

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
MATTHEW JUSTIN CLARK,
Respondent.

No. 58554

FILED

JAN 16 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a motion to suppress evidence. Tenth Judicial District Court, Churchill County; Leon Aberasturi, Judge.

The State argues that the district court erred as a matter of law by granting respondent Matthew Justin Clark's motion to suppress evidence because probable cause existed to believe that Clark was transporting contraband and the vehicle's mobility created an exigent circumstance that justified the warrantless search.

Clark responds that the district court erred by finding that a valid traffic stop occurred but properly determined that the warrantless search did not comport with Nevada law. The State characterizes Clark's response as an impermissible cross appeal. However, we conclude that Clark is merely arguing that the district court got the right result for another reason.

"Suppression issues present mixed questions of law and fact. 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." *State v. Beckman*, 129 Nev. ___, ___, 305 P.3d 912, 916 (2013) (internal quotation marks and citations omitted).

The district court conducted an evidentiary hearing, considered the audio and video recordings of the stop, and made the following factual findings: Officers Urso and Lee were stationed on I-80 in a rural area located 30 or 40 minutes from the nearest population center. They were in separate patrol vehicles and Officer Lee had a drug detection dog with him. Clark drove past the officers while traveling east. The officers initiated a traffic stop because Officer Urso had an honest belief that Clark had failed to signal his lane change or had not signaled long enough to satisfy the statute¹ and both officers had determined that Clark was traveling at a speed that exceeded the posted speed limit.

Officer Urso smelled marijuana and saw a map indicating destinations in Iowa and St. Louis when he made contact with Clark. Clark did not have his driver's license but provided the officers with the state of issuance and the license number. While Officer Lee ran the license, Clark exited the vehicle and conversed with Officer Urso. Clark displayed a nervous body posture and nervous speech, and he had sweaty hands despite the coldness of the night. Clark was traveling to Kansas after having flown to California. The cost of the rental car was comparable to the cost of airfare. The car had been rented by someone else and Clark's stated destination was farther west than the map in the car indicated. The officers' training and experience suggested that Clark might be engaged in drug trafficking because he was traveling from a source location to a sales location, the type of rental car he was driving is

¹Officer Urso told Clark that the only reason for the traffic stop was Clark's failure to signal before changing lanes; however, the dash camera video clearly reveals that Clark did signal his lane change.

avored by drug traffickers for its compartments, a smell of marijuana emanated from the car, and Clark had admitted to smoking marijuana.

Officer Urso told Clark that he was free to go with only a warning, but this was just a ruse—Officer Urso had already decided to further detain Clark to either obtain consent to search the vehicle or get a search warrant. Clark refused to consent to a search of the vehicle, Officer Urso informed Clark that he was being further detained, and Officer Lee walked his drug detection dog around Clark's vehicle. The dog alerted on several areas of the vehicle and the search that followed uncovered packages of marijuana, Oxycodone, and Hydrocodone. We conclude that the district court's factual findings are supported by substantial evidence and are not clearly wrong.

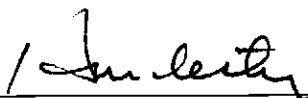
A traffic stop is a seizure and therefore it is subject to the Fourth Amendment's requirement of reasonableness. *Whren v. United States*, 517 U.S. 806, 809-10 (1996). A traffic stop is "reasonable where the police have probable cause to believe that a traffic violation has occurred." *Id.* at 810. Officer Urso's belief that Clark committed a traffic violation by failing to signal when he changed lanes was unreasonable: there were no other vehicles that may have been affected by Clark's movement and Nevada law does not require drivers to signal their movement under such circumstances. *See* NRS 484B.413(1); *United States v. McDonald*, 453 F.3d 958, 961-62 (7th Cir. 2006) (a police officer's mistake of law cannot support probable cause to conduct a traffic stop). However, because the traffic stop was initiated when the officers determined that Clark was speeding, we conclude that the stop was reasonable.


We recently revisited our automobile-exception jurisprudence and determined "that our state constitution compels no different

automobile exception to its warrant requirement than the Fourth Amendment does.” *State v. Lloyd*, 129 Nev. ___, ___, 312 P.3d 467, 473 (2013). Accordingly, if a vehicle is readily mobile and probable cause exists to believe it contains contraband, “the automobile exception to the warrant requirement imposed by the Fourth Amendment and the Nevada Constitution’s cognate provision [will justify] the search.” *Id.* at ___, 312 P.3d at 474.

Because the traffic stop was reasonable, Clark’s vehicle was readily mobile, and probable cause existed to believe that the vehicle contained contraband, we conclude that the automobile exception to the warrant requirement justified the search and therefore the district court erred by granting the suppression motion.² Accordingly, we

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

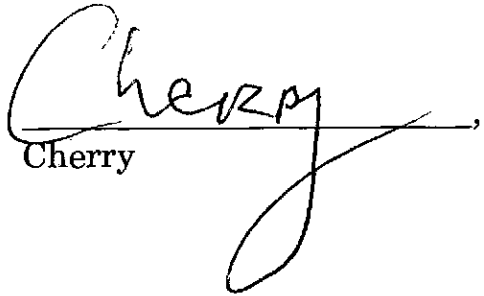
, J.
Hardesty

, J.
Douglas

²The issue of whether Clark was unreasonably detained beyond the time required to process the traffic offense was not litigated below and we decline to reach it sua sponte. See *Beckman*, 129 Nev. at ___, 305 P.3d at 915.

CHERRY, J., dissenting:

As discussed in *Lloyd v. State*, 129 Nev. ___, ___, 312 P.3d 467, 474 (2013) (Cherry, J., dissenting), I disagree with eliminating the requirement for exigent circumstances from Nevada's automobile exception caselaw. Accordingly, I dissent from the decision to reverse the district court's order.

 J.
Cherry

cc: Hon. Leon Aberasturi, District Judge
Attorney General/Carson City
Churchill County District Attorney/Fallon
Paul W. Drakulich
Churchill County Clerk