

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
DAVID R. HARTLEY,
Respondent.

No. 39236

FILED

JUL 05 2002

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM
CLERK OF SUPREME COURT
COPY CLERK

This is an appeal from a district court order granting respondent David R. Hartley's pretrial motion to suppress.

On June 22, 2001, at 1:25 a.m., Humboldt County Sheriff Officer Jeff Lynn, pulled over a vehicle driven by Hartley "for crossing over the yellow line with his left side tires." Officer Lynn testified that he observed the left side tires of the vehicle pass completely over both yellow lines in the road, and then cross back over the same lines into the proper lane. Officer Lynn testified that the sole reason he pulled over Hartley was for crossing over the double yellow lines.

Upon pulling over Hartley's vehicle, Officer Lynn cited him for violating NRS 484.291, failing to drive on the right side of the road. Officer Lynn testified that he did not cite Hartley for crossing the double yellow lines because he "didn't want to stack the charges." Officer Lynn also conducted an investigation resulting in the filing of additional criminal charges against Hartley, including driving while under the influence, ex-felon in possession of a firearm, failing to register as a sex offender, and driving with a suspended driver's license.

Thereafter, Hartley filed a pretrial motion to suppress, contending that the evidence obtained in the traffic stop should be suppressed because the stop was objectively unreasonable in violation of

the Fourth Amendment of the United States Constitution. In particular, Hartley alleged that it was objectively unreasonable for Officer Lynn to pull his vehicle over because he did not fail to drive on the "right side of the highway." Hartley argued that, pursuant to NRS 484.291, "the right side of the highway" is determined by drawing an imaginary line down the middle of the roadway and including the entire roadway to the right side of the imaginary line.


At the hearing on Hartley's pretrial motion to suppress, counsel for Hartley argued that even though Hartley's tires went "over a double yellow line for a brief time," he did nothing illegal because he "never ventured over to the left half of the roadway, and that is what the statute [that Hartley was cited for] proscribes." The district court agreed with Hartley, ruling that, pursuant to NRS 484.291, the "right half of the highway" was the right side of an equidistant "line [drawn] from the side extremities of the highway -- the actual center of the roadway." Because Hartley was permissibly driving on the "right half of the highway," the district court found that Officer Lynn had mistakenly pulled over Hartley, and that "[a]n officer's mistake of law does not provide a reasonable objective reason for a stop as required by the Fourth Amendment of the United States Constitution." The district court granted Hartley's pretrial motion to suppress.

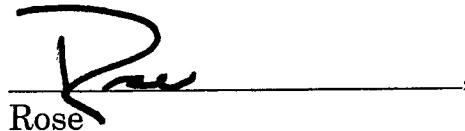
We conclude that the district court erred in construing NRS 484.291, which provides that vehicles should be "driven upon the right half of the highway" except for certain instances listed in the statute. In construing NRS 484.291, the district court ruled that the "right half of the highway" was the right side of an equidistant "line [drawn] from the side extremities of the highway -- the actual center of the roadway." We conclude that ruling is erroneous. Under NRS 484.291, the "right half of

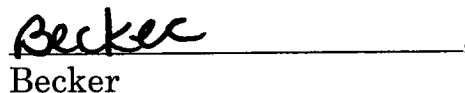
the highway” is the right travel lane, as designated by the lines of the road, without consideration of equidistant, imaginary lines.¹ Because Hartley swerved over the yellow lines, Officer Lynn had probable cause to stop Hartley. The fact that Hartley was not cited for the traffic violation that was the basis of the stop “does not negate the reasonableness of the stop.”²

The district court erred in granting Hartley’s motion to suppress because Officer Lynn had probable cause to stop Hartley’s vehicle. We therefore

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

¹See NRS 484.029 (imaginary, equidistant line only applicable where there is no line marked on highway).

²Scott v. State, 110 Nev. 622, 628-29, 877 P.2d 503, 508 (1994) (noting that lack of a traffic citation for an offense that was basis for stop does not negate the reasonableness of the stop); see also Gama v. State, 112 Nev. 833, 836, 920 P.2d 1010, 1012-13 (1996), citing Whren v. United States, 517 U.S. 806 (1996).

cc: Hon. Jerry V. Sullivan, District Judge
Attorney General/Carson City
Humboldt County District Attorney
Kyle B. Swanson
Humboldt County Clerk