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IN THE SUPREME COURT FOR THE STATE OF IDAHO

STATE OF IDAHO,)
)
Plaintiff/Respondent,)
)
vs.)
)
JOHN A. URRESTI,)
)
Defendant/Appellant.)
_____)

Supreme Court Case No. 44152

APPELLANT'S BRIEF

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

Honorable Gerald R. Schroeder, Presiding

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STATEMENT OF THE CASE

The present case arises from a conviction of Driving Under the Influence of Alcohol, I.C. § 18-8004, against the Defendant, John Urresti. On December 31, 2014, Mr. Urresti was subjected to a warrantless seizure by Corporal Paul Grabe of the Boise Police Department. (Tr. p.13 ll. 5-6; p 21 l. 13). Mr. Urresti was driving his truck that night on Leadville Avenue. (Tr. p. 13 ll. 17-18; p. 16 ll. 8-11). Also that night, officers were conducting an investigation on Leadville, and several police cars were in the road. (Tr. p. 14 ll. 14-21). As Mr. Urresti approached the area where there were police cars, he slowed down; and without leaving his lane of travel or committing any traffic violations, he began to drive between a police SUV, which did not have its lights activated and was “across the street” from Mr. Urresti’s lane of travel, and the cars parked along the right side of the road. (Tr. p. 15 ll. 19-24; p. 25 ll. 1-25; p. 27 ll. 23-24).

As Corporal Grabe saw Mr. Urresti beginning to drive into the area of the investigation, Corporal Grabe “motioned for him to back up.” (Tr. p. 19 ll. 23-24). Mr. Urresti complied with the command, and backed his car up. (Tr. 20 ll. 5-6). After Mr. Urresti had complied with the order to back up and was no longer moving toward Corporal Grabe’s investigation, Corporal Grabe ordered Mr. Urresti to stop and roll down his window (Tr. p. 20 ll. 11-16; p. 21 ll. 13-14).

Mr. Urresti complied, and ultimately the stop morphed into a DUI investigation.

Mr. Urresti was ultimately charged with DUI. Prior to trial in this matter, Mr. Urresti filed a Motion to Suppress Evidence on the grounds that he was seized in violation of Idaho Constitutional Article I section 17, and United States Constitutional Amendment IV. (R-13–14). Hearing was held on March 16, 2015, in the Magistrate Division. (R-16–19). The presiding Magistrate made oral findings on the record that day, finding that Mr. Urresti “was stopped by an

officer and backed up,” that “the defendant did comply with the orders [of Corporal Grabe],” and that “the officer had the right—probably even the duty—to talk to him and make sure that he understood he can’t do that.” The Magistrate denied the Motion to Suppress Evidence, “viewing, as I have to, the case in the light most favorable to the State.” (Tr. p 67 ll. 12-16). On June 8, 2015, the Defendant entered a conditional guilty plea reserving the right to appeal the Court’s decision on his Motion to Suppress Evidence. (R-35–38) He appealed to the District Court the same day. (R -41–43).

ISSUE PRESENTED ON APPEAL

1. Whether the Magistrate Court erred in binding itself to viewing the evidence “in a light most favorable to the State”
2. Whether the seizure of a driver who is obeying traffic laws and obeys the commands of an officer directing traffic may be seized and subjected to questioning.

ARGUMENT

The Supreme Court reviews the trial court (magistrate) record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure. *Pelayo v. Pelayo*, 154 Idaho 855, 858, 303 P.3d 217 (2013).

1. The Court should reverse the District Court’s decision to affirm the Magistrate because the Magistrate applied an incorrect legal standard in evaluating the evidence

The Magistrate erred in applying a legal standard in viewing the evidence in the light most favorable to the State. In the context of motions to suppress, “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. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

Here, the Magistrate Court stated that it “view[ed] as I have to, the case . . . in the light most favorable to the State.” In announcing that standard, the Magistrate was effectively announcing that it was bound to view the evidence in the light most favorable to the State and giving up its power—and duty—to weigh the evidence and draw factual inferences. While it is unclear what the Magistrate was referring to, it is clear from the statement of the standard that the Magistrate felt he had facts to weigh. The Magistrate Court effectively did not recognize its discretion in making its findings of fact. Consequently, the Magistrate abused its discretion and the District Court erred in affirming the Magistrate’s decision.

2. The Court should reverse the Magistrate’s decision on Mr. Urresti’s Motion to Suppress Evidence because Mr. Urresti was subjected to a warrantless and unreasonable seizure

Mr. Urresti was seized in violation of the US and Idaho Constitutions when he was ordered to stop and roll down his window after obeying the officer’s commands to address the perceived risks of Mr. Urresti’s otherwise lawful behavior. Both the United States Constitution and the Idaho Constitution guarantee “the right of the people to be secure in their persons . . . against unreasonable searches and seizures.” U.S. Const. amend IV; Idaho Const. art I § 17. A seizure occurs when a police officer, through some show of authority restrains the liberty of a person.” *State v. Gutierrez*, 137 Idaho 647, 649, 51 P.3d 461, 463 (Ct. App. 2002). Furthermore, when a person is seized without a warrant, the seizure is unlawful unless it is based on at least a reasonable and articulable suspicion that criminal activity is afoot. *State v. Willoughby*, 147 Idaho 482, 491, 211 P.3d 91, 100 (2009). When a person unlawfully seized, all the fruits of the

illegal seizure must be suppressed. *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407 (1963).

A seizure occurs whenever a person's liberty is restrained by a show of police authority. *Willoughby*, 147 Idaho at 486, 211 P.3d at 95. Whether a person's liberty is restrained is an objective test—if, considering the totality of the circumstances, police conduct would communicate to a reasonable person that he is not allowed to ignore the police and go about his business, then his liberty has been restrained, and he has been seized. *State v. Henege*, 143 Idaho 655, 658, 152 P.3d 16, 19 (2007). Furthermore, where a person is seized in a traffic stop, it ordinarily “must last no longer than necessary to effectuate its purpose.” *State v. Johnson*, 137 Idaho 656, 659, 51 P.3d 1112, 1115 (2002). A person “may not be detained even momentarily without objective grounds for doing so.” *State v. Gutierrez*, 137 Idaho 647, 652, 51 P.3d 461, 466 (Ct. App. 2002).

When a person is seized without a warrant, the burden is on the State to show that the seizure was reasonable. In the context of a *Terry* stop, the State must show that there was reasonable and articulable suspicion that criminal activity was afoot. *Willoughby* 147 Idaho at 490, 211 P.3d at 99. Reasonable suspicion exists when there is “some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.” *State v. Hankey*, 134 Idaho 844, 847, 11 P.3d 40, 43 (2000).

In one case, *State v. Henderson*, the Supreme Court invalidated DUI checkpoints, holding that Idaho Constitution requires “particularized suspicion of criminal wrongdoing” to justify a stop. 114. Idaho 293, 299, 756 P.2d 1057, 1065 (1986). In that case, the Boise Police Department had established a roadblock in which drivers were systematically and without

particularized suspicion ordered to roll their windows down. *Id.* at 293-94, 756 P.2d 1057-58.

Reasoning that a citizen of Idaho has the right to have “police treat [him or her] as a criminal only if [his or her] actions correspond” the Court held that roadblocks run afoul of Idaho’s Constitution. *Id.* at 298, 756 P.2d at 1062.

Here, Mr. Urresti was unlawfully seized at the time he was ordered to stop and roll down his window after having left the immediate area. The facts presented here are analogous to those the Supreme Court was faced with in *Henderson*; though the roadblock in *Henderson* had a different stated purpose from the roadblock here, the effect on drivers is identical if officers are given the authority to seize every vehicle that approaches with or without any particularized suspicion. It appears undisputed that Mr. Urresti was seized at the time Corporal Grabe ordered Mr. Urresti to back up, and continued until Mr. Urresti was released from jail. Corporal Grabe initially seized Mr. Urresti on the basis that he was about to hit a car (but didn’t) and that he was about to enter into an “investigation zone” (but didn’t). While Corporal Grabe’s stated purpose of preserving of the investigation and ensuring officer safety justified keeping Mr. Urresti out of the investigation zone—and there is substantial discussion by Corporal Grabe of the importance of keeping vehicles out of the investigation area—any officer safety or evidence preservation issues that may have justified redirecting Mr. Urresti away from the investigation zone dissipated once Mr. Urresti had backed away from the scene. Allowing further contact following Mr. Urresti’s compliance with police orders to leave the scene is essentially allowing officers to manufacture cause to conduct an investigatory stop.

Since there was no continuing justification for Mr. Urresti’s detention, the continued detention beyond having him leave the scene was unreasonable, and thus unconstitutional. Since

it was unconstitutional, all evidence obtained subsequent to stopping Mr. Urresti should have been suppressed, and the District Court erred in affirming the Magistrate's decision not to do so.


CONCLUSION

For the foregoing reasons, Mr Urresti respectfully requests that this Court reverse the District Court's decision affirming the Magistrate's denial of Defendant's Motion to Suppress Evidence and remand this matter to the Magistrate for further proceedings.

DATED this 25 day of July 2016.

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