8-22-2017

State v. Kiepke Respondent's Brief Dckt. 44713

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 44713**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR-FE-2016-8110**
	)	
WILLIAM CHRISTIAN KIEPKE,	)	
	)	
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

William Christian Kiepke appeals from the district court's denial of his motion to suppress.

Statement Of The Facts And Course Of The Proceedings

Officer Otter was patrolling through a Jackson's parking lot around midnight. (Tr., p. 7, Ls. 11-20.) It was a "high drug traffic area" and the officer was watching a drug-connected vehicle he had seen earlier in the day. (Tr., p. 7, L. 15 – p. 8, L. 2.) Another person was sitting in the vehicle, and Kiepke was outside of it, leaning into the window. (Tr., p. 8, Ls. 3-13.)

Another car was parked nearby; Officer Otter ran its license plates, confirming it belonged to Kiepke. (Tr., p. 8, Ls. 16-24.) The officer also discovered that Kiepke did not have an Idaho driver's license and that he "was suspended out of two other states." (Tr., p. 9, Ls. 7-14.)

Kiepke got into his own car. (Tr., p. 10, Ls. 14-25.) Officer Otter waited for Kiepke to leave—"but he obviously wasn't going to leave" with law enforcement there. (Tr., p. 9, Ls. 15-25.) So the officer drove out of the parking lot, waited, and watched Kiepke drive out of the parking lot. (Tr., p. 9, Ls. 18-20; p. 10, Ls. 14-19; p. 11, Ls. 10-17.) Officer Otter observed that Kiepke failed to signal as he turned and drove away. (Tr., p. 11, Ls. 22-25.)

Officer Otter pulled Kiepke over "[b]ecause he didn't have a driver's license as well as a turn signal violation."[1] (Tr., p. 12, Ls. 1-6.) The officer introduced himself and brought up the driver's license. (Tr., p. 12, Ls. 12-16.) Kiepke admitted "that he didn't have a driver's license and that he was … suspended out of the other states," and that "he was trying to pay fines." (Tr., p. 12, Ls. 17-21.) Kiepke also informed the officer he was on parole. (See Tr., p. 26, L. 20 – p. 27, L. 4.) Officer Otter requested Kiepke's identification, which led to the following exchange:

> Q: He provided you with an I.D. card?
>
> A: An I.D. card.
>
> Q: What happened next?
>
> A: I had him step out of the vehicle and take a seat on the front of my patrol vehicle.
>
> Q: Why did you have him step out of the vehicle at that time?
>
> A: Well, several reasons. It was my attention [sic] to arrest him for driving without a driver's license, as well as I believe from what I saw in the parking lot, some sort of drug activity had occurred. So I didn't want to destroy evidence, and I was planning on running my canine around the vehicle.

(Tr., p. 13, Ls. 1-14.)

Officer Otter ran his K-9 around the vehicle and it alerted on the driver's side window. (Tr., p. 13, Ls. 12-16; p. 14, Ls. 6-9.) The officer searched the vehicle and found marijuana, syringes, and other drug paraphernalia inside it. (Tr., p. 15, Ls. 21-24;

[1] Officer Otter was asked whether "the basis for your stop … was for the driver's license issue and the turn signal," to which he testified "Right." (Tr., p. 21, Ls. 3-6.) The officer elaborated that the interaction with the woman in the parking lot additionally "gave me the interest in him," but was "not the probable cause for my stop." (Tr., p. 21, Ls. 7-15.)

p. 16, Ls. 11-15.) He then placed Kiepke under arrest "[f]or driving without a driver's license, possession of paraphernalia, possession of marijuana." (Tr., p. 15, Ls. 11-17.) Kiepke was searched and a small bag with methamphetamine was found in his sock, so he was "also arrested for possession of methamphetamine." (Tr., p. 15, Ls. 15-17; p. 16, L. 16 – p. 17, L. 12.)

Kiepke was charged by information with possession of methamphetamine, possession of marijuana, possession of drug paraphernalia, and driving without a driver's license. (R., pp. 37-38.) He filed a motion to suppress the evidence that was found. (R., pp. 56-63.)

Ruling on his motion, the district court noted that Kiepke could have been stopped for the signal violation alone, but that Officer Otter additionally "already [knew] that the defendant has no Idaho driver's license and has been suspended in two other states." (Tr., p. 33, Ls. 6-12.) The district court further found the K-9 sniff created "no appreciable delay whatsoever," and kept a "justified basis for a more thorough search of the vehicle," which "immediately uncovers multiple items of drug paraphernalia." (Tr., p. 33, L. 18 – p. 34, L. 1.) The court concluded that:

> There is ample justification for the arrest of the defendant himself, and in the search incident to the arrest, drugs are found in his left sock. So think under the circumstances of this case, on multiple grounds there is no basis whatsoever to suppress this evidence.
>
> It was a valid stop. It was a valid search. It is a valid seizure of the evidence in this case. So I'm denying the motion to suppress and will not be writing up anything.

(Tr., p. 34, Ls. 2-11.)

Following the court's denial of his motion, Kiepke pleaded guilty to possession of methamphetamine pursuant to a plea agreement with the state. (Tr., p. 34, Ls. 20-25; p. 45, Ls. 16-20.) Kiepke reserved his right to appeal the denial of his motion to suppress, and timely appealed from the judgment of conviction. (Tr., p. 44, L. 22 – p. 45, L. 2; R., pp. 78, 85-86, 92-97, 99-103.)

ISSUE

Kiepke states the issue on appeal as:

> Whether the district court erred when it denied Mr. Kiepke's motion to suppress.

(Appellant's brief, p. 5.)

The state rephrases the issue as:

Has Kiepke failed to show the district court erred in denying his motion to suppress?

ARGUMENT

Kiepke Fails To Show The District Court Erred In Denying His Motion To Suppress

A. Introduction

Kiepke contends the district court erred in denying his motion to suppress because the evidence was found "as the result of the officer unlawfully prolonging the traffic stop to conduct an unjustified dog sniff." (Appellant's brief, p. 6 (capitalization altered).)

This argument fails because Kiepke was searched incident to an arrest for driving without a license, and the probable cause for that arrest developed before the arrest and before the K-9 sniff. The search was therefore constitutionally proper, and Kiepke fails to show that the district court erred in denying his motion to suppress evidence.

B. Standard Of Review

On review of a ruling on a motion to suppress, the appellate court defers to the trial court's findings of fact unless clearly erroneous, but exercises free review of the trial court's determination as to whether constitutional standards have been satisfied in light of the facts. State v. Willoughby, 147 Idaho 482, 485-86, 211 P.3d 91, 94-95 (2009); State v. Fees, 140 Idaho 81, 84, 90 P.3d 306, 309 (2004). If findings are supported by substantial evidence in the record, those "[f]indings will not be deemed clearly erroneous." State v. Stewart, 145 Idaho 641, 648, 181 P.3d 1249, 1256 (Ct. App. 2008) (quoting State v. Jaborra, 143 Idaho 94, 98, 137 P.3d 481, 485 (Ct. App. 2006)).

C. Kiepke Drove Without A License And Was Arrested For Driving Without A License; Therefore, His Arrest Was Supported By Probable Cause, And The Search Of His Person Was A Proper Search Incident To Arrest

The Fourth Amendment prohibits unreasonable searches and seizures. "A warrantless search is presumptively unreasonable unless it falls within certain special and well-delineated exceptions to the warrant requirement." State v. Kerley, 134 Idaho 870, 873, 11 P.3d 489, 492 (Ct. App. 2000) (citing Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971); State v. Ferreira, 133 Idaho 474, 479, 988 P.2d 700, 705 (Ct. App. 1999).) A search incident to lawful arrest is one such exception to the warrant requirement and, as such, does not violate the Fourth Amendment. Chimel v. California, 395 U.S. 752, 762-63 (1969); Kerley, 134 Idaho at 874, 11 P.3d at 493. "For an arrest to be considered lawful, it must be based on probable cause" to believe the arrestee has committed a crime. State v. Bishop, 146 Idaho 804, 816, 203 P.3d 1203, 1215 (2009) (citations omitted). "Probable cause exists when the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been or is being committed." Id. (citations, quotations, and brackets omitted).

The officer here indisputably developed probable cause to arrest Kiepke for driving without a license in violation of Idaho Code Section 49-301(1). The officer verified through dispatch that Kiepke was driving without a license, and Kiepke himself readily admitted it to the officer. (Tr., p. 9, Ls. 7-14; p. 12, Ls. 14-21.) This alone would have justified the arrest, and the search incident to it. Virginia v. Moore, 553 U.S. 164, 171-72 (2008) (probable cause constitutionally justifies arrest and search thereto regardless of state laws imposing additional requirements); State v. Green, 158 Idaho 884, 892, 354 P.3d 446, 454 (2015) ("Therefore, it cannot be said that the principles in that

section limiting certain warrantless misdemeanor arrests to specific circumstances are constitutional in nature. Likewise, a violation of that statute is not a constitutional violation. Because there was no pre-constitution counterpart to Section 49–1407, a violation of this section is merely statutory in nature. And, because there was no constitutional violation in this case, suppression was inappropriate.").

Moreover, even applying the statutory restrictions found in Idaho Code Section 49-1407, the officer here had ample grounds to believe Kiepke would disregard a written promise to appear in court, and therefore properly arrested him under state law. When pressed on this point Officer Otter testified:

> Q. And in fact in this case, you didn't cite Mr. Kiepke for driving without privileges. You cited him for the 49-301, invalid driver's license. Correct?
>
> A. Correct.
>
> Q. Now, your testimony with the state was that you would have arrested him for that.[2] Correct?
>
> A. Yes.
>
> Q. But you are familiar with Idaho Code 49-1407. Correct?
>
> A. I am.
>
> Q. So that code says that an officer shouldn't arrest somebody unless the person doesn't furnish satisfactory evidence of identity, you have reasonable probable grounds to believe a person would disregard a written promise to appear in court. So your testimony would be that Mr. Kiepke

[2] Trial counsel's "would have arrested" subjunctive-tense hypothetical understated the facts as testified to; when asked for the reasons why he arrested Kiepke, Officer Otter testified: "For driving without a driver's license, possession of paraphernalia, possession of marijuana, possession of—well, after the arrest, he was also arrested for possession of methamphetamine." (Tr., p. 15, Ls. 8-17; see also R., p. 10.) Thus, driving without a license was not what the officer "would have" arrested Kiepke for, but was among the things he actually did arrest him for.

didn't reasonably identify himself, and you didn't believe he would come to court?

A. I believed that there's a good chance he wouldn't come to court.

Q. Then you made that decision in 30 seconds?

A. Absolutely. Well, actually before the stop.

Q. So without having any conversation with Mr. Kiepke, you made a conclusion that he wouldn't come to court.

A. Yes.

Q. Based on what?

A. The fact that he was violating his parole and that he was committing a new crime, which would tell me that he is not planning on following the law anymore.

(Tr., p. 23, L. 6 – p. 24, L. 15.) The district court likewise found that "as soon as [the officer] contacts the defendant, the defendant admits that he doesn't have a valid driver's license and also advises the officer that he is on parole" (Tr., p. 33, Ls. 12-15), that "[t]here is ample justification for the arrest of the defendant himself" (Tr., p. 34, Ls. 2-3), and that "under the circumstances of this case, on multiple grounds there is no basis whatsoever to suppress this evidence" (Tr., p. 34, Ls. 5-7). Because the arrest of Kiepke was both constitutionally justified by probable cause and appropriate on state law grounds, his detention and arrest, and eventual search incident to that arrest, were all justified.

Kiepke's primary argument, below and on appeal, is that the evidence should have been suppressed as fruit of an illegally extended detention, which followed an alleged "abandonment" of the officer's original mission. (See Appellant's brief, pp. 6-11; R., pp. 59-61.) However, this argument fails because a search incident to a lawful arrest is

proper, and an arrest is constitutional so long as it is supported by probable cause. Chimel, 395 U.S. at 762-63; Kerley, 134 Idaho at 874, 11 P.3d at 493; Bishop, 146 Idaho 804, 816, 203 P.3d 1203, 1215. Moreover, the probable cause here[3] would have also justified any *de facto* arrest that occurred as a result of any allegedly unlawful extension of the stop. See State v. Buell, 145 Idaho 54, 57, 175 P.3d 216, 219 (Ct. App. 2008) (citing United States v. Sokolow, 490 U.S. 1, 7 (1989); State v. Gallegos, 120 Idaho 894, 896, 821 P.2d 949, 951 (1991)). Because Officer Otter had probable cause to arrest Kiepke prior to any detention, any de facto arrest resulting from an extension of the traffic stop was constitutionally justified, and therefore the search incident to that arrest was accordingly legal.

On this point Kiepke argues that because the officer did not arrest him at the outset of the encounter, the arrest was "intertwined with the illegal conduct" of an extended detention, and an arrest for the traffic violation could not expunge the taint of illegality. (Appellant's brief, p. 11, n. 3.) Kiepke claims that "[s]ince the actions the officer actually undertook in this case indicate the arrest did not occur until after the unlawful prolonging of the detention, and that arrest was actually intertwined with that illegal conduct, this hypothetical alternate justification does not expunge the taint in this case." (Appellant's brief, p. 11, n. 3.)

Kiepke has failed to support this theory on appeal. He cites to State v. Barwick, 94 Idaho 139, 140-41, 483 P.2d 670, 671-72 (1971), in which the defendant challenged

[3] At the time of the K-9 sniff the officer had probable cause to arrest Kiepke not only for driving without a license, which he ultimately did arrest him for, but also for driving without privileges, the facts of which Kiepke freely admitted. (Tr., p. 9, Ls. 7-14; p. 12, Ls. 14-21.)

the consent given to a vehicle search. The defendant there was arrested before he consented to a search. Id. at 141, 483 P.2d at 672 (1971) ("After the arrest on the charge of vagrancy, Officer Ayars asked Barwick if it was all right for him to search his car and appellant consented."). And of particular significance, the Barwick arrest was illegal—it was done "without probable cause or evidence to support it." Id. at 141-42, 483 P.2d 672-73. Thus, where the "consent and search [were] accompanied by an illegal arrest," the Barwick Court understandably concluded that the search could not have been lawfully consented to. Id. at 142, 483 P.2d at 673.

But the Barwick holding—that an illegal arrest will invalidate subsequent consent—is simply inapplicable where the arrest was legal and supported by probable cause, and the search was not based on consent. Here the officer had probable cause to arrest Kiepke for driving without a license, and that probable cause developed *before* the detention, before the arrest, and well before the K-9 sniffed the car. Thus, the search and the arrest were substantially contemporaneous. Rawlings v. Kentucky, 448 U.S. 98, 111 (1980) (valid search may precede formal arrest if substantially contemporaneous). Kiepke has not shown that the traffic violation arrest was illegal, nor has he shown that the Barwick rule would apply to a legal arrest. Indeed, to show that Barwick would apply to these facts, Kiepke must show that an allegedly extended detention, intertwined with a perfectly legal arrest, could reach back in time to invalidate preexisting probable cause. Because Barwick does not stand for this proposition, Kiepke has failed to support this argument on appeal. See State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996).

Kiepke indisputably drove without a license. His arrest for driving without a license was proper both constitutionally and as a matter of state law, and justified the

search incident to arrest. The district court therefore correctly denied his motion to suppress evidence.

CONCLUSION

The state respectfully requests this Court affirm the district court's denial of Kiepke's motion to suppress.

DATED this 22nd day of August, 2017.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of August, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/ Kale D. Gans
KALE D. GANS
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