

3-26-2013

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	No. 40139
Plaintiff-Respondent,)	
)	Ada Co. Case No.
vs.)	CR-2011-16632
)	
ROBERT LEROY HUCK,)	
)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

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

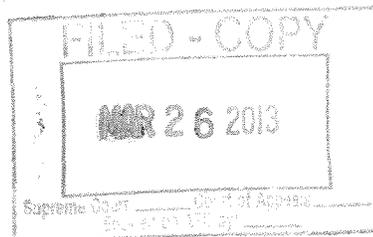
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STATEMENT OF THE CASE

Nature Of The Case

Robert Leroy Huck appeals from his judgment of conviction for possession of methamphetamine and possession of paraphernalia, entered upon his conditional guilty pleas. On appeal, he challenges the district court's denial of his suppression motion.

Statement Of The Facts And Course Of The Proceedings

The factual background of this case, as related by the district court, is as follows:

On June 16, 2011, Officers Kelly Montoya, Jim Schiffler, Guy Borgeau and Officer Phillips, all of the Boise Police Department, were working together as a "Direct Patrol Team." Shortly before 7:30 p.m., Officer Phillips received information regarding a drug transaction occurring in the Albertson's parking lot at the corner of Overland and Vista in Boise. Officer Phillips dispatched the other officers who were each in separate patrol vehicles to respond to the scene. He informed the other officers that the Defendant, Robert Leroy Huck ("Defendant") may be in possession of narcotics and provided a description of the Defendant and the vehicle he was driving. Other than the information received from Officer Phillips, the three other officers had no independent information regarding the situation. In responding to the scene, Officer Montoya observed the Defendant driving westbound on Overland and proceeded to follow the vehicle from a distance of about two car lengths. The other officers followed behind at various car lengths.

At approximately 7:30 p.m., Officer Montoya witnessed the Defendant's vehicle make a northbound turn onto Roosevelt Street. He proceeded to initiate a traffic stop based on his observation that the Defendant failed to utilize his signal for the period of time or distance as required by Idaho Code § 49-808(2) prior to making the turn. Officers Schiffler and Borgeau arrived and stopped at the scene of the traffic stop within a few seconds of the stop.

Officer Montoya contacted the Defendant in his vehicle, informed him of the reason for the traffic stop and obtained his driver's license. He told the Defendant that when making the turn onto Roosevelt Street, he

didn't engage the turn signal until he was already into the turn. After returning to his vehicle and running the Defendant's information through dispatch, Officer Montoya asked the Defendant if he had any problem if he searched the vehicle. The Defendant refused the request, stating that it was not his vehicle. Officer Montoya then asked Officer Schiffler to write the traffic citation while he went to retrieve his K-9 drug dog, Remco ("Drug Dog").

After returning with the Drug Dog, Officer Montoya advised the Defendant that he was going to use the Drug Dog to conduct a sniff around the exterior of the vehicle and directed the Defendant to exit the vehicle and stand over next to Officer Borgeau. Officer Borgeau also directed the Defendant to exit the vehicle and directed him not to put his hands in his pockets. Officer Borgeau testified that the Defendant appeared nervous and was hesitant to exit the vehicle and prior to exiting rolled up the window and locked the door. Officer Borgeau ordered the Defendant to place the keys on the top of the car explaining that it was a "safety issue." The Defendant reluctantly complied but questioned the request, arguing that it was not his car. Officer Borgeau testified that after the Defendant exited the vehicle, he turned away from him and towards the car, dropping his hands down towards the front of his waistband area and out of sight. This sudden movement immediately led Officer Borgeau to suspect the Defendant was either attempting to conceal evidence or retrieve a weapon. In response, Officer Borgeau grabbed the Defendant by the forearm and led the Defendant to the rear of the vehicle for the purpose of conducting a pat-down search of the Defendant. Prior to conducting the pat-down, Officer Borgeau asked the Defendant if he had anything on his person he needed to know about, including "weapons, needles or anything that would hurt him." The Defendant responded he had no weapons or needles. When asked if he had "something else" on his person, the Defendant admitted to having methamphetamine in his pocket.

Meanwhile, the Drug Dog sniff of the vehicle's exterior resulted in an alert near the driver-side door. Officer Montoya then proceeded to deploy his Drug Dog to conduct a sniff of the interior of the vehicle, resulting in the Drug Dog alerting to a black bag sitting on the passenger seat. A subsequent search of the black bag by Officer Montoya revealed seven syringes and a digital scale. The Defendant was subsequently placed under arrest. At no time prior to the arrest was the Defendant read

his *Miranda* rights. The traffic stop until the time of the arrest lasted approximately ten (10) minutes.

(R., pp.126-28 (footnote omitted).)

The state charged Huck with possession of methamphetamine and possession of drug paraphernalia. (R., pp.30-31.) The state later filed an Information Part II, alleging an enhancement against Huck for being a persistent violator of the law. (R., pp.58-59.)

Huck filed a motion to suppress the evidence, arguing that (1) law enforcement lacked probable cause to conduct the traffic stop; (2) no reasonable, articulable suspicion existed to remove Huck from his car; (3) Huck's detention was prolonged; (4) law enforcement failed to give Huck Miranda¹ warnings prior to questioning him at the scene; and (5) no evidence existed of the drug dog's qualifications. (R., pp.52-53; 75-88.) The state responded to the motion, arguing that the traffic stop was lawful, that the seizure of Huck was lawful, that Huck was not in custody when he told officers that he had methamphetamine in his pocket, and that Huck lacked standing to challenge the vehicle's search. (R., pp.95-108.) After additional briefing by the parties and a hearing on the motion, the district court denied Huck's suppression motion. (R., pp.126-38.)

Huck entered conditional guilty pleas to possession of methamphetamine and possession of drug paraphernalia, reserving his right to appeal the denial of his suppression motion. (R., pp.140-48.) The district court entered judgment against Huck and sentenced him to seven years with three years fixed on his conviction of possession of methamphetamine, but retained jurisdiction for a year. (R., pp.156-58.) Huck filed a timely notice of appeal. (R., pp.153-55.)

¹ Miranda v. Arizona, 384 U.S. 486 (1966).

ISSUE

Huck states the issue on appeal as:

Did the district court err when it denied Mr. Huck's motion to suppress?

(Appellant's brief, p.5.)

The state rephrases the issue as:

Has Huck failed to show error in the district court's denial of his suppression motion?

ARGUMENT

Huck Has Failed To Show Error In The District Court's Denial Of His Motion To Suppress Evidence

A. Introduction

During a traffic stop, Huck admitted to officers that he had methamphetamine in his pocket and, through a contemporaneous search of Huck's vehicle, police found additional quantities of methamphetamine and a digital scale. (R., pp.126-28.) Huck filed a suppression motion (R., pp.52-53, 75-88), which was denied by the district court (R., pp.126-38). On appeal, Huck asserts that the district court erred by denying his suppression motion because, he argues, the stop was illegal, he was wrongfully removed from his vehicle, his Miranda rights were violated, and/or the traffic stop was unreasonably extended.² (Appellant's brief, pp.7-16.) Application of the correct legal standards to the facts found by the district court, however, shows no error.

B. Standard Of Review

When review 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 found. 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

² Huck also argues that the district court erred in its determination that Huck lacked standing to challenge the search of his vehicle. (Appellant's brief, pp.13-16.) Whether Huck had standing to challenge the search of the vehicle, however, need not be addressed in this case. Each of Huck's appellate challenges focuses on his detention, whether it was lawful both at its inception and in its duration, and whether it became custodial. (See Appellant's brief, pp.7-18.) The ultimate search of the vehicle, which was based on probable cause from a drug dog's alert, is not challenged. The state concedes that Huck has standing to challenge his detention.

(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 Huck's Suppression Motion

The Fourth Amendment of the United States Constitution provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Const. amend. IV. While routine traffic stops by police officers implicate the Fourth Amendment’s prohibition against unreasonable searches and seizures, the reasonableness of a traffic stop is analyzed under Terry v. Ohio, 392 U.S. 1 (1968), because a traffic stop is more similar to an investigative detention than a custodial arrest. Delaware v. Prouse, 440 U.S. 648, 653 (1979); 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)).

To safeguard the privilege against self-incrimination afforded by the Fifth Amendment of the United States Constitution, the United States Supreme Court held in Miranda v. Arizona that before an individual is subjected to custodial interrogation, the interrogating officers must advise the individual of certain rights, including the right to remain silent. Id., 384 U.S. at 478-79. The test for determining whether an individual is in custody for purposes of Miranda is whether, considering the totality of the

circumstances surrounding the interrogation, there was a “formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.” California v. Beheler, 463 U.S. 1121, 1125 (1983) (quoting Oregon v. Mathiason, 429 U.S. 492, 495 (1977)). Because the “in custody” test for Miranda requires a restraint on freedom associated with formal arrest, “the temporary and relatively nonthreatening detention involved in a traffic stop ... does not constitute Miranda custody.” Maryland v. Shatzer, 559 U.S. 98, ___, 130 S.Ct. 1213, 1224 (2010) (citing Berkemer v. McCarty, 468 U.S. 420, 439-40 (1984)).

Applying the relevant legal standards to the facts before it, the district court correctly held that Huck’s detention and search were reasonable and complied with constitutional standards. (R., pp.126-38.) Huck challenges the district court’s ruling regarding his detention on various grounds, each of which is addressed below.

1. The Traffic Stop Was Lawful

Huck asserts that the traffic stop was unlawful. (Appellant’s brief, pp.7-10.) As noted above, a traffic stop is lawful when “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; Cortez, 449 U.S. at 417). When an officer observes a traffic violation, initiating a traffic stop is reasonable. Whren v. United States, 517 U.S. 806, 810 (1996).

In this case, Officer Montoya testified that he pulled over Huck because he observed Huck failing to properly engage his turn signal before turning from Overland Road onto Roosevelt Street as required by Idaho Code § 49-808(2). (4/9/2012 Tr., p.44, L.13 – p.45, L.5.) The district court found that, under the circumstances of this

case, Idaho Code § 49-808(2) required Huck to signal “for not less than the last one hundred (100) feet traveled by the vehicle before turning.” (R., p.129.) Officer Montoya testified, consistent with the audio recording of the traffic stop, that Huck failed to signal until he had already entered the intersection to turn onto Roosevelt Street. (4/9/2012 Tr., p.65, L.22 – p.66, L.11; see also State’s Ex. 1.) The district court found “Officer Montoya’s testimony to be credible and to be corroborated by the audio recording of the traffic stop.” (R., p.130.) The traffic stop was therefore legal based on Officer Montoya’s actual observation of a traffic violation.

Allowing “that credibility determinations are left to the discretion of the trial court,” Huck asserts that his testimony was credible and the district court should have accepted it instead of the officer’s. (Appellant’s brief, p.9.) Credibility determinations, however, are not merely left to the trial court’s discretion; rather, “it is the province of the trial court to weigh conflicting evidence and to judge the credibility of witnesses.” Snider v. Arnold, 153 Idaho 641, ___, 289 P.3d 43, 45 (2012) (citing Argosy Trust v. Wininger, 141 Idaho 570, 572, 114 P.3d 128, 130 (2005)). Appellate courts will not substitute their views of the evidence for that of the trial court. Id. Weighing the evidence before it, the trial court determined that Officer Montoya’s testimony was credible. (R., p.130.) Huck has failed to show clear error in that determination. Huck has failed, therefore, to show error in the district court’s determination that the traffic stop was lawful.

2. Officers Did Not Violate Huck’s Fourth Amendment Rights By Ordering Him To Exit His Vehicle

Huck argues that his Fourth Amendment rights were violated when he was ordered to exit his vehicle. (Appellant’s brief, p.10.) “[O]nce an officer has lawfully

stopped a motor vehicle for a traffic violation, ordering the driver to get out of the vehicle does not offend the Fourth Amendment.” State v. Irwin, 143 Idaho 102, 104, 137 P.3d 1024, 1026 (Ct. App. 2006); see also Pennsylvania v. Mimms, 434 U.S. 106, 111 n.6 (1977). Because, as established above, the traffic stop was lawful, Huck’s Fourth Amendment rights were not violated when officers ordered him to exit the vehicle.

3. Because Huck Was Not In Custody, Officers Did Not Violate His *Miranda* Rights By Questioning Him At The Scene Of The Traffic Stop Without First Giving Him *Miranda* Warnings

Huck argues that the district court erred by concluding that he was not in custody for purposes of Miranda while he was being frisked and questioned during his detention. (Appellant’s brief, pp.11-12.) The defendant bears the burden of establishing that he was in custody for purposes of Miranda. State v. James, 148 Idaho 574, 577, 225 P.3d 1169, 1172 (2010). As mentioned above, the test for determining whether an individual is in custody for purposes of Miranda is whether, objectively considering the totality of the circumstances surrounding an interrogation, there was a “formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.” Beheler, 463 U.S. at 1125 (quoting Mathiason, 429 U.S. at 495). Relevant factors in making this determination include the time, location, public visibility of the interrogation, the conduct of the officers, the nature and manner of the questioning, the extent to which officers confront the suspect with evidence of his guilt, and the presence of other persons. State v. Albaugh, 133 Idaho 587, 591, 990 P.2d 753, 757 (Ct. App. 1999); State v. Medrano, 123 Idaho 114, 117, 844 P.2d 1364, 1367 (Ct. App. 1992). Also as noted above, because the “in custody” test for Miranda requires a restraint on freedom associated with formal arrest, “the temporary and relatively nonthreatening detention

involved in a traffic stop ... does not constitute Miranda custody.” Shatzer, 559 U.S. at ____, 130 S.Ct. at 1224 (citing Berkemer, 468 U.S. at 439-40).

Correctly applying the relevant legal standards to the facts before it, the district court concluded that Huck was not in custody prior to his arrest. (R., pp.131-35.) The traffic stop lasted roughly ten minutes, which officers testified was a normal duration for a traffic stop. (R., p.132.) The traffic stop occurred in a public area along relatively busy streets. (R., pp.132-33.) The number of questions asked by the investigating officer was modest, and the questions were consistent with a Terry stop.³ (R., pp.133-34.) Finally, prior to arrest, Huck was never handcuffed, nor was he informed that his detention would be anything other than temporary. (R., pp.134-35.) Viewing these factors objectively, a reasonable person would not believe there was a “formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.”

Nonetheless, on appeal, Huck “asserts that he was in custody because he had been ordered out of the vehicle, frisked despite denying he had weapons, and there were three officers on the scene.” (Appellant’s brief, p.12.) These factors, while relevant to the inquiry, do not establish custody for purposes of Miranda. There is no question that Huck was seized when he was subjected to a traffic stop and frisked. Everything Huck has described, however, is consistent with an investigatory, or traffic, stop, and the “detention involved in a traffic stop ... does not constitute Miranda custody.” Shatzer, 559 U.S. at ____, 130 S.Ct. at 1224; see also State v. Young, 136

³ Before frisking him, the officer asked if Huck had “any weapons, any needles, anything that is going to hurt me.” (R., p.133; see also State’s Ex. 1.) Huck only denied the first two, saying “I have no weapons. No. I have no needles.” (Id.) The officer followed-up with, “Okay. Do you have something else?” (Id.) Huck acknowledged that he did. (Id.) The officer said, “You seem to be hesitating. What do you have?” (Id.) To which, Huck admitted, “I have a little methamphetamine.” (Id.)

Idaho 711, 720, 39 P.3d 651, 660 (Ct. App. 2002) (where a team of officers did not draw their weapons, use force or handcuffs, the suspect was not in custody for purposes of Miranda; even though “the officers controlled [his] movements to a certain degree, they did not control his movements to a degree associated with formal arrest”).

The Idaho Supreme Court’s opinion in State v. Ybarra, 102 Idaho 573, 634 P.2d 435 (1981), is instructive. In that case, Ybarra was a suspect in a bank robbery. Id. at 574, 634 P.2d at 436. He was stopped by several officers, ordered out of his car at gunpoint, and frisked. Id. After determining that Ybarra was not armed, two officers questioned him about the robbery “while the other officers receded from the scene.” Id. Ybarra made several incriminating statements to the officers. Id. He subsequently moved to suppress those statements, arguing that they were obtained in violation of his Miranda rights. Id. at 576, 634 P.2d at 438. The Idaho Supreme Court, however, held that Ybarra was not in custody because he was not “deprived of his freedom of action in a significant way so that Miranda warnings were required.” Id. at 576-77, 634 P.2d at 438-39.

While recognizing that “a multitude of police cars and officers present[ed] a vastly more intimidating scenario” than would have occurred had only one officer stopped Ybarra and questioned him, Id. at 577, 634 P.2d at 439, the Court also noted that virtually every police-citizen encounter will result in some degree of intimidation, but that is not determinative of the question of custody:

Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer Miranda warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning

takes place in the station house, or because the questioned person is one whom the police suspect. Miranda warnings are required only where there had been such a restriction on a person's freedom as to render him "in custody." It was that sort of coercive environment to which Miranda, by its terms was made applicable, and to which it is limited.

Id. (quoting Mathiason, 429 U.S. at 495). If Ybarra, removed from his car at gunpoint and frisked by a team of officers, was not in custody for purposes of Miranda, then Huck, who was subjected to a far more benign detention, was also not in custody.

The facts found by the district court in relation to Huck's suppression motion clearly establish that Huck was detained. They do not, however, establish that Huck was deprived of his freedom of action in a significant way so as to implicate Miranda. Although ordering Huck out of the vehicle and frisking him had the effect of restricting Huck's movement to a certain degree, that restriction was not sufficient for a reasonable person in Huck's position to believe he was in police custody to a degree associated with formal arrest. Huck failed to meet his burden of establishing that he was in custody for purposes of Miranda. The district court's denial of Huck's suppression motion on the basis of an alleged Miranda violation should be affirmed.

4. The Traffic Stop Was Not Unreasonably Extended

Huck argues that his detention was "unreasonably prolonged by the time the drug dog alerted to the vehicle." (Appellant's brief, pp.16-18.) An investigative detention must not only be justified at its beginning, but must also be conducted in a manner that is reasonably related in scope and duration to the circumstances which justified the interference in the first place. Florida v. Royer, 460 U.S. 491, 499-500 (1983); State v. Roe, 140 Idaho 176, 181, 90 P.3d 926, 931 (Ct. App. 2004). "There is

no rigid time limit for determining when a detention has lasted longer than necessary; rather, a court must consider the scope of the detention and the law enforcement purposes to be served, as well as the duration of the stop.” State v. Grantham, 146 Idaho 490, 496, 198 P.3d 128, 134 (Ct. App. 2008).

The district court held that Huck’s detention was not prolonged by Officer Montoya presenting his drug dog to conduct an open air sniff while another officer prepared a citation. (R., pp.136-37.) Because the dog was on scene and the sniff took place contemporaneously with the other officer writing the citation, the traffic stop was not extended by the sniff. (Id.) The district court’s determination is supported by the Court of Appeals’ opinion in State v. Parkinson, 135 Idaho 357, 17 P.3d 301 (Ct. App. 2000). In Parkinson, the Court held it was permissible for one officer to question a vehicle’s driver about drugs and weapons and to take a drug dog around the vehicle while another officer was busy checking with dispatch on the driver’s status and writing out a traffic citation. Id. at 362-63, 17 P.3d at 306-07.

Acknowledging that the drug dog was already on scene and that Officer Montoya delegated the responsibility of writing the citation to another officer, Huck nevertheless contends that the stop was impermissibly extended. (Appellant’s brief, pp.16-18.) Huck argues that the stop was extended because he was not ultimately issued a citation. (Id.) However, as Officer Montoya testified at the suppression hearing, Officer Schiffler in fact wrote out the citation. (4/9/2012 Tr., p.58, Ls.4-7.) Huck was not issued the citation because he “stated he wanted to help himself out with working as a confidential informant.” (4/9/2012 Tr., p.49, Ls.3-10.) Huck also argues that the stop was extended because Officer Montoya, after learning of Huck’s criminal history, asked questions

“regarding that history, even though this was not related to the purpose of the stop.” (Appellant’s brief, p.17.) Routine traffic stops may turn up suspicious circumstances which could justify an officer asking questions unrelated to the stop. State v. Myers, 118 Idaho 608, 613, 798 P.2d 453, 458 (Ct. App. 1990). Asking Huck limited questions about narcotics and weapons, after learning of his history of narcotics and weapons violations, would constitute part of a reasonable investigation, even if that was not the purpose of the initial stop. See Grantham, 146 Idaho at 496, 198 P.3d at 134; Parkinson, 135 Idaho at 362-63, 17 P.3d at 306-07. Huck has failed to show error in the district court’s determination that his detention’s duration was reasonable.

Huck’s detention was reasonable and complied with the standards of the Fourth Amendment. Because Huck was never in custody prior to his arrest, his Miranda rights were not violated when officers asked him questions at the scene of the traffic stop. Huck has failed to show error in the district court’s application of the relevant legal standards to the facts found. The district court correctly denied Huck’s suppression motion and should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court’s denial of Huck’s motion to suppress.

DATED this 26th day of April, 2013.



RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of April, 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

JUSTIN M. CURTIS
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.

A handwritten signature in cursive script, appearing to read "Russell J. Spencer", is written over a horizontal line.

RUSSELL J. SPENCER
Deputy Attorney General

RJS/pm