1-27-2015

State v. Fridley Appellant's Brief Dckt. 42468

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 42468
Plaintiff-Appellant,	)	
	)	Kootenai Co. Case No.
vs.	)	CR-2013-20298
	)	
GARY EUGENE FRIDLEY,	)	
	)	
Defendant-Respondent.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

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STATEMENT OF THE CASE

Nature of the Case

The state appeals from the district court's order suppressing evidence obtained pursuant to a search of a vehicle.

Statement of Facts and Course of Proceedings

Dispatch informed Sergeant Sutton that a pickup truck was driving erratically and almost hit a barrier as it exited I-90 in Post Falls. (Tr., p. 4, L. 13 – p. 5, L. 6.) Dispatch informed Sergeant Sutton that the pickup had parked and gave Sergeant Sutton the license plate number. (Tr., p. 5, L. 11 – p. 6, L. 1.) Sergeant Sutton parked and searched for the pickup on foot. (Id.) Sergeant Sutton eventually located the pickup and made contact with Gary Fridley who was in the driver's seat. (Id.) Sergeant Sutton observed an open can of beer in the center console of Fridley's pickup. (Tr., p. 8, L. 24 – p. 9, L. 4.)

Fridley initially denied driving, but eventually admitted that he had driven from Couer d'Alene and was on his way to meet his girlfriend. (Tr., p. 8, Ls. 13-23.) No one else was in the pickup. (Id.) Fridley said he had opened the beer when he was in Couer d'Alene and brought it with him to Post Falls. (Tr., p. 9, Ls. 7-19.) Fridley claimed that he had not been driving erratically, but he admitted to texting on his phone while driving. (Tr., p. 20, L. 21 – p. 21, L. 6.)

Sergeant Sutton cited Fridley for open container, a violation of Idaho Code § 23-505. (Tr., p. 9, L. 7 – p. 10, L. 4.) Sergeant Sutton gave Fridley the standardized Field Sobriety Tests. (Tr., p. 10, Ls. 5-14.) Fridley failed the walk and turn test but passed the other tests. (Id.) Sergeant Sutton then searched

the pickup. (Tr., p. 10, L. 15 – p. 24.) Sergeant Sutton explained his reasons for searching the pickup:

> A, the vehicle is mobile. Just because it is parked at the time, it can become mobile at any moment. I have not arrested Mr. Fridley. I want to make sure that there are no further open containers in this vehicle for him to go down the road to become further intoxicated if he so desired and endanger the public. I've already seen and observed one open container in plain view. I'm gonna search based upon the motor vehicle exception to make sure there are no further open containers that are not in obvious view. That's pretty much the summary of why I did what I did.

(Tr., p. 22, Ls. 9-19.) In addition to the open can of beer in plain view, Sergeant Sutton found in the center console area an airplane-sized bottle of liquor, a glass pipe, and two small plastic baggies with a fine residue inside. (Tr., p. 10, L. 15 – p. 11, L. 6.) Sergeant Sutton also found a small metal box with three bindles of crystal methamphetamine, nineteen pills, an electronic scale and wrapping material. (Tr., p. 11, Ls. 9-19.) He also found a marijuana pipe. (Tr., p. 11, L. 25 – p. 12, L. 8.)

The state charged Fridley with Possession of a Controlled Substance with Intent to Deliver (methamphetamine), Possession of a Controlled Substance (morphine), Possession of a Controlled Substance (marijuana), Possession of a Controlled Substance (hydrocodone, tramadol hydrochloride, and morphine sulfate) and Possession of Open Container of Alcohol (beer). (R., pp. 30-33.) Fridley moved to suppress the evidence Sergeant Sutton discovered as a result of the search of his pickup. (R., pp. 41-46, 52-53.) The district court held a hearing on the motion to suppress. (R., pp. 65-70.) The district court found

Sergeant Sutton's testimony at the suppression hearing to be "forthright, honest and credible." (Tr., p. 37, Ls. 19-22.)

The district court found that when Sergeant Sutton made contact with Fridley he saw the open beer can in the console. (Tr., p. 38, L. 18 – p. 39, L. 7.) The district court found that Sergeant Sutton had reasonable suspicion to investigate Fridley and Sergeant Sutton had probable cause to issue Fridley the citation for open container. (Tr., p. 40, Ls. 1-21.)

However, the district court held that because Sergeant Sutton searched the pickup after he issued the citation for open container there was no valid reason for the search and no exception to the warrant requirement existed. (Tr., p. 40, L. 22 – p. 41, L. 19.) The district court granted the motion to suppress. (R., pp. 71-72.) In a written order the district court ruled:

> Now, therefore, the Court finds that the State did not show that the search of Mr. Fridley's vehicle falls within an exception to the warrant requirement, and thus was a violation of Mr. Fridley's rights guaranteed by the Fourth and Fourteenth Amendment to the United States Constitution and Article I, § 17 of the Constitution of the State of Idaho. Therefore, on the grounds and for the reasons more fully set forth in open court on June 13, 2014:
>
> IT IS HEREBY ORDERED AND THIS DOES ORDER that the State may not at trial introduce any evidence whatsoever obtained as a result, direct or proximate, of the search of Mr. Fridley's vehicle.

(R., pp. 71-72.) The state timely appealed. (R., pp. 73-76.)

ISSUE

Did the district court err by concluding that the observation of contraband in plain view did not provide probable cause to search the vehicle under the automobile exception?

ARGUMENT

The District Court Erred When It Ruled That The Observation Of Contraband In Plain View Did Not Provide The Officer With Probable Cause To Search Fridley's Vehicle Under The Automobile Exception

A. Introduction

The district court found that Sergeant Sutton saw an open container of beer in plain view in Fridley's pickup. (Tr. p. 38, Ls. 18-23, p. 42, Ls. 19-22.) The district court held Sergeant Sutton had probable cause to issue a citation for open container under Idaho Code § 23-505. (Tr., p. 40, Ls. 19-21.)

However, the district court ruled that Sergeant Sutton was not authorized to search Fridley's vehicle under the automobile exception (Tr., p. 40, L. 22 – p. 41, L. 19.) The district court erred.

B. Standard Of Review

In reviewing an order denying a motion to suppress evidence, this appellate court applies a bifurcated standard of review. State v. Anderson, 154 Idaho 703, 302 P.3d 328 (2012) (citing State v. Purdum, 147 Idaho 206, 207, 207 P.3d 182, 183 (2009)). This appellate court will accept the trial court's findings of fact unless they are clearly erroneous but will freely review the trial court's application of constitutional principles to the facts found. Id.

C. The District Court Incorrectly Applied The Law To The Facts In Concluding The Search Of Fridley's Vehicle Was Not Justified Under The Automobile Exception

On appeal, the state does not challenge the district court's factual findings, but challenges the district court's application of law. The district court

erroneously held that the automobile exception did not justify Sergeant's Sutton's warrantless search of Fridley's vehicle. (Tr., p. 41, Ls. 9-19.) "Under the long-recognized automobile exception, police officers having probable cause to believe that an automobile contains contraband or evidence of a crime may search the automobile without a warrant." State v. Loman, 153 Idaho 573, 575, 287 P.3d 210, 212 (Ct. App. 2012) (citing Wyoming v. Houghton, 526 U.S. 295, 300 (1999); State v. Gallegos, 120 Idaho 894, 897-898, 821 P.2d 949, 952-953 (1991); State v. Johnson, 152 Idaho 56, 61, 266 P.3d 1161, 1166 (Ct. App. 2011); State v. Smith, 152 Idaho 115, 120, 266 P.3d 1220, 1225 (Ct. App. 2011); State v. Newman, 149 Idaho 596, 599, 237 P.3d 1222, 1225 (Ct. App. 2010)); see also Smith, 152 Idaho at 121, 266 P. 3d at 1226 (contraband, a marijuana pipe, in plain view provided officer with probable cause to search the vehicle under the automobile exception). "Probable cause is established when the totality of the circumstances known to the officer at the time of the search would give rise—in the mind of a reasonable person—to a fair probability that contraband or evidence of a crime will be found in a particular place." State v. Anderson, 154 Idaho 703, 302 P.3d 328 (2012) (citing State v. Josephson, 123 Idaho 790, 792–93, 852 P.2d 1387, 1389–90 (1993)). "Probable cause is a flexible, common-sense standard, and a practical, nontechnical probability that incriminating evidence is present is all that is required." Id. (citing Texas v. Brown, 460 U.S. 730, 742 (1983)). If probable cause exists to believe a vehicle contains evidence of criminal activity, the search of any area of the vehicle in which the evidence might be found is authorized. Johnson, 152 Idaho at 61, 266

P.3d at 1166 (citing United States v. Ross, 456 U.S. 798, 820–21 (1982)). Under Idaho Code § 23-505(2) it is a misdemeanor for a person in a actual physical control of a motor vehicle to possess an open container of alcohol, including beer. I.C. § 23-505(2).

The district court found that Fridley admitted to driving the vehicle and opening the beer. (Tr., p. 38, L. 18 – p. 39, L. 16.) The district court also found that Sergeant Sutton could see the open can of beer in plain view. (Tr. p. 38, Ls. 18-23, p. 42, Ls. 19-22.) The district court found Sergeant Sutton had probable cause to issue the citation for open container. (Tr., p. 40, Ls. 19-21.) Once Sergeant Sutton had probable cause to believe that Fridley's car contained contraband, the open can of beer, Sergeant Sutton was authorized, under the automobile exception to search the vehicle. As a result, Sergeant Sutton's search was valid and the district court erred when it granted Fridley's motion to suppress.

The district court held that Sergeant Sutton could not search Fridley's vehicle once Sergeant Sutton served Fridley with a citation for open container. (Tr., p. 39, Ls. 8-25, p. 40, L. 22 – p. 41, L. 19.) The district court did not provide any authority to support this conclusion. Nor could the Appellant find authority for the proposition that once a citation is issued the police cannot search a vehicle under the automobile exception.

The only case cited by the district court does not support its conclusion. (Tr., p. 40, L. 22 – p. 42, L. 18 (citing State v. Wigginton,142 Idaho 180, 125 P.3d 536 (Ct. App. 2005).) In Wigginton, an Idaho State Trooper observed a

vehicle cross over the highway centerline about three times and saw the brake lights come on for no discernible reason. Wigginton, 142 Idaho at 181, 125 P.3d at 537. The Trooper stopped the vehicle and made contact with the driver, Wigginton. Id. The Trooper saw Wigginton's eyes were bloodshot and smelled an overwhelming odor of alcohol coming from inside the vehicle. Id. Wigginton's passenger explained that someone had previously spilled a beer on the vehicle's floorboard. Id. After waiting for backup to arrive, the Trooper conducted field sobriety tests. Id. at 182, 125 P.3d at 538. Wigginton passed the field sobriety tests. Id. The Trooper then searched the vehicle because, "based on the strong odor coming from the car, they had probable cause to believe there was an open container of alcohol inside." Id. During the search of the vehicle the Trooper discovered ingredients and equipment commonly used in manufacturing methamphetamine. Id.

Wigginton moved to suppress the evidence found in the vehicle, contending, in part, that the smell of alcohol was insufficient to provide probable cause for the search. Id. at 182, 125 P.3d at 538. The district court denied the motion. Id. On appeal, the Idaho Court of Appeals held there was probable cause to search the vehicle because the Trooper possessed probable cause to believe that Wigginton's vehicle contained an open container in violation of Idaho Code § 23-505. Id. at 182-183, 125 P.3d at 538-539. The Court of Appeals held that the overwhelming odor of alcohol, plus additional information, pointed to the likelihood of an open container in the vehicle and gave probable cause for the search under the automobile exception. Id.

Sergeant Sutton had stronger probable cause to search Fridley's pickup than the Trooper had to search Wigginton's vehicle. The Trooper in Wigginton did not see the open container prior to the search, but instead primarily relied upon the smell of spilled alcohol to indicate there was an open container of alcohol in the vehicle. Sergeant Sutton actually saw the open container of alcohol in the vehicle. (Tr., p. 8, L. 24 – p. 9, L. 4.) Fridley's open can of beer was in plain view. (Id.) Sergeant Sutton had direct evidence of contraband in Fridley's pickup and therefore had probable cause to search the vehicle under the automobile exception. Wigginton does not support the district court's conclusion that the automobile exception did not authorize Sergeant Sutton's search. Because correct application of the law to the undisputed facts shows the search of Fridley's vehicle was justified under the automobile exception to the warrant requirement, the district court erred in granting Fridley's motion to suppress.

CONCLUSION

The state respectfully requests this Court reverse the district court's decision to suppress and this case be remanded for further proceedings.

DATED this 27th day of January 2015.

TED S. TOLLEFSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 27th day of January 2015, served a true and correct copy of the attached BRIEF OF APPELLANT by causing a copy addressed to:

SARA B. THOMAS
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.

TED S. TOLLEFSON
Deputy Attorney General

/pm