

8-9-2010

## State v. Crooks Appellant's Reply Brief Dckt. 37068

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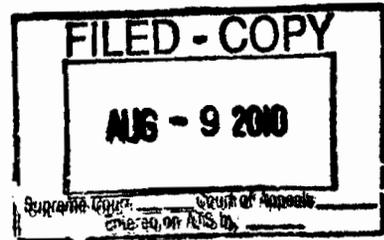
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, )  
 )  
 *Plaintiff-Respondent,* )  
 )  
 v. )  
 )  
 DALE FRANCIS CROOKS, )  
 )  
 *Defendant-Appellant.* )

DOCKET NO. 37068-2009



REPLY BRIEF

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

HONORABLE, LANSING L. HAYNES  
District Judge, Presiding

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## REBUTTAL ARGUMENT

The State has Failed to Show that Agent Sotka's *Terry* frisk of Crooks was legally justified upon a particularized suspicion that Crooks was presently armed or dangerous and not upon un-particularized statements that weapons are occasionally found during drug investigations.

In its Respondent's Brief, the State argues that "Agent Sotka's conduct in frisking Crooks for weapons was a constitutionally reasonable measure taken for officer safety." (Brief of Respondent, p. 6.) The State concedes that there existed no particularized suspicion that Crooks was presently armed or dangerous. (Brief of Respondent, p. 7: "As an initial matter, there was no testimony that Agent Sotka observed any suspicious bulges on Crooks, that Crooks had a known reputation for violence, or that he had acted in a threatening manner.") Therefore, to support its argument that the frisk was lawful, the State cites a number of cases and argues that those cases support a rule whereby a *Terry* frisk may be upheld where there exists no suspicion that a person is armed or dangerous, so long as police are confronting drug enterprises. (Brief of Respondent, p. 7.) The State's arguments are unpersuasive because the cases the State cites in its brief are factually dissimilar from Crooks' case.

For instance, in *State v. Dreier*, 139 Idaho 246, 76 P.3d 990 (Ct. App. 2003), which the State relies upon, the Court of Appeals upheld a pat down search of the defendant after officers learned of his presence at a home of a man who had consented to searches of his home as a condition of his pre-trial release on a pending charge of attempted manufacturing of methamphetamine. When the officers arrived at the home, they encountered a woman who told the officers that none of the residents of the home were present, but that the Defendant was

asleep inside. *Dreier*, 139 Idaho at 248, 249, 76 P.3d 992-993. When the defendant emerged from the home, he admitted to one of the officer that he was a visitor at the home; was aware that the home was subject to a search provision; and that there were drugs located in his "stuff". 139 Idaho at 249, 76 P.3d at 993. When asked by the officer whether he had any weapons, the defendant motioned to his side where he was wearing a leather case attached to his belt which contained a Leatherman's tool. *Id.* The officer took the Leatherman tool from the defendant's belt and then asked the defendant if he had any other weapons. *Id.* The defendant responded that he did not think he did. *Id.* The officer then patted the defendant down and during the pat-down search a bag of marijuana fell out of the defendant's pants pocket. *Id.*

In upholding the district court's denial of the marijuana, as well as methamphetamine later found in the defendant's belongings, the Court in *Dreier* agreed with the district court's conclusion that there were specific and articulable facts known to the officer that justified the pat-down search. *Dreier*, 139 Idaho at 250, 76 P.3d at 994. In *Dreier*, the Court stated:

The officer's encounter with Dreier occurred at a home subject to search for suspected drug manufacturing activity. The danger posed to the safety of an officer conducting a search of premises suspected of housing an illegal drug operation is increased by the presence of a person found on the premises, who may be involved in the criminal activities therein. *See State v. Pierce*, 137 Idaho 296, 299-300, 47 P.3d 1266, 1269-70 (Ct.App.2002) (The threat of violence to officers conducting a search of home suspected of housing an illegal drug operation is greater because of the recognized propensity of persons engaged in selling narcotics to carry firearms.). *See also United States v. Patterson*, 885 F.2d 483, 485 (8th Cir.1989) ("The possible danger presented by an individual approaching and entering a structure housing a drug operation is obvious. In fact, it would have been foolhardy for an objectively reasonable officer not to conduct a security frisk under the circumstances.").

Additionally, the officer who conducted the pat-down search of Dreier had been present

when a search warrant was previously executed at the same home. During the previous search, officers recovered approximately sixteen weapons from the home and some of the weapons were loaded. The officer was also aware that Dreier was a frequent visitor to the home and that Dreier was known to carry a firearm. Thus, there were specific and articulable facts known to the officer which would lead a reasonable prudent person to believe that Dreier could be armed and dangerous.

Furthermore, nothing in the initial stages of the encounter served to dispel the officer's reasonable belief. When the officer asked Dreier whether he had any weapons, Dreier made a motion to his side indicating that he did have a weapon. The officer recovered a Leatherman, which the officer described as a tool similar to a knife or other object capable of cutting. In view of the specific and articulable facts known to the officer at the scene and based on the reasonable inferences drawn from a totality of the specific circumstances presented, this Court concludes that the pat-down search of Dreier was lawful.

139 Idaho at 250, 251, 76 P.3d at 994-995.

*Dreier* is factually dissimilar from the present case on many bases. First, *Dreier* involved a situation where officers were responding to a home of a person suspected of manufacturing methamphetamine or at least had been charged with the attempted manufacturing of methamphetamine. Second, before any frisk of the defendant in *Dreier* occurred, an officer had asked him several questions including: (1) whether there were any drugs inside the home, and (2) whether he possessed any weapons. Third, the officer posed his questions to the defendant prior to any pat-down frisk being conducted and only after the defendant had acknowledged that he possessed drugs in his stuff and showed the officer that he had a Leatherman tool on his person.

In addition, in *Dreier* the officer conducting the pat-down search previously had been present at the home when a search warrant had been executed and sixteen weapons, some loaded, had been recovered. Lastly, the officer was also aware that the defendant was a frequent visitor to the home and was known to carry a firearm.

Unlike *Dreier* – and the facts in *State v. Pierce*, 137 Idaho 296, 47 P.3d 1266 (Ct. App. 2002) cited therein – the officers in Crooks’ case were not investigating suspected drug manufacturing activity. Instead, they were investigating a “controlled buy” of approximately forty dollars (\$40.00) worth of methamphetamine that had occurred at the home Kristopher Eby. (Tr., p. 17, Ls. 2-16; p. 18, Ls. 1-10.) Moreover, even though there had been a “controlled buy” at the residence earlier, the officers, including Agent Sotka possessed no information that weapons had been observed by Katie Kelly at Eby’s home. (*See, Transcript, generally.*)

When the officers arrived at Eby’s residence, they did not speak with Crooks to ascertain his identity or connection to the premises, but instead placed him in handcuffs and laid him prone on the living room floor. (Tr., p. 47, Ls. 2-24.) Agent Sotka did not question Crooks about the presence of either drugs or weapons in the home, nor even ask him how long Crooks had been at the residence. (Id.) Instead, Agent Sotka – in his own words – “I began to do a pat down as I always do.” (Tr., p. Ls. 15-16.)

In other reported Idaho cases, courts have found the pat-down frisk of defendants lawful based upon facts providing obvious justification that the police action was appropriate. *See, State v. Kester*, 137 Idaho 643, 51 P.3d 457 (Ct. App. 2002) (Holding that the frisk of the defendant who arrived at a home where a search warrant was being executed was appropriate where (1) the encounter took place late at night, (2) defendant’s explanation of why he was present was questionable, (3) defendant was wearing a fanny pack which could conceal a weapon, (4) officers knew that allegations had been made that the resident of the home had been trading drugs in exchange for weapons.); *State v. Cox*, 136 Idaho 858, 41 P.3d 744 (Ct App. 2002)

(Holding the frisk of defendant was lawful where (1) defendant's rented motel room contained methamphetamine in plain view, a large unsheathed knife and mail addressed to the defendant, (2) other occupant of the motel room had resisted arrest and been charged with aggravated assault on a police officer, and (3) the officer contacting defendant upon defendant's return to the motel was alone.); *State v. Fleenor*, 133 Idaho 552, 989 P.2d 784 (Ct. App. 1999) (Officer's frisk of defendant reasonable where (1) officer entering defendant's residence observed a large fixed-blade knife sitting on top of boxes located near the door, (2) defendant had knife and sheath on his belt, a (3) defendant became uncooperative with the officer when officer sought to remove the knife from defendant's person and secure it during the police investigation.)

In the present case, the justification offered for Agent Sotka's pat-down frisk of Crooks was merely the unparticularized statements of Sergeant Hildebrandt and Agent Sotka that weapons are occasionally found during drug investigations. No evidence was offered that Agent's Sotka's frisk of Crooks was based upon a particularized suspicion that Crooks was either armed or dangerous and for that reason the frisk was unlawful.

#### CONCLUSION

Based upon the foregoing, Defendant Dale Crooks respectfully requests that this Appellate Court reverse the decision of the district court denying his motion to suppress.

Dated this 5<sup>th</sup> day of August, 2010.



DANIEL G. COOPER

CERTIFICATE OF SERVICE

I hereby certify that two (2) true and correct copies of the foregoing Reply Brief were personally served by placing them in the U.S. Mail, postage prepaid on the 5<sup>th</sup> day of August, 2010, addressed to:

Idaho Attorney General  
Criminal Division  
P.O. Box 83720  
Boise, ID 83720-0010

A handwritten signature in black ink, appearing to read 'D. G. Cooper', written over a horizontal line.

DANIEL G. COOPER

