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State v. Tappin Respondent's Brief Dckt. 40377

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	No. 40377
Plaintiff-Respondent,)	
)	Ada Co. Case No.
vs.)	CR-2012-712
)	
MICHAEL WILLIAM TAPPIN,)	
)	
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

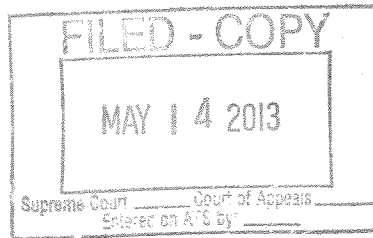
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STATEMENT OF THE CASE

Nature Of The Case

Michael William Tappin appeals from his judgment of conviction for trafficking in heroin, entered upon his conditional guilty plea. On appeal, he argues that the district court erred by denying his suppression motion.

Statement Of The Facts And Course Of The Proceedings

On January 11, 2012, Detective Andreoli, an undercover narcotics officer, arranged to purchase heroin from Steven McDaniel. (Tr., p.14, L.5 – p.15, L.8.) McDaniel and a friend, Mikey, were traveling to Seattle to purchase more heroin, after which McDaniel would be able to sell 10 grams of high quality heroin to Detective Andreoli. (Tr., p.15, L.9 – p.16, L.3; p.85, Ls.6-15.) McDaniel kept in contact with Detective Andreoli by phone and text, and they ultimately scheduled the delivery for January 14. (Tr., p.16, L.4 – p.19, L.10.)

On the morning of January 14, Detective Andreoli, with a surveillance team standing by, drove to the Shell Station on Federal Way where he met with McDaniel for the heroin delivery. (Tr., p.21, L.16 – p.23, L.11.) McDaniel informed Detective Andreoli that he could not complete the sale because his friend, Mikey, had his digital scale. (Tr., p.23, L.19 – p.24, L.13.) After attempting, and failing, to purchase a replacement scale at Fred Meyer, McDaniel determined that they would drive to Mikey's house and get his scale back. (Tr., p.24, L.20 – p.27, L.5.) As they approached the house, McDaniel had Detective Andreoli stop the car and got out to walk the rest of the way. (Tr., p.28, Ls.2-10.) According to McDaniel, Mikey did not like people knowing where he lived. (Id.)

Detective Andreoli observed McDaniel walk north on Virginia Street and radioed the information to the surveillance team. (Tr., p.28, Ls.11-21.) The surveillance team had been provided with a photograph of McDaniel. (Tr., p.58, Ls.1-6.) To avoid being spotted by McDaniel or driving past him, they drove around an adjacent street, Annette Street, and identified McDaniel as he returned from one of two houses on West Virginia Street. (Tr., p.63, L.10 – p.65, L.12.) McDaniel, returning to Detective Andreoli's car, then directed him back to the Shell Station where he produced a digital scale and completed the drug transaction. (Tr., p.30, L.5 – p.31, L.11.) McDaniel left Detective Andreoli and was shortly thereafter apprehended by Detective Bruner. (Tr., p.68, L.19 – p.69, L.6.)

Meanwhile, roughly a quarter of a mile away, surveillance officers observed the two houses on West Virginia Street. (Tr., p.69, L.24 – p.70, L.2; p.121, L.25 – p.123, L.12.) A car, with its driver on the phone, pulled up and parked, made a sudden u-turn and parked, and then pulled forward and parked again, all without signaling. (Tr., p.71, L.8 – p.73, L.7.) A man exited one of the houses on West Virginia Street and got into the passenger side of the car. (Tr., p.124, L.21 – p.125, L.23.) As the car began to pull away from the curb, officers enforced a traffic stop. (Tr., p.77, Ls.1-20.) Immediately after the stop, officers observed the passenger lean forward and reach his hands towards his waistband or pocket area. (Tr., p.77, L.21 – p.78, L.8.) Officers contacted the passenger, who gave his name as Mike Tappin. (Tr., p.78, L.9 – p.79, L.10.) A uniformed officer asked Tappin if he had any weapons or contraband and for permission to search Tappin's person. (Tr., p.79, Ls.15-25.) Tappin granted consent. (Tr., p.80,

Ls.1-2.) During that search, officers found heroin in Tappin's right front pants pocket. (Tr., p.82, Ls.11-22.)

A grand jury indicted Tappin with conspiracy to traffic in heroin, trafficking in heroin, and possession of drug paraphernalia. (R., pp.30-32.) Tappin filed a motion to suppress on the ground that there was no legal basis for the detention. (R., pp.56-64.) After a hearing on the motion (Tr., pp.7-137), the district court denied the suppression motion (R., pp.75-78).

Tappin entered into a conditional plea agreement, pursuant to which the state dismissed the conspiracy and paraphernalia charges and Tappin pleaded guilty to the trafficking charge, reserving his right to appeal the denial of his suppression motion. (R., pp.79-86; see also Tr., p.138, Ls.7-20.) The district court entered judgment against Tappin and sentenced him to 15 years with 10 years fixed on his conviction of trafficking in heroin. (R., pp.89-90.) Tappin filed a timely notice of appeal. (R., pp.94-97.)

ISSUE

Tappin states the issue on appeal as:

Did the district court err when it denied Mr. Tappin's motion to suppress, because the officers did not have reasonable suspicion to lawfully expand the traffic stop for investigation into drug activity, and thus his consent to a search was ineffective?

(Appellant's brief, p.5.)

The state rephrases the issue as:

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

ARGUMENT

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

A. Introduction

During a narcotics investigation, surveillance officers enforced a traffic stop on a suspicious vehicle for making an illegal u-turn and failing to signal. (R., pp.76-77; see also Tr., p.71, L.8 – p.72, L.12; p.77, Ls.1-20.) Tappin, a passenger in the vehicle, consented to a search of his person by officers, which led to the discovery of heroin. (R., p.78; see also Tr., p.79, L.19 – p.80, L.2.) Subsequently, Tappin filed a suppression motion (R., pp.56-64), which was denied by the district court (R., pp.75-78). On appeal, Tappin asserts that the district court erred by denying his suppression motion because, he argues, his consent was invalid due to the traffic stop being unreasonably extended. (Appellant's brief, pp.6-13.) This argument fails on two independent bases: First, it was not the argument Tappin raised to the district court in support of suppression, and Tappin is precluded from raising it for the first time on appeal; second, application of the correct legal standards to the facts found by the district court shows no error.

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 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

(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 Tappin'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)).

Generally, warrantless searches are considered unreasonable under the Fourth Amendment, “subject only to a few specifically established and well-delineated exceptions.” Minnesota v. Dickerson, 508 U.S. 366, 372 (1993) (internal citations and quotations omitted). One exception to the warrant requirement is a search done pursuant to consent. Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) (citations omitted); State v. Hansen, 138 Idaho 791, 796, 69 P.3d 1052, 1057 (2003); State v.

Varie, 135 Idaho 848, 852, 26 P.3d 31, 35 (2001). Freely and voluntarily given consent validates a search. Bustamonte, 412 U.S. at 222 (citations omitted). The voluntariness of an individual's consent is a question of fact to be determined based upon the totality of the circumstances. Varie, 135 Idaho at 852, 26 P.3d at 35 (citing Bustamonte, 412 U.S. at 248-49).

In this case, noting that the vehicle's driver committed several traffic infractions, the district court held that the traffic stop was justified based on the totality of the circumstances. (R., p.78.) The district court further held that once the stop occurred, nothing precluded the officer from asking Tappin if he would consent to a search. (Id.) Finally, the court noted that Tappin did not challenge the fact that he voluntarily consented to the search of his person. (Id.) Therefore, the search and seizure of Tappin was valid and the district court denied Tappin's suppression motion. (Id.)

On appeal, Tappin concedes that the traffic stop was valid at its inception and does not challenge the court's holding that he consented to the search. (Appellant's brief, pp.6-7.) Instead, Tappin argues that his consent was ineffective because, he contends, his detention was unlawfully extended. (Id., pp.6-13.) This argument was not raised to the district court and so may not be considered for the first time on appeal. State v. Fodge, 121 Idaho 192, 195, 824 P.2d 123, 126 (1992). This is especially true in relation to suppression motions where the defendant has the burden to present grounds for his motion to the trial court and may not raise alternative grounds for suppression for the first time on appeal. State v. Holland, 135 Idaho 159, 161-162, 15 P.3d 1167, 1169-1170 (2000); see also I.C.R. 47. Because Tappin failed to raise this argument below, the state did not have the direct opportunity to respond with evidence

or argument to challenge it, and the district court did not have the opportunity to consider it. Tappin is therefore precluded from raising it for the first time on appeal.

Even if this Court considers Tappin's new argument, he has still failed to show that the district court erred by denying his suppression motion. Tappin's contention that the traffic stop was unlawfully extended is premised on officers asking Tappin at the inception of the traffic stop whether he had any weapons or contraband, if he would consent to a search of his person, and where he lived. (Id., pp.8-10.) Tappin asserts that these questions were unnecessary to address the traffic violation and therefore represent an unlawful extension of the traffic stop. (Id.) Application of the correct legal standards, however, shows that the detention was not unlawfully extended.

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). Most importantly, "[b]rief, general questions about drugs and weapons, in and of themselves, do not extend an otherwise lawful detention." Id. at 496, 198 P.3d at 134. Thus, the officer's briefly asking Tappin, the passenger of the car, if he had drugs or weapons, and requesting consent to search Tappin's person for the same, did not unlawfully extend

the duration of the stop to investigate the driver of the car. Tappin's consent to the search was therefore valid.

Even if officers needed reasonable suspicion of a drug crime in order to ask brief questions regarding drugs and weapons and request consent to search Tappin's person for the same, the officers possessed the required reasonable suspicion. 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 an officer's suspicion is evaluated based upon the totality of the circumstances. Cortez, 449 U.S. at 417–18; State v. Rawlings, 121 Idaho 930, 932, 829 P.2d 520, 522 (1992).

This case arose from a related controlled purchase of heroin from Steven McDaniel. (R., pp.75-76.) McDaniel was not working alone. (Tr., p.32, L.15 – p.34, L.6; p.85, Ls.6-15.) Officers knew that within a couple days of selling the heroin, McDaniel had purchased it in Seattle with his friend. (Tr., p.16, L.10 – p.17, L.3.) The friend, Mikey, had McDaniel's digital scale, and McDaniel went to Mikey's house to pick it up. (Tr., p.25, L.25 – p.28, L.10.) Officers knew that McDaniel had gone to one of two houses on West Virginia Street to pick up the scale from Mikey. (Tr., p.64, L.24 – p.65, L.12.) After arresting McDaniel, officers placed the two houses under observation. (Tr., p.69, L.24 – p.70, L.2; p.121, L.25 – p.123, L.12.)

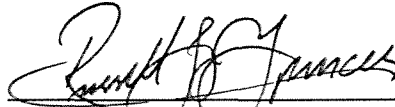
One of the detectives observing the houses was Detective Bruner. (Tr., p.69, L.24 – p.70, L.2.) Detective Bruner had substantial training and experience working in narcotics interdiction. (Tr., p.52, L.16 – p.54, L.7.) Detective Bruner observed a vehicle with its driver on the phone park, make a u-turn, park again, drive a little further and park again, all of which his experience indicated was consistent with a drug transaction about to occur. (Tr., p.71, L.8 – p.73, L.7.) Tappin exited one of the two houses under observation and got into the vehicle. (Tr., p.124, L.21 – p.125, L.23.) While officers enforced a traffic stop, Detective Bruner observed Tappin lean forward in his seat and place his hands in his waistband or pocket area. (Tr., p.77, L.1 – p.78, L.8.) Officers contacted Tappin and asked his name, which he gave as Mike Tappin, a name consistent with Mikey. (Tr., p.79, Ls.3-14.) Under the totality of these circumstances, officers had sufficient reasonable suspicion to ask if Tappin possessed any weapons or drugs, and to request consent to search for the same.

Applying the correct legal standards to the facts before it, the district court correctly denied Tappin's suppression motion. Tappin has failed to show error in the district court's denial of his motion. The district court's order denying the suppression motion should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Tappin's suppression motion.

DATED this 14th day of May, 2013.



RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of May, 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

BEN PATRICK McGREEVY
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