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State v. Knott Respondent's Brief Dckt. 40074

IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO, Plaintiff-Respondent, vs. DAVID M. KNOTT, Defendant-Appellant.	)	No. 40074 Blaine Co. Case No. CR-2010-3181

BRIEF OF RESPONDENT

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

HONORABLE R. TED ISRAEL, Magistrate Judge
HONORABLE ROBERT J. ELGEE, District Judge

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Nature of the Case

This case is on appeal from a decision by the district court in its appellate capacity. The district court affirmed a magistrate judge's pre-trial ruling denying David M. Knott's motion to exclude evidence in his prosecution for driving under the influence.

Statement of Facts and Course of Proceedings

Police officer Adam Johnson arrested David M. Knott for driving under the influence (DUI) in Ketchum, Idaho. (R., pp. 5, 24.) Officer Johnson took Knott to the Sun Valley Police Department to administer a breath (BAC) test. (Id.) There, the officer played an audio tape of a warning, and also provided the warning in writing, describing the consequences of Knott's refusal to take the BAC test. (Id.) Although Knott's suspension advisory form (Exhibit A) is illegible, it is undisputed it provided that his non-resident driver's license would not be seized.[1] (R., pp. 26, 50.) Knott resides in, and holds a driver's license from, New York state. (R., pp. 5, 24.) Knott refused the BAC test. (R., p. 24.)

Following a hearing regarding Knott's BAC refusal, Magistrate Judge Walker entered an order dismissing the license suspension. (R., pp. 24-25.) Judge Walker reasoned that the suspension advisory communicated to Knott

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[1] This can be inferred from the magistrate's decision (R., p. 50), which quotes as comparable, the advisory given the driver in State v. Kling, 150 Idaho 188, 245 P.3d 499 (Ct. App. 2010). In Kling, the court noted, "The advisory given to Kling . . . directly contradicted the statutory directive by affirmatively informing Kling that her nonresident driver's license would *not* be seized by the officer." Kling, 150 Idaho at 192, 245 P.3d at 503.

either failed to accurately state the statutory consequences of refusal, or was "impermissibly ambiguous when applied to out-of-state drivers." (R., p. 25.)

The state prosecuted Knott for DUI. (R., p. 34.) Knott moved to exclude evidence of his refusal (R., pp. 35-36), and the magistrate judge denied the motion (R., pp. 49-56). Knott pleaded guilty (R., pp. 76-77), but retained the right to appeal the denial of his suppression motion (R., p. 76). On appeal, the district court affirmed the magistrate court's ruling. (R., p. 142.) Knott now timely appeals to this Court. (R., pp. 144-46.)

ISSUE

Knott states the issue on appeal as:

> Whether the State in its case-in-chief can present evidence that an out-of-state licensed driver refused the evidentiary test despite a court ruling that the officer improperly advised him of the consequences of a refusal.

(Appellant's brief, p. 3.)

The state rephrases the issue as:

Has Knott failed to demonstrate the magistrate court erred or abused its discretion in denying suppression of his breath test refusal because the record and applicable case law support that his refusal was relevant and its probative value was not outweighed by any prejudicial effect?

ARGUMENT

Knott Has Failed To Demonstrate The Magistrate Court Erred Or Abused Its Discretion In Denying Suppression Of His Breath Test Refusal Because The Record And Applicable Case Law Support That His Refusal Was Relevant And Its Probative Value Was Not Outweighed By Any Prejudicial Effect

A. Introduction

Knott's refusal of the breath test was relevant to his prosecution for DUI as evidence of consciousness of guilt. The magistrate court found that the potential for unfair prejudice from evidence of Knott's refusal did not substantially outweigh its probative value, and the district court agreed. On this appeal, Knott fails to show the magistrate court erred or abused its discretion in denying exclusion of his refusal.

B. Standard Of Review

The appellate court directly reviews a decision by a district court made in its appellate capacity. State v. Decker, 152 Idaho 142, 145, 267 P.3d 729, 732 (Ct. App. 2011) (citation omitted). The appellate court accepts the magistrate's factual findings supported by substantial and competent evidence, but freely reviews legal conclusions. State v. Green, 149 Idaho 706, 708, 239 P.3d 811, 813 (Ct. App. 2010); Decker, 152 Idaho at 145, 267 P.3d at 732; Green, 149 Idaho at 708, 239 P.3d at 813. Where the magistrate's decision is supported by the record and law, and where the district court affirmed, the appellate court will affirm "as a matter of procedure." Id.

For issues concerning admissibility of evidence, the appellate court applies a mixed standard of review. State v. Shackelford, 150 Idaho 355, 363,

247 P.3d 582, 590 (2010) (citation omitted). First, the appellate court freely reviews the legal question whether evidence is relevant. Id. Next, the appellate court reviews for abuse of discretion, the trial court's weighing of the evidence's probative value against its prejudicial effect. Id. For this, the appellate court considers whether the court below (1) understood its decision was discretionary, (2) acted within the scope of its discretion and consistent with applicable legal standards, and (3) exercised reason in reaching its decision. Id.

C. Knott's Breath Test Refusal Was Relevant To His Prosecution For DUI

Evidence is relevant where it has a "tendency to make the existence of any fact . . . of consequence to the determination of the action more . . . or less probable than it would be without the evidence." I.R.E. 401. The very language of Idaho's DUI law anticipates the relevance of both breath test results and refusals. I.C. § 18-8004. It is unlawful to have an alcohol concentration of 0.08 or more "as shown by analysis of [a driver's] blood, urine, or breath." I.C. § 18-8004(1)(a). But the state shall not prosecute anyone having an alcohol concentration less than 0.08; and anyone who does not take a test for alcohol concentration may be prosecuted for DUI. I.C. § 18-8004(2). By refusing a test that would either support or preclude his prosecution for DUI, Knott demonstrated consciousness of guilt, rendering his refusal relevant.

The Court must next consider whether the magistrate court abused its discretion in weighing the probative value of Knott's refusal against its prejudicial effect. Shackelford, 150 Idaho at 363, 247 P.3d at 590.

D. Knott Has Failed To Show The Magistrate Court Abused Its Discretion In Light Of The Record And Applicable Case Law

1. The Record Shows The Magistrate Court Was Aware It Had Discretion And Exercised Reason

The first and third elements of an abuse of discretion analysis consider whether the magistrate court knew its decision was discretionary, and whether it exercised reason in reaching its decision. Shackelford, 150 Idaho at 363, 247 P.3d at 590. The first element is satisfied where the trial court recognizes it has a choice in rendering its decision. Sun Valley Shopping Center, Inc. v. Idaho Power Co., 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991). As to the third element, the appellate courts have not required a lengthy discussion to demonstrate an exercise of reason. See State v. Hedger, 115 Idaho 598, 600-01, 768 P.2d 1331, 1333-34 (1989).

Under Rule 403, evidence may be excluded where "its probative value is substantially outweighed by the danger of unfair prejudice." I.R.E. 403. In this case, the magistrate court heard the parties' oral arguments, and considered written argument from Knott's counsel. (See 4/25/11 Tr.; R., pp. 38-41.) In a written decision, the magistrate addressed the parties' legal arguments. (R., pp. 49-56.) The magistrate found Knott's refusal was "probative of his consciousness of guilt," and concluded that the "[i]mproper warnings about the consequences of refusal in a separate civil proceeding do not make that evidence so prejudicial that admission of it is prohibited." (R., p. 56.) This analysis, although brief, shows awareness of the need to balance probative value against prejudicial effect, and demonstrates that the magistrate's decision

was reached through reason. The first and third elements of the discretionary test are therefore satisfied.

2. Knott Has Not Shown the Magistrate Court Abused Its Discretion In Weighing The Probative Value Against The Prejudicial Effect Of Knott's Breath Test Refusal

Knott's primary argument is that his refusal should have been suppressed for lack of foundation. (Appellant's brief, pp. 4-12.) Knott acknowledges that a driver's refusal infers consciousness of guilt, but contends that admissibility of refusal requires that a driver be properly advised of the refusal's consequences. (Appellant's brief, pp. 4-6.) According to Knott, an improper warning vitiates the driver's ability to knowingly, willfully, and voluntarily refuse, thus causing the refusal's probative value to be substantially outweighed by its prejudicial effect. (Appellant's brief, p. 6.) In support, Knott cites a district court's decisions in State v. Salts, Blaine County Case CR-2003-15090 (R., pp. 43-47; Appellant's brief, p. 5). The Salts decision is neither binding nor persuasive here.

In Salts, the district court affirmed a magistrate's decision excluding refusal evidence in a DUI prosecution. (Id.) The magistrate concluded this result was required under Matter of Virgil, 126 Idaho 946, 895 P.2d 182 (Ct. App. 1995), which dismissed a *license suspension* under Idaho's *implied consent law*. Although Idaho's implied consent law requires a driver to be informed about the consequences of refusal, I.C. § 18-8002(3), Idaho's DUI law has no similar requirement, I.C. § 18-8004. The magistrate in Salts therefore misapplied Virgil, and the Court here should reject the reasoning in Salts as unsound.

Importantly, the Idaho Supreme Court recognized the competence and admissibility of a refusal in a DUI prosecution in State v. Bock, 80 Idaho 296, 309, 328 P.2d 1065, 1073 (1958). There, the court held that a driver's refusal, "[l]ike any other act or statement voluntarily made by him . . . [is] competent for the jury to consider and weigh, *with the other evidence*, and to draw from it whatever inference as to guilt or innocence may be justified thereby." Id. (emphasis added). Officer Johnson's inaccurate warning did not, as Knott suggests, render his refusal inadmissible. (Appellant's brief, pp. 4-5.) Instead, the inaccurate warning is other evidence for the jury to consider and weigh, with the refusal. Bock, 80 Idaho at 309, 328 P.2d at 1073.[2] Knott has not shown that his refusal is so prejudicial – or indeed prejudicial at all – so as to require its exclusion, rather than allowing the jury to make its findings and inferences as trier of fact. That the jury may draw an inference unfavorable to Knott does not render the evidence unduly prejudicial.

Ultimately, Knott offers unsupported, unspecific conclusions that he suffered prejudice. Absent showing of unfair prejudice that substantially outweighs his refusal's probative value, Knott fails to demonstrate the magistrate court abused its discretion.

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[2] The Bock court also noted, Idaho statutes contain no provision that a refusal is inadmissible, and "the courts should not add a limitation which the legislature has not seen fit to impose." Bock, 80 Idaho at 309, 328 P.2d at 1073 (citing then-existence of such provisions in Oregon and Washington statutes). Despite changes to Idaho law since Bock was decided, the Idaho legislature has not amended or added any provision excluding or limiting the admissibility of refusal in DUI prosecutions. See I.C. §§ 18-8002, 18-8004.

E. Knott Has Failed To Show That Admissibility of Refusal Evidence Is Contingent On Compliance With The Warning Requirement In Idaho's Implied Consent Law

Applicable law supports the district court's order denying exclusion of Knott's refusal. While drivers may physically refuse breath-alcohol tests, there is no legal right of refusal in Idaho. State v. Woolery, 116 Idaho 368, 372, 775 P.2d 1210, 1214 (1989). The out-of-state cases cited by Knott (Appellant's brief, pp. 6-10) are thus legally, as well as factually distinguishable. See Longley v. State, 776 P.2d 339, 344 (Alaska App. 1989) (refusal held not admissible because made before driver received any implied consent warning); Moore v. State, 458 S.E.2d 479, 480 (Georgia App. 1998) (refusal held inadmissible where driver was not advised he could pay for additional test by qualified person of his choosing, as required by statute); State v. Miceli, 554 N.W.2d 427, 431 (Nebraska App. 1996) (refusal held inadmissible where driver was advised using form previously held to constitute plain error); Janak v. State, 826 S.W.2d 803, 805 (Texas App. 1992) (refusal held inadmissible absent evidence statutory warning was given).

The Idaho Supreme Court considered the admissibility of a blood test result in State v. Woolery, 116 Idaho 368, 775 P.2d 1210 (1989). In that case, the court quoted a Wisconsin Supreme Court decision disapproving use of the implied consent law as a shield "to prevent constitutionally obtained evidence from being admitted at trial." Woolery, 116 Idaho at 371, 775 P.2d at 1213 (citing State v. Zielke, 137 Wis.2d 39, 403 N.W.2d 427, 434 (1987)). The Woolery court also cited the South Dakota Supreme Court, which held that a refusal does not require suppression of evidence where law enforcement fails to

comply with statutory procedures. Woolery, 116 Idaho at 372, 775 P.2d at 1214 (citing State v. Hartman, 256 N.W.2d 131 (S.D. 1977)). The Woolery court then held that, so long as a driver's constitutional rights are preserved, the state "should not be prevented from obtaining such relevant evidence as the alcohol content of the driver's blood." Woolery, 116 Idaho at 373, 775 P.2d at 1215.

In addition, the court highlighted that Idaho's implied consent law "is devoted entirely to the administrative, or civil, suspension" of a driver's license, and does not discuss DUI or other criminal offenses. Id. at 373, 775 P.2d at 1215. As such, the intent of the law was not "to hamstring the ability of law enforcement to properly investigate and obtain evidence." Id. Citing the U.S. Supreme Court, the Woolery court noted that, where constitutional standards for search and seizure are satisfied, an officer's failure to comply with Idaho's implied consent law should not render the results of an evidentiary test inadmissible in a criminal prosecution. Id. at 374, 775 P.2d at 1216 (citing Schmerber v. California, 384 U.S. 757 (1966)).

Although Knott's case involves a refusal rather than unconsented-to test results, the Woolery court's reasoning logically applies. Idaho's implied consent law was not intended to exclude evidence in a DUI prosecution, but to encourage the collection of evidence for the prosecution. Id. at 374, 775 P.2d at 1216; I.C. § 18-8002. An officer's failure to comply with statutory requirements for a license suspension warrants dismissal of a licensing action; however, it cannot be used as a shield to exclude constitutionally obtained evidence from trial. Woolery, 116 Idaho at 371, 775 P.2d at 1213 (citation omitted).

The United States Supreme Court has held that neither Due Process concerns nor the Fifth Amendment require exclusion of a refusal, even where police fail to warn that refusal could be used against the defendant at trial. South Dakota v. Neville, 459 U.S. 553 (1983). Knott has not asserted his constitutional rights were violated. Nor does the record support any such finding. Under applicable law, there was no basis to exclude evidence of Knott's refusal from his DUI prosecution.

CONCLUSION

For the foregoing reasons, the state respectfully requests that the Court affirm the district court's decision affirming the magistrate court below.

DATED this 8th day of February, 2013.

DAPHNE J. HUANG
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8th day of February, 2013, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

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