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State v. Hunter Respondent's Brief Dckt. 42233

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IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|---------------------|
| STATE OF IDAHO, |) | |
| |) | No. 42233 |
| Plaintiff-Respondent, |) | |
| |) | Canyon Co. Case No. |
| vs. |) | CR-2013-25586 |
| |) | |
| CRAIG ALLEN HUNTER, |) | |
| |) | |
| Defendant-Appellant. |) | |

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON**

**HONORABLE THOMAS J. RYAN
District Judge**

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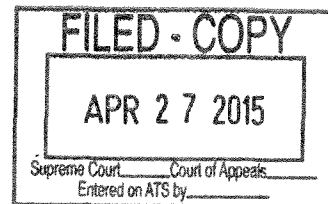


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STATEMENT OF THE CASE

Nature of the Case

Craig Allen Hunter appeals from a judgment of conviction entered upon his conditional guilty plea to felony driving under the influence (DUI). Specifically, Hunter challenges the denial of his motion to suppress.

Statement of Facts and Course of the Proceedings

The district court made the following findings of fact following a hearing on Hunter's motion to suppress:

The Defendant is charged by Criminal Information with operating a motor vehicle while under the influence of alcohol (third offense), a felony, in violation of I.C. §§ 18-8004, 18-8005; 18-8004; 18-8004C(2).

On October 5, 2013, at approximately 12:01 a.m., Corporal Pelkey observed a white Mercedes pull onto Cleveland Boulevard from a parking lot and cross over the immediate right hand lane of travel into the left hand lane of travel with its left turn signal activated. According to the police officer, the Mercedes never established itself in the right hand lane of travel. After establishing itself in the left hand lane, the Mercedes travelled approximately one hundred fifty (150) feet while signaling a left turn for approximately three (3) seconds. The Mercedes then executed a left turn onto 26th Avenue and pulled into a vacant parking lot in response to Corporal Pelkey's signal to pull over. Corporal Pelkey stated in his police report and again at the preliminary hearing that he pulled over this vehicle because it failed to utilize a turn signal for five (5) seconds, in violation of I.C. § 49-808(2). The officer approached the driver and identified him from his Idaho Driver's License as Craig Hunter, the Defendant. Officer Pelkey smelled the odor of alcohol and observed that the Defendant's eyes were bloodshot. The Defendant admitted consuming three drinks and he was detained due to suspicion of driving under the influence. Hunter subsequently failed three field sobriety tests and was asked to submit to a breath test. After four failures to provide a sufficient breath sample to measure breath alcohol content, a search warrant was obtained to collect a blood sample. The blood sample was collected and the Defendant was arrested.

(R., p.45.)

Hunter filed a motion to suppress asserting the initial traffic stop was impermissible because the officer lacked reasonable suspicion that Hunter had committed a traffic violation. (R., pp.32-35.) The court denied Hunter's motion finding the initial driving conduct observed by Officer Pelkey, turning from a right-hand lane into a left-hand lane, was a violation of I.C. § 49-644 and provided the officer with legal cause to conduct a traffic stop. (R., p.48.)

Hunter entered a conditional guilty plea to felony DUI, reserving the right to appeal the denial of his motion to suppress. (R., pp.56-62, 68-70; 3/26/14 Tr., p.15, L.18 – p.16, L.6, p.21, Ls.1-24.) The court placed Hunter on a four-year period of supervised probation with an underlying sentence of two-years fixed followed by three-years indeterminate. (R., pp.79-80; 5/12/14 Tr., p.12, Ls.5-12.) Hunter timely appealed. (R., pp.83-85.)

ISSUE

Hunter states the issue on appeal as:

Did the district court err when it denied Mr. Hunter's Motion to Suppress?

(Appellant's brief, p.4.)

The state rephrases the issue on appeal as:

Has Hunter failed to show error in the denial of his motion to suppress?

ARGUMENT

Hunter Has Failed To Show Error In The Denial Of His Motion To Suppress

A. Introduction

Hunter challenges the denial of his motion to suppress, arguing as he did below that “his Fourth Amendment rights were violated when Corporal Pelkey detained him without reasonable suspicion.” (Appellant’s brief, p.5.) Below, Hunter argued the officer was mistaken about what I.C. § 49-808(2) required of a driver when signaling his or her intent to turn and as such had no cause to stop Hunter. (R., pp.33-34). Below and on appeal Hunter contends that he “made the safest turn possible under the circumstances” and was not required to comply with the turning requirement of I.C. § 49-644 because doing so was impracticable and would have made it impossible to subsequently comply with the turn signal requirement of I.C. § 49-808(2). Hunter’s argument fails. (Appellant’s brief, p.10).

The trial court found “[r]egardless of whether the officer was interpreting § 49-808(2) correctly at the time of this traffic stop, he had legal cause to stop the vehicle because of his observation of the violation of I.C. § 49-644.” (R., p.48.) The district court correctly interpreted I.C. § 49-644 as requiring a turn “into the right, or nearest lane” as Hunter exited a parking lot. (R., pp.47-48.) Because the officer observed Hunter as “he drove **across** the nearest lane and directly into the left lane,” (R., p.48 (emphasis added)), the officer had a reasonable, articulable basis to conduct the traffic stop.

B. Standard Of Review

In reviewing a decision on a motion to suppress, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts. State v. Diaz, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007).

The interpretation and construction of a statute present questions of law over which the appellate court exercises free review. State v. Thompson, 140 Idaho 796, 798, 102 P.3d 1115, 1117 (2004).

C. The District Court Correctly Applied The Law To The Facts In Concluding That The Officer Had Reasonable Suspicion To Stop Hunter Because He Violated The Turning Requirements Of I.C. § 49-644(1)

"A traffic stop by an officer constitutes a seizure of the vehicle's occupants and implicates the Fourth Amendment's prohibition against unreasonable searches and seizures." State v. Young, 144 Idaho 646, 648, 167 P.3d 783, 785 (Ct. App. 2006) (citing Delaware v. Prouse, 440 U.S. 648, 653 (1979)). Ordinarily, a warrantless seizure must be based on probable cause to be reasonable. Florida v. Royer, 460 U.S. 491, 499-500 (1983); State v. Bishop, 146 Idaho 804, 811, 203 P.3d 1203, 1210 (2009). However, limited investigatory detentions, based on less than probable cause, are permissible when justified by an officer's reasonable, articulable suspicion that a person has committed, or is about to commit, a crime. Royer, 460 U.S. at 498; Bishop, 146 Idaho at 811, 203 P.3d at 1210. "An officer may also stop a vehicle to investigate possible criminal behavior if there is reasonable articulable suspicion that the vehicle is being driven contrary to traffic laws." Young, 144 Idaho at 648, 167 P.3d at 785 (citing

United States v. Cortez, 449 U.S. 411 (1981)). “Reasonable suspicion requires less than probable cause but more than speculation or instinct on the part of the officer.” State v. Horton, 150 Idaho 300, 302, 246 P.3d 673, 675 (Ct. App. 2010) (citation omitted). Whether an officer possessed reasonable suspicion is evaluated based on the totality of the circumstances known to the officer at or before the time of the stop. Bishop, 146 Idaho at 811, 203 P.3d at 1210; State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003).

Idaho Code § 49-644 governs required position and method of turning on Idaho highways and provides, in relevant part:

The driver of a vehicle intending to turn shall do so as follows:

- (1) Both the approach for a right turn and the right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

§ 49-644(1). The district court found the plain language of this statute required a person making a right-hand turn to turn “into the right, or nearest lane.” (R., pp.47-48.) Corporal Pelkey stopped Hunter after observing him exit a parking lot onto Cleveland Blvd. and “cross the right-hand lane to get into the left-hand lane.” (2/20/14 Tr., p.6, Ls.10-13.) Hunter argues he made the safest turn possible by crossing over the right lane in order to get to the left lane in enough time to correctly signal his upcoming turn. (Appellant’s brief, p.10.)

The objective of statutory interpretation is to give effect to legislative intent. State v. Pina, 149 Idaho 140, 144, 233 P.3d 71, 75 (2010); Robison v. Bateman-Hall, Inc., 139 Idaho 207, 210, 76 P.3d 951, 954 (2003). Because the best guide to legislative intent is the wording of the statute itself, the

interpretation of a statute must begin with its literal words. Verska v. Saint Alphonsus Reg'l Med. Ctr., 151 Idaho 889, 893, 265 P.3d 502, 506 (2011); State v. Doe, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009). The words of a statute “must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.” Verska, 151 Idaho at 893, 265 P.3d at 506 (quoting State v. Schwartz, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003)). “[W]here statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature.” Id. (quoting City of Sun Valley v. Sun Valley Co., 123 Idaho 665, 667, 851 P.2d 961, 963 (1993)).

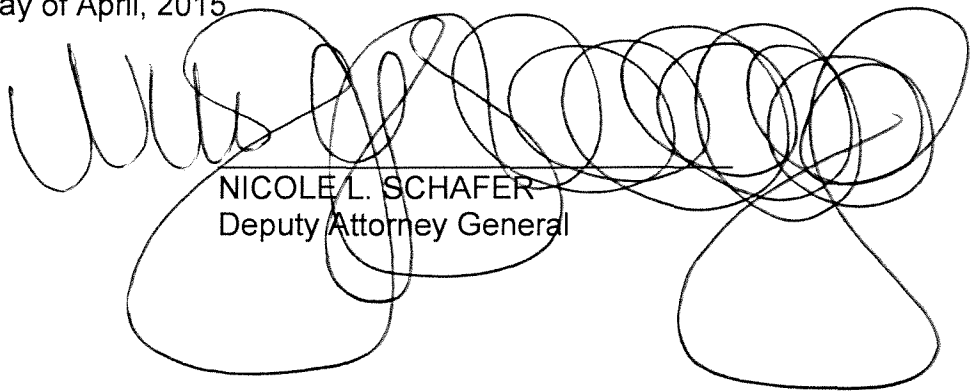
The language of the statute in question is unambiguous. When making a right-hand turn, the approach and the turn shall be made “as close as practicable to the right-hand curb or edge of the driveway.” I.C. § 49-644 (1). The plain language of the statute clearly directs a driver to turn **from** the extreme right-hand lane **to** the extreme right-hand lane when practicable. In Re: Beyer, 155 Idaho 40, 304 P.3d 1206 (Ct.App. 2013), held the language of § 49-644(1) unambiguously requires “that a driver turn into the right, or nearest lane, rather than drive across the nearest lane and directly into the left lane of a four-lane road consisting of two lanes in each direction.” 155 Idaho at 45, 304 P.3d at 1211. Hunter did not do that. Instead, he “cross[ed] over the immediate right hand lane of travel into the left hand lane of travel” and failed to “establish[] [himself] in the right hand lane of travel.” (R., p.45.).

Because Hunter turned from the right-hand lane into the left-hand lane, the district court correctly upheld the traffic stop as being justified by a reasonable, articulable suspicion that Hunter violated I.C. § 49-644(1). Hunter's argument that his desire to make a successive left turn made his compliance with this statute not "practicable" is without merit. Faced with the choice of taking the most direct route to his destination or complying with traffic laws, Hunter made the wrong choice. Hunter has failed to show error in the denial of his motion to suppress.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Hunter's motion to suppress and affirm his judgment of conviction.

DATED this 27th day of April, 2015



NICOLE L. SCHAFER
Deputy Attorney General

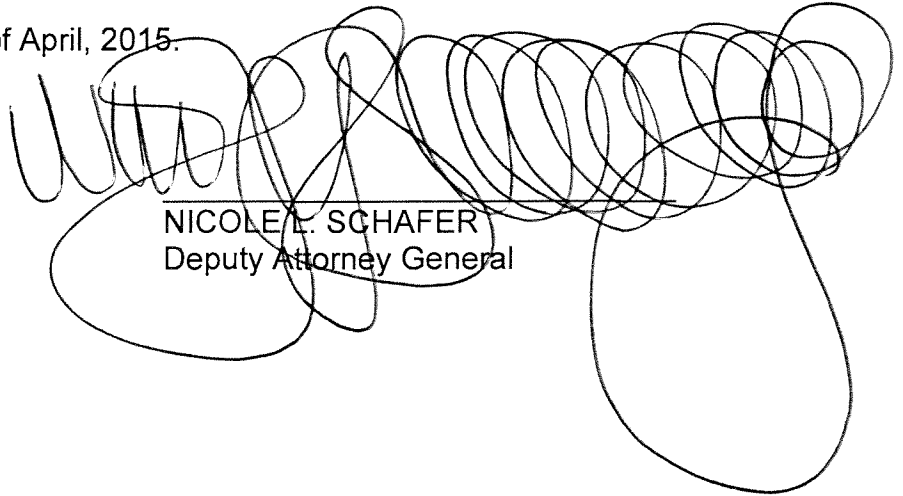
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 27th day of April, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by causing a copy addressed to:

KIMBERLY E. SMITH
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.

DATED this 27th day of April, 2015.



NICOLE L. SCHAFER
Deputy Attorney General

NLS/pm