7-26-2012

State v. West Appellant's Brief Dckt. 38802

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	DOCKET NO. 38802
	)	
v.	)	
	)	
LANDON BLAKE WEST,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE RICHARD D. GREENWOOD
District Judge

SARA B. THOMAS
State Appellate Public Defender
State of Idaho
I.S.B. #5867

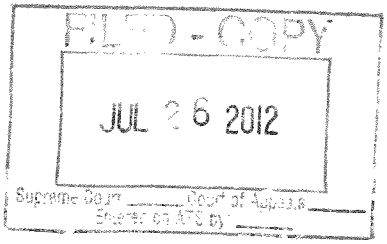
ERIK R. LEHTINEN
Chief, Appellate Unit
I.S.B. #6247

SPENCER J. HAHN
Deputy State Appellate Public Defender
I.S.B. #8576
3050 N. Lake Harbor Lane, Suite 100
Boise, ID 83703
(208) 334-2712

ATTORNEYS FOR
DEFENDANT-APPELLANT

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEY FOR
PLAINTIFF-RESPONDENT



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STATEMENT OF THE CASE

Nature of the Case

Landon Blake West appeals following the district court's denial of his motion to suppress evidence obtained following the deployment of a drug dog during a traffic stop. Mr. West asserts that the district court erred when it concluded that the traffic stop was not unreasonably delayed, and, in the alternative, that any delay was justified by reasonable suspicion that Mr. West had committed, or was about to commit, a crime.

Statement of the Facts and Course of Proceedings

Mr. West was initially charged with possession of marijuana in an amount exceeding three ounces and possession of drug paraphernalia. (R., pp.28-31). Mr. West filed a motion to suppress, seeking the suppression of all evidence obtained as a result of his illegal seizure, without reasonable suspicion, and the illegal search of his vehicle, in violation of Article I, § 17 of the Idaho Constitution and the Fourth Amendment to the United States Constitution, as well as all statements made after he was questioned in the absence of *Miranda*[1] warnings, along with statements obtained after *Miranda* warnings were provided.[2] (R., pp.51-52.)

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[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[2] The district court did not rule on the issue of pre-*Miranda* statements, indicating that it would "leave that up in the air pending further request of the parties." (Tr., p.84, Ls.8-13.) The parties do not appear to have requested a ruling on that issue. (*See generally* R.) As such, this portion of the motion to suppress is not ripe for appeal. Furthermore, because the bulk of Mr. West's incriminatory statements were made prior to the Miranda warming, and a determination as to whether Mr. West's pre-*Miranda* statements should have been suppressed was not made and cannot be challenged on appeal, there is little value to challenging the district court's decision not to suppress post-*Miranda* statements (Tr., p.84, Ls.3-5), it is not capable of meaningful review on appeal.

At the hearing on the motion to suppress, Officer Andreoli of the Boise Police Department testified about his encounter with Mr. West that led to the instant charges. Officer Andreoli explained that he first noticed Mr. West's car when he saw it backing out of the driveway of "a possible drug house" in his patrol area. While following the car, Officer Andreoli saw Mr. West fail to properly signal during a turn.[3] Officer Andreoli then conducted a traffic stop, observing that Mr. West "was holding a freshly lit cigarette" which, based on his experience, is "oftentimes" a sign that someone is attempting "to mask odors, either on a subject or an odor inside the vehicle." In his experience, he has "had instances where a lit cigarette was used to mask the odor of marijuana." (Tr., p.5, L.25 – p.11, L.6.)

Officer Andreoli noticed that Mr. West "appeared extremely nervous," with his hand "visibly shaking as he handed me his documents." Finally, Officer Andreoli noticed that Mr. West "was wearing a necklace which appeared to be made of hemp" with "a glass medallion that had the numbers four, two, zero on it." According to Officer Andreoli, in his "training and experience" he knows "the number '420' to be known amongst people who use marijuana as a universal time to smoke marijuana." (Tr., p.11, L.7 – p.12, L.8.)

At that point, Officer Andreoli, while standing at the driver's side window, radioed dispatch and requested that a drug dog be sent to the stop. Officer Andreoli then returned to his patrol car "and ran both Mr. West and his passenger through dispatch for driver's license status as well as any active warrants, then began completing a citation

[3] Defense counsel conceded that the initial traffic stop of Mr. West was justified. (Tr., p.56, Ls.2-4.)

for the insurance violation."[4] Officer Andreoli described the process of running individuals through dispatch for driver's license status and warrants as follows:

> However, when you go to the administration channel [as opposed to the normal police radio channel], the administrative channel to run driver's license and warrant checks, everybody in the valley – everybody in Ada County is on one channel.
>
> So I can't speak for this instance as far as what the waiting period was. But, typically, you call in to dispatch with your designator and explain to them that you are basically – tell them that you have two that you want to run for license and warrant checks. We use codes and stuff like that for radio purposes, but you basically tell them that you're there and you're waiting. And then you have to wait for dispatch to come back to you and let you know that you're the next in line, basically, before you can actually run their information.
>
> The way we run the information is last name first, and we typically spell the last name using the phonetic alphabet. So, for Mr. West, it would be "William, Edward, Sam, Tom," spelling that, and then spell his first name if it's not a common name, and then provide a date of birth, *and then wait for dispatch again to come back and run the second individual.*
>
> And then dispatch would have to go through their computers – I think there's two or three different computers they have to run through for driver's license, for warrants, and then for any criminal record – before they can relay that information back to you as an officer.

(Tr., p.38, L.18 – p.39, L.23 (emphasis added).)

The drug dog, accompanied by his handler Deputy Clifford, arrived ten minutes into the traffic stop while Officer Andreoli was still completing the traffic citation. Officer Andreoli then discussed the situation with Deputy Clifford for approximately thirty seconds before returning to the car and having Mr. West and his passenger exit the car. Mr. West was then patted down for weapons, and "escorted back toward my patrol car and asked to have a seat – excuse me – have a sit there on the curb nearby." Officer

[4] The insurance card provided by Mr. West was expired. (Tr., p.13, Ls.2-6.)

Andreoli described Mr. West as "very compliant" with his requests. (Tr., p.13, L.7 – p.17, L.3.)

At that point, while the dog was sniffing the outside of Mr. West's car, Officer Andreoli "was explaining to Mr. West what had led me to this point of the investigation as far as utilizing a drug-certified canine." Officer Andreoli "asked him if he was aware [of] what the '420' on his necklace signified; and he, in his own words, I believe stated that it was a universal pothead time." In response to Officer Andreoli's question regarding whether there was anything in the car that he should be aware of before the dog finds it, Mr. West asked – and was refused – permission to return to his vehicle to retrieve something. Mr. West then told Officer Andreoli "that he had some marijuana inside the vehicle, explained where it was at inside the vehicle, which was inside of a backpack I believe on the front passenger side of the vehicle." By that time, however, the drug dog had already found the item.[5]

Defense counsel argued that the police unlawfully extended the duration of the traffic stop to allow time for the drug dog to arrive, and that the time it took to call dispatch and write out the citation was unreasonable. (Tr., p.52, L.14 – p.66, L.10.) In response, the State argued that the "drug dog got there in the time period that was legally permissible in a public area and then conducted the sniff. And so we don't need to look to these reasonable articulable suspicions." (Tr., p.70, L.24 – p.71, L.3.) The State then argued, in the alternative, that the officer had reasonable articulable suspicion based on the facts articulated by the officer. (Tr., p.72, L.15 – p.75, L.7.)

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[5] After receiving his *Miranda* warnings, Mr. West admitted that he was a marijuana dealer. (Tr., p.20, L.11 – p.22, L.3.) For the reasons set forth in note 2, *supra*, this is not relevant to the only claim ripe for appeal.

Ultimately, the district court concluded that the length of the stop was not unreasonable, "given what was going on with the writing of the citation and the calling in the information on the two occupants of the motor vehicle." The district court also concluded "that the officer did, in fact, have a reasonably articulable suspicion that something is afoot at the time he conducts this search [sic]." Specifically, the district court explained that taking all of the facts articulated by the officer together, "it would be reasonable for the officer to conduct a further investigation as to what is going on with this defendant." The district court then announced that it would not suppress the evidence. (Tr., p.81, L.23 – p.84, L.1.)

Following the district court's denial of Mr. West's motion to suppress, he and the State entered into a Rule 11 plea agreement under which he agreed to enter conditional guilty pleas to charges of possession of a controlled substance (marijuana) with intent to deliver[6] and possession of drug paraphernalia, reserving the right to appeal the denial of his motion to suppress, with the parties free to argue for any lawful sentence. (R., pp.142-45.) Pursuant to the agreement, Mr. West entered pleas of guilty to both charges. (R., p.146.)

The district court imposed a unified sentence of five years, with two years fixed, on the possession of a controlled substance (marijuana) with the intent to deliver charge, retaining jurisdiction for a period of one year, and imposed a concurrent ninety day sentence on the drug paraphernalia charge. (R., p.147.) Mr. West then filed a Notice of Appeal timely from the judgment of conviction. (R., p.150.) Following the

[6] This charge was amended from possession of marijuana in an amount exceeding three ounces in the State's Second Amended Information. (R., pp.125-26.)

completion of his rider, the district court suspended the balance of Mr. West's sentence, and placed him on probation for a period of five years. (R., pp.171-72.)

ISSUE

Did the district court err when it denied Mr. West's motion to suppress evidence obtained in violation of Article I, § 17 of the Idaho Constitution and the Fourth Amendment to the United States Constitution?

ARGUMENT

I.

The District Court Erred When It Denied Mr. West's Motion To Suppress Evidence Obtained In Violation Of Article I, § 17 Of The Idaho Constitution And The Fourth Amendment To The United States Constitution

A. Introduction

Mr. West asserts that the district court erred when it denied his motion to suppress evidence obtained in violation of Article I, § 17 of the Idaho Constitution and the Fourth Amendment to the United States Constitution following the deployment of a drug dog during the unlawful extension of a traffic stop because the duration of the traffic stop was unreasonably extended and because the police did not have reasonable suspicion to believe that Mr. West had committed, or was about to commit, a crime.

B. Standard Of Review

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact which were supported by substantial evidence, but freely reviews the application of constitutional principles to those facts. *State v. Atkinson,* 128 Idaho 559, 561 (Ct. App. 1996).

C. The District Court Erred When It Denied Mr. West's Motion To Suppress

The Constitutions of both the United States and Idaho protect "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; Idaho Const. Art. I, § 17. The purpose of these constitutional provisions is to "impose a standard of reasonableness upon the exercise of discretion by governmental agents and thereby safeguard an individual's

privacy and security against arbitrary invasions." *State v. Maddox*, 137 Idaho 821, 824 (Ct. App. 2002) (citing *Delaware v. Prouse*, 440 U.S. 648, 653-654 (1979)). The constitutions safeguard against unreasonable searches and seizures applies to the seizures of persons through detentions falling short of a formal arrest. *United States v. Brignoni-Ponce,* 422 U.S. 873, 878 (1975); *Terry v. Ohio,* 392 U.S. 1, 16 (68). The stop of a vehicle constitutes a seizure of its occupants and is, therefore, subject to these constitutional restraints. *State v. Flowers*, 131 Idaho 205, 208 (Ct. App. 1998). A vehicle stop is of limited magnitude compared to other types of seizures; however, it is nonetheless a "constitutionally cognizable" intrusion and, therefore, may not be conducted "at the unbridled discretion of law enforcement officials." *Delaware v. Prouse*, 440 U.S. 648, 661 (79).

When the purpose of the detention is to investigate a possible traffic offense or other crime, it must be based upon reasonable, articulable suspicion of criminal activity. *State v. Schumacher,* 136 Idaho 509 (Ct. App. 2001); *Florida v. Royer,* 460 U. 491, 498 (1983). Although the required information leading to formation of reasonable suspicion in the mind of the police officer is less than the information required to form probable cause, it still "must be more than mere speculation or a hunch on the part of the police officer." *State v. Cerino*, 141 Idaho 736, 738 (Ct. App. 2005). The reasonableness of the officer's suspicion is evaluated based upon the totality of the circumstances at the time of the seizure. *Flower* 131 Idaho at 208.

A routine traffic stop is normally limited in scope and of short duration; therefore, it is more analogous to an investigative detention than a custodial arrest and, as such, is analyzed under the principles set forth in *Terry v. Ohio,* 392 U.S. 1 (1968). *Prouse,* 440

U.S. at 653-654. Under *Terry,* an investigative detention is permissible if it is based upon specific aritculable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity. *Id.* at 21.

The question of whether an investigative detention is reasonable requires an inquiry into both whether the officer's action was justified at the inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place. *State v. Parkinson,* 135 Idaho 357, 361 (Ct. App. 2000). However, the purpose of a stop is not fixed at the time the stop is initiated; a routine traffic stop might turn up suspicious circumstances that justify an officer asking questions unrelated to the stop. *Id.* at 362.

The United States Supreme Court has stated that an investigative detention "must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *State v. Gutierrez,* 137 Idaho 647, 650 (Ct. App. 2002) (citing *Florida v. Royer,* 460 U.S. 491, 500 (1983)). Further, an individual "may not be detained even momentarily without reasonable, objective grounds for doing so." *Id.* In *United States v. Valadez,* 267 F.3d 395 (5th Cir. 2001), the court held that, "[f]urther detention was not lawful after the point at which the purposes of the stop [were] resolved." *Id.* at 398.

It is therefore not necessarily a constitutional violation for an officer who has stopped someone for a traffic violation to ask unrelated questions about drugs or to run a drug dog around the outside of the vehicle. *State v. Aguirre*, 141 Idaho 560, 563 (Ct. App. 2005). Idaho Courts have held that the questioning and use of a drug dog during a stop does not violate the Fourth Amendment when it does not extend the

duration of the stop beyond that which was necessary to address the traffic violation. *See State v. Silva,* 134 Idaho 848, 852-853 (Ct. App. 2000) (holding that an officer's request to search a car was lawful where the request was made before the issuance of the traffic citation had been completed and such request lengthened the process only by a second or two); *see also Parkinson,* 135 Idaho at 362-363 (holding that it was permissible for one officer to question a vehicle's driver about drugs and weapons and to take a drug dog around the car while another officer was busy checking with dispatch on the driver's status and writing out a traffic citation).

In contrast, the Idaho Court of Appeals concluded that it was an unwarranted intrusion upon the vehicle occupants' privacy and liberty for an officer to question a driver about matters unrelated to the traffic stop after the officer had fulfilled the purpose of the stop by issuing a written warning to the driver. *Gutierrez,* 137 Idaho at 651-653. Similarly, the Court of Appeals concluded that a motorist had been unlawfully detained where all routine traffic stop procedures had been completed when additional officers arrived and then requested consent to search the vehicle. *State v. Zavala,* 134 Idaho 532 (Ct. App. 2000).

The question of whether the duration of the traffic stop was unreasonably extended must be addressed first because, if it was not unreasonably extended, then no constitutional violation could have occurred, regardless of the absence of reasonable suspicion that Mr. West had committed, or was about to commit, a crime.

1. The Duration Of The Traffic Stop Was Unreasonably Extended

The Idaho Supreme Court has held that it is not a violation of the Fourth Amendment to request identification from the driver of a vehicle during an otherwise

lawful encounter and to verify, through a records check, the validity of that license. *State v. Godwin*, 121 Idaho 491, 495-96 (1992) (relying, in part, on I.C. § 49-316, which "requires *a driver* to surrender a driver's license to a police officer upon demand") (emphasis added); *see also State v. Reed*, 107 Idaho 162, 165 (Ct. App. 1984) ("Once the [lawful] traffic stop had occurred, nothing in the fourth amendment would preclude the officer from routinely asking *the motorist* to exhibit his driver's license, the vehicle registration and an insurance certificate.") (emphasis added).

The issue with respect to checking the identities of otherwise innocent passengers appears to turn on whether the request for identification extended the length of the traffic stop. In *State v. Roe*, 140 Idaho 176 (Ct. App. 2004), the Idaho Court of Appeals held that police did not unreasonably extend the duration of a traffic stop when requesting the identification of a passenger when that request did not result in a detention that is "any longer than if the officer had only identified the driver." The Court's conclusion rested on the fact that one officer was identifying the driver while another was simultaneously identifying the passenger, meaning that the request for the passenger's information "did not extend the duration of the stop beyond the time necessary to effectuate the purpose of the stop." *State v. Roe*, 140 Idaho 176, 182 (Ct. App. 2004).

With respect to obtaining and checking the status of a passenger during a traffic stop for a driver's traffic violation, two courts have held that it does not violate the Fourth Amendment to do so when the purpose of the officer doing so is to verify whether the passenger will be able to operate the vehicle legally where the driver of the vehicle either lacks a valid driver's license or will be otherwise unable to drive the vehicle; no

court appears to have addressed whether it may be done as a matter of routine. *See United States v. Diaz-Castaneda*, 494 F.3d 1146, 1153 (9th Cir. 2007) (holding that because the officer "wanted to learn *not only* who the passenger was in a stopped vehicle, *but also* whether [the passenger] could drive the truck once Diaz was arrested" asking for the passenger's identification did not "implicat[e] the Fourth Amendment") (emphases added); *see also United States v. Arreola-Delgado*, 137 F. Supp. 2d 1240, 1247 (D. Kan. 2001) (officer "asking to see [passenger's] license and promptly checking into its legal status . . . was related to the traffic stop upon learning that the driver Vasquez did not possess a driver's license").

Because the State did not produce evidence that the passenger in Mr. West's vehicle had committed a crime or violation necessitating identifying and checking the passenger's status, and Mr. West's ability to operate the vehicle was not in question at the time of the request and records check, the district court erred in finding that the duration of the traffic stop was reasonable in light of the officer running both the driver's and passenger's information through dispatch.

As testified to by the officer, running two names through dispatch requires two requests of the dispatcher who must then search three separate computer systems to check for warrants, license status, and criminal history on each person. (Tr., p.38, L.18 – p.39, L.23.) A review of the audio recording of the traffic stop reveals that verifying with the passenger that the information on her requested license was still current took several seconds (Defendant's Exhibit C, Track 2,[7] 2:23 to 2:26), providing the

[7] Defendant's Exhibit C is a CD-ROM disk containing three audio tracks. Only the second track, "719 Andreoli, 07222010 2047 081234.dss" (*hereinafter* Track 2), is relevant to the issue on appeal. The first, "719 Andreoli, 07222010 218 018234.dss,"

passenger's information to dispatch took another seventeen seconds (Defendant's Exhibit C, Track 2, 5:12 to 5:29), and receiving word back that the passenger's license was valid took another four seconds.[8] (Defendant's Exhibit C, Track 2, 6:24 to 6:28.) At least another sixty seconds was spent explaining why the drug dog was called out, having both Mr. West and the passenger exit the vehicle, requesting consent for – and conducting – a pat down of Mr. West, and asking the passenger whether she was in possession of any weapons. (Defendant's Exhibit C, Track 2, 11:30 to 13:02.) Additionally, Officer Andreoli spent several seconds requesting that the drug dog be called out *before* contacting dispatch to run checks on Mr. West and the passenger. (Defendant's Exhibit C, Track 2.) Furthermore, the time it took to brief the drug dog handler on the situation, estimated to be thirty seconds (Tr., p.15, Ls.5-16), impermissibly extended the duration of the traffic stop. As such, the district court erred when it denied Mr. West's motion to suppress on this basis.

2. The Police Lacked Reasonable, Articulable Suspicion To Justify Extending The Traffic Stop To Await The Arrival Of The Drug Dog

Mr. West asserts that the reasonable, articulable suspicion needed to justify the expansion of the scope and duration of an ordinary traffic stop requires that the officer have such suspicion for a specific crime. *See Terry*, 391 U.S. at 6, 23 (1968) (officer suspected Terry and his co-defendant of casing a store to commit an armed robbery,

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consists of a conversation between Officer Andreoli and the passenger along with the arrest of Mr. West. The third, "719 Andreoli, 07222010 2121 018234.dss," consists of a conversation between Mr. West and Officer Andreoli in which Mr. West consents to a search of the contents of his cell phone. (Defendant's Exhibit C.)

[8] This does not include the time that it took to run the passenger's information, it only includes the time that it took for dispatch to announce, via the radio, that the passenger's license was valid.

with Supreme Court explaining, "[i]t would have been poor police work indeed for an officer of 30 years' experience in the detection of thievery from stores in this same neighborhood to have failed to investigate this behavior further"); *Royer*, 460 U.S. at 498 ("[C]ertain seizures are justifiable under the Fourth Amendment if there is articulable suspicion that a person has committed or is about to commit *a crime*.") (emphasis added).

In this case, the fact that Mr. West was leaving a suspected drug house, smoking a recently lit cigarette, appeared nervous, and was wearing a piece of hemp jewelry with a commonly-known marijuana reference did not provide reasonable suspicion that he had committed, or was about to commit, a specific crime justifying extending the duration of the traffic stop to allow for the arrival of a drug dog. *See State v. Zuniga*, 143 Idaho 431 (Ct. App. 2006) (no reasonable suspicion to support an investigatory detention when police observed a man exit a house know for drug activity and man appeared nervous upon contact with the police).

Officer Andreoli did not testify as to what crime he suspected that Mr. West had committed or was about to commit. (*See generally* Tr.) Furthermore, even assuming that the facts gave rise to reasonable suspicion that Mr. West had committed a specific crime, the action taken by the officer -- delaying the traffic stop to await the arrival of a drug dog -- was not the least intrusive means for investigating the officer's suspicions; asking questions of Mr. West concerning drugs and the house that he recently left would have been the appropriate next step to take in confirming or dispelling the officer's suspicions. Because Officer Andreoli lacked reasonable articulable suspicion that Mr. West had committed, or was about to commit, a specific crime at the time that

he extended the duration of the traffic stop, the district court erred in denying Mr. West's motion to suppress evidence obtained as a result of that extension.

CONCLUSION

Mr. West respectfully requests that this Court vacate the district court's judgment of conviction, reverse the order denying his motion to suppress, and remand this matter to the district court for entry of an order suppressing all evidence obtained as a result of the unlawful extension of the traffic stop.

DATED this 26th day of July, 2012.

SPENCER J. HAHN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26th day of July, 2012, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

LANDON BLAKE WEST
INMATE #99578
407 W WARREN
BOISE ID 83706

RICHARD D. GREENWOOD
DISTRICT COURT JUDGE
200 WEST FRONT STREET
BOISE ID 83702-7300

SEAN C BEAVER
ATTORNEY AT LAW
777 N 4TH STREET
BOISE ID 83702

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
Hand delivered to Attorney General's mailbox at Supreme Court.

NANCY SANDOVAL
Administrative Assistant

SJH/ns