

6-17-2014

State v. Watt Appellant's Brief Dckt. 41870

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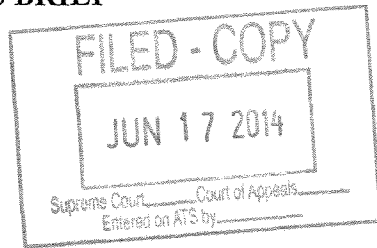
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) No. 41870
)
 v.)
)
 JARYN WATT,) 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 MICHAEL MCLAUGHLIN
District Judge

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DEFENDANT-APPELLANT**

**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

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STATE OF IDAHO,)	
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Plaintiff-Respondent,)	No. 41870
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JARYN WATT,)	APPELLANT'S BRIEF
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STATEMENT OF THE CASE

Nature of the Case and Course of Proceedings

Jaryn Watt entered a conditional plea of guilty pursuant to Idaho Criminal Rule 11(a)(2) on July 30, 2013 to Paraphernalia a violation of Idaho Code 37-2734A(1) and Possession of a Controlled Substance a violation of Idaho Code 37-2732(c)(3). Mr. Watt filed his Notice of Appeal on August 2, 2013; the District Court heard argument and took the matter under advisement. The District Court issued its Memorandum Decision and Order affirming the denial of suppression on January 16, 2014, and Mr. Watt now timely appeals.

On appeal, Mr. Watt asserts that the trial court erred when it failed to grant his Motion to Suppress based on the lack of reasonable articulable suspicion to prolong the detention in violation of Mr. Watt's 4th, 5th, and 6th Amendment Rights of the United States Constitution and Article I, Sections 13 and 17 of the Idaho State Constitution.

Statement of the Facts and Course of Proceedings

On February 12, 2013 at about 10:15 p.m. Jaryn Watt was at the intersection of Eagle Road and Easy Jet near the dumpster located in the parking lot of several businesses. (06/13/13 Hr., p.4, Ls.22-24)(06/13/13 Hr., p.5, Ls.8-23). Jaryn was stopped near the dumpster to throw away some trash that was in his vehicle. (06/13/13 Hr., p.28, Ls.1-8). The doors of his vehicle were open and the lights inside the vehicle were on. (06/13/13 Hr., p.28, Ls.1-8). Jaryn had thrown some trash away, and gone back to his vehicle when he saw an empty can of chewing tobacco. (06/13/13 Hr., p.28, Ls.1-8). Jaryn tossed the can of chewing tobacco over the enclosure, and it bounced off the top so he went around the side of the enclosure to pick up the can and put it in the dumpster. (06/13/13 Hr., p.28, Ls.16 – p.29, Ls.4). Once Jaryn came out of the dumpster enclosure for the second time, he saw the police car pull in behind him. (06/13/13 Hr., p.29, Ls.1-4).

Officer Clark testified that he did not activate his emergency lights. (6/13/13 Hr., p.7, Ls.11-12). However, Jaryn testified that he observed the flashing lights of the police car as well as a spotlight on him specifically. (06/13/13 Hr., p.29, Ls.21-25). Officer Clark testified that he was just kind of curious as to why Jaryn was there, and thought that it was odd. (06/13/13 Hr., p.6, L. 25 – p. 7 Ls. 3). As Officer Clark spoke with Jaryn he alleges that his pupil's didn't react much to light and that his eyes were bloodshot and watery. (06/13/13 Hr., p.8, Ls.16-21). Officer Clark had Jaryn's driver's license and returned to his vehicle to check for wants and warrants. (06/13/13 Hr., p.9, Ls.7-15). While in his patrol vehicle Officer Clark called Deputy Tenna for an assist. (06/13/13 Hr., p.9, Ls.11-15). Deputy Tenna is a K9 handler and based on Officer Clarks' observations, he believed Jaryn was under the influence of a controlled substance. (06/13/13 Hr., p.11, Ls.2-8). Officer Clark conducted further investigation including measuring his pupils, a modified Rhomberg Stand test, and took his pulse. (06/13/13 Hr., p.11, Ls.13 – p.14 L.3). None of those tests are standard field sobriety tests and Jaryn believes those tests were irrelevant to the initial determination as to whether or not Officer Clark had reasonable and articulable suspicion to prolong the detention. (06/13/13 Hr., p.9, Ls.18 – p.10 Ls.23). From the time Officer Clark made contact with Jaryn, until Deputy Tenna arrived was about seven minutes. (06/13/13 Hr., p.14, L.10).

Officer Clark did not ask any questions about Jaryn's day, whether he had been working a full day or sleeping. (06/13/13 Hr., p.19, Ls.3-22). Officer Clark had never met Jaryn, and had no knowledge as to how Jaryn's eyes normally appear. (06/13/13 Hr., p.20, Ls.1-3). Officer Clark is not an ophthalmologist, and when evaluating pupil size, it is measured in millimeters, which is one of the smallest forms of measurement. (06/13/13 Hr., p.20, Ls.4-14). Officer Clark has only a "few" hours training in evaluating pupil size. (06/13/13 Hr., p.21, Ls.12-20).

Jaryn did not get his license back from Officer Clark until after he had been detained and placed in the back of the police car, and then released with a citation. (06/13/13 Hr., p.37, Ls.15-19).

ISSUES

- I. Did the trial court err when it failed to grant the defendant's Motion to Suppress based on the lack of reasonable articulable suspicion to prolong the detention in violation of Mr. Watt's 4th, 5th, and 6th Amendment Rights of the United States Constitution and Article I, Section 13 and 17 of the Idaho Constitution?

ARGUMENT

I.

The Trial Court Erred When It Failed To Grant The Defendant's Motion to Suppress Based On The Lack Of Reasonable Articulate Suspicion To Prolong The Detention In Violation Of Mr. Watt's 4th, 5th, and 6th Amendment Rights Of The United States Constitution And Article I, Sections 13 And 17 Of The Idaho State Constitution?

A. Introduction

Mr. Watt asserts that based on the totality of the circumstances; the officer unreasonably extended the detention of Mr. Watt after the purpose of the encounter had been abandoned and that the trial court erred when it failed to grant his Motion to Suppress because Officer Carter lacked reasonable articulable suspicion to prolong the detention in violation of Mr. Watt's constitutional right against unreasonable search and seizure guaranteed to him by the United States and Idaho Constitutions.

B. Standard on Appeal

Motions to suppress evidence for violation of constitutional rights present questions of fact and law. This Court exercise free review in determining whether constitutional standards have been met in light of the facts presented. *State v. Holler*, 136 Idaho 287, 291, 32 P.3d 679, 683 (Ct.App.2001); *State v. Evans*, 134 Idaho 560, 563, 6 P.3d 416, 419 (Ct.App.2000); *State v. Jordan*, 122 Idaho 771, 772, 839 P.2d 38, 39 (Ct.App.1992).

C. The Trial Court Erred When It Failed To Grant The Defendant's Motion to Suppress Based On The Lack Of Reasonable Articulate Suspicion To Prolong The Detention In Violation Of Mr. Watt's 4th, 5th, and 6th Amendment Rights of The United States Constitution And Article I, Sections 13 And 17 Of The Idaho State Constitution.

The Fourth Amendment to the United States Constitution and Article I, § 17 of the Idaho Constitution guarantee the right of the people to be free from unreasonable searches and seizures conducted by government officials. U.S. Const. amend. IV; Idaho Const Art. I, § 17. The federal

safeguard has been incorporated through the Due Process Clause of the Fourteenth Amendment to the United States Constitution to apply to the states. *State v. Bishop*, 146 Idaho 804, 810, 203 P.3d 1203 (2009) (citing *Mapp v. Ohio*, 367 U.S. 643,655 (1961)). “Evidence obtained in violation of the amendment generally may not be used as evidence against the victim of the illegal government action.” *Id.* at 810-11. This “exclusionary rule” applies to both “evidence obtained directly from the illegal government action and to evidence discovered through the exploitation of the original illegality, or the fruit of the poisonous tree.” *Id.* at 811. “The test is ‘whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of [the original] illegality or instead by means sufficiently distinguishable to be purged of the primary taint.’” *Id.* (quoting *Wong Sun v. United States*, 371 U.S. 471, 488 (1963) (alteration in original)). In other words, “evidence that is sufficiently attenuated from the illegal government action may be admitted at trial.” *Id.* “When a defendant moves to exclude evidence on the grounds that it was obtained in violation of the Fourth Amendment, the government carries the burden of proving that the search or seizure in question was reasonable.” *Id.*

“A traffic stop is subject to the Fourth Amendment restraint against unreasonable searches and seizures.” *State v. Sheldon*, 139 Idaho 980, 983, 88 P.3d 1220 (Ct.App.2003). A routine traffic stop, typically of limited scope and duration, is analyzed under the principles set forth in *Terry v. Ohio*, 392 U.S. 1 (1968), because it is more analogous to an investigative detention than a custodial arrest. *Id.* “Under *Terry*, 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.” *Id.* Under this standard, the “totality of the circumstances then known to the officer . . . must show a particularized and objective basis for

suspecting the particular person stopped of criminal activity.” *Id.* (internal quotation marks omitted).

“To meet the constitutional standard of reasonableness, an investigative detention must not only be justified by reasonable suspicion at its inception, but also must be reasonably related in scope to the circumstances that justified the stop in the first place.” *Id.* A traffic violation, as an unlawful activity, in itself justifies a traffic stop. *State v. DuValt*, 131 Idaho 550, 553, 961 P.2d 641 (1998).

As stated in *Terry* the determination of whether investigative detention is reasonable requires a two-pronged analysis: (1) “whether the officer’s action was justified at its inception” and (2) “whether it was reasonably related in scope to the circumstances which justified the interference in the first place.” When a person is detained, the scope of the detention must be carefully tailored to its underlying justification and must last no longer than is necessary to effectuate the purpose of the stop. *Florida v. Royer*, 460 U.S. 491, 500 (1983). Further, it is the State’s burden to demonstrate that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure. *Id.* at 500-501. A routine traffic stop is a limited seizure that closely resembles an investigative detention under *Terry*. *Berkemer v. McCarty*, 468 U.S. 420 (1984). However, *Terry* prohibits an expansion of a traffic stop to a drug investigation if police immediately abandon the purpose that justified the stop.

Idaho's Constitution stands on its own, and although we may look to the rulings of the federal courts on the United States Constitution for guidance in interpreting our own state constitutional guarantees, “we interpret a separate and in many respects, independent constitution.” *Hellar v. Cenarrusa*, 106 Idaho 586, 590, 682 P.2d 539, 543 (1984). Idaho’s

Constitution, specifically Article I, § 17 provides more privacy protection as well as more remedial protection including suppression. Idaho's exclusionary rule was applied in *State v. Arregui*, 44 Idaho 43, 254 P. 788 (1927), 34 years before the federal exclusionary rule was applied to the states in *Mapp v. Ohio*, 367 U.S. 643 (1961). Thus, Idaho has a long history of recognizing both the efficacy and importance of the exclusionary rule. In *State v. Rauch*, 99 Idaho 586, 586 P.2d 671 (1978), the Court recognized that to admit illegally seized evidence would constitute an independent constitutional violation by the court in addition to the violation at the time of the illegal search.

Idaho's Court has recognized that the more substantial cost to society is the violation of the constitutional rights, not that a guilty party may go free.

"I can see no such expediency or necessity for the enforcement of any law as to justify violation of constitutional rights to accomplish it. The shock to the sensibilities of the average citizen when his government violates a constitutional right of another is far more evil in its effect than the escape of any criminal through the courts' observance of those rights." *Arregui*, 44 Idaho at ___, 254 P. at 792.

Although the Federal Exclusionary rule has been whittled away at through case law, Idaho's Constitution and the Exclusionary Rule are still in full force and effect. Idahoans are more protective of their privacy, thus the Courts should provide us with more protection. We are more concerned about the innocent being affected by overzealous police, "The prospect of unregulated governmental monitoring will undoubtedly prove disturbing even to those with nothing illicit to hide." *State v. Thompson*, 114 Idaho 746, 751, 760 P.2d 1162 (1988).

In *State v. Aguirre*, 141 Idaho 560, 112 P.3d 848 (Ct.App.2005), a deputy assisting in a traffic stop noticed a truck driven by Mr. Aguirre circling the area. *Id.* at 561. Mr. Aguirre was subsequently observed pulling out of a parking lot without coming to a complete stop prior to entering the roadway. *Id.* After a traffic stop was effectuated, the deputy made contact with Mr.

Aguirre, inquired as to why he was circling the area, received Mr. Aguirre's driver's license, registration and insurance, and requested permission to search the vehicle. *Id.* at 561-562. Mr. Aguirre refused and the deputy then advised him that he would deploy a drug detection dog around the truck. *Id.* The dog alerted on the outside of the truck and a subsequent search revealed a semi-automatic handgun. *Id.*

The Court was presented with the question of whether the use of the drug dog was reasonably related in scope to the circumstances which justified the traffic stop. In its analysis the Court noted that in previous cases in which the use of a drug dog has been permitted, it did not extend the duration of the stop beyond that which was necessary to address the traffic violation. *Id.* at 563. In contrast, the facts with which the Court was presented indicated that law enforcement officers made no further effort to pursue the initial purpose of the stop (the traffic violation of not coming to a complete stop) and made no effort to delegate responsibility for concurrent investigations. *Id.* at 564. The Court further noted that "... the collective effort of the police was uniformly directed at a drug investigation completely unrelated to the traffic stop. The purpose that justified the stop – the issuance of a traffic citation – was immediately abandoned." *Id.* Though the entire stop lasted only five to seven minutes, the court held that, because the dog sniff was not reasonably related in scope to the circumstances that justified the traffic stop, and no further probable cause justified the extension, the sniff was an unconstitutional expansion of the traffic stop. *Id.* at 850, 852.

Further, Idaho courts have held even a minimal extension may be unconstitutional where no additional grounds for doing so are discovered before the initial justification for the stop is resolved. *State v. Gutierrez*, 137 Idaho 647, 51 P.3d 461, 466 (Ct.App.2002). In *Gutierrez*, a passenger was cited for possession of a controlled substance, after a consensual search of the

vehicle. *Id.* at 463. After pulling the car over for speeding, the officer noticed the driver exhibited “undue nervousness.” *Id.* The officer ensured the driver’s license was valid, and returned to the car to issue the driver a warning. Rather than concluding the stop, the officer began asking the driver if illegal items were in the car. The officer noted that the driver’s body language suggested he was lying. The officer obtained consent to search the vehicle and subsequently discovered marijuana. *Id.* The court held that, although the stop was extended for only “sixty to ninety seconds,” it was an impermissible extension because the officer did not have “reasonable, objective grounds for doing so.” *Id.* at 466.

In this case, Officer Clark made contact with Mr. Watt because he “was just kind of curious” and after an explanation of a legitimate purpose for being near the dumpster and in this parking lot the officer claimed Jaryn had dilated pupils and bloodshot and watery eyes. It wasn’t until at least five (5) minutes later that Deputy Tenna arrived with the drug detection dog. Unlike *Gutierrez*, there was no observation of any undue nervousness or body language that would suggest the driver was lying or that potential criminal activity was afoot. Officer Clark did not observe any odor of alcohol or marijuana, and the only potential indicator was bloodshot and watery eyes. Further, there is no evidence that Mr. Watt exhibited any symptoms of impairment or that he was on probation or parole or involved in any other criminal activity. There were no reasonable or objective grounds for Officer Clark to ask for the assistance of a drug detection dog or for the officer to then question Mr. Watt regarding the presence of anything illegal or to pursue any further testing.

Officer Clark immediately directed his efforts toward a drug/DUI investigation completely unrelated to the initial consensual encounter. The consensual encounter ended once Officer Clark took the license of Mr. Watt to check for wants and warrants. Because drivers are


required to carry their licenses on them at all times, a driver is seized when a cop takes the license. *State v. Osborn*, 121 Idaho 520, 826 P.2d 481 (Ct.App. 1991). There was nothing to suggest to the officer that criminal activity was afoot and instead of concluding the encounter, the officer had the individual wait an additional five minutes for the drug detection dog and then asked questions with respect to illegal drugs.

The initial consensual encounter was transformed into a detention when Officer Clark took the driver's license of Mr. Watt; that detention was unreasonably lengthened when Officer Clark began testing Mr. Watt with regards to a potential DUI investigation. What is specifically telling is that instead of having Mr. Watt perform the standard field sobriety tests (horizontal gaze nystagmus, walk and turn, one leg stand) which are performed in almost all DUI investigations Officer Clark instead performed his own tests in an apparent stall and delay tactic to ensure the arrival of the K9. The three "tests" used by Officer Clark are not part of the standard field sobriety testing. Further, two of the offered "tests" were not tests and were the subjective measuring of a pupil and a pulse. Officer Clark violated the Fourth Amendment rights of Mr. Watt; like in *Aguirre* and *Gutierrez*, because Officer Clark lacked reasonable objective grounds for extending the stop, the evidence must be suppressed.

CONCLUSION

For the reasons set forth above, Mr. Watt respectfully requests that this court reverse the trial court's decision denying his Motion to Suppress.

DATED this 17th day of June 2014.



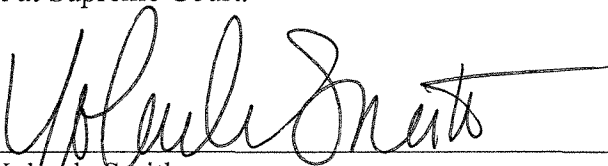
HEIDI TOLMAN
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CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 17th day of June 2014, I caused to be served a true and correct copy of the foregoing document in the above-captioned matter to:

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



Yolanda Smith