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State v. Hills Respondent's Brief Dckt. 39081

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)
)
 Plaintiff-Respondent,)
)
 vs.)
)
 ROBERT STEPHEN HILLS, III,)
)
 Defendant-Appellant.)

NO. 39081

FILED
MAY - 3 2012

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF NEZ PERCE

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District Judge

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MAY 3 2012

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STATEMENT OF THE CASE

Nature Of The Case

Robert S. Hills appeals from his judgment and conviction for felony driving under the influence.

Statement Of The Facts And Course Of The Proceedings

On April 30, 2010, Anthony Shell and another Albertson's employee observed two men having an altercation near a checkout stand. (R., pp.217-18.) As the two men walked out of the store to continue the altercation, Mr. Shell and the other employee followed. (R., p.218.) Mr. Shell noted that the older individual, subsequently identified as Hills, "was wearing blue jeans, a checkered shirt and a leather jacket and that he had longer, shaggy blonde/gray hair." (R., p.218.) Once outside, the altercation continued briefly but ended when the younger individual walked away. (R., p.218.) Hills then began talking to Mr. Shell and Mr. Shell noticed that Hills had bloodshot eyes, slurred speech and a strong smell of alcohol coming from his person. (R., p.218.) Mr. Shell and the other employee watched Hills as he walked to a vehicle. (R., p.218.) Mr. Shell noticed that Hills was "stumbling badly and watched him get into the driver's seat of a dark blue Ford Ranger pickup that had been lowered and had chrome wheels." (R., p.218.) Concerned that Hills was intoxicated, Mr. Shell called the police as he watched Hills pull out onto 21st Street and head south.¹ (R., p.218.)

¹ In the district court, it was "undisputed that Mr. Shell identified himself when he called the Lewiston Police and provided the dispatcher with the basis for his belief Hills was likely driving while under the influence of alcohol." (R., p.222.)

Idaho State Trooper John Ferris was just entering Lewiston city limits when he heard Lewiston Police dispatch put out a call about a possible intoxicated driver leaving the Albertson's parking lot. (R., p.219.) Trooper Ferris learned from that "an identified caller told dispatch he had observed an individual staggering in the Albertson's parking lot then get into the driver's seat of a purple colored Ford Ranger pickup and turn south onto 21st Street." (R., p.219.) Trooper Ferris drove in the direction of Albertson's and continued south on 21st Street. (R., p.219.) As he continued to monitor the City radio traffic, Trooper Ferris further learned that "there was a named complainant that could identify the suspect driver." (R., p.219.) Trooper Ferris caught up to a vehicle matching the description provided by the informant and followed it for a short distance. (R., p.219.) When the vehicle turned and headed west, Trooper Ferris activated his overhead lights and pulled the vehicle over. (R., p.219.)

Trooper Ferris and a Lewiston Police Officer contacted the driver of the vehicle. (R., p.219.) As Trooper Ferris talked to the driver, identified by insurance documents as Hills, "he noticed Hills' eyes were bloodshot, his speech appeared slurred, his movements were slow and there was an odor of alcohol coming from inside the vehicle." (R., p.219.) When Hills was unable to produce a driver's license, Trooper Ferris had dispatch run a license check and found out that Hills' driving privileges were valid in Idaho, but had been suspended in Washington. (R., p.219.) Based on Trooper Ferris' observations of Hills, he decided to conduct a DUI investigation. (R., p.219.) When Trooper Ferris asked Hills to perform field sobriety tests, "Hills told him he would not perform any

testing and he might as well just arrest him.” (R., pp.219-20.) Trooper Fen’s then informed Hills he was under arrest on suspicion of driving under the influence of alcohol. (R., p.220.) Hills refused breath testing. (R., p.13.)

The state charged Hills with felony driving under the influence based on Hills’ prior DUI convictions. (R., pp.112-13.) Thereafter, Hills filed a motion to suppress “any and all evidence obtained as a result of the illegal stop, seizure, and/or arrest of the defendant.” (R., pp.151-57.) The district court denied Hills’ motion to suppress, finding reasonable suspicion for the stop of Hills. (R., pp.217-22.)

Hills entered into a binding Rule 11 plea agreement (R., pp.231-34; Tr., p.7, Ls.8-19), and he pled guilty to felony driving under the influence (Tr., p.14, Ls.11-23). In exchange for Hills’ guilty plea, the state agreed to a unified sentence of five years with two years fixed, with the district court retaining jurisdiction. (R., p.232; Tr., p.7, Ls.14-18.) The state also agreed to dismiss Hills’ related driving without privileges charge. (R., p.232.) Under the terms of the plea agreement, Hills did not reserve his right to appeal the denial of his motion to suppress and he “waive[d] his right to appeal any sentence that is imposed in accordance with the terms of this plea agreement.” (R., pp.231-34.)

After the PSI was completed (PSI, p.1; Tr., p.16, Ls.5-6), the district court rejected the Rule 11 plea agreement and Hills was allowed to withdraw his guilty plea (R., p.236; Tr., p.17, Ls.11-15). The parties then filed another Rule 11 plea agreement. (R., pp.239-42; Tr., p.17, Ls.18-20.) The only change from the original plea agreement was that the parties agreed to a unified sentence of five

years with one year fixed and a recommendation for the therapeutic community.² (R., p.240; Tr., p.17, Ls.20-25.) Hills pled guilty to felony driving under the influence (Tr., p.27, L.15 - p.28, L.2), and the district court accepted the Rule 11 plea agreement (R., p.243).

Prior to sentencing, the parties filed an amended Rule 11 plea agreement that modified the condition regarding Hills' driver's license suspension. (R., pp.252-55.) The district court accepted the amended Rule 11 plea agreement. (R., p.257.) In accordance with the terms of the amended Rule 11 plea agreement, the district court imposed a unified sentence of five years with one year fixed and recommended "placement in the Therapeutic Community prior to parole." (R., pp.260-261.) Hills timely appealed. (R., pp.266-68.)

² The original Rule 11 plea agreement proposed a unified sentence of five years with two years fixed and required the district court to retain jurisdiction. (R., p.232.)

ISSUES

Hills states the issue on appeal as:

Mindful of the fact that Mr. Hills did not enter a conditional guilty plea reserving his right to appeal from the district court's denial of his motion to suppress, did the district court err when it denied his motion to suppress?

(Appellant's brief, p.3.)

The state wishes to rephrase the issue on appeal as:

By entering an unconditional guilty plea, has Hills waived his right to appeal the district court's order denying his motion to suppress?

ARGUMENT

By Entering An Unconditional Guilty Plea, Hills Waived His Right To Appeal The District Court's Denial Of His Motion To Suppress

A. Introduction

Hills only argument on appeal is that "despite the fact that Mr. Hills did not enter a conditional guilty plea reserving the right to challenge the denial of his motion to suppress, he nonetheless asserts that the district court erred when it denied his motion to suppress the evidence obtained against him as the result of a traffic stop." (Appellant's brief, p.4.) This argument is without merit. Hills waived any right he may have had to appeal the district court's denial of his motion to suppress when he entered an unconditional plea of guilty to felony driving under the influence.

B. Hills Waived His Right To Appeal The District Court's Denial Of His Motion To Suppress When He Entered An Unconditional Plea Of Guilty To Felony Driving Under The Influence

It is well settled that the entry of a guilty plea, "if voluntarily and knowingly made, is conclusive as to the defendant's guilt and waives all non-jurisdictional defects in prior proceedings against the defendant." State v. Green, 130 Idaho 503, 505, 943 P.2d 929, 931 (1997) (citing Clark v. State, 92 Idaho 827, 832, 452 P.2d 54, 59 (1969)). However, a defendant may preserve such defects or issues by entering a conditional plea of guilty which reserves, in writing, the right "to review any specified adverse ruling." I.C.R. 11(a)(2); see also, Green, 130 Idaho at 505, 943 P.2d at 931. In this case, Hills concedes that he "did not enter a conditional guilty plea reserving the right to challenge the denial of his motion

to suppress” (Appellant's brief, p.4.) Accordingly, Hills waived his right to challenge the district court's denial of his motion to suppress.³

CONCLUSION

The state respectfully requests that this Court affirm the judgment of conviction.

DATED this 3rd day of May 2012.



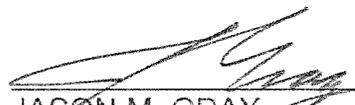
JASON M. GRAY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of May 2012, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SPENCER J. HAHN
STATE APPELLATE PUBLIC DEFENDER

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



JASON M. GRAY
Deputy Attorney General

JMG/pm

³ The state notes that Hills has not articulated on appeal any basis for reversing the district court's denial of the suppression motion. (See generally, Appellant's brief.)