IN THE SUPREME COURT OF THE STATE OF NEVADA

DRAKE GIRARD PETRONZI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39610

FILED

AUG 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 jury verdict, of one count of trafficking in a controlled substance. The district court sentenced appellant Drake Girard Petronzi to serve a prison term of 28 to 72 months.

Petronzi contends that the district court erred in denying his motion to suppress because his abandonment of the controlled substance was involuntary and occurred in the context of an unlawful pat-down search. We disagree.

Generally, "[a] defendant who voluntarily abandons property has no standing to contest its search and seizure."[1] However, abandonment must be voluntary and will not be given effect where such abandonment arises in the context of an unlawful search.[2] A pat-down search, however, is not unlawful where the police officer observes

[1]U.S. v. Stephens, 206 F.3d 914, 917 (9th Cir. 2000).

[2]Id.; see also U.S. v. Garzon, 119 F.3d 1446, 1451 (10th Cir. 1997).

suspicious circumstances giving rise to a reasonable belief that the individual searched may be carrying a weapon.[3]

In the instant case, we conclude the district court's finding that the abandonment did not take place in the context of an unlawful pat-down search is supported by the record. In particular, at the suppression hearing, Nevada Highway Patrol Trooper Kris Satterwhite testified that, on December 22, 2001, at approximately 1:00 a.m., Satterwhite stopped Petronzi because he was speeding and driving erratically. Satterwhite discovered that Petronzi had a suspended driver's license and was on probation, so he asked Petronzi to step out of vehicle and submit to a field sobriety test. After exiting the vehicle, Petronzi became nervous, started slightly clenching his fists, and began looking around as if he wanted to run away. Satterwhite, who became concerned that Petronzi might be armed, asked Petronzi if he had any weapons; Petronzi said "no." Satterwhite then conducted a brief pat-down search of Petronzi.[4] In light of Satterwhite's testimony that he conducted the pat-down search because he observed suspicious circumstances that led him to believe Petronzi

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[3]Terry v. Ohio, 392 U.S. 1 (1968); Scott v. State, 110 Nev. 622, 877 P.2d 503 (1994).

[4]After the pat-down search, Satterwhite observed a package of methamphetamine lying between Petronzi's feet that had not been there previously. Although Petronzi claimed the methamphetamine was not his, Petronzi was arrested and charged with trafficking and possession of a controlled substance for sale.

might be armed, we conclude the district court's finding that the search was lawful is supported by substantial evidence.[5]

Additionally, Petronzi contends that the district court erred in admitting evidence of a prior bad act, namely, that Petronzi had previously abandoned methamphetamine during a pat-down search, and then claimed the drugs were not his. We conclude that the district court did not abuse its discretion in admitting evidence of this prior bad act to show identity and absence of mistake.[6]

This court has held that evidence of prior involvement in drug trafficking is admissible to prove identity and absence of mistake in a subsequent case where the defendant is charged with drug trafficking.[7] Here, Petronzi was charged with both drug trafficking and drug possession, and the evidence concerned Petronzi's prior abandonment of drugs in the context of a pat-down search. Specifically, after conducting a Petrocelli hearing, the district court allowed testimony from Washoe County Sheriff Deputy William Engelmann that, on April 19, 2000, Engelmann stopped Petronzi and conducted a pat-down search.[8] During the search, Petronzi abandoned a packet of methamphetamine, and

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[5]See State v. Miller, 110 Nev. 690, 694, 877 P.2d 1044, 1047 (1994) (findings of fact in suppression hearing will not be disturbed on appeal if supported by substantial evidence).

[6]See NRS 48.045(2); see also Tillema v. State, 112 Nev. 266, 269, 914 P.2d 605, 607 (1996) (evidence of prior conviction for same offense committed under similar circumstances admissible to show common scheme).

[7]King v. State, 116 Nev. 349, 354-55, 998 P.2d 1172, 1175-76 (2000).

[8]See Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985)

thereafter claimed it was not his. Petronzi later pleaded guilty to possessing the drug. Because Engelmann's testimony was admissible to show that Petronzi was the individual who dropped the methamphetamine in the context of a pat-down search, we conclude that district court did not err in admitting that testimony at trial, finding its probative value was not substantially outweighed by the danger of unfair prejudice.[9]

Having considered Petronzi's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

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[9]See Tinch v. State, 113 Nev. 1170, 1175-76, 946 P.2d 1061, 1064-65 (1997) (in order to admit prior bad act evidence, district court must conduct a Petrocelli hearing, and determine that the incident is relevant to crime charged, proven by clear and convincing evidence, and its probative value is not substantially outweighed by the dangers of unfair prejudice).