of abode" rather than merely a transient visit. The court additionally noted that the registration-related details borne out of

Det. Williams's corollary drug investigation were relayed to Det. Hernandez before he directed Deputy Lynch to stop the taxi.

Upon consideration of the testimony from the preliminary and suppression hearings, the district court ultimately concluded that "Det. Hernandez had knowledge of specific, trustworthy facts and circumstances sufficient to cause a reasonable person to believe Mr. Williams was in violation of NRS 179C.110" and a reasonable suspicion of illegal narcotics activity. Despite Williams's contentions that Det. Hernandez's testimony was self-serving, the court expressly found Det. Hernandez's testimony credible, and this court will not "evaluate the credibility of witnesses because that is the responsibility of the trier of fact." *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

Under these circumstances, a reasonable officer could have stopped Williams to investigate these apparent violations, regardless of their subjective intentions. *See* NRS 171.123(1) & (2); *Gama v. State*, 112 Nev. 833, 836-37, 920 P.2d 1010, 1012-13 (1996) (adopting the United States Supreme Court's "could have" test to resolve pretextual claims under the Fourth Amendment); *see also Doyle v. State*, 116 Nev. 148, 155, 995 P.2d 465, 469-70 (2000) (stating "subjective intentions play no role in ordinary probable-cause Fourth Amendment analysis"). We therefore conclude that the district court did not err in determining that reasonably trustworthy information existed sufficient to warrant a reasonably cautious person to believe Williams committed a crime for his failure-to-report under NRS 179C.110(5) combined with illegal narcotics activity as discussed below.

In addition to the evidence regarding a violation of Nevada's felon-registration statutes, reasonable suspicion as to narcotics activity provided sufficient grounds to initiate the stop. Specifically, the district

court's findings and credibility determination as to Det. Hernandez's testimony supports the existence of reasonable suspicion of narcotics activity to justify the stop. As the district court determined, "prior to" or "at the time of" conducting the traffic stop, Det. Hernandez had knowledge of specific, articulable facts supporting an inference Williams was selling narcotics.

For instance, the district court found Det. Hernandez's testimony demonstrated that his partner Det. Williams was investigating Williams as a suspect in selling narcotics prior to the traffic stop and that Det. Williams learned Williams was a convicted felon, on parole, and registered as a convicted felon with a stated residence at the Desert Rose Inn. The court further found Det. Hernandez's testimony demonstrated that two individuals indicated they purchased narcotics from a male out of an expensive hotel room fitting Williams's description. Compounding such suspicion, the court reiterated that Det. Hernandez also spoke to employees at the Atlantis who identified Williams as the only hotel guest matching the description provided by Det. Hernandez, and who advised that Williams had been staying at the Atlantis for the last thirty days, "during which time they witnessed suspicious activity consistent with the sale of narcotics." Det. Hernandez also spoke to the director of the Atlantis who indicated Atlantis records show Williams had been staying at the Atlantis in excess of forty-eight hours.

Moreover, Williams's counsel advanced a more specific timeline at the motion to suppress evidentiary hearing that further bolsters the district court's ultimate finding that independent reasonable suspicion of narcotics activity was supported prior to the initiation of the taxi stop:

> Tangentially, my client got involved or was, became the suspect of law enforcement through the conversations of this other

> investigation. The Atlantis security came out, [and] was talking to law enforcement on that day, it was August 31st, 2022.
>
> . . .
>
> So through the course of the conversations, there -- it was a vague description of adult [B]lack male may be the source of where the drugs were coming from. Mr. Williams fit that description. The Atlantis security started talking about how he had been at the hotel for a period of time. How long that period of time and having breaks that period of time, I think, is a factual dispute. Officer Hernandez ran his name, my client's name. My client's required as an ex-felon to register where his location is. My client was registered at the Desert Rose motel on West 4th Street. And so the Detective Hernandez, in his statement at the preliminary hearing testified that that gave him the probable cause to stop the vehicle that my client was in to arrest him for the failing to register under I think it's 179C.110, for failing to notify law enforcement in this address.

This representation of the factual timeline of events, advanced by Williams's own attorney, suggests that law enforcement retrieved Williams's name from the hotel as a possible suspect in the prior drug incident, did a background check, and *then* discovered he was on parole. The timeline relied upon by both the district court as advanced by Williams's counsel at the suppression hearing, therefore, suggests Williams was already implicated in criminal narcotics activity and that law enforcement aware of his parolee status—the initial reason why a search of his name was run by police. *See, e.g., Brinegar v. United States*, 338 U.S. 160, 177 (1949) (affirming a determination of probable cause based on the fact that the law enforcement officer had personal knowledge of the defendant's criminal history).

We therefore conclude on de novo review that Williams has not demonstrated that the district court erred in denying his suppression motion, where officers had reasonable suspicion to stop Williams's vehicle

and investigate him for failure to register under NRS 179C.110 and for criminal narcotics activity.

*Williams's remaining constitutional arguments have been forfeited*

Alternatively, Williams argues that his arrest remains constitutionally deficient because the offense of a felon-registration violation reflects an ordinary misdemeanor under NRS 179C.220, and NRS 171.124(1) requires that ordinary misdemeanors must be committed in the presence of an officer to justify a warrantless arrest.[3] He also challenges the constitutionality of the K-9 free-air sniff and subsequent search of the taxi because the drug dog was trained to alert in the same manner for a legalized controlled substance (marijuana) as it does for illegal controlled substances (such as heroin and methamphetamine).

But fatally, as the State contends, Williams did not advance either of these constitutional arguments before the district court, so we need not address the merits of the claims on appeal. The failure to preserve an error below, which includes structural, constitutional, or other error, forfeits the right to assert the claim on appeal. *Jeremias*, 134 Nev. at 50, 412 P.3d at 48. This court retains its discretion to address forfeited errors where an appellant demonstrates plain error, but Williams does not attempt to do so. *See id.* Moreover, although we may address constitutional issues raised for the first time on appeal, we choose not to exercise such discretion in this case. *See Phipps v. State*, 111 Nev. 1276,

---

[3]*See* NRS 179C.220 ("Any person violating the provisions of this chapter is guilty of a misdemeanor."); *see also* NRS 171.124(1)(a) (authorizing warrantless arrest for ordinary misdemeanors "committed or attempted *in the officer's presence*," creating a distinction in arrest authority based on offense severity (emphasis added)).

1280, 903 P.2d 820, 823 (1995) ("Failure to object below generally bars review on appeal."). Therefore, we need not address or comment on the merit of Williams's arguments.[4] Nevertheless, assuming arguendo that Williams could not initially have been arrested for a misdemeanor failure to register that occurred outside the officers' presence, the officers still had reasonable suspicion to stop Williams's taxi to *investigate* his failure to register and criminal narcotics activity, *see* NRS 171.123(1) & (2), and their subsequent discovery of narcotics in the vehicle provided probable cause for arrest. *See Doleman v. State*, 107 Nev. 409, 413, 812 P.2d 1287, 1289 (1991) ("Probable cause to conduct a warrantless arrest exists when police have reasonably trustworthy information of facts and circumstances that are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been or is being committed by the person to be arrested."); *cf. 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.")

Likewise, the challenge advanced by Williams as to the search of the vehicle is dependent upon his suggestion that the use of the K-9 was itself an unlawful search because it was trained to alert on the presence of multiple controlled substances, including marijuana, and therefore, the alert as to the presence of controlled substances was not a reliable indicator of a crime because possession of small amounts marijuana is legal.

---

[4]We further note that we need not address the State's contentions that Williams lacked standing to challenge the stop, arrest, and search on constitutional grounds because the district court did not address it in the first instance.

However, this issue was not raised before the district court nor argued on appeal as plain error, and Williams makes no other arguments on appeal as to the constitutionality of the searches. Thus, it was forfeited and we decline to consider it. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48.

Accordingly, we

ORDER the judgment of conviction AFFIRMED and REMAND for the limited purpose of correcting the clerical error in the judgment of conviction.[5]


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Lynne K. Jones, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

[5]Insofar as Williams has raised other arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.