7-12-2010

State v. Scott Appellant's Reply Brief Dckt. 37018

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Appellant, vs. MATTHEW GILBERT SCOTT, Defendant-Respondent.	)	NO. 37018

REPLY 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

HONORABLE MICHAEL GRIFFIN, Magistrate Judge
HONORABLE JOHN T. MITCHELL, District Judge

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A. Introduction

The magistrate concluded that Officer Hagstrom exceeded his legal authority by stopping Scott outside the Sandpoint city limits, reasoning that because Officer Hagstrom did not activate his lights until after he had left the city limits he was only "following" Scott and not "pursuing" him. (R., pp. 48-49.) The district court affirmed on the same basis. (R., pp. 86-87.) These courts erred because there is no legal requirement that the officer activate his lights to be in "fresh pursuit" and because even if the officer exceeded his statutory authority in stopping Scott there was no constitutional violation (and thus no grounds for suppression) because the stop was supported by reasonable suspicion of speeding, which blossomed into probable cause for DUI. (Appellant's brief, pp. 4-15.)

On appeal Scott contends that the lower courts were correct in concluding that Officer Hagstrom was not in fresh pursuit, contending that the question of fresh pursuit is a factual question. (Respondent's brief, pp. 5-8.) This argument fails because the lower courts clearly concluded that some effort to detain (in this case activation of lights) was a legal prerequisite to being in "fresh pursuit" -- an error of law, not fact.

Scott next contends that the state's argument that he failed to show any violation of his constitutional (as opposed to statutory) rights is not preserved and, if preserved, is erroneous. (Respondent's brief, pp. 9-10.) The argument

that this issue was not preserved fails because the question of whether Scott was entitled to suppression was obviously raised by Scott and decided by the lower courts. Scott's argument on the merits likewise fails because it is directly contrary to applicable statute and precedent.

B. The Lower Courts Erred By Holding That Activation Of Lights Is A Prerequisite To Being In Fresh Pursuit

Scott contends that the magistrate's findings of fact are entitled to deference. (Respondent's brief, pp. 6-7.) This is a truism with which the state has no dispute. See, e.g., State v. Hedgecock, 147 Idaho 580, 583, 212 P.3d 1010, 1013 (Ct. App. 2009) ("When reviewing the decision on a suppression motion, we defer to the trial court's findings of fact unless they are clearly erroneous, while exercising free review over the application of constitutional standards to those facts."). The state contests none of the magistrate's findings of fact, including when the officer activated his lights and that the officer could have activated his lights immediately upon seeing the infraction, while still within the city limits, the facts Scott emphasizes in his brief. (See Respondent's brief, pp. 6-7.) The state's argument, however, is that activation of the lights within the city limits is not a *legal* prerequisite to fresh pursuit under the statute (Appellant's brief, pp. 5-10), a legal proposition on which Scott takes no position on appeal (see, generally, Respondent's brief). Because the applicable legal authority shows that a pursuit may be initiated without activating lights or otherwise signaling the suspect to stop (see Appellant's brief, pp. 5-10 (and cases cited)), the lower courts erred as a matter of law. The facts found by the trial court show

that Officer Hagstrom initiated his pursuit without any delay, much less without *unreasonable* delay, and therefore the lower courts erred in concluding that Officer Hagstrom exceeded his legal authority when he stopped Scott.

C. The Issue Of Whether Scott Is Entitled To Suppression Of Evidence Is Properly Before This Court

Scott contends that, "because the state did not argue against suppression as an appropriate remedy" below, the issue is waived. (Respondent's brief, p. 9.) This argument fails on the record because the prosecutor did argue that Scott was not entitled to suppression (although the prosecutor used the word "dismissal" instead of "suppression") for a violation of the fresh pursuit laws. (Tr., p. 23, Ls. 10-15 (arguing Scott was not entitled to dismissal even if the fresh pursuit laws were violated).) Scott's argument also ignores the fact that Scott himself raised the issue and the magistrate decided it. Because the issue was raised to and decided by the trial court, it is properly before this Court on appeal.

An issue is preserved for appeal if it is presented to the court for decision and the court has decided it. State v. DuValt, 131 Idaho 550, 553, 961 P.2d 641, 644 (1998); State v. Green, 130 Idaho 503, 506, 943 P.2d 929, 932 (1997). Scott moved to "suppress the evidence gathered against him" at least in part because, he claimed, the "extraterritorial stop of the Defendant was ... contrary to I.C. [§] 67-2337(2), (3), and (5) ...." (R., p. 37.) At the hearing counsel for Scott (not current counsel) stated that the motion to suppress was "premised as indicated on Title 67 and also deals with questions of fresh pursuit." (Tr., p. 20, Ls. 10-12.) The trial court concluded that fresh pursuit did not justify the stop and

granted the motion, suppressing the evidence. (R., pp. 48-49.) Because the issue of whether Scott was entitled to suppression for a violation of the fresh pursuit laws was clearly before the court on Scott's motion, and because the trial court clearly decided that issue, whether Scott is entitled to suppression for the claimed violation of the fresh pursuit statutes is an issue preserved for appellate review.

D. Because Officer Hagstrom Did Not Violate Scott's Constitutional Rights Scott Was Not Entitled To Suppression

In its brief on appeal the state argued that there is no exclusionary rule generally applicable to statutory violations. (Appellant's brief, pp. 10-11 (and cases cited).) The state further contended that the legislature did not provide an exclusionary rule for violation of the fresh pursuit laws, but instead specifically provided that a violation of those laws would not render an otherwise lawful arrest unlawful. (Appellant's brief, p. 12 (and statute cited).) Scott does not dispute either of these propositions. (See, generally, Respondent's brief.) It is therefore undisputed before this Court that Scott is not entitled to suppression for a violation of the fresh pursuit statutes, unless such a violation was also a violation of his constitutional rights against unreasonable searches and seizures.

Application of the relevant legal precedents shows that there was no violation of Scott's constitutional rights. In Virginia v. Moore, 553 U.S. 164 (2008), the Supreme Court of the United States held that an arrest rendered illegal by Virginia law was not a constitutional violation entitling Moore to suppression of evidence so long as the arrest met constitutional standards. (See

Appellant's brief, pp. 12-13 (and other cases cited).) A traffic stop based on reasonable suspicion the driver has committed an infraction is constitutionally reasonable. See Berkemer v. McCarty, 468 U.S. 420, 439 (1984); State v. McCarthy, 133 Idaho 119, 124, 982 P.2d 954, 959 (Ct. App. 1999). Because the state proved that the stop in this case was supported by reasonable suspicion that Scott was speeding the stop was constitutional. Because there was no violation of Scott's constitutional rights, the lower courts erred in suppressing evidence associated with that stop.

CONCLUSION

The state requests this Court to reverse the district court's order on appeal and remand to the magistrate for further proceedings.

DATED this 12th day of July, 2010.

KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th day of July, 2010 I caused two true and correct copies of the foregoing REPLY BRIEF OF APPELLANT to be placed in the United States mail, postage prepaid, addressed to:

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KKJ/pm