

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CRESTON BOOTHE WANTY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76834-COA

FILED

JUL 30 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Younky
DEPUTY CLERK

ORDER OF AFFIRMANCE

Creston Boothe Wanty appeals from a judgment of conviction entered pursuant to a guilty plea of possession of a stun gun by a prohibited person. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

Wanty claims the district court erred by denying his pretrial motion to suppress evidence, a stun gun that was seized during a warrantless search.¹ He argues that “[a] search incident to arrest is a traditional exception to the warrant requirement, however, it must be predicated by a lawful arrest.” And he asserts that his arrest for a misdemeanor offense was not lawful because it was made after 7 p.m. in violation of NRS 171.136(2).

“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) (internal quotation marks and citations omitted).

¹Wanty preserved this claim for appeal pursuant to NRS 174.035(3).

The record demonstrates that Sergeant Todd Fincher testified at the justice court's hearing on Wanty's initial motion to suppress evidence.² Sergeant Fincher stated that he and Deputy Michael Stroud were working on January 18, 2017, at approximately 9:39 p.m., when Wanty called and reported that someone had thrown oil on his car. Sergeant Fincher ran a criminal history check on Wanty and learned that Wanty had two prior felony convictions. Sergeant Fincher had had contact with Wanty on January 14, 2017—just four days before the instant call—and had other information indicating that Wanty had been in White Pine County for more than 48 hours without registering with law enforcement authorities. Sergeant Fincher and Deputy Stroud finished investigating Wanty's call, confronted Wanty about not registering with law enforcement authorities, and arrested Wanty after he indicated he did not know that he was required to register. The district court made factual findings that are consistent with this testimony and that are not clearly wrong.


Based on this record, we make the following conclusions: First, Wanty's failure to register with law enforcement authorities pursuant to NRS 179C.100(1) was a continuing offense. *See* NRS 179C.210; *Rimer v. State*, 131 Nev. 307, 319, 351 P.3d 697, 706 (2015) (adopting the legislative-intent test for determining whether an offense is a continuing offense). Second, Wanty was lawfully arrested because he committed a continuing offense "in the presence of the arresting officers." NRS 171.136(2)(b). And, third, Wanty was lawfully searched incident to the arrest. *See Scott v. State*,

²Wanty's initial motion to suppress evidence was filed in the justice court. The justice court conducted an evidentiary hearing and ordered the motion to suppress evidence denied. Wanty subsequently filed a motion to suppress evidence in the district court.

110 Nev. 622, 629, 877 P.2d 503, 508 (1994). We further conclude that the district court did not err by denying Wanty's motion to suppress evidence, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Steve L. Dobrescu, District Judge
Kirsty E. Pickering Attorney at Law
Attorney General/Carson City
White Pine County District Attorney
White Pine County Clerk