11-9-2016

State v. Francke Respondent's Brief Dckt. 44262

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 44262**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR-FE-2015-3396**
	)	
LUCAS DARNELL FRANCKE,	)	
	)	
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 ADA

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Lucas Darnell Francke appeals from the judgment entered upon his conditional guilty pleas to possession of a controlled substance and possession of paraphernalia. Francke contends the district court erred in denying his motion to suppress.

Statement Of The Facts And Course Of The Proceedings

The state charged Francke with possession of a controlled substance and possession of paraphernalia. (R., pp.8-9, 15-16, 57-58.) Francke filed a motion to suppress, asserting there was no reasonable basis for the traffic stop because I.C. § 49-428(2) is unconstitutionally vague as applied to trucks with trailer ball hitches. (R., pp.90-98.) The district court denied Francke's motion. (Tr., p.21, L.7 – p.24, L.14.)

Pursuant to a plea agreement, Francke pled guilty to both possession charges, reserving his right to challenge the denial of his motion to suppress. (R., pp.128-139.) The court imposed a unified five-year sentence, with two years fixed, for possession of a controlled substance, but retained jurisdiction and "defer[red] pronouncing sentence" on the paraphernalia charge "until the rider review hearing." (R., pp.156-159.) Francke filed a timely notice of appeal. (R., pp.146-148.)

ISSUE

Francke states the issue on appeal as:

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

(Appellant's Brief, p.7.)

The state rephrases the issue as:

Has Francke failed to show the district court erred in denying his motion to suppress and concluding that the language of I.C. § 49-428(2) is not unconstitutionally vague?

ARGUMENT

The District Court Correctly Concluded Francke Was Not Entitled To Suppression Based On Francke's Assertion That I.C. § 49-428(2) Is Unconstitutionally Vague

A. Introduction

Francke "asserts the district court erred when it denied his motion to suppress," which motion was based on Francke's assertion that "I.C. § 49-428(2) is void for vagueness." (Appellant's Brief, p.8.) Application of the relevant legal standards shows the district court correctly concluded otherwise and affirmed Francke's motion to suppress on this basis.

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 [the court] freely reviews the application of constitutional principles to the facts as found." State v. Faith, 141 Idaho 728, 730, 117 P.3d 142, 144 (Ct. App. 2005).

Where the constitutionality of a statute is challenged, the appellate court reviews it *de novo*. State v. Korsen, 138 Idaho 706, 711, 69 P.3d 126, 131 (2003). The party challenging the constitutionality of the statute must overcome a strong presumption of constitutionality and clearly show the invalidity of the statute. Id. The appellate court is obligated to seek a construction of a statute that upholds its constitutionality. Id.

C. Francke Has Failed To Show Error In The District Court's Conclusion That Francke Was Not Entitled To Suppression Because I.C. § 49-428(2) Is Not Unconstitutionally Vague

If an officer has reasonable articulable suspicion to believe a car is being driven in violation of the motor vehicle code, the officer may conduct a traffic stop. Deen v. State, 131 Idaho 435, 436, 958 P.2d 592, 593 (1998). In this case, Officer Pickard conducted a traffic stop on Francke based on reasonable suspicion of a violation of I.C. § 49-428(2). (See R., pp.93-94, 104.) That statute provides, in relevant part, that "[e]very license plate shall at all times . . . be in a place and position to be clearly visible, and shall be maintained free from foreign materials and in a condition to be clearly legible . . .." At the suppression hearing, the parties stipulated that "the trailer ball hitch" on the truck in which Francke was riding "blocked a portion of the license plate" such that Officer Pickard could not read the entire plate when travelling behind the truck. (Tr., p.7, L.9 – p.9, L.6.; see also R., pp.124-125 (affidavit filed in support of motion to suppress).) Francke argued that the statute is unconstitutionally vague as applied because it does not "allow for . . . citizens of ordinary intelligence to understand what is prohibited." (Tr., p.11, Ls.6-12.) The district court rejected this argument, explaining that the words "clearly visible," as used in I.C. § 49-428(2), have a "common meaning that can be understood."[1] (Tr., p.21, Ls.11-13.) As such, the district court denied Francke's request for suppression. (Tr., p.24, Ls.13-14.)

[1] The district court agreed with Francke's alternative argument that the trailer ball hitch would not constitute "foreign material" for purposes of I.C. § 49-428(2). (Tr., p.22, Ls.19-23.)

On appeal, Francke states he is "[m]indful of the plain language of Section 49-428(2) and its mandate that every license plate shall at all times be 'clearly visible,'" but nevertheless asserts "the statute is unconstitutionally vague as applied to his conduct" because that is what he argued in support of his motion. (Appellant's Brief, p.11.) Francke does not, however, explain why this is so. Instead, he effectively concedes it is not. Having failed to present any actual argument supporting his constitutional argument, this Court should decline to consider it. See Murray v. State, 156 Idaho 159, 168, 321 P.3d 709, 718 (2014) (quoting State v. Zichko, 129 Idaho 259, 263, 923 P.3d 966, 970 (1996)) (noting an issue will not be considered if "either authority or argument is lacking" and declining to consider appellant's claim because he failed to "provide[] a single authority or legal proposition to support his argument").

Even if the Court considers the merits of Francke's "argument," it fails for two reasons. First, Francke would not be entitled to suppression under the Fourth Amendment based on a traffic stop made in violation of a state statute. Virginia v. Moore, 553 U.S. 164 (2008).

Second, I.C. § 49-428(2) is not unconstitutionally vague. The void-for-vagueness doctrine rests upon the Due Process Clause of the Fourteenth Amendment and requires that a penal statute define a criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489 (1982); State v. Korsen, 138 Idaho 706, 711, 69 P.3d 126, 131 (2003).

"A statute may be void for vagueness if it fails to give adequate notice to people of ordinary intelligence concerning the conduct it proscribes, or if it fails to establish minimal guidelines to govern law enforcement or others who must enforce the statute." State v. Fluewelling, 150 Idaho 576, 578, 249 P.3d 375, 377 (2011) (quoting Korsen, 138 Idaho at 712, 69 P.3d at 132). "It has long been held that a statute should not be held void for uncertainty if any practical interpretation can be given the statute." State v. Larsen, 135 Idaho 754, 756, 24 P.3d 702, 704 (2001). There is a strong presumption of constitutionality and the party challenging the statute must clearly show the invalidity of the statute. Olsen v. J. A. Freeman Co., 117 Idaho 706, 709, 791 P.2d 1285 (1990); State v. Nelson, 119 Idaho 444, 447, 807 P.2d 1282, 1285 (Ct. App. 1991).

Section 49-428(2)'s requirement that a license plate be "clearly visible" at all times is not vague. That Francke may believe there should be an exception for trailer ball hitches does not mean the words in the statute "fail[] to give adequate notice to people of ordinary intelligence concerning the conduct it prescribes," it just means that he disagrees with the statute's application to vehicles with trailer ball hitches. Disagreement with the application of a statute to a particular set of circumstances falls far short of demonstrating the statute is vague. The district court correctly concluded the words "clearly visible," as used in I.C. § 49-428(2), have "a common meaning that can be understood." (Tr., p.21, Ls.11-13.) Francke has failed to establish otherwise.

CONCLUSION

The state respectfully requests this Court affirm the judgment entered upon Francke's conditional guilty pleas to possession of a controlled substance and possession of paraphernalia.

DATED this 9th day of November, 2016.

/s/ Jessica M. Lorello
JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of November, 2016, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

BEN P. McGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Jessica M. Lorello
JESSICA M. LORELLO
Deputy Attorney General

JML/dd