IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CASSANDRA MICHELLE MCELVAIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75367-COA

FILED
FEB 19 2019
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Cassandra Michelle McElvain appeals from a judgment of conviction, pursuant to a guilty plea, of driving under the influence with a prior felony DUI conviction. First Judicial District Court, Carson City; James E. Wilson, Judge.

A state trooper stopped McElvain's vehicle after he observed her flicking ash from a cigarette out of her window at a stoplight.[1] As the trooper spoke to McElvain, he smelled alcohol in her car and on her breath. After McElvain failed field sobriety tests, the trooper arrested her for driving under the influence.

McElvain moved the district court to suppress all evidence obtained from the traffic stop, arguing that the trooper lacked reasonable suspicion to believe that she had violated NRS 475.030(1)(b), which prohibits "discard[ing] from a moving vehicle any lighted cigarette, cigar, ash or other material which may cause a fire." After an evidentiary hearing, the district court found that the trooper reasonably suspected that McElvain had violated or would soon violate the statute, and thus denied

[1]We do not recount the facts except as necessary to our disposition.

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the motion. McElvain ultimately pleaded guilty but preserved her right to appeal the denial. *See* NRS 174.035(3).

On appeal, McElvain argues that the district court erred by denying her motion because there was no evidence that the ash was lighted or that her vehicle was moving when she flicked ash from her cigarette, and that she discarded the ash in an area—a left-turn lane in a city intersection—where it could not cause a fire.

"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. 481, 485-86, 305 P.3d 912, 916 (2013) (citation and internal quotation marks omitted). A police officer may stop a person and conduct a brief investigation when the officer has a reasonable, articulable suspicion that criminal activity is taking place or is about to take place. *Terry v. Ohio*, 392 U.S. 1, 21 (1968); *see also* NRS 171.123(1). When determining whether an officer had reasonable suspicion, the district court must consider the totality of the circumstances. *United States v. Arvizu*, 534 U.S. 266, 273 (2002).

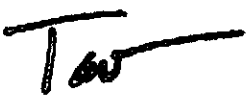
At the evidentiary hearing on McElvain's motion, the district court heard testimony from the trooper as to why he stopped McElvain. In its order denying the motion, the court made the following factual findings based on that testimony: The trooper saw McElvain flick ash from her lighted, smoking cigarette, and thus "could reasonably infer lighted ash was discarded." The trooper did not see her put out her cigarette, and thus "could reasonably infer the cigarette was still lit." He could also "reasonably infer [that McElvain's vehicle] would soon be moving" and that she would again flick ash from her cigarette as the vehicle began moving. The court

concluded that the trooper "had reasonable cause to believe McElvain had violated or was about to violate NRS 475.030(1)(b)," and thus "had reasonable suspicion to make a traffic stop."

We conclude that the record supports the district court's factual findings, and thus that they are not clearly erroneous. We further conclude that the trooper's testimony articulated specific facts, the totality of which supports the district court's legal conclusion that the trooper had the reasonable suspicion necessary to justify the traffic stop. We therefore conclude that the district court did not err by denying McElvain's motion to suppress. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, A.C.J.
Douglas



_____, J.
Tao

_____, J.
Gibbons

cc: Hon. James E. Wilson, District Judge
State Public Defender/Carson City
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk