8-29-2016

State v. Lee Respondent's Brief Dckt. 44001

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**Nos. 44001 & 44002**
Plaintiff-Respondent,	)	
	)	**Payette County Case Nos.**
v.	)	**CR-2015-768 & CR-2015-766**
	)	
TREVOR GLENN LEE,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Trevor Glenn Lee appeals from the judgment entered upon his conditional guilty plea to possession of methamphetamine. On appeal, Lee challenges the denial of his motion to suppress.

Statement Of Facts And Course Of Proceedings

Officer Jonathan Laurenson was on patrol when he saw Lee driving through town. (P.H. Tr., p.5, Ls.17-24.) Officer Laurenson was familiar with Lee and knew that the last time he had contact with him, Lee had a suspended driver's license. (P.H. Tr., p.6, Ls.7-8.) As a result, Officer Laurenson checked Lee's status with dispatch and learned that Lee was still suspended. (P.H. Tr., p.6, Ls.9-17.) As Officer Laurenson was checking with dispatch, he was following Lee and watched Lee pull into a Maverick store parking lot, get out of his truck, and go inside. (P.H. Tr., p.6, Ls.6-17.) Officer Laurenson waited outside the Maverick for several minutes before Lee eventually came out and started walking down the sidewalk. (P.H. Tr., p.6, L.22 – p.7, L.4.) Officer Laurenson waited another 20 minutes, but Lee did not return to his truck, so Officer Laurenson looked around the Maverick property to try and locate him. (P.H. Tr., p.7, Ls.3-8.) Unsuccessful in his efforts to find Lee on the property, Officer Laurenson "went out to check 95 to see if [Lee] walked away and, surprisingly, he was only a block or two away from Maverick on the sidewalk walking north." (P.H. Tr., p.7, Ls.12-15.)

Officer Laurenson made contact with Lee as he was walking down the road. (Supp. Hrg. Tr., p.9, L.24 – p.10, L.10.) Officer Laurenson "honked [his] air horn and made a motion to Mr. Lee with [his] hand to come to [him]." (Supp. Hrg. Tr., p.10, Ls.6-7.) Lee "appeared to be reluctant" to have contact with Officer Laurenson and when Officer Laurenson asked Lee why he was no longer driving his truck, Lee said he wanted to walk. (Supp. Hrg. Tr., p.10, Ls.7-11; Exhibit A1[1] at 20:41:28-20:41:39.) Officer Laurenson asked Lee if he had any weapons, and Lee made a motion towards his pocket and indicated he had a pocket knife. (Exhibit A1 at 20:41:55-20:41:57.) Officer Laurenson told Lee not to reach in his pocket and directed Lee to the front of his car. (Exhibit A1 at 20:41:57-20:42:02.) Lee responded by asking, "What did I do?," and Officer Laurenson explained, "Driving without privileges," and again asked Lee to move to the front of his patrol car. (Exhibit A1 at 20:42:01-20:42:05.) Lee insisted he had not been driving, but Officer Laurenson described how he saw Lee driving, and the actions he took at the Maverick. (Exhibit A1 at 20:42:05-20:42:44.) Officer Laurenson had to direct Lee to the front of his car several more times before Lee eventually complied. (Exhibit A1 at 20:42:44-20:42:54.)

Once Lee was at the front of Officer Laurenson's patrol car, Officer Laurenson began to frisk him. (Exhibit A1 at 20:43:00-20:43:42.) During the frisk, Officer Laurenson pushed Lee's cigarettes out of Lee's left front pocket and asked him, "what kind of stuff" he had "in there." (Exhibit A1 at 20:43:41-

[1] There are several files on the disc admitted as Exhibit A1; all references to Exhibit A1 in this brief are to the file labeled "Laurenson 15009185A."

20:43:43.) Lee said he thought he had keys, change, and money. (Exhibit A1 at 20:43:42-20:43:46.) Officer Laurenson asked Lee if he "mind[ed]" if he removed the items from Lee's pocket, but Lee said he "would rather [he] not." (Exhibit A1 at 20:43:46-20:43:52; see also 20:44:01-20:44:06.) Officer Laurenson told Lee he had "so much stuff in there" that he did not know if there was a weapon. (Exhibit A1 at 20:43:52-20:43:58; see also 20:44:14-20:44:17.) Concerned that Lee had a weapon in his pocket, Officer Laurenson removed the items from Lee's left pocket by pushing them up from the outside as opposed to reaching inside the pocket. (Exhibit A1 at 20:44:06-20:45:19; Supp. Hrg. Tr., p.15, L.23 – p.16, L.1, p.17, Ls.17-19; P.H. Tr., p.12, L.6 – p.13, L.6.) When Officer Laurenson removed the knife, which was at the bottom of Lee's pocket below the other items in Lee's pocket, he commented, "So you do have a weapon on you. Thank you for telling me." (Exhibit A1 at 20:45:17-20:45:21.) Lee responded, "I never said I didn't," and Officer Laurenson repeated, "I said thank you for telling me." (Exhibit A1 at 20:45:21-20:45:26.)

The other items in Lee's pocket in addition to the knife included two Carmex containers, a small tin container, and one Chapstick container. (Exhibit A1 at 20:44:18-20:45:18.) Officer Laurenson testified that he attended a training that items such as Chapstick containers were being used to conceal contraband. (Supp. Hrg. Tr., p.16, Ls.9-21; P.H. Tr., p.14, L.13 – p.15, L.10.) Suspecting that the containers in Lee's pocket were used for that purpose, Officer Laurenson opened them and found marijuana in one of the Carmex containers, methamphetamine in the small tin container, and methamphetamine residue in

the Chapstick container; the other Carmex container actually had Carmex in it. (Exhibit A1 at 20:46:40-20:48:51; Supp. Hrg. Tr., p.16, Ls.9-21, p.14, Ls.1-10; P.H. Tr., p.16, L.3 – p.17, L.8; R., p.12 (probable cause affidavit describing containers and their contents).)

Although Officer Laurenson initially only detained Lee for the purpose of issuing him a citation for driving without privileges, he decided to arrest him after discovering the drugs inside the containers Lee had in his pocket. (Exhibit A1 at 20:45:36-20:48:57, 20:50:05-20:50:20; Supp. Hrg. Tr., p.12, Ls.19-24.)

The state charged Lee with possession of methamphetamine and three misdemeanors – possession of marijuana, possession of paraphernalia, and driving without privileges.[2] (R., pp.9-10, 52-53, 238-239.) Lee filed a motion to suppress, claiming he was unlawfully searched when Officer Laurenson removed items from his pocket, and Officer Laurenson unlawfully searched the items removed from his pocket. (R., pp.95-96.) The district court denied Lee's motion after an evidentiary hearing. (See generally Supp. Hrg. Tr.; R., pp.154-163.) Lee filed a motion to reconsider, which the district court also denied. (R., pp.166-174.)

Pursuant to a plea agreement in which Lee reserved the right to challenge the denial of his suppression motion on appeal, Lee pled guilty to possession of methamphetamine, and the state dismissed the three misdemeanor charges. (R., pp.186-192.) The court imposed a unified four-year sentence, with one and

[2] The felony methamphetamine allegation was charged by Complaint and Information, and Lee was issued a citation for the three misdemeanors. (R., pp.9-10, 52-53, 238-239.) The court consolidated all four charges. (R., p.27.)

one-half years fixed, but suspended the sentence and placed Lee on probation. (R., pp.218-222.) Lee timely appealed from the judgment. (R., pp.224-227.)

ISSUE

Lee states the issue on appeal as:

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

(Appellant's Brief, p.6.)

The state rephrases the issue as:

Should this Court conclude that an officer may search a defendant pursuant to the search incident to arrest exception so long as the officer has probable cause for an arrest regardless of the officer's subjective intent with respect to the arrest and regardless of whether the defendant is ultimately arrested for the offense for which probable cause initially existed?

ARGUMENT

Lee Has Failed To Show Error In The Denial Of His Suppression Motion

A. Introduction

Lee challenges the denial of his motion to suppress, arguing that the frisk was unlawful, the search of the containers in his pocket was unlawful, and the search incident to arrest exception does not apply. (Appellant's Brief, pp.8-16.) This Court need not address the validity of the frisk because whether the removal and search of the containers from Lee's pockets was a valid search incident to arrest is dispositive of whether Lee was entitled to suppression of the contraband found in those containers. Correct application of the law to the facts supports the district court's determination that the search incident to arrest exception applies in this case. The district court's order denying Lee's motion to suppress should, therefore, be affirmed.

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).

C. The District Court Correctly Concluded That The Search Incident To Arrest Exception Applied And, As A Result, Lee Was Not Entitled To Suppression

"Searches incident to arrest are one of the well-established exceptions to the warrant requirement." State v. LaMay, 140 Idaho 835, 838, 103 P.3d 448, 451 (2004) (citations omitted). Lee conceded that Officer Laurenson had probable cause to arrest him for driving without privileges, but claimed that because Officer Laurenson said he did not intend to arrest Lee for that offense, and did not in fact arrest him for that offense, the search incident to arrest exception could not apply to preclude exclusion of the drug evidence Officer Laurenson found in Lee's pocket. (R., p.127.) The district court rejected Lee's claim, stating: "In Idaho, there is no authority to support the contention that officers must have subjective intent to arrest when conducting a search incident to arrest based on probable cause." (R., p.160.) The district court held:

> [W]hen Officer Laurenson conducted the search, probable cause existed for an arrest because he had observed Lee driving an automobile and had confirmed that he had a suspended license. Based on this probable cause, and for the reason that the search and arrest were substantially contemporaneous as in *Rawlings* [*v. Kentucky*, 448 U.S. 98 (1980)], the Court holds that Officer Laurenson was justified in conducting a search incident to arrest.

(R., p.162 (footnote omitted).) The district court's conclusion was correct.

In Rawlings, the Supreme Court held that when the police have probable cause to arrest, it is not "particularly important that the search preceded the arrest rather than vice versa." 448 U.S. at 111 (citations omitted). The Idaho Court of Appeals has applied Rawlings in several cases. See, e.g., State v. Smith, 152 Idaho 115, 119-120, 266 P.3d 1220, 1224-1225 (Ct. App. 2011);

State v. Chapman, 146 Idaho 346, 351, 194 P.3d 550, 555 (Ct. App. 2008); State v. Gibson, 141 Idaho 277, 282, 108 P.3d 424, 429 (Ct. App. 2005); State v. Robertson, 134 Idaho 180, 186, 997 P.2d 641, 647 (Ct. App. 2000). In applying Rawlings, the Court of Appeals has held that "[s]o long as the search and the arrest are substantially contemporaneous, and the fruits of the search are not required to establish probable cause for the arrest, the search need not precisely follow the arrest in order to be incident to that arrest." Smith, 152 Idaho at 119, 266 P.3d at 1224 (citations omitted). The facts in this case satisfy this standard. Officer Laurenson had probable cause to arrest Lee for driving without privileges before the search and Lee's arrest was "substantially contemporaneous" to the search. Moreover, the fruits of the search – the drugs – were not required to establish probable cause for Lee's arrest because Officer Laurenson already had probable cause to arrest Lee for an entirely different offense – driving without privileges.

Lee does not appear to dispute the foregoing facts, nor could he. Rather, Lee argues that the search incident to arrest exception does not apply because Officer Laurenson did not have the subjective intent to arrest him for driving without privileges. (Appellant's Brief, pp.12-14.) The district court correctly rejected this argument because Officer Laurenson's subjective intent with respect to the decision to arrest is irrelevant to whether he in fact had probable

cause to arrest Lee prior to the search, which is all that is required in addition to a substantially contemporaneous arrest.[3]

In general, an officer's subjective intent is irrelevant to a Fourth Amendment analysis. See Whren v. United States, 517 U.S. 806, 813 (1996) ("Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis."); State v. Garcia-Rodriguez, 2016 WL 3223372 *8, --- P.3d --- (Idaho App. 2016), petition for review pending ("Although the officer did not immediately arrest Garcia-Rodriguez when the officer obtained probable cause and even told Garcia-Rodriguez he was not under arrest when he was handcuffed, the officer's subjective intent is irrelevant."). In Devenpeck v. Alford, 543 U.S. 146, 150 (2004), an officer arrested an individual for conduct the officer believed constituted a crime and cited him for a different offense. It was later determined that the conduct that formed the basis of the arrest was not, in fact, a crime; however, there was probable cause to arrest the defendant for other crimes even though the officer did not do so. Id. at 151-152. Addressing the Fourth Amendment implications of the defendant's arrest, the Supreme Court held that an officer's "subjective reason for making [an] arrest need not be the criminal offense as to which the known facts provide probable cause," and it rejected the argument that "the offense establishing probable cause must be 'closely related' to, and based on the same conduct as, the offense identified by the arresting officer at the time of arrest." Devenpeck, 543 U.S. at 153. The

[3] Lee does not contend, nor could he, that his arrest was not substantially contemporaneous to the search. (See generally Appellant's Brief, pp.12-16.)

Court, quoting its prior decision in Horton v. California, 496 U.S. 128, 138 (1990), reiterated that "evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." Devenpeck, 543 U.S. at 153 (alteration omitted). If the Fourth Amendment is not offended by arresting an individual for an act that does not constitute a crime when there is probable cause for a different offense, even one that is not "closely related," as was the case in Devenpeck, the Fourth Amendment cannot be offended by what occurred in Lee's case. The Idaho Supreme Court's decision in State v. Schwarz, 133 Idaho 463, 988 P.2d 689 (1999), supports this conclusion.

In Schwarz, officers conducted a traffic stop after observing the driver of a vehicle turn without signaling. 133 Idaho at 464, 988 P.2d at 690. When the passenger, Schwarz, was asked for identification, he informed the officer that there was a warrant for his arrest. Id. at 465, 988 P.2d at 691. After the officer "radioed the dispatcher to request a warrant check on Schwarz," he asked Schwarz "to step out of the vehicle." Id. As Schwarz did so, he exhibited behaviors indicating that he might flee or fight with the officer. Id. Consequently, the officer placed Schwarz in handcuffs, advised him of his rights, "and frisked the waist band and front pockets of Schwarz's shorts." Id. The officer testified that he conducted the frisk because it was part of his training "just to pat down for any handcuff keys or weapons." Id. During the pat down, the officer "felt what he believed to be a glass vial commonly used for drug storage in the left

pocket of Schwarz's shorts." Id. The vial contained a substance the officer believed was methamphetamine. Id.

Following the pat down, dispatch "incorrectly" advised that there was no outstanding warrant for Schwarz. Schwarz, 133 Idaho at 465, 988 P.2d at 691. "The paperwork for the outstanding warrant had apparently not been entered into the computer system." Id. Because Schwarz admitted that the vial in his pocket belonged to him, and that it contained methamphetamine, the officer arrested him for possession of a controlled substance. Id.

Schwarz filed a motion to suppress, which the district court granted based on the fact that the officer "testified that he did not arrest Schwarz, but only conducted a seizure and frisk based on his suspicion that Schwarz was armed and dangerous." Schwarz, 133 Idaho at 465-466, 988 P.2d at 691-692. "Concluding that there was no reason for [the officer] to believe that Schwarz was armed and dangerous after being handcuffed, the district court ruled that the search of Schwarz's pockets was not justified." Id. at 466, 988 P.2d at 692. The district court also "concluded that it must decide the reasonableness of the search on the basis of [the officer's] actual or stated intent at the time of the search." Id. at 467, 988 P.2d at 693. "Absent any legal justification for the warrantless search, the district court held that the search was illegal." Id.

On appeal, the Idaho Supreme Court noted that, following the Supreme Court's decision in Whren, "the Ninth Circuit Court of Appeals has consistently held that an officer's subjective intent is irrelevant and that a stop or search is not pretextual where there is 'probable cause to believe that a violation of law has

occurred.'" Schwarz, 133 Idaho at 467, 988 P.2d at 693 (quoting United States v. Hudson, 100 F.3d 1409, 1414-1416 (9th Cir. 1996)). The Court further stated, "Because the facts making up a probable cause determination are viewed from an objective standpoint, the officer's subjective beliefs concerning that determination are not material." Schwarz, 133 Idaho at 468, 988 P.2d at 694 (quoting State v. Julian, 129 Idaho 133, 137, 922 P.2d 1059, 1063 (1996)). Applying these principles to the facts, the Court concluded that "[b]ecause there was probable cause to arrest Schwarz, [the officer's] pat-down search was a valid search incident to arrest." Schwarz, 133 Idaho at 468, 988 P.2d at 694 (citing Chimel v. California, 395 U.S. 752 (1969), United States v. Robinson, 414 U.S. 218 (1973)). Courts from other jurisdictions have similarly concluded that an officer's subjective intent is irrelevant and a search incident to arrest is lawful so long as there was probable cause to arrest. See, e.g., State v. Surtain, 31 So.3d 1037, 1047 (La. 2010) ("[T]he officer's characterization of the action makes no difference in the final analysis of the legality of the search and does not change the fact that, in this case, probable cause actually existed to support a warrantless arrest of the defendant prior to the search."); State v. Sykes, 695 N.W.2d 277, 285-287 (Wis. 2005) ("as long as there was probable cause to arrest before the search, no additional protection from government intrusion is afforded by requiring that persons be arrested for and charged with the same crime as that for which probable cause initially existed"; "whether law enforcement subjectively intended to arrest . . . is not the relevant inquiry"); State v. Boulia, 522 So.2d 528, 530 (Fla. Dist. Ct. App. 1988) (because officer

had probable cause to arrest prior to search, and because arrest was "in fact made shortly after the challenged search," the fact that the officer had "announced his intention to issue Boulia a notice to appear rather than effecting a full-custody arrest is of no consequence," because search was justified as incident to arrest); but see People v. Reid, 26 N.E.3d 237, 238 (N.Y. 2015) (holding that "although probable cause to arrest the driver existed before the search, the driver would not have been arrested if the search had not produced evidence of a crime").

Because Officer Laurenson had probable cause to arrest Lee, and because he could search Lee incident to arrest, Lee has failed to show error in the denial of his suppression motion.

CONCLUSION

The state respectfully requests that this Court affirm the judgment and the denial of Lee's motion to suppress.

DATED this 29th day of August, 2016.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29th day of August, 2016, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

ANDREA W. REYNOLDS
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