

IN THE SUPREME COURT OF THE STATE OF NEVADA

TADZIU EWING,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38399

**FILED**

**NOV 30 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of driving under the influence (DUI), third offense. The district court sentenced appellant Tadziu Ewing to serve a prison term of 12 to 48 months.

Ewing first contends that his conviction should be reversed because the district court failed to conduct a sufficient canvass to determine whether appellant knowingly and intelligently waived his right to testify. We disagree. While "it is good practice" for a trial court to advise a defendant of his right to testify, we have previously concluded that such an advisement is not mandatory for purposes of a valid conviction.<sup>1</sup>

In the instant case, the record reveals that Ewing knew that he had the right to testify. The district court advised Ewing of his right not to testify at the first of his two trials. Additionally, during jury deliberations in the second trial, defense counsel informed the district court that she had advised Ewing of his right to testify and that upon her advice, Ewing had decided not to testify. Likewise, in the course of the second trial, Ewing admitted that he knew he had the right to testify but that he had decided not to do so. Finally, there is no evidence in the record that Ewing was coerced or misled into not testifying. Rather, the record indicates that Ewing had two prior DUI convictions, which suggests that Ewing may have decided not to take the stand to avoid being

---

<sup>1</sup>Phillips v. State, 105 Nev. 631, 633, 782 P.2d 381, 382 (1989).

01-20038

impeached with his prior convictions.<sup>2</sup> We therefore conclude that Ewing's contention lacks merit.

Ewing next contends that the district court erred in using his second-offense DUI conviction for enhancement purposes. Specifically, Ewing contends that his second-offense DUI conviction was constitutionally infirm because there was no indication that he was informed of the sentencing consequences arising from his guilty plea in that case. We disagree.

To use a prior misdemeanor conviction for enhancement purposes, the State has the "burden of proving either that the defendant was represented by counsel or validly waived that right, and that the spirit of constitutional principles was respected in the prior misdemeanor proceedings."<sup>3</sup> "[I]f the state produces a record of a judgment of conviction which shows that the defendant was represented by counsel, then it is presumed that the conviction is constitutionally adequate."<sup>4</sup> Once the State has demonstrated that the defendant was represented by counsel, the burden is on the defendant to present evidence to rebut the presumption that the conviction is constitutionally adequate.<sup>5</sup>

Here, the State produced a certified record of a judgment of conviction for Ewing's second offense DUI. The judgment showed that Ewing was represented by counsel prior to entry of his guilty plea, giving rise to the presumption that his conviction was constitutionally adequate.<sup>6</sup> Further, Ewing failed to present any evidence to rebut the presumption that his second-offense DUI conviction was constitutionally adequate. Therefore, we conclude that the district court did not err in using Ewing's second-offense DUI for enhancement purposes.

---

<sup>2</sup>See id.

<sup>3</sup>Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991).

<sup>4</sup>Davenport v. State, 112 Nev. 475, 478, 915 P.2d 878, 880 (1996).

<sup>5</sup>Id.

<sup>6</sup>Although not required by Dressler and Davenport, we note that the judgment of conviction expressly provided that the district court had informed Ewing of the constitutional rights he was waiving, the charges against him, and the range of punishments accorded under the law, and that Ewing acknowledged he understood the charges and the range of punishments.

Finally, Ewing contends that the district court erred in denying his motion to suppress evidence because the law enforcement officers who stopped his vehicle did not have reasonable suspicion to do so. Particularly, Ewing contends that the citizen's tip that he was driving a vehicle while intoxicated was unreliable and uncorroborated, and therefore could not give rise to reasonable suspicion.

NRS 171.123(1) authorizes 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." "[T]he police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion."<sup>7</sup> The articulable facts supporting reasonable suspicion may be based on an informant's tip so long as the tip is sufficiently reliable.<sup>8</sup>

Here, we conclude that the district court's conclusion that reasonable suspicion existed in support of the stop of Ewing's vehicle is supported by substantial evidence. Particularly, an identifiable citizen, who testified at the suppression hearing and trial, informed a law enforcement dispatcher that two men drove away in a truck and were "drinking beer and seem[ed] to be a little bit intoxicated." The citizen gave the license number and a description of the vehicle. At the evidentiary hearing, the citizen testified that he believed that the driver of the vehicle was intoxicated because he was: (1) loud, argumentative, and yelling profanities in a public place; (2) drinking from a plastic cup with a gold-colored liquid that he assumed was beer; and (3) walked with an unsteady gait.

Based solely on the citizen's tip that a driver was under the influence of alcohol, law enforcement officials stopped Ewing's vehicle. One of the officers testified he observed that Ewing's eyes were watery and bloodshot and that Ewing smelled of alcohol. Because Ewing subsequently failed some field sobriety tests, he was arrested for DUI. Three blood draws were taken thirty minutes apart, and laboratory tests of Ewing's

---

<sup>7</sup>Terry v. Ohio, 392 U.S. 1, 21 (1968).

<sup>8</sup>See State v. Sonnenfeld, 114 Nev. 631, 958 P.2d 1215 (1998).

blood indicated that his blood alcohol level was .189, .174, and .167, respectively.

Because the identified citizen-informant supplied sufficient detail to support a stop and detention, and the officer satisfactorily corroborated the report, we conclude that the stop and investigatory detention was supported by reasonable suspicion and did not violate Ewing's Fourth Amendment rights. Accordingly, the district court did not err in denying Ewing's motion to suppress evidence.

Having considered Ewing's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Young, J.  
Young

Agosti, J.  
Agosti

Leavitt, J.  
Leavitt

cc: Hon. Connie J. Steinheimer, District Judge  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe County Public Defender  
Washoe County Clerk