

IN THE SUPREME COURT OF THE STATE OF NEVADA

FEDERICO MARTINEZ CAMPOS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 37804

FILED

JUN 07 2024

ORDER OF AFFIRMANCE

JANETTE A. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Ruben*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, upon a plea of guilty, of one count of trafficking in a controlled substance. Appellant Federico Campos pleaded guilty to one count of trafficking in a controlled substance; however, he reserved his right to pursue a motion to suppress the evidence and appeal any adverse ruling to this court. After the district court denied the motion to suppress, Campos was sentenced to serve twenty-five years in prison with a minimum parole eligibility of ten years.

The incident at issue occurred on January 22, 2000, when Deputy George Forbush, of the Humboldt County Sheriff's Office, spotted a suspicious pickup truck driving in front of him on Interstate 80 with its tailgate down. Deputy Forbush ran the license plate number through dispatch and received a report that it did not match the vehicle. Deputy Forbush confirmed the numbers did not match before pulling the truck over.

Deputy Forbush collected the vehicle registration and the driver's licenses from the occupants, Campos and Jose Lopez. Deputy Forbush asked Campos to accompany him to the patrol car while Deputy Forbush called the information into dispatch. Both occupants of the vehicle were wearing shorts and t-shirts, despite the temperature being approximately thirty degrees. There was no luggage in the truck. Both

Campos and Lopez were drinking energy drinks. These facts were consistent with situations that Deputy Forbush knew were common for drug traffickers.

Deputy Forbush compared the license plate number and the vehicle identification number with the information contained on the registration and found they matched. However, because of the previous information given to him by dispatch indicating no match, Deputy Forbush called dispatch again, attempting to clarify the discrepancy.

While waiting for additional information from dispatch, Deputy Forbush talked alternately with Campos and Lopez. Deputy Forbush, who speaks Spanish, conversed with Lopez in Spanish and Campos in English. Campos complained he was cold. Campos and Lopez's answers to questions regarding their relationship and the trip were inconsistent.

Deputy Forbush continued to casually talk with Campos while they waited for confirmation from dispatch, which came approximately twelve minutes after the original stop. A computer problem apparently caused the earlier inaccurate report. Deputy Forbush walked to the truck and returned Lopez's documents. Deputy Forbush then returned to his patrol car and returned Campos' paperwork to him.

Deputy Forbush then asked Campos, "I was wondering if you could help me out with a couple things. I got a couple questions for you, okay. Is that cool?" Campos responded, "Okay. Okay." Deputy Forbush asked Campos about his relationship with Lopez, why they were going to Salt Lake City and how long they planned to stay. After receiving Campos' answers, Deputy Forbush stated, "All right. Hold on just a minute." Deputy Forbush walked to the truck and talked to Lopez in Spanish.

Deputy Forbush returned to Campos and asked if everything in the car belonged to him. Campos responded in the affirmative. Deputy Forbush queried if there were any guns, methamphetamine, crank, speed or marijuana in the car. Campos responded "no" to all of the questions.

Deputy Forbush asked if he could search the car for drugs. Campos responded in the affirmative. Deputy Forbush asked Campos to fill out a consent form, which granted written permission to search the truck. Deputy Forbush explained the form to Campos, which was in both Spanish and English. Deputy Forbush verbally explained in both Spanish and English that Campos did not have to consent to the search and that Campos was not being forced to give consent.

Deputy Forbush then requested that a canine unit be sent to the scene. Campos completed a majority of the consent form, both the Spanish and English portions. Deputy Forbush supplied Campos with the date and time. The form stated, "I \_\_\_\_\_, hereby grant my consent to Dep. George Forbush officers of the HCSD [Humboldt Co. Sheriff's Dept.] to search the following vehicle described below including luggage, containers, and contents of all." Campos signed his name.

When Campos again complained about being cold, Deputy Forbush queried if he wanted to sit in the back of the patrol car to stay warm. Campos responded that he would. Deputy Forbush returned to the truck and asked Lopez to step out of the truck. Deputy Forbush explained he was going to search the car and confirmed that nothing in the car belonged to Lopez. Deputy Forbush asked if Lopez was cold and Lopez stated he was. Deputy Forbush allowed Lopez and Campos to sit in the back of the patrol car. Deputy Forbush told the men that if they needed anything to just ask Deputy Dove, who had arrived at the scene while

Forbush was returning Campos' paperwork. Dove was standing next to the car for assistance.

Deputy Forbush commenced a search of the truck, beginning at the fenders and the cab. Approximately fourteen minutes later, Nevada Highway Patrol Officer, Thomas Merschel, arrived at the scene with his drug dog Time. Deputy Forbush and Officer Merschel examined the truck together and discovered that the screws that secured the bed liner were scraped and partially stripped.

Time jumped in the bed and continually indicated two locations underneath the bed liner as being positive for drugs. The officers removed two of the four tie downs and attempted to see underneath the bed liner with the aid of a flashlight, but were unable to see anything. Officer Merschel once again retrieved Time, who again alerted to the presence of narcotics.

Deputy Forbush went to his patrol car and asked Campos to accompany him to the truck. Officer Merschel and Deputy Forbush testified that they sought Campos' permission to remove the bed liner. Campos consented. Campos walked unaccompanied back to the patrol car and got into the car. Deputy Forbush and Officer Merschel removed the remaining two tie downs.

The officers lifted the bed liner and discovered two saran wrapped packages that contained a white substance, which presumptively tested positive for methamphetamine. Campos and Lopez were placed under arrest. The truck was impounded, and a further search revealed one more package of methamphetamine.

Campos filed a motion to suppress, alleging the methamphetamine was discovered pursuant to an illegal search and

seizure. The district court denied the motion and Campos appeals, alleging several errors.

1. Burden at Motion to Suppress Hearing

Campos claims that the district court committed reversible error when it placed the burden of proof on the defense at the motion to suppress hearing. Campos asserts the district court erroneously placed the burden of proof upon him to show the search was illegal. We disagree.

At the hearing, after considering arguments from each side as to who has the burden, the district court had Campos present evidence that the search was illegal. Campos argued that since the search was performed without a warrant, the State had the burden to show the search was performed pursuant to a warrant exception. The State argued that since it was the defense's motion, Campos should first proceed.

However, in its order denying the motion to suppress, the district court correctly placed the burden on the State. The district court concluded that sufficient evidence had been presented to demonstrate Campos voluntarily consented to the search.

"When a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he has the burden of proving that the consent was, in fact, freely and voluntarily given."<sup>1</sup> We conclude that while the district court had Campos present evidence first at the hearing, the district court applied the correct burden of proof in rendering its order. Accordingly, we conclude there is no reversible error.

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<sup>1</sup>Bumper v. State of North Carolina, 391 U.S. 543, 548 (1968).

## 2. Illegal Stop and Seizure

Campos argues that the district court erred by denying his motion to suppress. Campos alleges that the methamphetamine was discovered by an illegal search and seizure. “[F]indings of fact in a suppression hearing will not be disturbed on appeal if supported by substantial evidence.”<sup>2</sup> A district court’s findings of fact are reviewed under a deferential standard of review.<sup>3</sup>

### Calling the License Plate Number Into Dispatch

Campos argues that Deputy Forbush did not have cause to check the truck’s license plate with dispatch. One who challenges the legality of a search must establish that he or she had a reasonable expectation of privacy in the place searched.<sup>4</sup> A person does not have a reasonable expectation of privacy in a license plate number that is clearly visible to the public. We conclude that calling a license plate number into dispatch does not constitute an unreasonable search or a seizure. Therefore, this contention is without merit.

### Stopping the Vehicle

Campos contends that Deputy Forbush: (1) did not have cause to stop his truck, (2) unreasonably extended the length of the stop, and (3) exceeded the scope of the stop. We disagree.

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<sup>2</sup>Peck v. State, 116 Nev. 840, 846, 7 P.3d 470, 474 (2000) (quotation and citation omitted).

<sup>3</sup>Id.

<sup>4</sup>Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

“An automobile stop by police is a seizure within the meaning of the Fourth Amendment.”<sup>5</sup> The police may reasonably stop an automobile when there is probable cause to believe a traffic violation has occurred.<sup>6</sup> A traffic violation stop is not rendered invalid because it is a mere pretext for a narcotics search.<sup>7</sup> Under the good faith exception to the exclusionary rule, evidence should not be suppressed when officers acted in good faith and in the reasonable, although mistaken, belief that they are authorized.<sup>8</sup>

Campos argues the stop was pretextual. Deputy Forbush stopped Campos because dispatch reported the license plate number did not match the truck. The law requires a vehicle to have valid license plates.<sup>9</sup> Therefore, due to the report of mismatch, Deputy Forbush had probable cause to believe Campos was violating the law. Even though dispatch later confirmed the match, at the time Deputy Forbush pulled Campos over, he had a good faith belief that Campos was violating the law. Therefore, we conclude this was not an illegal seizure.

Campos also contends Deputy Forbush unreasonably extended the length of the seizure. Campos argues once Deputy Forbush confirmed a match between the registration, the license plates, and the VIN, Deputy

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<sup>5</sup>U.S. v. Garcia, 205 F.3d 1182, 1186 (9th Cir. 2000); see also Whren v. U.S., 517 U.S. 806, 809-10 (1996).

<sup>6</sup>Whren, 517 U.S. at 810.

<sup>7</sup>See United States v. Robinson, 414 U.S. 218, 221 n.1 (1973).

<sup>8</sup>U.S. v. De Leon-Reyna, 930 F.2d 396, 400-01 (5th Cir. 1991).

<sup>9</sup>NRS 482.545.

Forbush had accomplished the purpose of the detention and should have released Campos.

The police may not unreasonably extend a stop once the purpose for the initial stop has been fulfilled.<sup>10</sup> However, in this case, confirming the match with dispatch was part of the purpose of the initial stop. Therefore, we conclude that the extra couple of minutes it took Deputy Forbush to confirm a match with dispatch was not an unreasonable extension of the stop since Deputy Forbush was still seeking to fulfill the purpose of the original detention.

Campos also contends that during this time period, Deputy Forbush exceeded the scope of the stop by questioning Campos on subjects unrelated to the stop. Mere questions do not constitute a seizure.<sup>11</sup> The court must determine whether the questioning "was reasonably related in scope to the circumstances which justified the interference in the first place."<sup>12</sup> The casual conversation during this time did not delay the stop longer than necessary. Deputy Forbush continued to diligently communicate with dispatch to uncover the reason for the discrepancy. Therefore, the district court's denial of the motion to suppress on this basis is based on substantial evidence.

After Confirmation that Campos had Not Committed a Traffic Violation

Campos contends he was illegally seized for the eight minutes between when dispatch confirmed the match and Campos signed the consent form. Campos asserts that the stop exceeded the scope of the

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<sup>10</sup>See Ferris v. State, 735 A.2d 491, 499 (Md. 1999).

<sup>11</sup>Florida v. Bostick, 501 U.S. 429, 434 (1991).

<sup>12</sup>Terry v. State of Ohio, 392 U.S. 1, 20 (1968).



consent when Deputy Forbush told him to "hold on." Campos claims "hold on" clearly indicates that his freedom was being restricted.

"[A] waiver and consent, freely and intelligently given, converts a search and seizure which otherwise would be unlawful into a lawful search and seizure."<sup>13</sup> "[A] search conducted pursuant to consent must be limited to the terms of the consent," and "[w]hether the scope of consent has been exceeded is a factual question to be determined by examining the totality of the circumstances."<sup>14</sup> "[A] consent to search does not mean the constitutional protection against unreasonable searches and seizures has been waived for all time and for all things."<sup>15</sup>

Immediately after receiving confirmation from dispatch that the license plate number matched the vehicle, Deputy Forbush returned Lopez's and Campos' documents. Thereafter, Deputy Forbush received Campos' consent to ask a couple of questions. Deputy Forbush questioned Campos regarding some inconsistencies between Campos' and Lopez's stories. Deputy Forbush then asked Campos to "hold on" while he asked Lopez some questions.

Nothing in the circumstances indicates that Campos was coerced into staying and answering questions. After viewing the videotape and putting this comment into context, we conclude that the district court did not err in finding that a reasonable person in these circumstances would still have felt free to leave. The videotape reveals that Deputy

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<sup>13</sup>Peck, 116 Nev. at 846, 7 P.3d at 474 (citing State v. Plas, 80 Nev. 251, 254, 391 P.2d 867, 868 (1964)).

<sup>14</sup>Canada v. State, 104 Nev. 288, 291, 756 P.2d 552, 553 (1988) (citations omitted).

<sup>15</sup>Gray v. State, 441 A.2d 209, 221 (Del. 1981).

Forbush was not acting in an overbearing manner or misusing his power. Therefore, we conclude that the district court reasonably found that Deputy Forbush's questioning of Campos and Lopez, which lasted approximately eight minutes, was consensual and not an illegal seizure.

Sitting in the Patrol Car

Campos claims he was illegally seized when he was placed in the backseat of the patrol car. Campos compares his being in the patrol car to the cases of State v. McKellips<sup>16</sup> and State v. Sprague.<sup>17</sup> In McKellips, the police responded to a fatal accident.<sup>18</sup> The defendant, who was driving with a suspended license, was the driver of one of the vehicles involved.<sup>19</sup> The police questioned the defendant for approximately fifteen minutes and then placed him in the back of the patrol car with the door closed. However, the police stated he was not under arrest.<sup>20</sup> Another officer questioned the defendant and removed him from the car to perform a sobriety test after which the defendant was again seated in the patrol car.<sup>21</sup> The door was left open due to the heat, but officers were placed next

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<sup>16</sup>118 Nev. 465, 49 P.3d 655 (2002).

<sup>17</sup>824 A.2d 539 (Vt. 2003).

<sup>18</sup>118 Nev. at 467, 49 P.3d at 657.

<sup>19</sup>Id.

<sup>20</sup>Id. at 468, 49 P.3d at 658.

<sup>21</sup>Id. at 468, 49 P.3d at 657.

to the door.<sup>22</sup> This court concluded that a reasonable person would not have felt free to leave under these circumstances.<sup>23</sup>

In Sprague, the Supreme Court of Vermont stated the police illegally seized a person who had been pulled over for a traffic violation.<sup>24</sup> During a traffic stop, the police asked the defendant if he would mind having a seat in the patrol car while the officer checked his license.<sup>25</sup> The court stated that a reasonable person would not have felt free to leave under the circumstances.<sup>26</sup>

We do not find this case analogous to McKellips or Sprague. Campos was wearing shorts in thirty-degree weather and stated at least two separate times that he was cold. Deputy Forbush asked Campos if he wished to sit in the back of the patrol car to keep warm. Additionally, Deputy Forbush asked Deputy Dove to stand by the door in case Campos wanted anything. Campos, unlike McKellips, was given a choice as to whether he wished to sit in the patrol car. Additionally, unlike in Sprague, Deputy Forbush did not order Campos into his car. We conclude that there is substantial evidence to support that this was not an illegal seizure.

#### Search of the Truck

Campos argues the district court should have suppressed the evidence of the methamphetamine because it was the result of an illegal

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<sup>22</sup>Id. at 468, 49 P.3d at 657.

<sup>23</sup>Id. at 470, 49 P.3d at 659.

<sup>24</sup>824 A.2d at 549.

<sup>25</sup>Id. at 542.

<sup>26</sup>Id. at 549.

search of his vehicle. Campos alleges that the search of his truck constitutes an illegal search since his consent to search was not voluntary and the search exceeded the scope of the consent. We disagree.

Campos gave his consent to the search both orally and in writing. The consent form stated, "I \_\_\_\_\_, hereby grant my consent to Dep. George Forbush officers of the HCSO to search the following vehicle described below including luggage, containers, and contents of all." Campos signed the form after having it explained to him in both Spanish and English, including being told that he did not have to consent. The record includes the videotape and supports the district court's findings that Deputy Forbush was not acting in an overbearing or domineering manner in seeking Campos' consent. Therefore, the district court reasonably found that Campos freely and voluntarily gave his consent.

The search did not exceed the scope of Campos' consent.

We are unpersuaded that a consent search may be validly qualified by the number of officers allowed to search, and we so hold. Once consent has been obtained from one with authority to give it, any expectation of privacy has been lost. We seriously doubt that the entry of additional officers would further diminish the consenter's expectation of privacy . . . .<sup>27</sup>

Deputy Dove was on the scene when Campos granted consent to search the truck and Officer Merschel arrived shortly thereafter. Campos gave his consent to the search and his waiver of his right to privacy was not further diminished by the participation of additional officers.

Additionally, the use of Time, the drug dog, did not exceed the scope of the consent. A dog sniff is only a search when it occurs in a place

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<sup>27</sup>United States v. Rubio, 727 F.2d 786, 797 (9th Cir. 1984).

where the dog or its handler is not entitled to be.<sup>28</sup> “Using a narcotics dog to carry out a consensual search of an automobile is perhaps the least intrusive means of searching because it involves no unnecessary opening or forcing of closed containers or sealed areas of the car unless the dog alerts.”<sup>29</sup> Additionally, the failure of the defendant to object to scope of the search or the use of the canine indicates the search was within the scope of the original consent.<sup>30</sup>

Campos’ consent extended to luggage, containers and the contents of the truck, thereby authorizing the officer to be in the bed of the truck. There is no indication that Campos attempted to limit the scope of the consent in any way, at any time. Therefore, we conclude that the use of Time did not exceed the scope of Campos’ consent to search the truck.

Finally, Campos contends that the search exceeded the scope of the consent when the officers removed the bed liner. The consent form that Campos signed included searching all containers. Furthermore, Officer Merschel and Deputy Forbush both testified that they asked Campos’ consent to remove the bed liner and that he agreed. Despite Campos’ contentions, this case is fundamentally different than State v. Johnson,<sup>31</sup> since Campos’ written and verbal consent specifically included looking in containers and removing the bed liner. In contrast, in Johnson,

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<sup>28</sup>Brian L. Porto, Annotation, Use of Trained Dog to Detect Narcotics or Drugs as Unreasonable Search in Violation of Fourth Amendment, 150 A.L.R. Fed. 399 § 2 (1998).

<sup>29</sup>U.S. v. Perez, 37 F.3d 510, 516 (9th Cir. 1994).


<sup>30</sup>Id. at 516.


<sup>31</sup>116 Nev. 78, 993 P.2d 44 (2000).


the officers only had a nebulous consent, based on which they proceeded to remove the backseat of the car, pull up the carpet and dismantle the dashboard.<sup>32</sup> We conclude that there is substantial evidence to support the district court's finding that Campos' consent included removal of the bed liner.

We conclude that substantial evidence supports the district court's finding that the search and seizure in this case was not unreasonable. Therefore, the denial of the motion to suppress was appropriate. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

\_\_\_\_\_, J.  
Becker

\_\_\_\_\_, J.  
Agosti

\_\_\_\_\_, J.  
Gibbons

cc: Hon. John M. Iroz, District Judge  
State Public Defender/Carson City  
Attorney General Brian Sandoval/Las Vegas  
Humboldt County District Attorney  
Humboldt County Clerk

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<sup>32</sup>Id. at 80, 993 P.2d at 45.