9-22-2015

State v. Kraly Appellant's Brief Dckt. 42580

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. SHANE ANTHONY KRALY, Defendant-Appellant.	NO. 42580 BONNER COUNTY NO. CR 2014-838 APPELLANT'S BRIEF

BRIEF OF APPELLANT

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

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STATEMENT OF THE CASE

Nature of the Case

Shane Anthony Kraly entered a conditional plea of guilty to one count of attempted possession of methamphetamine, preserving his right to challenge the district court's order denying his Motion to Suppress. Mr. Kraly asserts that the district court erred in denying his Motion to Suppress because the police detained him without reasonable suspicion in violation of the Fourth Amendment.

Statement of the Facts and Course of Proceedings

At 8:00 p.m., Officer Inman saw a car parked in a parking lot. (Tr., p.47, Ls.13-20.)[1] The car was the only car in the lot and was parked perpendicular to the parking lines. (Tr., p.48, L.4 – p.52, L.9.) Officer Inman saw two people in the car and he parked his patrol car in front of the car so that his headlights were shining into the car's windshield. (Tr., p.53, L.15 – p.55, L.9.) Officer Inman was wearing a police uniform and driving a marked police patrol car. (Tr., p.53, L.22 – p.54, L.6.) He walked up to the driver's side window of the car and made contact with Mr. Kraly, who was in the driver's seat, and Tiffany Baldwin, who was in the front passenger seat. (Tr., p.56, L.3. – p.57, L.24.) Officer Inman shined his flashlight inside the car and in Ms. Baldwin's face. (Tr., p.57, Ls.16-24.) Officer Inman asked Mr. Kraly what they were doing. (Tr., p.57, Ls.3-5.) Mr. Kraly responded that he and Ms. Baldwin were spending some

[1] Unless otherwise indicated, transcript citations refer to the transcript of the Motion to Suppress hearing held on May 20, 2014, which begins on page 44 of the primary transcript.

alone time together. (Tr., p.57, Ls.6-7.) Because Mr. Kraly was "fidgety," Officer Inman suspected he may be using a stimulant, so he asked to see both of their identifications. (Tr., p.58, Ls.4-9.) Mr. Kraly did not have his identifications, but he gave the name "Robert Kraly." (Tr., p.58, Ls.11-13.) Ms. Baldwin gave Officer Inman her license and told him that she thought she had a warrant for her arrest. (Tr., p.58, Ls.13-15.) Officer Inman took the identification back to his patrol car and radioed for another officer, who arrived with a drug dog. (Tr., p.59, Ls.2-4.) Ms. Baldwin did in fact have a warrant for her arrest, and officers arrested her. (Tr., p.60, Ls.17-20, p.62, Ls.10-16.) When Ms. Baldwin got out of the car, there was a syringe on the passenger seat. (Tr., p.62, Ls.14-18.) Another officer deployed the drug dog, and the dog alerted on the car. (Tr., p.66, Ls.2-4.) Police searched the car and found methamphetamine and paraphernalia. (Tr., p.66, Ls.9-16.)

Mr. Kraly was charged with one count of possession of methamphetamine. (R., pp.63-64.) He filed a Motion to Suppress, wherein he argued that Officer Inman illegally detained him and, therefore, the evidence found in the car should be suppressed. (R., pp.92-99, 107-117.) The district court denied Mr. Kraly Motion to Suppress and found that the initial contact between Officer Inman and Mr. Kraly was consensual, and that a seizure did not occur until Ms. Baldwin told Officer Inman that she had an outstanding arrest warrant. (R., pp.130-34.) The court further found that once Ms. Baldwin told Officer Inman that she had a warrant, Officer Inman had reasonable suspicion to detain Mr. Kraly and Ms. Baldwin. (R., p.134.)

Pursuant to a plea agreement, Mr. Kraly entered a conditional plea to one count of attempted possession of methamphetamine, preserving his right to appeal the district

court's order denying his Motion to Suppress. (R., pp.224-35, Tr. 9/5/14, p.9, Ls.19-24.) This case was consolidated with case number CR 2014-611, which was scheduled for a disposition hearing following the court's finding that Mr. Kraly violated his probation by possessing methamphetamine. (Tr. 9/5/14, p.5, Ls.1-7, p.4, Ls.2-9.) The district court imposed a sentence of three years, with one and one-half years fixed, but suspended the sentence and placed Mr. Kraly on three years of probation with a recommendation for drug court. (Tr. 9/5/14, p.15, Ls.1-10.)

Mr. Kraly filed a timely Notice of Appeal from the district court's judgment of conviction. (R., p.257.)

ISSUE

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

ARGUMENT

The District Court Erred When It Denied Mr. Kraly's Motion To Suppress Because Officer Inman Did Not Have Reasonable Suspicion To Detain Him

A. Introduction

The district court erred in denying Mr. Kraly's Motion to Suppress because Mr. Kraly's Fourth Amendment rights were violated when police officers illegally detained him. As such, the district court's order denying Kraly's Motion to Suppress should be reversed.

B. Standard Of Review

In *State v. Cutler*, 143 Idaho 297 (Ct. App. 2006), the Court of Appeals articulated the following standard of review for an appeal from a motion to suppress:

> The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact which are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. 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.

Id. at 302 (citations omitted).

C. The District Court Erred When It Denied Mr. Kraly's Motion To Suppress Because His Detention Was Illegal And, Therefore, Any Evidence Collected Must Be Suppressed As Fruit Of Illegal Government Activity

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The purpose of this constitutional right is to "impose a standard of reasonableness upon the exercise of discretion by governmental agents and thereby

safeguard an individual's privacy and security against arbitrary invasions." *State v. Maddox*, 137 Idaho 821, 824 (Ct. App. 2002). When a defendant seeks to suppress evidence obtained as a result of an illegal seizure, the defendant bears the burden of proving that a seizure occurred. *State v. Page*, 140 Idaho 841, 843 (2004). "The test to determine if an individual is seized for Fourth Amendment purposes is an objective one" requiring an evaluation of "the totality of the circumstances." *State v. Henage,* 143 Idaho 655, 658 (2007). A seizure under the meaning of the Fourth Amendment occurs "when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *State v. Nickel,* 134 Idaho 610, 612 (2000) (quoting *Terry v. Ohio,* 392 U.S. 1, 19 n. 16 (1968)).

1. Officer Inman's Initial Contact With Mr. Kraly Was A Seizure Because A Reasonable Person In Mr. Kraly's Position Would Not Have Felt Free To Leave

In determining whether a seizure has taken place, the proper inquiry is "whether, under all the circumstances surrounding the encounter, a reasonable person would have felt free to leave or otherwise decline the officer's requests and terminate the encounter." *State v. Reese*, 132 Idaho 652, 653 (1999), *State v. Waldie,* 126 Idaho 864, 866 (Ct. App. 1995).

In *State v. Fry*, the Idaho Court of Appeals held that police may ask a person questions and ask to examine identification without reasonable suspicion as long as they do not convey a message that compliance with the request is required. *State v. Fry*, 122 Idaho 100, 102 (1991). Additionally, if a police officer parks his patrol car in a way that blocks a person's exit route, that factor can be considered when determining

whether a seizure has occurred. *Id.*; *see also State v. Willoughby*, 147 Idaho 482, 487-88 (2009).

The facts in *Fry* are very similar to those here. In *Fry*, police officers observed a parked vehicle with two occupants in it. *Id.* at 101. An officer in full uniform approached the car and asked the occupants what they were doing while another officer stood behind the car. *Id.* The Court of Appeals stated, "Unlike other cases in which the police request the subject's cooperation in answering questions, the inquiry here as to what Fry was doing did not give Fry the option of answering or not." *Id.* at 103. The Court of Appeals further emphasized that the critical inquiry is whether, taking into account all of the circumstances surrounding the encounter, "the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business." *Id.* (quoting *Florida v. Bostick*, 501 U.S. 429 (1991)).

Under the totality of the circumstances, a reasonable person in Mr. Kraly's position would not have felt free to leave or to decline to answer questions. Officer Inman parked his patrol car in front of Mr. Kraly's parked car with the headlights shining into Mr. Kraly's windshield. (Tr., p.11, L.10 – p.12, L.24, p.20, Ls.2-17.) Although Mr. Kraly was not directly blocked in, he would have had to drive around the front of Officer Inman's patrol car or back out in order to drive away. (Tr., p.82, L.20 – p.83, L.5; State's Exhibit 2.) Officer Inman pointed his flashlight inside the car and directly into Ms. Baldwin's face. (Tr., p.57, Ls.18-24.) Similar to the situation in *Fry*, Officer Inman asked Mr. Kraly what they were doing and sked for identification. (Tr., p.57, L.1 – p.58, L.9.) It should be noted that Idaho Code section 49-316 states: "Every licensee shall

have his driver's license in his immediate possession at all times when operating a motor vehicle and shall, upon demand, surrender the driver's license into the hands of a peace officer for his inspection." Mr. Kraly is presumed to know the law. *See State v. Fox*, 124 Idaho 924 (1993) (Ignorance of the law is not a defense). Therefore, it is presumed that Mr. Kraly is familiar with Idaho Code section 49-316 and would recognize that he must surrender his driver's license to a peace officer when it is requested.

Officer Inman testified that prior to Ms. Baldwin's statement about the warrant, he would have stopped Mr. Kraly if Mr. Kraly had attempted to drive away because of the "fidgeting" he observed. (Tr., p.73, L.18 – p.74, L.7.) Officer Inman stated that Mr. Kraly was seized as soon as he approached the car and saw Mr. Kraly fidgeting. (Tr., p.74, Ls.8-9.) Although the standard is an objective one, if Officer Inman did not believe Mr. Kraly was free to leave, he certainly was not communicating to Mr. Kraly that he was free to leave. Consequently, it is very unlikely that Mr. Kraly believed he was free to leave. Given the totality of the circumstances, a reasonable person in Mr. Kraly's position would not have felt free to leave and, therefore, Officer Inman's contact with Mr. Kraly was a seizure.

2. Officer Inman Did Not Have Reasonable Suspicion To Detain Mr. Kraly

An investigative detention is constitutionally permissible based upon reasonable suspicion, derived from specific articulable facts, that the person stopped has committed or is about to commit a crime. *Terry*, *supra*, 392 U.S. at 21; *State v. Salato,* 137 Idaho 260, 264 (Ct. App. 2001). Although the required information leading to formation of reasonable suspicion in the mind of the police officer is less than the information

required to form probable cause, it still "must be more than mere speculation or a hunch on the part of the police officer." *State v. Cerino*, 141 Idaho 736, 738 (Ct. App. 2005). The reasonableness of the suspicion must be evaluated upon the totality of the circumstances at the time of the stop, and the "whole picture must yield a particularized and objective basis for suspecting that the individual being stopped is or has been engaged in wrongdoing. *State v. Sevy*, 129 Idaho 613, 615 (Ct. App. 1997).

Here, the only information Officer Inman had when he detained Mr. Kraly was that Mr. Kraly's car was parked perpendicular to the parking stalls, the car did not have any lights on, and Mr. Kraly was "fidgeting." (Tr., p.48, L.4 – p.52, L.9, p.56, Ls,9-13.) These facts do not amount to reasonable suspicion and, therefore, Officer Inman's detention of Mr. Kraly violated the Fourth Amendment.

D. All Evidence Collected Following The Illegal Detention Must Be Suppressed As It Is Fruit Of The Illegal Governmental Activity

The application of the exclusionary rule to suppress evidence is appropriate only to evidence that is fruit of the illegal governmental activity. *Segura v. United States,* 468 U.S. 796, 815; *Wong Sun v. United States,* 371 U.S. 471 (1963); *State v. Bainbridge,* 117 Idaho 245, 249 (1990). 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 that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Wong Sun, supra,* 371 U.S. at 488. Suppression is required if "the evidence sought to be suppressed would not have come to light but for the government's unconstitutional conduct." *State v. Wigginton*, 142 Idaho 180, 184 (Ct. App. 2005).

As discussed above, Officer Inman illegally detained Mr. Kraly. Had this detention not occurred, the methamphetamine in Mr. Kraly's car would not have been discovered. The State failed to meet its burden of showing that the evidence is untainted; therefore, all the evidence collected after the impermissible seizure must be suppressed as fruit of the illegal police activity.

CONCLUSION

Mr. Kraly respectfully requests that this Court vacate the judgment and commitment, reverse the order denying his Motion to Suppress, and remand the case to the district court for further proceedings.

DATED this 22nd day of September, 2015.

ERIC D. FREDERICKSEN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22nd day of September, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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