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State v. Dixon Appellant's Brief Dckt. 44060

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IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|-----------------------------|
| STATE OF IDAHO, |) | |
| |) | NO. 44060 |
| Plaintiff-Respondent, |) | |
| |) | ADA COUNTY NO. CR 2015-8499 |
| v. |) | |
| |) | |
| ROBERT BRYON DIXON, |) | |
| |) | |
| Defendant-Appellant. |) | |
| _____ |) | |

BRIEF OF APPELLANT

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

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District Judge

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STATEMENT OF THE CASE

Nature of the Case

Robert Bryon Dixon was convicted of possession of a controlled substance and sentenced to a unified term of seven years, with two-and-one-half years fixed. He appeals from his judgment of conviction, challenging the district court's denial of his motion to suppress. He contends the district court erred in denying his motion to suppress because the officer who stopped his vehicle lacked reasonable suspicion of criminal activity at the time of the stop.

Statement of Facts and Course of Proceedings

At approximately 2:45 a.m. on June 14, 2015, Boise Police Officer Tad Miller observed a vehicle driving in the outside westbound lane of Fairview Avenue in Boise, Idaho. (Tr., p.6, L.16 – p.7, L.17.) Officer Miller testified he observed the vehicle cross the dotted yellow line dividing the outside lane from the inside lane with its left tires for approximately two to three seconds. (Tr., p.6, Ls.12-24; p.15, Ls.5-18; p.20, Ls.3-10.) This occurred one time over the course of approximately thirty seconds. (Tr., p.15, L.19 – p.16, L.1.) The officer testified this was “alarming” because “[i]t could indicate . . . the driver is possibly intoxicated.” (Tr., p.8, Ls.3-6.) The officer initiated a traffic stop, and the driver of the stopped vehicle, later identified as Mr. Dixon, pulled over in a “fairly timely” manner. (Tr., p.8, Ls.9-12; p.14, Ls.22-24.)

After the stop, Officer Miller observed Mr. Dixon was “very nervous and was looking around the vehicle unable to [remain] still.” (Tr., p.9, Ls.20-23.) He also observed the passenger was not wearing a seatbelt. (Presentence Investigation Report (“PSI”), p.55.) Another officer arrived on scene, and that officer found what he believed

to be a methamphetamine pipe in Mr. Dixon's pocket while conducting a frisk. (Tr., p.9, Ls.18-23; PSI, p.3.) The second officer's drug dog alerted on Mr. Dixon's vehicle and the officers ultimately found multiple controlled substances, a pipe and a digital scale in the vehicle, and a small plastic baggie with methamphetamine in Mr. Dixon's wallet. (PSI, p.3.)

Mr. Dixon was charged by Amended Information with three counts of felony possession of a controlled substance, one count of misdemeanor possession of a controlled substance, and one count of possession of drug paraphernalia. (R., pp.32-34.) The State also filed an Information Part II alleging Mr. Dixon was a persistent violator within the meaning of Idaho Code § 19-2514. (R., pp.73-75.)

Mr. Dixon filed a motion to suppress, supported by a memorandum and affidavit, arguing the stop of his vehicle violated his rights under the Fourth Amendment of the United States Constitution because the officer lacked reasonable suspicion of criminal activity at the time of the stop. (R., pp.56-65, 99-101; Tr., p.3, Ls.16-22.) The State filed an objection to Mr. Dixon's motion. (R., pp.91-96.) The district court held a hearing, at which Officer Miller and Mr. Dixon testified regarding the circumstances of the stop. Mr. Dixon testified there was "no way" his tires crossed into the inside lane on Fairview Avenue. (Tr., p.28, Ls.17-20.) The district court denied Mr. Dixon's motion. The district court found Officer Miller was credible and concluded he observed a violation of Idaho Code § 49-637, which provided reasonable suspicion for the stop. (Tr., p.38, Ls.10-24.)

Following the denial of his motion to suppress, Mr. Dixon entered into an agreement with the State pursuant to which he agreed to plead guilty to one count of

felony possession of a controlled substance, reserving his right to appeal from the denial of his motion to suppress, and the State agreed to dismiss the other counts and the Information Part II. (Tr., p.41, L.17 – p.42, L.21; R., pp.113-20, 121.) The district court accepted Mr. Dixon's guilty plea and sentenced him to a unified term of seven years, with two-and-one-half years fixed, to be served concurrently with any other sentences he is serving. (Tr., p.55, Ls.19-24; p.68, L.25 – p.69, L.4; R., p.127.) The judgment of conviction was filed on February 16, 2016, and Mr. Dixon filed a timely notice of appeal on March 21, 2016. (R., pp.126-29, 133-35.)

ISSUE

Did the district court err in denying Mr. Dixon's motion to suppress?

ARGUMENT

The District Court Erred In Denying Mr. Dixon's Motion To Suppress

A. Introduction

The district court erred in denying Mr. Dixon's motion to suppress because Officer Miller did not have reasonable suspicion of criminal activity at the time he stopped Mr. Dixon's vehicle. The district court concluded the officer had reasonable suspicion that Mr. Dixon violated Idaho Code § 49-637 by driving across the dotted yellow line separating the two westbound lines of Fairview Avenue for approximately two to three seconds. The district court erred. Mr. Dixon did not violate § 49-637 because there is no indication his movement either could not, or was not, made with safety.

B. Standard Of Review

This Court uses a bifurcated standard to review a district court's order on a motion to suppress. *State v. Danney*, 153 Idaho 405, 408 (2012). The Court will accept the trial court's findings of fact "unless they are clearly erroneous." *State v. Wulff*, 157 Idaho 416, 418 (2014). However, the Court exercises free review of "the trial court's application of constitutional principles to the facts found." *Danney*, 153 Idaho at 408.

C. The Stop Of Mr. Dixon's Vehicle Was Not Supported By Reasonable Suspicion

A traffic stop constitutes a seizure under the Fourth Amendment of the United States Constitution. *State v. Henage*, 143 Idaho 655, 658 (2007). However, "[l]imited investigatory detentions are permissible when justified by an officer's reasonable articulable suspicion that a person has committed, or is about to commit, a crime."

State v. Morgan, 154 Idaho 109, 112 (2013) (citation omitted). “Reasonable suspicion must be based on specific, articulable facts and the rational inferences that can be drawn from those facts . . . and requires more than a mere hunch or inchoate and unparticularized suspicion.” *Id.* (quotation marks and citations omitted). “The test for reasonable suspicion is based on the totality of the circumstances known to the officer at or before the time of the stop.” *Id.* (citation omitted).

Based on the totality of the circumstances known to Officer Miller at the time he stopped Mr. Dixon’s vehicle, he did not have reasonable suspicion of criminal activity. The district court concluded Officer Miller had reasonable suspicion of criminal activity because he observed Mr. Dixon violate Idaho Code § 49-637 when his left front and rear tires crossed the dotted yellow line dividing the outside and inside westbound lanes for approximately two to three seconds. (Tr., p.38, Ls.10-24.) The district court erred.

Section 49-637 states, in pertinent part, that “[w]henver any highway has been divided into two (2) or more clearly marked lanes for traffic . . . [a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety.” I.C. § 49-637(1). Where, as here, a driver’s left tires cross from the outside to the inside lane for two to three seconds, and there is no indication such movement either could not, or was not made with safety, the driver does not violate Section 49-637.

The standard this Court applies in interpreting a statute is well settled:

Statutory analysis must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written. This Court interprets statutes according to their plain, express meaning and resorts to judicial construction only if the statute is ambiguous, incomplete,

absurd, or arguably in conflict with other laws. Where the language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to construe the language.

State v. Neal, 159 Idaho 439, 444 (2015) (quotation marks and citations omitted). In addition, “[s]tatutes and ordinances should be construed so that effect is given to their provisions, and no part is rendered superfluous or insignificant.” *Id.* at 445 (quotation marks and citation omitted).

Idaho Code § 49-637 requires that, on a highway with more than two marked lanes, a vehicle be driven “as nearly as practicable within a single lane” and “not be moved from that lane until the driver has first ascertained that the movement can be made with safety.” A driver does not violate this statute every time he fails to remain in a single lane on a multi-lane highway. Interpreting the statute in this manner would render the “as nearly as practicable” language to be mere surplusage. The statute’s command that drivers remain in a single lane “as nearly as practicable” requires nothing more than that drivers stay in a single lane to the degree it “is reasonably capable of being accomplished [or] feasible.” Black’s Law Dictionary 1210 (8th ed. 2004). This statute encompasses a recognition that it is not always practicable to stay precisely in one’s lane of travel. A driver who briefly (here, very briefly) moves from his lane of travel to another does not violate the statute in the absence of any evidence that his movement either could not, or was not, made with safety.

The State did not present any evidence in the district court that Mr. Dixon’s brief movement from one westbound lane to the other either could not, or was not, made with safety. Officer Miller testified “[t]here were other vehicles on the road” but he could not recall if there was a vehicle between his vehicle and Mr. Dixon’s vehicle. (Tr., p.13,

Ls.16-19.) Officer Miller did not testify that Mr. Dixon's brief movement posed a danger to Mr. Dixon, the officer, or anyone else on the highway. It would be an unnecessarily harsh interpretation of Section 49-637 to conclude that a driver can be pulled over, cited, and possibly then subject to intrusive searches, for moving briefly from one lane to another in a way that is not unsafe. "Constructions that would render a statute productive of unnecessarily harsh consequences are to be avoided and any ambiguity in a statute should be resolved in favor of a reasonable operation of the law." *Higginson v. Westergard*, 100 Idaho 687, 691, 604 P.2d 51, 55 (1979).

At the suppression hearing, Officer Miller testified he did not observe any possible traffic infraction apart from the possible violation of Section 49-637, discussed above. He was asked, "During the rest of the 30 seconds or so that you were behind [Mr. Dixon], would it be fair to say that he was well within his lane?" (Tr., p.15, Ls.21-23.) He answered, "Yeah; I did not observe any infractions or I would have stopped him at that time for anything I'd observed." (Tr., p.15, L.24 – p.16, L.1.) Because Officer Miller did not observe a violation of Section 49-637, he did not have reasonable suspicion of criminal activity to support the traffic stop. *See State v. Young*, 144 Idaho 646, 649 (Ct. App. 2006) (concluding the magistrate correctly applied the statute at issue to determine no traffic violation had occurred, and the stop of the defendant was therefore not supported by probable cause or reasonable suspicion of criminal activity).¹

¹ In denying Mr. Dixon's motion to suppress, the district court noted that "once the vehicle was stopped, the officer realized the passenger was not wearing a seatbelt, which is also another law violation . . ." (Tr., p.39, Ls.22-25.) This fact was not known to Officer Miller prior to the stop, and thus cannot be considered in determining whether the stop was supported by reasonable suspicion. *See State v. Emory*, 119 Idaho 661, 664 (Ct. App. 1991) ("The suspicion for the stop must be based upon objective

