7-6-2016

State v. McAuley Respondent's Brief Dckt. 43702

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 43702**
Plaintiff-Respondent,	)	
	)	**Elmore Co. Case No.**
v.	)	**CR-2015-87**
	)	
SCOTT CLIFFORD McAULEY,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

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District Judge

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **PAGE**

STATEMENT OF THE CASE

Nature Of The Case

Scott Clifford McAuley appeals from the judgment entered upon his conditional guilty plea to possession of a controlled substance with a persistent violator enhancement. McAuley claims the district court erred in denying his motion to suppress.

Statement Of Facts And Course Of Proceedings

Deputy Garrett Kinnan was dispatched to a report of an unresponsive individual inside a car parked at a Chevron. (Tr., p.9, Ls.11-19.) When Deputy Kinnan arrived on scene, he located a parked, but running, car and observed a man inside the vehicle "who appeared to be asleep or was having what seemed like a medical issue[.]" (Tr., p.10, Ls.3-8, p.15, Ls.12-25.) The individual, later identified as McAuley, did not respond to the deputy's loud knocking on his window, and Deputy Kinnan noticed McAuley was "tossing his head back and forth, his eyes were shut, [and] his lips were moving." (Tr., p.10, L.6 – p.11, L.16.) Deputy Kinnan requested "medical back up" who responded to the scene to assess McAuley. (Tr., p.11, L.24 – p.12, L.9.) McAuley was unable to explain to medical personnel "where he was at," "where he was coming from or how long he had been there." (Tr., p.12, Ls.13-15.) He was also "[s]low in thought process, almost in a confused state." (Tr., p.12, Ls.15-16.) The medical personnel left after McAuley signed a "medical release," but Deputy Kinnan remained concerned because he felt McAuley was "impaired." (Tr., p.14, L.7 – p.15, L.11; see also p.17, Ls.19-21.) By that point, Deputy Kinnan was also

aware that McAuley's driving privileges were suspended and that he was in Idaho without permission from his probation officer. (Tr., p.16, Ls.1-6, p.17, Ls.17-19.)

Deputy Kinnan arrested McAuley, after which he searched McAuley's vehicle. (Tr., p.17, L.22 – p.18, L.5.) The search revealed "several syringes," one containing methamphetamine, "several knives and a firearm." (Tr., p.18, Ls.6-8.) McAuley was on parole at the time and was not allowed to possess a firearm. (Tr., p.18, Ls.9-16.)

The state charged McAuley with possession of a controlled substance, unlawful possession of a firearm, and possession of drug paraphernalia. (R., pp.25-26.) The state also alleged McAuley is a persistent violator. (R., p.27.) McAuley filed a motion to suppress claiming he was unlawfully detained, searched, interrogated, and arrested. (R., p.35.) The court denied McAuley's motion after an evidentiary hearing. (See generally Tr., pp.7-49.) McAuley subsequently entered a conditional guilty plea to possession of a controlled substance and the enhancement, reserving his right to appeal the denial of his suppression motion, and the state dismissed the firearm and paraphernalia charges. (R., pp.68-79, 87; see generally Tr., pp.57-75.) The district court imposed a unified 10-year sentence, with three years fixed, and retained jurisdiction. (R., pp.87-90.) McAuley filed a timely notice of appeal from the judgment. (R., pp.92-94.)

ISSUE

McAuley states the issue on appeal as:

> Did the district court err when it denied Mr. McAuley's motion to suppress?

(Appellant's Brief, p.6.)

The state rephrases the issue on appeal as:

Has McAuley failed to show any error in the district court's determination that McAuley was not entitled to suppression since his initial contact with law enforcement was based upon the community caretaking function and, during that contact, the deputy developed probable cause to arrest McAuley for driving without privileges and reasonable suspicion to detain him for driving under the influence?

ARGUMENT

McAuley Has Failed To Show Error In The Denial Of His Motion To Suppress

A. Introduction

McAuley concedes "Deputy Kinnan initially encountered [him] pursuant to his community caretaking function to perform a medical check" and concedes that "[d]uring the course of the medical check, Deputy Kinnan learned that Mr. McAuley was driving without privileges." (Appellant's Brief, p.7.) Nevertheless, McAuley argues that he was entitled to suppression because, he claims, "Deputy Kinnan did not have reasonable suspicion for a drug investigation and his continued questioning . . . about drugs prolonged Mr. McAuley's detention and violated his rights under the Fourth Amendment."[1] (Appellant's Brief, p.7.) This argument is without merit. Because Deputy Kinnan had probable cause to arrest McAuley for driving without privileges, he did not need reasonable suspicion of a different offense in order to continue to detain McAuley. Moreover, notwithstanding McAuley's assertions to the contrary, the district court correctly concluded that Deputy Kinnan had reasonable suspicion to believe McAuley had been driving under the influence of narcotics and could lawfully detain him to confirm or dispel that suspicion. McAuley has failed to show any error in the denial of his suppression motion.

[1] McAuley's suppression motion also asserted a Fifth Amendment violation based on Miranda v. Arizona, 384 U.S. 436 (1966). (R., pp.39-40.) On appeal, McAuley does not challenge the district court's denial of this aspect of his motion. (See generally Appellant's Brief, pp.7-13.)

B. Standard Of Review

"The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts." State v. Diaz, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007). The power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. State v. Valdez-Molina, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); State v. Fleenor, 133 Idaho 552, 555, 989 P.2d 784, 787 (Ct. App. 1999). The appellate court also gives deference to any implicit findings of the trial court supported by substantial evidence. State v. Brauch, 133 Idaho 215, 218, 984 P.2d 703, 706 (1999).

C. McAuley Has Failed To Show Error In The District Court's Denial Of His Suppression Motion

"The Fourth Amendment safeguard against unreasonable searches and seizures applies to the seizures of persons through arrests or detentions falling short of arrest." State v. Gutierrez, 137 Idaho 647, 650, 51 P.3d 461, 464 (Ct. App. 2002) (citations omitted). "An arrest for a public offense, whether a felony or misdemeanor, may be made upon probable cause." State v. Carr, 123 Idaho 127, 130, 844 P.2d 1377, 1380 (Ct. App. 1992) (citation omitted). "Driving without privileges is a public offense and can be charged as either a felony or misdemeanor." Id. Thus, driving without privileges is a crime for which arrest is appropriate so long as the arrest is based upon probable cause. Id.

McAuley concedes, as he must, that Deputy Kinnan had probable cause to arrest him for driving without privileges, and Deputy Kinnan developed probable cause for such an arrest during the medical assessment that was initiated pursuant to Deputy Kinnan's lawful community caretaking function. (Appellant's Brief, pp.7, 8.) This concession is consistent with the evidence, the district court's factual findings, and the district court's conclusion that Deputy Kinnan had "probable cause at that point for any subsequent seizure that occurred." (Tr., p.40, L.1 – p.41, L.4.) Nevertheless, McAuley argues that because "Deputy Kinnan could have written [him] a ticket for driving without privileges or further investigated that offense," but "did not do so," any further detention required reasonable suspicion of a different offense, which McAuley contends did not exist. (Appellant's Brief, p.8.) This argument is contrary to law.

That Deputy Kinnan "could have" written a ticket but did not does not mean the probable cause for McAuley's detention disappeared. Nor did Deputy Kinnan's failure to conduct "further investigat[ion] of that offense" dissipate the probable cause, and it is unclear what additional investigation McAuley thinks was necessary, much less required. McAuley cites no authority for the proposition that an officer must cite or arrest someone for the same offense that provided probable cause for the detention in the first instance in order for the detention to be lawful. Instead, McAuley relies on cases that stand for the proposition that "[a] police officer can abandon an investigation to pursue a new line of inquiry if he has reasonable suspicion supporting the new line of inquiry." (Appellant's Brief, pp.8-9 (citations omitted).) McAuley apparently extrapolates

from this principle that reasonable suspicion for a "new line of inquiry" is a necessary prerequisite to continuing to detain an individual, despite the existence of probable cause, if the individual is not ultimately charged with the offense on which the detention was initially based. This argument is not only unsupported by the legal principle upon which McAuley relies, it would essentially require officers to arrest for, or the state to charge defendants with, additional crimes. Presumably, this is not actually the result McAuley, or any other criminal defendant, would advocate.

A review of State v. Perez-Jungo, 156 Idaho 609, 329 P.3d 391 (Ct. App. 2014), one of the cases McAuley cites in support of his claim (Appellant's Brief, p.9), further illustrates why McAuley's reliance on the legal principle from that case does not apply. In Perez-Jungo, an officer saw a vehicle parked on the side of a gravel road in the early morning hours and approached the vehicle due to "concern that the vehicle was abandoned, the vehicle was stolen, the driver was in need of assistance, or the driver may have been involved in recent vandalisms of cell towers in the area." Perez-Jungo, 156 Idaho at 612, 329 P.3d at 394. Upon making contact with the driver, Perez-Jungo, the officer "asked what he was doing," and Perez-Jungo said "he was waiting for a friend and that someone had told him there was a potential job site nearby." Id. "The officer noted that Perez-Jungo's eyes were bloodshot and glassy," but Perez-Jungo denied he had been drinking. Id. The officer also noticed a statue on Perez-Jungo's dashboard that he recognized as the "patron saint of drug traffickers." Id. (footnote omitted). After confirming Perez-Jungo had a valid license and no warrants, the officer told

Perez-Jungo to exit his vehicle and, while shining a light into the vehicle, the officer "saw what appeared to be drug paraphernalia and a controlled substance, leading to a search of the vehicle" and Perez-Jungo's eventual arrest. Id. at 612-613, 329 P.3d at 394-395.

Perez-Jungo filed a motion to suppress, arguing, in relevant part, that his detention was unlawfully extended without reasonable suspicion. Perez-Jungo, 156 Idaho at 613, 329 P.3d at 395. Addressing this issue, the Court of Appeals explained the relevant legal standards:

> The purpose of a stop is not fixed at the time the stop is initiated. Any routine investigative detention might turn up suspicious circumstances which could justify an officer asking questions unrelated to the initial purpose for the stop. Such unrelated inquiries, if brief, do not necessarily exceed the scope of the initial detention and violate a detainee's Fourth Amendment rights. Moreover, an officer's observations and general inquiries, and the events succeeding the stop, may—and often do—give rise to legitimate reasons for particularized lines of inquiry and further investigation by an officer. Indeed, a detention initiated for one investigative purpose may disclose suspicious circumstances that justify expanding the investigation to other possible crimes. Thus, the length and scope of the initial investigatory detention may be lawfully expanded if there exist objective and specific articulable facts that justify reasonable suspicion that the detained person is, has been, or is about to engage in criminal activity.
>
> **Accordingly, our inquiry is directed at determining whether the officer had reasonable suspicion, upon resolution of the initial justifications for the stop, to continue the detention to investigate other possible crimes.**

Id. at 614-615, 329 P.3d at 396-397 (citations omitted, emphasis added).

Thus, reasonable suspicion of a different crime is only necessary for continuing a detention "upon resolution of the initial justifications for the stop." Id. at 615, 329 P.3d at 397. The initial justification for McAuley's detention never

ended because Deputy Kinnan could have arrested McAuley at any time based upon probable cause that McAuley was driving without privileges. That Deputy Kinnan did not do so does not mean the justification ended. McAuley's reliance on other cases applying the principle articulated in Perez-Jungo to facts where the officer could only issue a citation, and could not detain a driver beyond what was required to accomplish that task, also do not apply since McAuley was subject to arrest, not just a citation. (Appellant's Brief, pp.9, 13.)

Because Deputy Kinnan did not need any basis for detaining McAuley in addition to the probable cause he had to detain and arrest McAuley for driving without privileges, the Court need not address McAuley's argument that the district court erred in finding Deputy Kinnan also had reasonable suspicion to believe that McAuley was driving under the influence. Even if considered, McAuley's claim fails.

"Under *Terry* [*v. Ohio*, 392 U.S. 1, 21 (1968)], an investigative detention is permissible if it is based upon specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity." State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). "The justification for an investigate detention is evaluated upon the totality of the circumstances then known to the officer." Id. (citations omitted).

With respect to reasonable suspicion that McAuley had been driving under the influence, the district court found:

> . . . Mr. McAuley was, at the time, seated in the driver's seat, the engine was running, the parking lot is a public place, or it is a private property open to the public by the appearance of the video and from the officer's testimony that this was a gas station.

> Mr. McAuley, upon being approached by the officer, was slumped over. His initial questions to the officer and the paramedic appear to be confused -- or his initial answers to their questions. The paramedic asks Mr. McAuley, while the officer is standing there, where are you at? Mr. Cauley's -- Mr. McAuely's response is Burns, Oregon. Where did you start out today? Mr. McAuley replies, I don't know, and I don't remember falling asleep. Mr. McAuley denies taking any medications. He also tells the paramedic something else about falling asleep.
>
> Based on my observations of Mr. McAuley on the video, as well as the officer's testimony about his observations of Mr. McAuley, I find that there is a reasonable suspicion in the officer's mind that at the time the paramedics were talking to Mr. McAuley, Mr. McAuley play -- may have been operating a motor vehicle under the influence of some substance that would justify the officer's detention of Mr. McAuley.

(Tr., p.41, L.15 – p.42, L.13.)

Deputy Kinnan's observations, referenced by the district court, included Deputy Kinnan seeing McAuley "tossing his head back and forth, his eyes were shut, [and] his lips were moving" (Tr., p.10, Ls.6-15), McAuley's inability to explain to medical personnel "where he was at," "where he was coming from or how long he had been there" (Tr., p.12, Ls.13-15), and McAuley's "[s]low" "thought process," and "confused state" (Tr., p.12, Ls.15-16).

McAuley does not challenge any of the factual findings underpinning the district court's finding of reasonable suspicion or even the district court's conclusion that the facts supported a finding of reasonable suspicion that McAuley was driving under the influence, but contends "Deputy Kinnan did not have reasonable suspicion to believe that Mr. McAuley had committed, or was

about to commit, a drug crime."[2] (Appellant's Brief, p.9.) It is unclear how this complaint is relevant since Deputy Kinnan did not need reasonable suspicion of a "drug crime" in order to detain him, and the district court's determination was not based on reasonable suspicion of a "drug crime."

McAuley similarly complains that Deputy Kinnan "questioned [him] about drugs because of [his] nervous behavior, the way he was answering questions, and the fact that he could not recall the exact date he was released from prison," none of which McAuley believes was adequate to "establish reasonable suspicion of drug activity." (Appellant's Brief, p.12.) In addition to ignoring the actual finding of reasonable suspicion, which was based on driving under the influence, McAuley ignores half of the factors noted by the district court and testified to by Deputy Kinnan. The totality of circumstances as set forth by the district court, as outlined by Deputy Kinnan, and as reflected in the video of Deputy Kinnan's interaction with McAuley, support the district court's finding that there was reasonable suspicion to believe McAuley was driving under the influence. Although that finding was unnecessary in light of the existence of probable cause to arrest McAuley, the finding is supported by the evidence and the law. McAuley has failed to show otherwise.

[2] McAuley does not argue, as he did with respect to Deputy Kinnan's probable cause to arrest for driving without privileges, that any reasonable suspicion for driving under the influence disappeared once Deputy Kinnan decided not to charge him with that offense, but instead charged him with possession of a controlled substance, possession of paraphernalia, unlawful possession of a firearm, and carrying a concealed weapon without a license. (R., p.11.)

CONCLUSION

The state respectfully requests that this Court affirm the judgment entered upon McAuley's conditional guilty plea to possession of a controlled substance with a persistent violator enhancement.

DATED this 6th day of July, 2016.

_/s/ Jessica M. Lorello___
JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 6th day of July, 2016, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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_/s/ Jessica M. Lorello__
JESSICA M. LORELLO
Deputy Attorney General

JML/dd