

IN THE SUPREME COURT OF THE STATE OF NEVADA

HYRUM JOSEPH WEST,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60745

FILED

DEC 13 2012

TRASIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of trafficking in a controlled substance. Fifth Judicial District Court, Nye County; Lee A. Gates, Senior Judge.¹

Motion to suppress

Appellant Hyrum Joseph West contends that the district court erred by denying his pretrial motion to suppress evidence obtained during a search of his vehicle. West asserts that the traffic stop was pretextual, there were no exigent circumstances, he did not consent to the search, he could not have consented to the search because he was already in custody, the search exceeded the scope of a general consent, the drug-detection dog alert did not justify the warrantless search, and an inventory search would not have led to the discovery of the drugs.

A challenge to the constitutionality of a search or seizure presents mixed questions of law and fact. Somee v. State, 124 Nev. 434, 441, 187 P.3d 152, 157-58 (2008). We review a district court's factual

¹The Honorable Robert L. Lane, District Judge, conducted the evidentiary hearing and ruled on West's pretrial motions to suppress evidence and dismiss the charge.

findings for clear error and the legal consequences of the factual findings de novo. Id.

The United States and Nevada Constitutions prohibit unreasonable search and seizure. U.S. Const. amend. IV; Nev. Const. art. 1, § 18. “[A] vehicle stop that is supported by probable cause to believe that the driver has committed a traffic infraction is ‘reasonable’ under the Fourth Amendment, even if a reasonable officer would not have made the stop absent some purpose unrelated to traffic enforcement.” Gama v. State, 112 Nev. 833, 836, 920 P.2d 1010, 1012-13 (1996) (citing Whren v. United States, 517 U.S. 806 (1996)). A warrantless search of a vehicle is reasonable if it is justified by both probable cause and exigent circumstances. Camacho v. State, 119 Nev. 395, 400, 75 P.3d 370, 374 (2003). Probable cause may be based on a positive alert by a reliable drug-detection dog. U.S. v. Lingenfelter, 997 F.2d 632, 639 (9th Cir. 1993). Exigent circumstances exist when the police make a roadside arrest because it is “unreasonable to require the police to remain at the scene of the arrest pending the arrival of a warrant or assign an officer to accompany the tow truck to an impound yard.” Hughes v. State, 116 Nev. 975, 980, 12 P.3d 948, 951 (2000) (quoting Fletcher v. State, 115 Nev. 425, 430, 990 P.2d 192, 195 (1999)).

The district court conducted an evidentiary hearing on West’s pretrial motions and made the following factual findings: Detective Mead was aware of West’s drug transporting activities and was informed that West was traveling from Las Vegas to Pahrump. A sheriff’s deputy stopped West for speeding. West gave consent to search his vehicle twice. West was arrested for failure to register as a felon. Two deputies advised Detective Mead that West gave consent to search the vehicle. A drug-

detection dog alerted to the presence of a controlled substance in West's vehicle. Detective Mead did not obtain a warrant to search West's vehicle. And West has since denied giving consent to search the vehicle. The district court concluded that West was lawfully stopped for speeding, the drug-detection dog's alert constituted probable cause, and "probable cause existed for the search of the automobile even absent Defendant West's consent."

The district court's factual findings are supported by the record on appeal and are not clearly wrong. Because the traffic stop was valid, there was probable cause to believe the vehicle contained a controlled substance, and the roadside arrest resulted in an exigent circumstance, we conclude that the traffic stop and vehicle search were constitutional. Accordingly, the district court did not err by denying West's suppression motion.²

Motion to dismiss

West contends that the district court erred by denying his motion to dismiss the charge because the State failed to provide the dash camera videotape recording of the traffic stop and arrest, as ordered by the justice court; when it was finally provided six months later, the recording of the traffic stop was almost completely gone; and he suffered extreme prejudice because the recording corroborated his claim that he did not consent to the search.

We review a district court's decision to grant or deny a motion to dismiss a charging document for abuse of discretion. Hill v. State, 124

²In light of this conclusion, we need not consider West's claims that he did not consent to the search, the consent was invalid, and the search exceeded the scope of any consent.

Nev. 546, 550, 188 P.3d 51, 54 (2008). “The State’s failure to preserve potentially exculpatory evidence may result in dismissal of the charges if the defendant can show bad faith or connivance on the part of the government or that he was prejudiced by the loss of the evidence.” Daniels v. State, 114 Nev. 261, 266-67, 956 P.2d 111, 115 (1998) (internal quotation marks omitted).

The district court found that the sheriff’s deputy’s video recording system was malfunctioning at the time of the traffic stop, the videotape was in disarray and unintelligible, the deputy did not purposely destroy the videotape evidence, and no evidence was presented that the videotape was destroyed in bad faith. Because the record on appeal supports the district court’s factual findings and we conclude that West has failed to demonstrate that the State acted in bad faith or that he was prejudiced by the loss of the videotape, the district court did not abuse its discretion by denying West’s motion to dismiss the charge.

Double jeopardy

West contends that the district court violated his double jeopardy rights by subjecting him to a second trial after jeopardy attached in the first trial and a mistrial was declared. He argues that the first trial ended when the jury deadlocked after less than six hours of deliberation and the district court declared a mistrial before defense counsel could finish his thought or objection.³

The constitutional guarantee against double jeopardy bars retrial after jeopardy has attached and before a verdict has been reached

³The Honorable Joseph M. Bonaventure, Senior Judge, presided over the first trial.

unless (1) the defendant consents to a mistrial or (2) the district court determines that a mistrial is required by “manifest necessity.” Glover v. Dist. Ct., 125 Nev. 691, 709, 220 P.3d 684, 696 (2009). We review a district court’s determination of manifest necessity for abuse of discretion. Id.


The district court found manifest necessity to declare a mistrial after the jury foreman stated that the last poll was eight-four, the jury was hopelessly deadlocked, and further deliberation would not be helpful. We conclude that the district court did not abuse its discretion by determining that a mistrial was required by manifest necessity and did not violate West’s double jeopardy rights. See id. at 702, 220 P.3d at 692 (“A deadlocked jury is the classic example of the ‘manifest necessity’ for mistrial before final verdict that will permit retrial without offense to a defendant’s double jeopardy rights.”).


Cumulative error

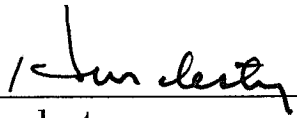
West contends that cumulative error deprived him of a fair trial. However, because West has failed to demonstrate any error, he was not deprived of a fair trial due to cumulative error. See Pascua v. State, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006).

Having considered West’s contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.


Saitta, J.


Pickering, J.


Hardesty, J.

cc: Chief Judge, Fifth Judicial District Court
Hon. Robert L. Lane, District Judge
Hon. Lee A. Gates, Senior Judge
Hon. Joseph M. Bonaventure, Senior Judge
Harry R. Gensler
Nye County District Attorney
Attorney General/Carson City
Nye County Clerk