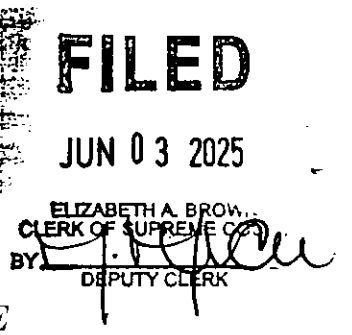
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KALEO GIONSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88243-COA



ORDER OF AFFIRMANCE

Kaleo Gionson appeals from a judgment of conviction, entered pursuant to a jury verdict, of driving under the influence of alcohol and/or controlled or prohibited substance, above the legal limit, with a prior felony driving under the influence conviction. Second Judicial District Court, Washoe County; Lynne K. Jones, Chief Judge.

First, Gionson argues the district court erred by denying his motion to suppress without conducting an evidentiary hearing and without making specific factual findings. While an evidentiary hearing is generally necessary for a motion to suppress, *see State v. Rincon*, 122 Nev. 1170, 1176-77, 147 P.3d 233, 238 (2006), where there are no disputed issues of material fact that will affect the outcome of the motion, a hearing is not required, *see Cortes v. State*, 127 Nev. 505, 509, 260 P.3d 184, 187-88 (2011), *citing United States v. Curlin*, 638 F.3d 562, 564 (7th Cir. 2011) ("District courts are required to conduct evidentiary hearings only when a substantial claim is presented and there are disputed issues of material fact that will affect the outcome of the motion [to suppress].").

In his motion to suppress, Gionson argued the police officer lacked reasonable suspicion to conduct the traffic stop and the ensuing

driving under the influence (DUI) investigation. Gionson's motion referenced and relied on the police officer's statements in the officer's report, and Gionson did not dispute or otherwise contest those statements in his motion. Thus, because Gionson failed to allege or demonstrate there were disputed issues of material fact, we conclude the district court did not err by ruling on his motion without first holding an evidentiary hearing. Further, the district court issued an order with sufficient factual findings for this court to review the issue on appeal. *See Rincon*, 122 Nev. at 1177, 147 P.3d at 238 (stating that district courts must issue "express factual findings when ruling on suppression motions").

Moreover, we discern no error by the district court's denial of the motion to suppress. The Fourth Amendment requires a law enforcement officer to have reasonable suspicion to justify an investigative traffic stop. *Id.* at 1173, 147 P.3d at 235. "A law enforcement officer has a reasonable suspicion justifying an investigative stop if there are specific, articulable facts supporting an inference of criminal activity." *Id.* The district court relied on the statements in the officer's report. In the report, the officer stated he observed Gionson drive through a traffic diversion and then drive over a firehose. The act of driving over the firehose constituted reasonable suspicion for the officer to pull Gionson over for a violation of NRS 484B.913 (prohibiting driving over a firehose). Further, once the officer pulled Gionson over, the officer noticed Gionson's slurred speech, his watery and bloodshot eyes, and the odor of alcohol on Gionson's breath. Further, the officer observed a half bottle of vodka in the backseat. These facts constituted reasonable suspicion to conduct a DUI investigation. Therefore, we conclude Gionson is not entitled to relief on this claim.

Second, Gionson argues the district court erred at sentencing by admitting a prior felony DUI conviction from Alaska. The Alaska conviction was used to enhance Gionson's DUI in this case to a felony. In order to use the Alaska conviction to enhance Gionson's Nevada conviction, the Alaska statute underlying the conviction had to punish the same or similar conduct as that proscribed by the Nevada statute at issue, NRS 484C.110. *See Sindelar v. State*, 132 Nev. 683, 686, 382 P.3d 904, 906 (2016). "The criminalized conduct need not be identical" but "may merely be the same kind of species." *Id.* (quotation marks omitted).

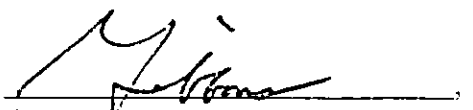
The Alaska statute criminalizes DUI when the person's blood alcohol concentration is .08 or higher within four hours of driving. *See* Alaska Stat. § 28.35.030(a)(2). The Nevada statute criminalizes DUI when the person's blood alcohol concentration is .08 or higher within two hours of driving. *See* NRS 484C.110(1)(c). Gionson argues the different time frames between the two statutes render the Alaska statute sufficiently different from Nevada's so as to not punish the same or similar conduct. We disagree.

Both statutes criminalize driving under the influence of intoxicating liquor, both require a blood alcohol concentration of .08 or higher, and both punish a third DUI within a specified time period as a felony. *See Sindelar*, 132 Nev. at 687, 382 P.3d at 906 (finding that Nevada and Utah's statutes prohibited the same or similar conduct where the prohibited conduct was essentially the same, the blood alcohol concentration required was .08 or higher, and both had recidivism windows). We conclude the two-hour time difference within which to detect the blood alcohol concentration is not so different such that Alaska's statute does not punish the same or similar conduct as Nevada's statute. *Cf. Blume v. State*, 112 Nev. 472, 474-75, 915 P.2d 282, 283-84 (1996) (concluding that,

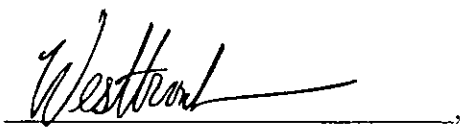
even though the blood alcohol weight required in California was lower, it still constituted the same or similar conduct that was prohibited in Nevada). Therefore, we conclude that the district court did not abuse its discretion by admitting the prior Alaska conviction at sentencing.

Having concluded that Gionson is not entitled to relief, we ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Bulla



_____, J.
Gibbons



_____, J.
Westbrook

cc: Hon. Lynne K. Jones, Chief Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk