

IN THE SUPREME COURT OF THE STATE OF NEVADA

BERNARDO PINEDA-MARQUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40971

FILED

JUN 04 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one felony count of driving under the influence with two or more prior convictions. The district court sentenced appellant Bernardo Pineda-Marquez to serve a prison term of 18-45 months and ordered him to pay a fine of \$2,000.00.

Pineda-Marquez contends that the district court erred in denying his motion to suppress.¹ Pineda-Marquez claims that once the police officer who initiated the traffic stop realized that Pineda-Marquez was not the individual involved in the reported hit-and-run accident, he should have been allowed to leave the scene of the stop. Therefore, Pineda-Marquez argues that because his seizure "was a mistake," evidence of his intoxication should have been suppressed. Alternatively, Pineda-Marquez argues that the "mild odor of alcohol, standing alone,"

¹Pineda-Marquez represents that the written guilty plea agreement expressly preserved his right to appeal from the denial of his motion to suppress. Although the partial record before this court does not substantiate this representation, the State confirms that the issue was preserved for appeal. We have therefore considered the merits of Pineda-Marquez' argument.

was not a sufficient reason to detain him after the police officer realized he stopped the wrong vehicle. We disagree.

The Fourth Amendment of the United States Constitution prohibits unreasonable searches and seizures, and this protection applies to investigatory stops of persons or vehicles.² A police officer may initiate a vehicle stop based only upon a reasonable articulable suspicion that the person or vehicle stopped had been involved in criminal activity.³ Judicial determinations of reasonable suspicion must be based upon the totality of the circumstances.⁴ On appeal, this court will not disturb a district court's findings of fact in a suppression hearing where they are supported by substantial evidence.⁵

In this case, Officer Matthew Locuson testified at the preliminary hearing that on the night in question, he received information from dispatch about a hit-and-run accident involving a vehicle and a pedestrian. Officer Locuson, at the time, understood the vehicle to be a "two tone colored full size Bronco" traveling westbound. A review of the dispatch transcript reveals that officers were directed to locate a "two-tone

²United States v. Arvizu, 534 U.S. 266, 273 (2002) (citing Terry v. Ohio, 392 U.S. 1, 9 (1968)); see also Nev. Const. art. 1, § 18.

³See State v. Sonnefeld, 114 Nev. 631, 633-34, 958 P.2d 1215, 1216-17 (1998); State v. Wright, 104 Nev. 521, 523, 763 P.2d 49, 50 (1988); see also NRS 171.123(1) ("Any peace officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime").

⁴See Arvizu, 534 U.S. at 273.

⁵See State v. Harnisch, 113 Nev. 214, 219, 931 P.2d 1359, 1363 (1997).

Ford Bronco Two,” a vehicle that Officer Locuson acknowledged was smaller than a full-sized Bronco.

Within seconds after receiving the information from dispatch, Officer Locuson was passed by a two-toned, beige, full-sized Bronco traveling westbound. As a result, Officer Locuson initiated a traffic stop. Officer Locuson inspected the vehicle and did not find any damage or indication that it had been involved in an accident, and therefore, determined “that it was probably the incorrect vehicle.” Officer Locuson, however, smelled the odor of alcohol on Pineda-Marquez. Pineda-Marquez denied consuming any alcoholic beverages. After conducting field sobriety tests, Officer Locuson determined that Pineda-Marquez was impaired and arrested him for driving under the influence.

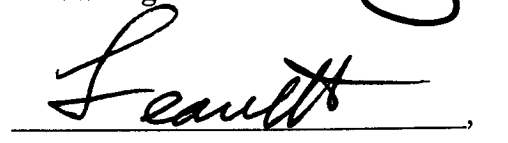
We conclude that there was substantial evidence to support the district court’s findings of fact and denial of Pineda-Marquez’ motion to suppress. In his motion, Pineda-Marquez alleged that the police officer’s mistake required the suppression of all evidence of his intoxication. After conducting a hearing on the motion, the district court determined that Officer Locuson “acted in good faith in executing the traffic stop,” and that his “mistake of fact regarding the vehicle was reasonable under the circumstances.” Pineda-Marquez’ vehicle was a Bronco two-toned in color, traveling westward, and within close proximity to the time and location of the accident. Given the totality of the circumstances, we conclude that Officer Locuson stopped Pineda-Marquez’ vehicle in good faith based upon a reasonable articulable suspicion that the vehicle had been involved in the reported hit-and-run accident. Additionally, once Officer Locuson stopped the vehicle, the odor of alcohol justified the further detention. Pineda-Marquez’ subsequent failure to pass

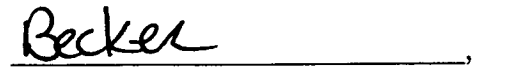
the field sobriety tests established the requisite probable cause to arrest Pineda-Marquez for DUI.

Therefore, having considered Pineda-Marquez' contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Andrew J. Puccinelli, District Judge
Elko County Public Defender
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Elko County Clerk