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### **McCord v. State, 139 Nev. Adv. Op. (Dec. 28, 2023)**

Evan Sommer

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*McCord v. State*, 139 Nev. Adv. Op. (Dec. 28, 2023)<sup>1</sup>

A LICENSE PLATE FRAME THAT PARTIALLY COVERS A LICENSE PLATE DOES NOT VIOLATE NRS 482.275(4) AND DOES NOT ESTABLISH PROBABLE CAUSE.

**Summary**

In the case of *McCord vs. State*, the Nevada Supreme Court clarified the interpretation of NRS 482.275(4) regarding license plates.<sup>2</sup> The court ruled that a license plate frame partially covering the plate does not constitute “foreign material” making the plate illegible. Furthermore, it established that such a circumstance does not provide probable cause for a traffic stop. This decision addressed the issue of what constitutes a violation of the license plate visibility law, directly impacting the legitimacy of the traffic stop done by the Washoe County Sheriff’s Office on Mr. McCord and the subsequent evidence obtained, leading to the reversal of McCord’s conviction.

**Background**

Law enforcement used a confidential informant to arrange the sale of a large amount of methamphetamine with David McCord. The informant had previously conducted a successful drug transaction with McCord approximately one week before. Law enforcement monitored the informant’s communications with McCord, and obtained information regarding McCord’s identity, how much methamphetamine he was carrying, his approximate location, and a vehicle description. Sergeant Ned Nemeth of the Regional Narcotics Unit was informed about McCord’s involvement in drug transactions and subsequently initiated surveillance.

Sergeant Nemeth observed McCord’s vehicle and specifically noted an issue with the car’s license plate, which he believed provided probable cause for a traffic stop. The car’s license plate frame, acquired from a car dealership, partially obscured the word “Nevada,” which Nemeth deemed to be a violation of NRS 482.275(4).<sup>3</sup> Based on this, Nemeth initiated a traffic stop.

During the stop, a scale with a white, crystalline substance was discovered in McCord’s possession. This discovery led to further investigation, after McCord declined providing consent to search the vehicle, leading to a canine search that discovered methamphetamine in the car.

The legality of the traffic stop, particularly the interpretation of the license plate obstruction under NRS 482.275(4), became a key point of contention in the lower court.<sup>4</sup> McCord’s defense argued that the stop lacked probable cause and was therefore a violation of the Fourth Amendment. Regarding Miranda rights, McCord argued that he was in a custodial setting during the traffic stop and thus should have received Miranda warnings, particularly when he was questioned about a scale found in his possession. McCord filed motions to suppress the evidence obtained during the stop and statements made to law enforcement, arguing the stop was unconstitutional and he was in a custodial interrogation without Miranda warnings. The trial court denied these motions.

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<sup>1</sup> By Evan Sommer.

<sup>2</sup> NEV. REV. STAT § 482.275(4) (2022).

<sup>3</sup> NEV. REV. STAT § 482.275(4) (2022).

<sup>4</sup> NEV. REV. STAT § 482.275(4) (2022).

The district court found that the stop of McCord’s vehicle by Sergeant Nemeth was legal, based on the partial obstruction of the license plate, which was considered a violation of NRS 482.275(4).<sup>5</sup> Additionally, the court determined that the duration and conduct of the stop, including the questioning of McCord and the use of a police canine, did not violate McCord’s constitutional rights. The district court ruled that the situation did not constitute a custodial interrogation requiring Miranda warnings. The court determined that the stop’s environment, the nature of the questioning, and the lack of any formal arrest or restraint comparable to a formal arrest meant that McCord was not in custody for Miranda purposes. Consequently, the court denied McCord’s motions to suppress the evidence obtained during the stop and the statements he made during his interaction with law enforcement. This led to McCord’s conviction in the lower court.

## **Discussion**

### ***Proper Display of License Plates***

The main issue in the case was the interpretation of NRS 482.275(4), which governs the display of license plates in the state of Nevada.<sup>6</sup> McCord argued that his partially obscured license plate was still legible, and the frame shouldn’t be deemed “foreign material” under the statute. However, the Nevada Supreme Court focused solely on the alleged violation of NRS 482.275(4) for probable cause.<sup>7</sup>

The Court considered the statute’s requirement for license plates to be “clearly legible” and not obscured by “foreign materials.” The analysis balanced this statutory interpretation against the broader context of Fourth Amendment protections against unreasonable searches and seizures. *Whren v. United States* set a pivotal precedent, as it established that any traffic violation can provide police with probable cause for a stop.<sup>8</sup> *State v. Rincon* was cited, as it highlighted the balance between public interest and individual rights in determining the reasonableness of a stop.<sup>9</sup>

### ***Whether the license plate was free from foreign materials***

The Nevada Supreme Court reviewed whether the district court erred in concluding that a license plate frame constituted “foreign material” under NRS 482.275(4).<sup>10</sup> McCord argued, citing to *United States v. Flores*, that license plate frames are commonly used and do not usually obscure essential plate information.<sup>11</sup> The district court recognized the widespread use of frames, including those provided by dealerships and for personal expression.

Writing for the Court, Chief Justice Lidia S. Stiglich considered the overall focus of NRS 482.275(4) on visibility and legibility, did not believe the Legislature intended to include all plate frames as “foreign materials.”<sup>12</sup> Interpreting the statute, it aimed to ensure clear display of registration information for vehicle identification. The Court noted that a broad interpretation of

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<sup>5</sup> NEV. REV. STAT § 482.275(4) (2022).

<sup>6</sup> NEV. REV. STAT § 482.275(4) (2022).

<sup>7</sup> NEV. REV. STAT § 482.275(4) (2022).

<sup>8</sup> *Whren v. United States*, 517 U.S. 806, 809-10 (1996).

<sup>9</sup> *State v. Rincon*, 122 Nev. 1170, 1175, 147 P.3d 233, 236 (2006).

<sup>10</sup> NEV. REV. STAT § 482.275(4) (2022).

<sup>11</sup> *United States v. Flores*, 798 F.3d 645, 649 (7th Cir. 2015).

<sup>12</sup> NEV. REV. STAT § 482.275(4) (2022).

“foreign materials” to include any frame could lead to absurd results, as noted in *State v. Carter* and *Whitfield v. United States*.<sup>13</sup> By holding that license plate frames often given by car dealerships would create probable cause for police to conduct traffic stops, the Court would essentially give police great ability to pull over a large majority of Nevada drivers. The Court stated that this does not further the purpose of NRS 482.275(4) in ensuring that vehicles can be identified.<sup>14</sup> *Carter* and *Whitfield* both support the view, put forth by McCord, that frames that don’t obscure necessary information do not constitute a violation. Chief Justice Stiglich noted that the Legislature is empowered to enact traffic laws that outlaw license plate frames, it can do so. Until then, the Court will not interpret NRS 482.275(4) as doing so.<sup>15</sup>

***Whether the license plate was clearly legible***

McCord argued that the district court erred in concluding that he violated NRS 482.275(4) when the license plate frame completely covered the phrase “Home Means Nevada” at the bottom of the plate and partially obscured the word “NEVADA” at the top of the license plate.<sup>16</sup> The State contended that McCord’s license plate violated NRS 482.275(4) because the frame “intrudes onto the written portion of the plate itself.”<sup>17</sup>

***A license plate frame covering nonessential information imprinted on a license plate does not violate NRS 482.275(4)***

McCord argued that the frame, covering the phrase “Home Means Nevada,” was inconsequential since it did not obscure necessary identifying information. The Court agreed, emphasizing the legislative intent behind NRS 482.275(4), which is to ensure the clear display of essential registration information for vehicle identification. Particularly, the Court pointed to *Whitfield v. United States*, where it was held that obscuring non-critical information, like a state nickname, does not justify a traffic stop. The Court recognized that license plates must display specific information as per NRS 482.270(5), and a frame covering nonessential details does not hinder this requirement.<sup>18</sup>

***A license plate is properly displayed if the necessary information is readily identifiable***

The Court then turned to whether McCord’s license plate was properly displayed, with the necessary information readily identifiable, despite being partially covered by his car frame. McCord argued that the frame’s partial covering of the state name did not impede the identification of the plate, while the district court contended it constituted a violation of NRS 482.275(4).<sup>19</sup> The Court considered the statute’s intention, ensuring a “clearly visible” and

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<sup>13</sup> *State v. Carter*, 255 A.3d 1139, 1156 (N.J. 2021); *Whitfield v. United States*, 99 A.3d 650, 652 (D.C. Cir. 2014).

<sup>14</sup> NEV. REV. STAT § 482.275(4) (2022).

<sup>15</sup> By Chief Justice Stiglich at 9.

<sup>16</sup> NEV. REV. STAT § 482.275(4) (2022).

<sup>17</sup> By Chief Justice Stiglich at 9.

<sup>18</sup> By Chief Justice Stiglich at 10.

<sup>19</sup> *Id.*

“clearly legible” plates for vehicle identification.<sup>20</sup> Referencing cases like *State v. Hayes* and *State v. Hinojosa*, Chief Justice Stiglich emphasized the importance of clear license plate display for law enforcement.<sup>21</sup> The Court accounted for the common use of license plate frames, which weighed in McCord’s favor, while also accounting for the potential misuse of traffic stops. Ultimately, the Court sided with McCord, concluding that the partial obstruction did not hinder the legibility of essential information on the plate and thus did not violate the statute.<sup>22</sup> This interpretation aimed to limit the discretion of law enforcement in conducting pretextual stops, possibly giving rise to discriminatory stops.

Wanting to avoid these possible discriminatory concerns, the Court looked to *State v. Carter* and its narrow reading of New Jersey’s license plate display law.<sup>23</sup> The Court wanted the focus to be on the legibility of the license plate and not on the fact that there was a slight obstruction by the frame.<sup>24</sup> Further citing to the United States Court of Appeals for the Seventh Circuit, using the facts from *United States v. Flores* as a contrast, the Court noted that when the officer in question can immediately identify the issuing state when looking at a partially obstructed plate, then the plate is legible.<sup>25</sup>

## **Conclusion**

The Nevada Supreme Court determined that the license plate frame on McCord’s vehicle, which partially covered the plate, did not constitute “foreign material” as per NRS 482.275(4). Because of this, Deputy Nemeth lacked probable cause for the traffic stop based on McCord’s alleged violation of NRS 482.275(4). Consequently, the district court’s decision to deny McCord’s motion to suppress evidence obtained during the traffic stop was deemed to be erroneous. The Nevada Supreme Court reversed McCord’s conviction and remanded the matter for further proceedings consistent with their opinion.

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<sup>20</sup> *Id.*

<sup>21</sup> *State v. Hayes*, 660 P.2d 1387, 1389 (Kan. Ct. App. 1983); *Hinojosa v. State*, 319 S.W.3d 258, 265 (Ark. 2009).

<sup>22</sup> By Chief Justice Stiglich at 11.

<sup>23</sup> *Carter*, 255, A3d at 1157.

<sup>24</sup> By Chief Justice Stiglich at 12.

<sup>25</sup> *Flores*, 798 F.3d at 647.