

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLOS ALDECOA,

No. 38557

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JAN 23 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
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 Carlos Aldecoa to serve 6 months in jail.

Aldecoa's sole contention is that the district court erred in denying his motion to suppress because the police officers 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 abuse its discretion in denying Aldecoa's motion to suppress because its finding that the police officers'

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

initial encounter with Aldecoa was consensual is supported by sufficient evidence.²

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.³ However, not all interactions between policemen and citizens involve a "seizure" under the Fourth Amendment.⁴ 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."⁵

Applying the Stinnett test to the instant matter, we conclude that appellant was not seized and that his encounter with law enforcement was consensual. At a pretrial hearing, Reno Police officer Michael Lessman testified that he was working in a program called "Weed and Seed," patrolling the northeast area of Reno looking for truants and persons writing graffiti or committing other like crimes. Lessman further testified that, at approximately 1:00 p.m., he observed Aldecoa walking

²See State v. Harnisch, 113 Nev. 214, 219, 931 P.2d 1359, 1363 (1997) (recognizing that findings of fact in a suppression hearing will not be disturbed where supported by substantial evidence), clarified on rehearing, 114 Nev. 225, 954 P.2d 1180 (1998).

³See Terry v. Ohio, 392 U.S. 1, 27 (1968); see also NRS 171.123.

⁴See State v. Lisenbee, 116 Nev. 1124, 1127, 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).

⁵State 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))).

down the street. Lessman testified: (1) that he had known Aldecoa for three and one-half years; (2) that Aldecoa was a self-admitted member of a local street gang; (3) that, several years prior, Aldecoa had shot himself in the head and also was caught with a screwdriver that was a "common edge weapon"; and (4) Lessman believed Aldecoa had relocated from Reno to Sparks.

Lessman stopped Aldecoa "to speak with [him] to try to update [his] mental file." Lessman testified that Aldecoa was very friendly, that he had interacted with Aldecoa multiple times, and that he had always gotten along with him. Lessman described the encounter with Aldecoa as consensual and lasting approximately three to five minutes. Lessman said "hi," and shook hands with Aldecoa. Lessman and Aldecoa spoke generally about what Aldecoa had been doing recently, and Lessman inquired whether Aldecoa had relocated and whether he was working. Because of Aldecoa's history, Lessman asked Aldecoa if he was "carrying any knives or guns on him." Aldecoa replied "I think I might have a knife." Lessman then conducted a pat search on the outside of Aldecoa's waistband, and felt the cylinder of a revolver. Lessman handcuffed Aldecoa and retrieved a loaded .22 caliber revolver from his front pocket. Aldecoa was arrested and charged with carrying a concealed weapon.


Markedly absent from the record before us is any evidence that Officer Lessman restrained appellant physically or otherwise through a show of authority when he asked Aldecoa if he was in possession of a weapon. Because Aldecoa volunteered the information about the knife in response to a question, we conclude that Aldecoa was not seized, and therefore the protections and rights afforded by the Fourth Amendment were not implicated. Once Aldecoa informed Lessman that he had a


weapon, it was reasonable and permissible for Lessman to conduct a pat search to retrieve that weapon for his own protection and the protection of others.⁶ Further, once the pat search revealed a weapon, the subsequent seizure of that weapon and arrest of Aldecoa did not run afoul of the Fourth Amendment.⁷ Accordingly, the district court did not err in denying Aldecoa's motion to suppress.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General/Carson City
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk

⁶Walker v. State, 113 Nev. 853, 865, 944 P.2d 762, 770 (1997); Terry, 392 U.S. at 27.

⁷Terry, 392 U.S. at 30-31.