

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SARAH ELIZABETH GRAVELLE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondents.

No. 83781-COA

**FILED**

JUL 21 2022

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

*ORDER OF AFFIRMANCE*

Sarah Elizabeth Gravelle appeals from a judgment of conviction, pursuant to a jury verdict, of one count of possession of a controlled substance. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.<sup>1</sup>

On August 22, 2018, Officer Joshua Taylor, a member of a canine unit, initiated a traffic stop in Elko, after observing a vehicle that did not have a functioning license plate light.<sup>2</sup> As Officer Taylor was approaching the vehicle, he observed the passenger move his left hand down by the seat. Officer Taylor spoke to the passenger and driver through the passenger-side window and recognized the passenger as a convicted felon with violent tendencies. Concerned for his safety, Officer Taylor called for backup. After approximately a minute or two, additional officers, who were nearby, arrived at the scene to assist Officer Taylor. The passenger exited the vehicle, and Officer Dean Pinkham, patted him down for weapons, so

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<sup>1</sup>We note that Judge Nancy Porter made the pretrial rulings and presided over the jury trial.

<sup>2</sup>We do not recount the facts except as necessary for our disposition.

that Officer Taylor could speak to the driver, Gravelle, through the driver's side window.

Gravelle admitted to Officer Taylor to being a user of methamphetamine, including within the last five days. She also stated that she had just cleaned out her car after making a trip to California, so she did not get in trouble for anything in the vehicle. She also disclosed that there was a pocketknife and a marijuana pipe in the vehicle but that she was unsure if there was anything illegal in the vehicle. Officer Taylor asked Gravelle for permission to search her vehicle. Gravelle initially said yes, but then Officer Taylor observed her become "real nervous, like knee started bouncing, stuttered a couple of times," and she asked what would happen if she said no. Officer Taylor explained to Gravelle that he would continue his investigation, at which point, Gravelle withdrew her consent for him to search the vehicle.

Based on his discussions with Gravelle, Officer Taylor had Gravelle step out of the vehicle to conduct a pat down for weapons and specifically asked if she would give her consent to have her pants pockets searched. Gravelle consented. Officer Taylor found a white plastic cap in one of her pockets that he recognized as the cover to the plunger side of a hypodermic needle. Subsequently, Officer Taylor observed Gravelle shaking and attempting to distract him with conversation rather than allowing him to continue with his investigation. Suspecting that there were illegal drugs in the vehicle—based on finding the plastic cap, Gravelle's admission to having recently used methamphetamine, and her demeanor—Officer Taylor deployed his drug detection canine, already present at the scene, to investigate the outside of the vehicle by sniffing for the presence of illegal drugs. The canine alerted Officer Taylor that he had identified an odor of illegal drugs in the vehicle, and a search of the vehicle ensued. Upon

searching the vehicle, the officers located a backpack on the backseat; inside the backpack was a substance later determined to be methamphetamine, a marijuana pipe that Gravelle admitted was hers, and an orange cap from a hypodermic needle. The backpack also contained unidentified receipts, although one was related to a money transfer, with Gravelle's name on them. When Officer Taylor questioned Gravelle about her vehicle, she confirmed that no one else was allowed to use it.

Gravelle was charged with one count of possession of a controlled substance. After a preliminary hearing, Gravelle filed a motion to suppress the backpack and other evidence seized from the traffic stop, contending that the officers impermissibly prolonged the stop. The district court, relying upon the preliminary hearing transcript, denied the motion to suppress, finding that Officer Taylor had reasonable suspicion to prolong the stop and deploy the drug detection canine. Gravelle also filed a motion to dismiss, arguing that the district court should dismiss the case because the officers were in violation of NRS 289.830(1)(b), as they were not wearing body cameras as statutorily required by July 1, 2018, which was before the date of her arrest in August. The district court denied the motion to dismiss based on the body cameras, finding that even if body camera footage would have been material, dismissal would be improper because the officers did not act in bad faith and there was no remedy in the statute for a police department's failure to comply with fitting its officers with body cameras by July 1, or for a violation of the statute in failing to wear one.

The case then proceeded to a jury trial. After the jury deliberated for approximately one hour, the jury submitted a question to the district court asking permission to see an exhibit that was not entered into evidence but was listed on the exhibit list. The court discovered that the unofficial exhibit list that included all proposed exhibits was inadvertently

sent back with the jury for deliberations and listed several items that were not admitted into evidence. Items stated on the list included, "Certified JOC for case CR-FP-11-0469" and "Certified JOC for case 3:15-CR-0005-MMD-VPC." These proposed exhibits were copies of Gravelle's prior felony judgments of conviction (JOCs), which would only possibly have been admissible if she had testified in her defense, and she did not do so. The court had the list immediately removed from the jury room. While the court and the parties were deciding how to address the issue, the jury notified the court that it had come to a verdict. The attorneys agreed to hear the verdict and then consider their options afterward. The jury found Gravelle guilty of Count 1, possession of a controlled substance.

Gravelle moved for a mistrial due to the exhibit list being inadvertently given to the jury, and the district court conducted a hearing on the motion. At the hearing, without objection from Gravelle, the court questioned members of the jury regarding the case. The jurors testified that the case was not difficult to resolve, the issue of guilt was not close, and the exhibit list did not impact their deliberations. The court noted that the list itself did not describe the exhibits in any detail. Members of the jury also testified that although some jurors were curious about the exhibit list, the jurors did not know what the descriptions of the exhibits meant or what the letters JOC stood for. Ultimately, the district court denied the motion for a mistrial, noting that once the jury submitted a question about the improper list, the list was immediately removed from the jury room, and that the list was not prejudicial to Gravelle based its vagueness and on the jurors' responses.

On appeal, Gravelle argues that the district court (1) erred in finding that Officer Taylor had reasonable suspicion to prolong the stop and deploy the drug detection canine resulting in the search of the backpack and



seizure of the methamphetamine; (2) erred in finding that the case should not be dismissed because of a violation of NRS 289.830(1)(b)'s body camera requirement; and (3) erred by failing to declare a mistrial based on the inadvertently disclosed proposed exhibit list. Conversely, the State argues that the district court did not err in finding that Officer Taylor had reasonable suspicion of criminal activity, as the totality of the circumstances gave him reasonable suspicion of illegal drugs being present in the vehicle, and he was justified in detaining Gravelle long enough to deploy the drug detection canine, which ultimately lead to the search of the vehicle and seizure of the controlled substance. The State also argues that the district court did not err by denying Gravelle's motion to dismiss, as Gravelle cannot show that the officers acted in bad faith when the Elko Police Department delayed in implementing its body camera program due to lack of funding. The State further argues that the district court did not err by denying Gravelle's motion to declare a mistrial, as the jury was never exposed to any evidence that was not admitted at trial and Gravelle suffered no prejudice from the error of the proposed list initially being provided to the jury during deliberations. We agree with the State and address each of Gravelle's arguments on appeal in turn.

*The district court did not err in denying the motion to suppress*

Gravelle argues that the district court abused its discretion in denying her motion to suppress evidence seized from her vehicle because the officers impermissibly prolonged the traffic stop. When considering the denial of a motion to suppress, the appellate court reviews the district court's "legal conclusions de novo and its factual findings for clear error." *Lamb v. State*, 127 Nev. 26, 31, 251 P.3d 700, 703 (2011). "Suppression issues present mixed questions of law and fact." *Johnson v. State*, 118 Nev. 787, 794, 59 P.3d 450, 455 (2002), *overruled on other grounds by Nunnery v. State*, 127

Nev. 749, 772, 263 P.3d 235, 250-51 (2011). “The reasonableness of a seizure is a matter of law reviewed de novo.” *State v. Beckman*, 129 Nev. 481, 486, 305 P.3d 912, 916 (2013).

A constitutionally valid traffic stop requires a reasonable articulable suspicion that, when considered in conjunction with rational inferences from the totality of the circumstances, may then justify a warrantless search or seizure during the stop. *Walker v. State*, 113 Nev. 853, 865, 944 P.2d 762, 770 (1997). “An automobile stop is thus subject to the constitutional imperative that it not be unreasonable under the circumstances.” *Beckman*, 129 Nev. at 486, 305 P.3d at 916 (quoting *Whren v. United States*, 517 U.S. 806, 810 (1996)). Additionally, NRS 171.123(1) allows a police officer to “detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime.” Here, it is undisputed that Officer Taylor initiated a lawful traffic stop, as the license plate light on Gravelle’s vehicle was not illuminated.<sup>3</sup> See *Whren v. United States*, 517 U.S. at 810 (stating that “[a]s a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred”). Therefore, the initial stop was reasonable under the Fourth Amendment.

Moreover, the Nevada Supreme Court has noted that “[d]uring the course of a lawful traffic stop, officers may complete a number of routine tasks,” such as “ask for a driver’s license and vehicle registration, run a computer check, and issue a ticket.” *Beckman*, 129 Nev. at 486, 305 P.3d at 916. Officers are also permitted to “inquire about the occupants’ destination,

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<sup>3</sup>NRS 484D.100 and 484D.115 require vehicles to display lighted lamps illuminating the rear license plate.

route, and purpose.” *Id.* Additionally, law enforcement may conduct a brief, limited investigation for safety purposes. *Terry v. Ohio*, 392 U.S. 1, 27 (1968); *Dixon v. State*, 103 Nev. 272, 273, 737 P.2d 1162, 1163-64 (1987). Once the vehicle’s occupant is removed from the vehicle, law enforcement may conduct a frisk of the individual if there is a reasonable articulable suspicion that officer safety is a concern. *Pennsylvania v. Mimms*, 434 U.S. 106, 111-12 (1977). Reasonable articulable suspicion “require[s] something more than a police officer’s hunch.” *State v. Rincon*, 122 Nev. 1170, 1173, 147 P.3d 233, 235 (2006).

We conclude that the district court did not err in denying Gravelle’s motion to suppress. To the extent that Gravelle argues that Officer Taylor prolonged the stop by asking her questions rather than working on issuing her a ticket, officers are permitted to inquire about a driver’s purpose and travels. Accordingly, it was reasonable for Officer Taylor to inquire as to how Gravelle knew the passenger, as it related to the purpose of their journey. *See United States v. Rodriguez*, 802 F. App’x 90, 97 (5th Cir. 2020) (stating that the length of the traffic stop was reasonable when the officer questioned the appellant regarding how she knew the passenger, and she subsequently gave answers inconsistent with the passenger’s). Once Gravelle began volunteering information about her recent methamphetamine use and concern for the condition of the inside of her vehicle, this gave rise to Officer Taylor’s reasonable suspicion of drug-related criminal activity. *See United States v. Sanchez*, 417 F.3d 971, 975 (8th Cir. 2005) (stating that “[i]f, during a traffic stop, an officer develops a reasonable, articulable suspicion that a vehicle is carrying contraband, he has justification, under the Fourth Amendment, for a greater intrusion unrelated to the traffic offense” (quoting *United States v. Bloomfield*, 40 F.3d 910, 918 (8th Cir. 1994))).

Based on Gravelle's responses, Officer Taylor then asked Gravelle to step out of the vehicle for a pat down to check for weapons. Because the initial traffic stop was legitimate, Officer Taylor was able to order Gravelle out of the vehicle. *See Maryland v. Wilson*, 519 U.S. 408, 410 (1997) (holding that so long as there was a legitimate traffic stop, law enforcement, without more, can order the driver or passenger to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures); *see also Padilla v. State*, No. 73353, 2019 WL 6840114, at \*2 (Nev. Dec. 12, 2019) (Order of Reversal) ("If law enforcement's stop is valid, officers may request the occupant of a vehicle to step out of the car so that further inquiry may be pursued with greater safety to both." (internal quotation marks omitted)).

Thus, Officer Taylor was justified in requesting that Gravelle step out of the car and in patting Gravelle down for weapons. Specifically, Officer Taylor was justified because Gravelle admitted to having a pocketknife in the vehicle and was uncertain as to what else might be in the vehicle. She also consented to Officer Taylor searching her pockets. Upon searching her pockets, he uncovered the cap to a hypodermic needle. In finding the cap, coupled with Gravelle's statements admitting to recently using methamphetamine as well as her demeanor, Officer Taylor had reason to suspect illegal drug activity and reasonably deployed his drug detection canine. Therefore, Officer Taylor did not impermissibly extend the traffic stop by questioning Gravelle and asking her to step out of the vehicle.

To the extent Gravelle argues that Officer Taylor impermissibly prolonged the traffic stop, such that the circumstances of the stop did not fall under the limited exceptions for extending the duration of a traffic stop, we disagree. The Nevada Supreme Court has concluded that a prolonged traffic stop "may be reasonable in three limited circumstances: when the



extension of the stop was consensual, the delay was de minimis, or the officer lawfully receives information during the traffic stop that creates a reasonable suspicion of criminal conduct.” *Beckman*, 129 Nev. at 488, 305 P.3d at 917 (emphasis added).

First, a prolonged traffic stop is reasonable if the encounter becomes consensual. After all, a consensual encounter is not a seizure, and thus, the Fourth Amendment is not implicated. *Id.* at 488, 305 P.3d at 918. Here, Gravelle did not consent to a search of the vehicle, but as stated above, Officer Taylor was justified in asking Gravelle to step out of the vehicle and conducting a pat down. Additionally, Gravelle consented to a search of her pockets, in which Officer Taylor found a white plastic cap that he recognized as the cover of a hypodermic needle. While Gravelle did not consent to a search of her vehicle, this circumstance did not preclude Officer Taylor from further investigative efforts under *Beckman* as discussed below.

Second, a delay may be reasonable, based on the circumstances, if it is de minimis. Here, the record does not reflect a delay in waiting for a drug detection canine to arrive, as the drug detection canine was already at the scene and was deployed approximately ten minutes into the stop. Any delay in waiting for additional officers to arrive was due to the initial safety concerns with handling the passenger, which the United States Supreme Court has held is a legitimate concern for officers in effectuating traffic stops. *See Mimms*, 434 U.S. at 110 (“The safety of the officer—is both legitimate and weighty.”). Arguably, there was minimal delay, given both the need to ensure that the passenger was not armed before Officer Taylor initiated discussion with Gravelle and the fact the deployment of the drug detection canine occurred while the stop was ongoing. *See State v. Lloyd*, 129 Nev. 739, 742, 312 P.3d 467, 469 (2013) (concluding that nothing suggested that the officer prolonged the traffic stop, when the drug detection

canine unit arrived a few minutes before the officer finished processing the traffic violation). Thus, any alleged delay was de minimis.

Third, a prolonged stop is permissible if the results of the initial stop provide an officer with reasonable suspicion of criminal conduct, thereby creating a new Fourth Amendment event. *Beckman*, 129 Nev. at 489, 305 P.3d at 918. Whether the officer's articulated reasons for extending the seizure were reasonable "must be determined with an objective eye in light of the totality of the circumstances." *Lisenbee*, 116 Nev. at 1128, 13 P.3d at 950. Factors such as nervousness are part of a reasonable suspicion analysis. *Beckman*, 129 Nev. at 489-90, 305 P.3d at 918.

Here, Gravelle admitted to using methamphetamine within the last five days, told Officer Taylor that she had recently cleaned out her car to avoid getting in trouble but was not sure what was in it, exhibited nervous behavior, and had a cap to a hypodermic needle in her pocket. Logically, Officer Taylor had reason to suspect that there were illicit drugs in the vehicle and to deploy the drug detection canine approximately ten minutes into the stop. Once the canine alerted the officers to the presence of illegal drugs in the vehicle, the officers were justified in conducting a search of the vehicle. *See Lloyd*, 129 Nev. at 750, 312 P.3d at 474 ("[A] police officer who has probable cause to believe the car contains contraband or evidence of a crime must either seize the vehicle while a warrant is sought or search the vehicle without a warrant. Given probable cause, either course is constitutionally reasonable."); *see also Gama v. State*, 112 Nev. 833, 838 n.4, 920 P.2d 1010, 1014 n.4 (1996) (concluding that when a drug detection canine "alerted to the presence of drugs in [defendant's] car, the officers had an independent legal justification for searching [defendant's] car" (internal quotations omitted)). Therefore, to the extent Officer Taylor prolonged the traffic stop by deploying the drug detection canine, doing so was reasonable,

as there was reasonable suspicion that Gravelle had possession of illegal drugs. Accordingly, as any prolonged stop was constitutional, the district court did not abuse its discretion in denying Gravelle's motion to suppress the evidence seized from her vehicle as a result of the search.

*The district court did not abuse its discretion in denying the motion to dismiss*

This court reviews a district court's denial of a motion to dismiss charges for an abuse of discretion. *Hill v. State*, 124 Nev. 546, 550, 188 P.3d 51, 54 (2008). To succeed on a claim that the State failed to collect evidence, the defendant must first show that the evidence was material. *Daniels v. State*, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998). Pursuant to the *Daniels* test, evidence is material when there is a reasonable probability that, had the evidence been available, the result of trial would have been different. *Id.* If the evidence was material, the inquiry then turns to whether the "failure to gather evidence was the result of mere negligence, gross negligence, or a bad faith attempt to prejudice the defendant's case." *Id.*

Here, Gravelle fails to cite to authority that the district court erred in denying her motion to dismiss because the officers were not using body cameras at the time of her arrest in violation of the statute. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). Instead, Gravelle primarily characterizes her argument as a failure to collect evidence, arguing that potential body camera footage would have supported her theory that the passenger possessed the methamphetamine. As stated above, we apply the *Daniels* two-part test to consider the State's failure to collect evidence.

To the extent Gravelle argues that potential body camera footage would have been material, as it would have shown who had possession of the methamphetamine and whether reasonable suspicion was developed, Gravelle fails to demonstrate that the body camera footage would have resulted in a different outcome. To prevail on a *Daniels* claim, Gravelle must do more than speculate that the evidence might have been favorable to her case; she must provide evidence showing it would have made a difference. *See Randolph v. State*, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001) (rejecting a defendant's argument that potential evidence "would have been favorable to his case" as "mere speculation" where he offered no evidence to support his assertions); *see also Guerrina v. State*, 134 Nev. 338, 347, 419 P.3d 705, 713 (2018) (rejecting a defendant's *Daniels* argument that a videotape was material, as he pointed to no evidence to contradict the detective's testimony and "his arguments assume rather than demonstrate that the videotape evidence was material").

Both Officer Taylor and Officer Pinkham testified as to the events of the traffic stop, and Gravelle fails to specifically demonstrate what body camera footage would have provided in contrast to their testimony. Although she summarily contends that the footage *could* have shown that the passenger possessed the methamphetamine, she fails to point to anything in the record to support this contention. There is next to nothing in the record that indicates the passenger was in possession of the backpack at the time of the traffic stop or when it was found in the back seat of the vehicle or that anything in the backpack pointed to the passenger having sole possession of the methamphetamine, particularly as receipts with Gravelle's name on it were found in the backpack. Thus, the jury could have found that the illegal drugs in the backpack were solely hers, or belonging to both her and her passenger, to support the conviction.



Even assuming that the potential body camera footage was material, Gravelle has not demonstrated that the officers acted with negligence, gross negligence, or bad faith in failing to use body cameras. Due to a lack of funding, the officers did not have body cameras. Gravelle has not demonstrated that the officers could have obtained body cameras when the Elko Police Department had yet to secure them for its officers. See *Daniels*, 114 Nev. at 267, 956 P.2d at 115 (imposing no sanction when the failure to gather evidence was the result of mere negligence); see also *United States v. Christian*, 302 F. App'x 85, 87 (3d Cir. 2008) ("Absent some proof of ill-will, a failure to follow procedure is insufficient to support a finding of government bad faith."). Therefore, the district court did not abuse its discretion in denying the motion to dismiss based on the lack of body cameras.

*The district court did not abuse its discretion in denying the motion for a mistrial*

The trial court's judgment in denying a mistrial will not be overturned absent an abuse of discretion. *Rudin v. State*, 120 Nev. 121, 142, 86 P.3d 572, 586 (2004). In addition, the Nevada Supreme Court has stated that the factors to be considered in deciding whether to reverse a conviction due to a jury being provided inadmissible evidence are "whether the issue of innocence or guilt is close, the quantity and character of the error, and the gravity of the crime charged." *Winiarz v. State*, 107 Nev. 812, 814, 820 P.2d 1317 (1991) (quoting *Rowbottom v. State*, 105 Nev. 472, 486, 779 P.2d 934, 943 (1989), overturned on other grounds by *Bigpond v. State*, 128 Nev. 108, 116, 270 P.3d 1244 (2012)).

First, the issue of guilt was not close, as the methamphetamine was found in a backpack in Gravelle's car, which also contained receipts in Gravelle's name, a marijuana pipe that Gravelle admitted was hers, and an

orange cap for a hypodermic device matching the other end of the cap found in Gravelle's pocket. While Gravelle attempted to argue that the methamphetamine belonged to the passenger, the jury was instructed on the different theories of possession, including joint and constructive possession. Accordingly, the issue of guilt was not close, given the circumstantial evidence, the physical evidence found in the backpack, and all reasonable inferences, which suggest that Gravelle had constructive possession or joint possession of the methamphetamine.

Second, the character of the error was minimal. The exhibit list here did not describe any of the unadmitted exhibits in detail. Additionally, the exhibit list only referenced Gravelle's prior criminal convictions by using "JOC," and the jury did not actually have any of the unadmitted exhibits in its possession. Based on the nature of the proposed exhibit list and the district court's questioning, it is reasonable to conclude that the jury did not understand the contents of the list or what the abbreviation JOC meant. Furthermore, the jury had already reached its verdict while the court and the parties conferred about the jury's question, and they agreed to accept the verdict without answering the question. Furthermore, the jury reached its verdict without having the question about the exhibit list answered suggesting that the jury's question did not ultimately impact jury deliberations.

Finally, the gravity of the offense Gravelle was charged with was a category E felony, the lowest level felony offense, which can be distinguished from the facts in *Winiarz*, which dealt with a first-degree murder charge with use of a deadly weapon, the most serious offense, and the sentence of life in prison. In light of the foregoing, and because there

was strong evidence to support the conviction, we conclude that the district court did not abuse its discretion in denying Gravelle's motion for a mistrial.<sup>4</sup>

Therefore, we

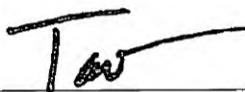
ORDER the judgment of conviction AFFIRMED.

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

  
\_\_\_\_\_, J.  
Bulla

TAO, J., concurring:

I concur in the judgment.

  
\_\_\_\_\_, J.  
Tao

cc: Hon. Alvin R. Kacin, District Judge  
Elko County Public Defender  
Attorney General/Carson City  
Elko County District Attorney  
Elko County Clerk

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<sup>4</sup>Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given our disposition of this appeal.