10-17-2011

State v. Gwin Respondent's Brief Dckt. 38636

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 38636
	)	
vs.	)	
	)	
ROY THOMPSON GWIN,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

HONORABLE JOHN K. BUTLER
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

RUSSELL J. SPENCER
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
PLAINTIFF-RESPONDENT

ELIZABETH A. ALLRED
Deputy State Appellate
Public Defender
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

ATTORNEY FOR
DEFENDANT-APPELLANT

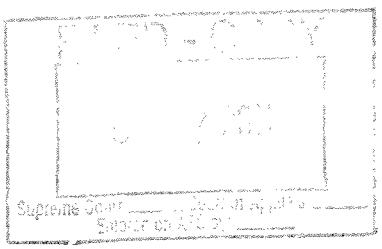


TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

Nature of the Case 1

Statement of the Facts and Course of the Proceedings 1

ISSUES 2

ARGUMENT 3

I. Gwin has Failed to Show Error in the District Court's Denial of his Suppression Motion 3

A. Introduction 3

B. Standard of Review 3

C. The District Court Correctly Denied Gwin's Suppression Motion 4

II. Gwin has Failed to Establish an Abuse of the District Court's Sentencing Discretion 7

CONCLUSION 10

CERTIFICATE OF SERVICE 11

TABLE OF AUTHORITIES

CASES **PAGE**

Adams v. Williams, 407 U.S. 143 (1972) 5

Alabama v. White, 496 U.S. 325 (1990) 4, 5

Delaware v. Prouse, 440 U.S. 648 (1979) 4

Dunlap v. State, 126 Idaho 901, 894 P.2d 134 (Ct. App. 1995) 5

Florida v. J.L., 529 U.S. 266 (2000) 5

Illinois v. Gates, 462 U.S. 213 (1983) 5

State v. Atkinson, 128 Idaho 559, 916 P.2d 1284 (Ct. App. 1996) 3

State v. Baker, 136 Idaho 576, 38 P.3d 614 (2001) 8

State v. Flowers, 131 Idaho 205, 953 P.2d 645 (Ct. App. 1998) 4

State v. Gallegos, 120 Idaho 894, 821 P.2d 949 (1991) 4

State v. Larson, 135 Idaho 99, 15 P.3d 334 (Ct. App. 2000) 5

State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000) 8

State v. O'Bryan, 96 Idaho 548, 531 P.2d 1193 (1975) 5

State v. Oliver, 144 Idaho 722, 170 P.3d 387 (2007) 8, 9

State v. Peterson, 133 Idaho 44, 981 P.2d 1154 (Ct. App. 1999) 5

State v. Puga, 131 Idaho 89, 952 P.2d 904 (Ct. App. 1997) 9

State v. Rawlings, 121 Idaho 930, 829 P.2d 520 (1992) 4

State v. Schevers, 132 Idaho 786, 979 P.2d 659 (Ct. App. 1999) 3

State v. Schumacher, 136 Idaho 509, 37 P.3d 6 (Ct. App. 2001) 4

State v. Sheldon, 139 Idaho 980, 88 P.3d 1220 (Ct. App. 2003). 4, 7

State v. Toohill, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982).....8

State v. Valdez-Molina, 127 Idaho 102, 897 P.2d 993 (1995).....3

State v. Willoughby, 147 Idaho 482, 211 P.3d 91 (2009).....3

State v. Zichko, 129 Idaho 259, 923 P.2d 966 (1996).....7

Terry v. Ohio, 392 U.S. 1 (1968).....4

United States v. Cortez, 449 U.S. 411 (1981).....4

United States v. Sokolow, 490 U.S. 1 (1989).....4

STATEMENT OF THE CASE

Nature of the Case

Roy T. Gwin appeals, challenging the district court's denial of his motion to suppress, and the unified sentence of 20 years with three years fixed it imposed upon his conviction for driving under the influence with a persistent violator enhancement.

Statement of the Facts and Course of the Proceedings

The district court related the following factual background for this case:

> On August 9, 2010 the police were notified of a physical disturbance on Golf Course Road. Deputy McRoberts arrived on the scene and spoke with David Gwin who stated he and his father had been in an altercation and that his father had left driving a green, Chevrolet Blazer. Deputy Summers was notified by McRoberts to locate a green, Chevrolet Blazer driving in the area and Summers observed such a vehicle and initiated [a] traffic stop. The driver was David Gwin's father, Roy Gwin, the defendant. Deputy Summers after the traffic stop determined that the defendant was under the influence of alcohol and the defendant was then arrested for DUI.

(R., pp.112-13.)

The State charged Gwin with felony driving under the influence with a persistent violator enhancement. (R., pp.69-74.) Gwin filed a motion to suppress evidence, challenging the reasonable suspicion for the initial traffic stop. (R., pp.95-96.) The district court denied Gwin's suppression motion. (R., pp.112-19.) Gwin entered a conditional guilty plea, reserving the right to appeal the district court's denial of his suppression motion. (R., pp.143-44.) The district court entered judgment of conviction on the felony driving under the influence, finding Gwin to be a persistent violator of the law, and imposed a unified sentence of 20 years with three fixed. (R., pp.151-56.) Gwin filed a timely notice of appeal. (R., pp.158-60.)

ISSUES

Gwin states the issues on appeal as:

> 1. Did the district court err when it denied Mr. Gwin's motion to suppress?
>
> 2. Did the district court abuse its discretion when it imposed a unified sentence of twenty years, with three years fixed, upon Mr. Gwin following his plea of guilty to felony driving under the influence and a persistent violator enhancement?

(Appellant's brief, p.4.)

The State rephrases the issues as:

1. Has Gwin failed to show error in the district court's denial of his motion to suppress?

2. Has Gwin failed to establish an abuse of discretion by the district court in imposing a unified sentence of 20 years with three years fixed upon Gwin's conviction for felony driving under the influence with a persistent violator enhancement?

ARGUMENT

I.
Gwin has Failed to Show Error in the District Court's Denial of his Suppression Motion

A. Introduction

Although he concedes that officers had "reasonable suspicion to conduct an investigative detention," Gwin asserts that they "did not have reasonable suspicion to conduct a traffic stop," and therefore the district court erred in denying his suppression motion. (Appellant's brief, pp.5-8.) Gwin's argument that there are different reasonable suspicion standards for a "detention" and a "traffic stop" is without merit. He has failed to show either clear error in the district court's factual findings, or error in its application of law to those findings. The district court's denial of his suppression motion should therefore be affirmed.

B. Standard of Review

On review of a ruling on a motion to suppress, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence and exercises free review of the trial court's determination as to whether constitutional standards have been satisfied in light of the facts. State v. Willoughby, 147 Idaho 482, 485-86, 211 P.3d 91, 94-95 (2009); State v. Atkinson, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. State v. Valdez-Molina, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); State v. Schevers, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

C. The District Court Correctly Denied Gwin's Suppression Motion

A routine traffic stop by a police officer constitutes a seizure of the vehicle's occupants and implicates the Fourth Amendment's prohibition against unreasonable searches and seizures. Delaware v. Prouse, 440 U.S. 648, 653 (1979); State v. Flowers, 131 Idaho 205, 208, 953 P.2d 645, 648 (Ct. App. 1998). Because a routine traffic stop is normally limited in scope and duration, it is analyzed under the principles of an investigative detention as set forth in Terry v. Ohio, 392 U.S. 1 (1968). Prouse, 440 U.S. at 653–54; State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). "An investigative detention is permissible if it is based upon specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity." Sheldon, 139 Idaho at 983, 88 P.3d at 1223 (citing Terry, 392 U.S. at 21; United States v. Cortez, 449 U.S. 411, 417 (1981)).

Reasonable suspicion must be based on specific articulable facts and the rational inferences that naturally follow from those facts. Terry, 392 U.S. at 21; State v. Gallegos, 120 Idaho 894, 896–97, 821 P.2d 949, 951–52 (1991). While the quantity and quality of information necessary to establish reasonable suspicion is less than that necessary to establish probable cause, Alabama v. White, 496 U.S. 325, 330 (1990), reasonable suspicion requires more than a mere hunch or "inchoate and unparticularized suspicion" United States v. Sokolow, 490 U.S. 1, 7 (1989). The reasonableness of the police officer's suspicion is evaluated based upon the totality of the circumstances at the time of the seizure. Cortez, 449 U.S. at 417–18; State v. Rawlings, 121 Idaho 930, 932, 829 P.2d 520, 522 (1992); State v. Schumacher, 136 Idaho 509, 515, 37 P.3d 6, 12 (Ct. App. 2001).

Reasonable suspicion may be supplied by an informant's tip or a citizen's report of suspected criminal activity. State v. Larson, 135 Idaho 99, 101, 15 P.3d 334, 336 (Ct. App. 2000).

> Whether information from such a source is sufficient to create reasonable suspicion depends upon the content and reliability of the information presented by the source, including whether the informant reveals her identity and the basis of her knowledge. See Alabama v. White, 496 U.S. 325, 330 (1990); Illinois v. Gates, 462 U.S. 213 (1983); Adams v. Williams, 407 U.S. 143, 146–47 (1972). An anonymous tip, standing alone, is generally not enough to justify a stop because "an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity...." White, 496 U.S. at 329. See also Florida v. J.L., 529 U.S. 266, 269 (2000). However, when the information from an anonymous tip bears sufficient indicia of reliability or is corroborated by independent police observations, it may provide justification for a stop. White, 496 U.S. at 331. Where the information comes from a known citizen informant rather than an anonymous tipster, the citizen's disclosure of her identity, which carries the risk of accountability if the allegations turn out to be fabricated, is generally deemed adequate to show veracity and reliability. Gates, 462 U.S. at 233; Williams, 407 U.S. at 146–47; State v. O'Bryan, 96 Idaho 548, 552, 531 P.2d 1193, 1197 (1975); State v. Peterson, 133 Idaho 44, 47, 981 P.2d 1154, 1157 (Ct. App. 1999); Dunlap v. State, 126 Idaho 901, 907, 894 P.2d 134, 140 (Ct. App. 1995).

Id.

The district court found that the police had reasonable suspicion to stop Gwin as they performed their investigative functions. (R., pp.118-19.) This determination is amply supported by the Record. Police received an anonymous tip that there was an altercation taking place in the middle of Golf Course Road. (Tr., p.7, L.8 – p.8, L.8; p.20, L.16 – p.21, L.1.) Officers McRoberts and Summers, in separate cars, went to investigate the disturbance. (Tr., p.16, Ls.7-17.) Officer McRoberts found David Gwin in the vicinity of the reported altercation and contacted him. (Tr., p.8, L.12 – p.9, L.5.)

David Gwin's statement and appearance corroborated the information from the anonymous tipster regarding the altercation; he confirmed that he was a participant in the fight and told police that his father, the other participant, was in the vicinity driving a green Chevy Blazer. (Tr., p.9, L.19 – p.13, L.1.) Shortly thereafter, Officer Summers spotted a green Chevy Blazer in the near vicinity that matched the description and stopped the vehicle to investigate. (Tr., p.24, Ls.2-21.) This occurred in the early hours of a Monday morning, in a rural area, when there was very little traffic. (R., pp.14-17.)

Denying Gwin's suppression motion, the district court noted:

> The deputies new [sic] at the time that the traffic stop was made that the defendant and his son had been in a fight. The altercation resulted in a citizen's call to dispatch. The defendant had left his son stranded in the early morning hours. The deputies had only one version of the altercation. The defendant's vehicle was spotted in the area of the altercation and the traffic stop was in the vicinity of the altercation. This court is persuaded that given the totality of the circumstances, Deputy Summers had a reasonable and articulable suspicion that the driver of the stopped vehicle was the same as the individual involved in the altercation, a possible crime. Given the nature of the altercation, an officer could have thought that the crimes of battery or assault could have been committed. This court is not convinced that just because David Gwin did not appear to be physically injured and did not wish to press charges that no crime may have been committed and further investigation was unwarranted. This court finds that it is reasonable to stop a green, Chevrolet Blazer; near the scene of the altercation, at 2:00 a.m. on a Monday, when few cars are likely to be on the road, let alone matching the description; based on the totality of the circumstances. This combination of circumstances allowed for a reasonable and articulable suspicion justifying the vehicle stop to further investigate the report of the altercation between the defendant and his son.

(R., pp.118-19.) Gwin has failed to establish clear error in any of these factual findings, and Gwin has failed to establish error in the district court's application of the law to those factual findings.

Instead Gwin argues that, though the police had reasonable suspicion to conduct an investigative detention, they lacked reasonable suspicion to enforce a traffic stop on Gwin, because his son was not pressing charges. (Appellant's brief, pp.6-8.) In addition to its self-contradictory nature, this argument that a victim willing to press charges is a necessary element of reasonable suspicion is unsupported by any legal authority and need not be addressed by this Court on appeal. State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). Rather, to perform an investigative detention, police only need articulable facts that justify their suspicion "that the detained person is, has been, or is about to be engaged in criminal activity." Sheldon, 139 Idaho at 983, 88 P.3d at 1223. As the district court correctly noted below, "whether or not David Gwin wants to press charges, that does not factor in as to whether there still was a crime committed or possibly committed." (Tr., p.33, Ls.19-22.) Having failed to establish either clear error in the district court's factual findings or error in the application of relevant legal standards to those findings, Gwin has failed to show any error in the district court's denial of his suppression motion. The judgment of the district court should be affirmed.

II.

Gwin has Failed to Establish an Abuse of the District Court's Sentencing Discretion

Gwin asserts that the district court abused its discretion when it imposed and executed a unified sentence of 20 years with three years fixed following his felony driving under the influence conviction with a persistent violator enhancement, in light of his history of substance abuse and other allegedly mitigating factors. (Appellant's brief,

pp.9-12.) Gwin has failed to establish an abuse of the district court's sentencing discretion.

Where a sentence is within statutory limits, an appellant is required to establish that the sentence is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden, the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary "to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case." State v. Toohill, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). Though courts review the whole sentence on appeal, the presumption is that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). In deference to the trial judge, the Court will not substitute its view of a reasonable sentence where reasonable minds might differ. Toohill, 103 Idaho at 568, 650 P.2d at 710.

The facts of the present crime are straightforward: Upon pulling Gwin over, Deputy Summers recognized that Gwin was drunk. (PSI, p.2; R., pp.14-17.) A breathalyzer confirmed that Gwin was driving over the legal limit, as he blew a .13. (Id.) This was not Gwin's first DUI; it wasn't his first felony DUI. (See PSI, pp.3-5.) Gwin's first DUI was in May, 1991 (PSI, p.3), he got another in November, 1991 (id.), his first felony DUI came in 1992 (id.), and he received his second felony DUI in 2007 (PSI, p.5). This is Gwin's third felony DUI. Gwin has had multiple opportunities to stop driving

under the influence, yet has failed. And Gwin's lengthy criminal history, encompassing the past two decades, is not limited to DUI's. Additionally, Gwin has been charged with many felonies and misdemeanors, including Grand Theft, narcotics and paraphernalia possession, malicious injury to property, driving without privileges, and uttering forged documents, and for violating many probations and paroles. (PSI, pp.3-5.)

The district court appropriately considered all of the relevant factors when crafting and imposing Gwin's sentence. (Tr., p.83, L.17 – p.84, L.3.) The district court noted that this was Gwin's sixth felony conviction, and third felony DUI conviction. (Tr., p.84, Ls.9-18.) The district court also noted that Gwin had received extensive treatment for his alcoholism and rehabilitative programming, yet he continued to both abuse alcohol and to drive under the influence. (Tr., p.85, L.19 – p.87, L.18.) The district court did recognize that Gwin had improved over time. (Tr., p.84, Ls.11-16; p.88, Ls.2-5.) However, that minor improvement could not outweigh the significant risk Gwin poses to the community as a habitual drunk driver. (Tr., p.84, L.17 – p.85, L.6; p.87, L.16 – p.88, L.10.) As the Court has said, "[t]he proverbial drunk driver cuts a wide path of death, pain and grief, as well as untold physical and emotional injury, across the roads of Idaho and the nation." State v. Puga, 131 Idaho 89, 90, 952 P.2d 904, 905 (Ct. App. 1997) (quoted Tr., p.85, Ls.2-6).

Gwin argues that his history of substance abuse and professed willingness to undergo treatment should have been weighed as stronger mitigating factors. (Appellant's brief, pp.9-10.) This argument is unavailing. A history of alcohol abuse is not a mitigating factor in relation to a crime which requires not only the repeated abuse of alcohol, but *driving* while abusing alcohol. See Oliver, 144 Idaho at 727, 170 P.3d at

392. Gwin also argues that the support of family and friends should result in a more lenient sentence. (Appellant's brief, pp.10-11.) Gwin's argument, however, does not change the fact that despite such support in the past, Gwin still repeatedly chose to drink and drive. Because the support of family members has yet to protect the community from Gwin's driving under the influence, Gwin has failed to show that the district court was required to conclude that it somehow would this time.

The district court addressed the relevant factors to be considered at the sentencing hearing and exercised its discretion in imposing a reasonable sentence. Gwin has failed to establish any abuse of the district court's sentencing discretion. The judgment of the district court should be affirmed.

CONCLUSION

The State respectfully requests that this Court affirm the district court's denial of Gwin's motion to suppress evidence, and affirm Gwin's conviction and sentence.

DATED this 17th day of October, 2011.

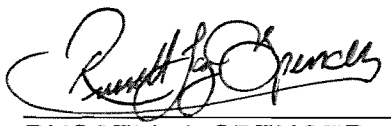
RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of October 2011, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

ELIZABETH ANN ALLRED
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



RUSSELL J. SPENCER
Deputy Attorney General

RJS/pm