3-8-2016

State v. Seward Appellant's Brief Dckt. 43658

IN THE SUPREME COURT OF THE STATE OF IDAHO

THE STATE OF IDAHO Plaintiff/Respondent, vs. JEREMY WAYNE SEWARD, Defendant/Appellant.	)	Supreme Court Docket No. 43658-2015 CASE NO. CR2015-13

BRIEF OF APPELLANT

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

CHRISTOPHER S. NYE
District Judge

FOR THE APPELLANT: Matthew J. Roker
LOVAN ROKER & ROUNDS, P.C.
717 S. Kimball, Suite 200
Caldwell, Idaho 83605

FOR THE RESPONDENT: LAWRENCE G. WASDEN
Idaho Attorney General
Statehouse, Room 210
Post Office Box 83720
Boise, Idaho 83720-0010

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STATEMENT OF THE CASE

Appellant was charged with felony Driving Under the Influence. Defendant moved to suppress evidence arguing that he was seized in violation of his State and Federal Constitution Rights. A motion to suppress hearing was held and following the presentation of evidence the District Court denied the motion to suppress evidence finding that although Appellant was seized for Fourth Amendment purpose, the Officer had reasonable suspicion to effectuate the seizure.

COURSE OF PROCEEDINGS

On December 26, 2014, Defendant was charged by citation with Misdemeanor Driving Under the Influence. The State filed a motion to amend the Complaint to a Felony. On January 23, 2016, the Court granted the State's motion and amended the charge to felony Driving Under the Influence. Appellant waived his preliminary hearing on March 6, 2015 and pled not guilty at his District Court Arraignment on March 20, 2015. Appellant timely filed his Motion to Suppress Evidence on April 17, 2015. On May 12, 2015 a hearing was held on the motion to suppress. Following the presentation of evidence the District Court made oral findings of fact on the record and denied Appellant's Motion to Suppress Evidence. On July 6, 2015, pursuant to a Rule 11 plea agreement reserving his right to appeal the denial of his motion to suppress evidence, Appellant entered a plea of guilty to the felony Driving Under the Influence. On July 8, 2015, the District Court entered a written Order denying Appellant's motion to suppress evidence. On September 14, 2015, Appellant was sentenced to two years fixed followed by five years indeterminate for a total aggregate sentence of seven years. The sentence was suspended and Appellant placed on probation for a period of four years. Appellant filed a timely notice of appeal on October 21, 2015.

STATEMENT OF FACTS

At approximately 10:00 p.m. on December 26, 2014, Officer Jared Ashcraft of the Parma Police Department was on patrol in a marked police car and observed a vehicle parked outside a bar in Parma, Idaho. Tr. P. 5 Ls. 6-15 and P. 17 Ls. 2-5. Ashcraft had received information months earlier that the vehicle belonged to Jeremy Seward, the Appellant. Also, that Appellant did not have a valid driver's license and had a warrant for his arrest. Tr. P. 5 Ls. 19-24. Ashcraft had been informed through an anonymous tip that Appellant was the person who drove the vehicle on a regular basis. Tr. P. 20 Ls. 11-18. Ashcraft does not know how many people are in the Appellant's family and believes it is possible other people could drive the vehicle. Tr. P. 40 Ls. 6-12. Ashcraft ran the license plate on the vehicle and found that it was registered to both the Appellant and Appellant's brother. Tr P. 6 Ls. 4-14. Ashcraft also confirmed at that time that Appellant did not have a valid driver's license and had a misdemeanor warrant for failure to appear. Tr. P. 14 Ls. 3-6. Later that evening at approximately 10:40 p.m. Ashcraft was parked when he observed the vehicle drive past him. Tr P. 7 Ls. 1-14. Ashcraft followed the vehicle but was unable to see who was inside the vehicle. Tr P. 7 Ls. 15-20. As Ashcraft followed the vehicle he did not observe any driving offenses. Tr. P. 8 Ls. 24-25 and P. 9 L. 1. The vehicle pulled into a private driveway. Tr. P. 9 Ls. 2-4. Ashcraft testified that it was immediately after he turned around and was able to catch up to the vehicle that the vehicle turned into the driveway. Tr. P. 22 Ls. 6-18. The vehicle parked about two or three car lengths from the trailer house. Tr. P. 34 Ls. 8-13. Ashcraft testified that the house where the vehicle pulled into the driveway was not where any of the Seward's lived. Tr. P. 33 Ls. 16-24. Ashcraft had previous contact with the people who lived in the home but could not see if any where in the vehicle. Tr. P. 41 Ls. 8-15. Ashcraft pulled behind the vehicle at a forty-five degree angle. Tr. P. 9 Ls. 7-10. Ashcraft then approached the vehicle and for the first time was able to identify the Appellant seated on the driver's side and Appellant's brother seated on the passenger's side. Tr P. 11 Ls. 7-25 and P. 16 Ls. 9-13. Ashcraft returned to his patrol car and called into dispatch Appellant's information and for the first time was able to identify that the warrant was for daytime or nighttime. Tr. P. 39 Ls. 1-23. Appellant was administered field sobriety tests and a blood draw was conducted with the results later showing Defendant to be in excess of the legal limit. Tr. P. 15 Ls. 23-25 and P. 16 Ls. 1-8.

ISSUES PRESENTED ON APPEAL

1) Did the District Court err in finding the police officer had reasonable suspicion to effectuate a seizure of Appellant?

2) Should Appellant's identification as the driver of the vehicle be excluded from evidence because of the unlawful seizure?

ATTORNEY FEES ON APPEAL

None.

ARGUMENT

Standard of Review

"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 that 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. (internal citations omitted)." State v. Liechty, 267 P.3d 1278 at 1281, 152 Idaho 163 at 166 (Ct.App. 2011)

The Initial Seizure of Appellant Was Unreasonable

"An encounter between a law enforcement officer and a citizen does not trigger Fourth Amendment scrutiny unless it is nonconsensual. A seizure under the meaning of the Fourth Amendment occurs only 'when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.' (internal citations omitted)." State v. Willoughby, 211 P.3d 91 at 95, 147 Idaho 482 at 486 (Idaho 2009)

"Other circumstances that may indicate a seizure include whether an officer used overhead emergency lights or took action to block a vehicle's exit route (internal citations omitted)." State v. Randle, 276 P.3d 732 at 735, 152 Idaho 860, (Ct.App. 2012).

The District Court heard testimony on whether Officer Ashcraft had used his car to block Appellant from being able to leave. Tr. P. 44 Ls. 2-13 and P. 52 Ls. 11-16. The Court's findings of fact are that Officer Ashcraft using his patrol car to block Appellant into the driveway and prevent him from leaving seized Appellant. Tr. P. 63 Ls.. 12-15.

"A traffic stop, which constitutes a seizure under the Fourth Amendment, must be supported by reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws or that either the vehicle or the occupant is subject to detention in connection with a violation of other laws. The reasonableness of the suspicion must be evaluated upon the totality of the circumstances at the time of the stop. This reasonable suspicion standard requires less than probable cause, but more than speculation or instinct on the part of an officer. (internal citations omitted)." State v. Naccarato, 878 P.2d 184 at 186, 126 Idaho 10 at 12 (Ct.App. 1994).

Prior to effectuating the seizure of the vehicle and Appellant, Officer Ashcraft did not know who was inside the vehicle. Tr P. 7 Ls. 15-20. Officer Ashcraft's suspicion that Appellant was inside the vehicle was gleaned from the following information. An anonymous tip that Appellant drove the truck on a regular basis. Tr. P. 20 Ls. 11-18. The vehicle was registered to Appellant and Appellant's brother. Tr P. 6 Ls. 4-14. Officer Ashcraft does not know how many people are in the Appellant's family and acknowledged it is possible other people could drive the vehicle. Tr. P. 40 Ls. 6-12. The observation that the vehicle pulled into a driveway to a home where the Appellant does not live. Tr. P. 33 Ls. 16-24. The vehicle parked about two or three car lengths from the house. Tr. P. 34 Ls. 8-13.

None of the information beyond the fact Appellant was one of the registered owners of the vehicle would support a belief that Appellant may be inside the vehicle. The Appellate Courts have previously found that the mere observation of a vehicle being driven by someone of the same gender as the unlicensed owner is insufficient to give rise to a reasonable suspicion of

unlawful activity. State v. Cerino, 117 P.3d 876, 141 Idaho 736 (Idaho App. 2005). Unlike *Cerino*, where law enforcement had the advantage of observing an adult male inside the vehicle consistent with the gender of the suspect, Ashcraft was completely unable to see who was inside the vehicle. Tr P. 7 Ls. 15-20.

The information available to Officer Ashcraft did not provide reasonable suspicion to effectuate a seizure of Appellant. The evidence presented does not support the District Court's finding that reasonable suspicion existed for the seizure and the Order denying Appellant's motion to suppress should be reversed.

Evidence Obtained Prior To the Determination Of The Nighttime Warrant Should Be Suppressed.

In *State v. Maland* 140 Idaho 817 (Idaho 2004) the Idaho Supreme Court found that evidence obtained by police officers following the unlawful detention of a wanted person shall be excluded if the evidence was obtained prior to the discovery of the warrant of arrest.

This rule was stated more succinctly in *State v. Page,* 140 Idaho 841 at 847 (Idaho 2004) as follows,

> It is important to note that had the drug evidence in this case been seized after the officer seized Page's license and took it back to the patrol vehicle, but prior to discovery of the valid warrant, the considerations outlined in Green would not justify the conclusion that the evidence was sufficiently attenuated from improper police conduct so as to be admissible. See, e.g., State v. Maland, 140 Idaho 817, 103 P.3d 430, 2004 WL 2930716 (November 24, 2004). In such a case, evidence seized prior to the arrest, unless justified by some other exception, would not be admissible simply because, ultimately, a valid arrest warrant was discovered. A judicial determination of probable cause focuses on the information and facts the officers possessed at the time. State v. Schwarz, 133 Idaho 463, 467, 988 P.2d 689, 693 (1999). It is only the fact that there was an intervening factor between the unlawful seizure and discovery of the evidence--the discovery of the warrant in this case--that creates the exception, which permitted the officer to arrest Page and made the subsequent seizure of evidence admissible.

Prior to the seizure of Appellant, Officer Ashcraft confirmed that Appellant did not have a valid driver's license and had a misdemeanor warrant for failure to appear. Tr. P. 14 Ls. 3-6. Although Officer Ashcraft had knowledge of the misdemeanor warrant prior to the seizure of Appellant, he did not identify whether the warrant allowed for nighttime service until after making contact with Appellant and then returning to his patrol car to confirm with dispatch. Tr. P. 39 Ls. 9-23. It is not in dispute that the seizure occurred at nighttime. Tr. P. 39 Ls. 24-25 and P. 40 L. 1.

Appellant argues that the intervening factor between the unlawful seizure and the discovery of Appellant as the driver of the vehicle was not the discovery of the misdemeanor warrant, but the discovery that the warrant could be executed at nighttime. A daytime only warrant could not be an intervening factor when the seizure occurred at night.

Any evidence discovered prior to the intervening factor, including but not limited to the identification of Appellant as the driver of the vehicle, should be excluded from evidence.

CONCLUSION

The initial seizure of Appellant was unreasonable and a violation of his Fourth Amendment rights. Therefore, the District Court's Order that the seizure of Appellant was supported by reasonable suspicion should be reversed. Further, the confirmation of the nighttime warrant was an intervening factor in the otherwise unlawful seizure and all evidence discovered prior to the confirmation of the nighttime warrant, including but not limited to the identification of the Appellant as the driver of the vehicle, should be excluded.

DATED this 8th day of March 2016.

LOVAN ROKER & ROUNDS, P.C.

MATTHEW J. ROKER
Attorney for Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8thday of March, 2016, 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:

CHRISTOPHER S. NYE
DISTRICT COURT JUDGE
CANYON COUNTY COURTHOUSE
1115 ALBANY STREET
CALDWELL, IDAHO 83605

LAWRENCE G. WASDEN
IDAHO ATTORNEY GENERAL
STATEHOUSE, ROOM 210
PO BOX 83720
BOISE, IDAHO 83720-0010

CANYON COUNTY PROSECUTING ATTORNEY
1115 ALBANY STREET
CALDWELL, IDAHO 83605

MATTHEW J. ROKER