12-22-2017

State v. Sanquist Appellant's Brief Dckt. 45096

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 45096**
Plaintiff-Respondent,	)	
	)	**KOOTENAI COUNTY NO.**
v.	)	**CR 2016-20343**
	)	
ASHLEY LYNNE SANQUIST,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

HONORABLE JOHN T. MITCHELL
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Ashley Sanquist contends the district court erred when it denied her motion to suppress the evidence in this case, which was found as a result of an unlawfully-prolonged investigative detention. Once the police database provided profiles which corroborated the information Ms. Sanquist and her companion had given the officers about their names, the mission of the stop was complete and the officers no longer had a reasonable suspicion upon which to continue detaining them. Rather, the officers unlawfully continued to detain them based on a mere hunch that the corroborated information was still false. Accordingly, this Court should reverse the order denying Ms. Sanquist's motion to suppress that evidence, vacate her judgment of conviction, and remand this case for further proceedings.

Statement of the Facts and Course of Proceedings

Officers Cannon and Johnson responded to a call reporting that two unknown, and therefore, suspicious, women were sitting in a car parked outside a bail bond office during business hours. (Tr., Vol.1, p.8, L.15 - p.9, L.2, p.48, Ls.1-7.)[1] One woman was sitting in the front passenger seat of the car, and the other was sitting in the back, driver-side seat. (Tr., Vol.1, p.10, L.20 - p.11, L.7.) They told the officers that they had arrived in that car with its owner,

[1] The transcripts in this case are provided in three independently bound and paginated volumes. To avoid confusion, "Vol.1" will refer to the volume containing the transcript of the preliminary hearing, of which the district court took judicial notice in regard to Ms. Sanquist's motion to suppress. (Tr., Vol.2, p.4, Ls.13-14.) "Vol.2" will refer to the volume containing the transcripts of the hearing on the motion to suppress and the sentencing hearing. "Vol.3" will refer to the volume containing the transcript of the change of plea hearing.

Justin Buck, who had just been taken into custody inside the bail bond office. (Defense Exhibit A, clip 1179971, ~0:15.)[2]

Both women stated they did not have identification on them. (*See* Defense Exhibit A, clip 1180013, ~0:45.) However, when asked, Ms. Sanquist (who had been in the back seat) gave Officer Cannon her name. (Tr., Vol.1, p.10, L.23 - p.11, L.2; Defense Exhibit A, clip 1180013, ~1:15.) He requested over his radio that the name she gave be against the police database, and that search returned a profile which matched Ms. Sanquist's physical description. (Defense Exhibit A, clip 1180013, ~1:45, 3:20, 14:30.) Officer Cannon also asked Ms. Sanquist who the other woman was, and Ms. Sanquist said her first name was Jacqueline, and that she thought her last name was "Bruss," though she explained she was not sure about that. (Defense Exhibit A, clip 1180013, ~3:54-4:56, 6:44.)

Officer Cannon testified that, during that period of questioning, Ms. Sanquist was not free to leave. (Tr., Vol.1, p.31, Ls.14-16.) He asked her if anything in the car was hers, and she identified her purse for him. (Defense Exhibit A, clip 1180013, ~5:20.) When he asked if he could search her purse, she told him, "No, you may not." (Defense Exhibit A, clip 1180013, ~9:00; *see also* Tr., Vol.1, p.38, Ls.10-11 (Officer Cannon testifying he did not have permission to search Ms. Sanquist's purse).)

Meanwhile, Officer Johnson was talking with the woman from the front passenger seat, who said her name was Jaqueline Bulgar. (Defense Exhibit A, clip 1179971, ~0:35.) However,

[2] Defense Exhibit A consisted of several video clips and photographs which were not independently marked. (*See* Tr., Vol.2, p.6., Ls.21-25.) The prosecutor's only objection to that exhibit was that one of the video clips was duplicative of State's Exhibit 1. (Tr., Vol.2, p.7, Ls.6-11.) Therefore, to avoid confusion, citations to that exhibit will include the file name, which is a numeric identifier. Citations to the video clips will also include an indication of when in the clip the cited matter is referenced. If quotes from the video clips are necessary, they are reproduced to the best of appellate counsel's ability.

she was nervous and had trouble telling Officer Johnson her birthdate. (Defense Exhibit A, clip 1179971, ~0:35.) Nevertheless, a search of the police database for the information Ms. Bulgar gave also returned with a valid profile.[3] (Defense Exhibit A, clip1179971, ~13:16; *see also* Defense Exhibit A, clip 1180013, ~8:38 (Officer Cannon looking at that profile).) Officer Johnson remarked to Officer Cannon that the physical description and picture contained in the profile for Ms. Bulgar mostly matched the woman from the front passenger seat. (Defense Exhibit A, clip1179971, ~13:16.) The only part which did not match was a reference to a tattoo on Ms. Bulgar's leg, which the woman in the front seat did not have, though Officer Johnson remarked that the reference to the tattoo could have been a clerical error. (Defense Exhibit A, clip 1179971, ~13:21.)

Despite having received information from their database which corroborated the information both women had given about their respective names, the officers continued to detain them. (*See* Tr., Vol.1, p.55, Ls.17-19, p.57, Ls.19-23 (Officer Johnson testifying neither woman was free to leave during that period of time).) Specifically, Officer Johnson stood watching them while Officer Cannon went into the bail bond office to talk with the reporting party, Tiffany Burnette. (*See* Defense Exhibit A, clip 1179971, ~9:16-12:50; Defense Exhibit A, clip 1180013, ~10:30.)

Ms. Burnette told Officer Cannon that she and the owner of the car, Justin Buck, had been in a relationship, but they had broken up nearly a year earlier. (Defense Exhibit A, clip 1180013, ~11:20; *compare* R., p.70.) She stated that, since that breakup, she believed Mr. Buck had been using methamphetamine and hanging around with "the two girls," though she also

[3] Officer Cannon subsequently tried a search for the name "Bruss," but apparently found no profile for that name. (*See* Defense Exhibit A, clip 1180013, ~8:25.)

stated she did not know the two women outside. (Defense Exhibit A, clip 1180013, ~11:15.) When Officer Cannon asked if she owned the car, Ms. Burnette immediately told him, "No." (Defense Exhibit A, clip 1180013, ~12:22.) Instead, she explained that she had given Mr. Buck the car as a gift when they had been together, and that he was the only person listed on the title. (Defense Exhibit A, clip 1180013, ~12:11; *see also* Defense Exhibit A, clip 1180013, ~4:31 (showing Officer Cannon examining the registration for the car, which identifies Justin Buck as the only owner of that car).) However, Ms. Burnette stated that, because Mr. Buck had just been taken back into custody, she was going to handle what happened with the car and consented to the officers searching it. (Defense Exhibit A, clip 1180013, ~12:34.) She also mentioned that she had told the two other women that she had called a tow truck to come collect the car.[4] (Defense Exhibit A, clip 1180013, ~11:45.)

Officer Cannon proceeded to search the car, including Ms. Sanquist's purse.[5] (*See generally* Defense Exhibit A, clip 1180013, ~15:50-30:40.) In the backseat of the car, among other things, he found two tablet computers which he was able to confirm had been stolen. (*See* Tr., Vol.1, p.14, Ls.23-25; Defense Exhibit A, clip 1180013, ~27:35.) He also found various items that he believed to contain drugs in both women's bags. (Defense Exhibit A, clip 1180015, ~0:25.)

While Officer Cannon searched the car, Officer Johnson continued watching the two women. (*See generally* Defense Exhibit A, clip 1179971, ~13:35-43:15.) During that time, he

[4] After Officer Cannon had searched the car, Ms. Burnette clarified that she had not actually called a tow truck, but had simply told the other women that she had to try to get them to leave. (Defense Exhibit A, clip 1180014, ~0:54.)

[5] The prosecutor noted that no evidence relevant to any of the charges ultimately filed against Ms. Sanquist had been found in her purse, nor did he intend to present anything found in that purse during trial. (Tr., Vol.2, p.23, Ls.8-11, p.28, Ls.16-20.)

noticed Ms. Sanquist drop something and cover it with her foot. (Tr., Vol.1, p.51, L.19 - p.53, L.15.) He eventually mentioned the fact to Officer Cannon, who called Ms. Sanquist over to talk with him. (Defense Exhibit A, clip 1179971, ~43:33.) When she did so, Officer Cannon picked up a baggie from the ground. (Defense Exhibit A, clip 1180015, ~5:20.) The contents of that baggie tested positive for methamphetamine. (Tr., Vol.1, p.23, L.20 - p.24, L.1.) The officers ultimately arrested both women. (Defense Exhibit A, clip 1180015, ~6:00, 10:27.)

Upon searching Ms. Bulger, officers found an identification card which gave her name as Jennifer Arnold. (Tr., Vol.1, p.41, L.25 - p.42, L.2.) A check for warrants revealed an outstanding warrant for Ms. Arnold. (Tr., Vol.1, p.42, Ls.16-20.)

The State charged Ms. Sanquist with possession of a controlled substance for the baggie under her shoe, concealing evidence, and possession of stolen property. (R., pp.69-70.) She moved to suppress all the evidence found and the statements she made during the investigative detention, arguing that the officers had unlawfully extended that detention. (R., p.76.) The prosecutor responded that prolonging the detention was justified because both women had given officers a false name for the woman in the front passenger seat, and that Ms. Sanquist could not challenge the seizure and search of the baggie under her foot because she had abandoned it. (Aug. pp.2-3.)[6]

The district court ultimately denied Ms. Sanquist's motion to suppress. (Tr., Vol.2, p.25, Ls.7-8.) It concluded that the officers initially had a right to investigate the two women based on the report of unknown, suspicious individuals in the parking lot. (Tr., Vol.2, p.25, Ls.11-24.) Therefore, it found the detention up through the point where Officer Cannon asked to search

[6] A motion to augment the appellate record with a copy of the State's response to Ms. Sanquist's motion to suppress has been filed contemporaneously with this brief.

Ms. Sanquist's purse was justified as part of that investigation.[7] (Tr., Vol.2, p.25, L.24 - p.26, 7.) The district court also concluded the officers had reasonable suspicion to believe the name both had given for the woman in the front passenger seat was false, and that those false statements were cause to detain both women further because they amounted to crimes committed in the officers' presence. (Tr., Vol.2, p.27, Ls.8-24.) It found that cause remained in place through the time Ms. Sanquist dropped the baggie on the ground. (Tr., Vol.2, p.28, Ls.3-6.)

Ms. Sanquist subsequently entered a conditional guilty plea wherein she reserved her right to appeal the district court's decision on her motion to suppress. (R., p.92; Tr., Vol.3, p.2, Ls.17-19.) In exchange for her guilty pleas, the State agreed, *inter alia*, to reduce the concealing evidence charge to a misdemeanor. (R., p.92; Tr., Vol.3, p.3, L.24 - p.4, L.2.) The district court ultimately imposed a unified sentence of four years, with two years fixed, on the possession charge, and concurrent ninety-day sentences on the two misdemeanors, all of which it suspended for an aggregate three-year term of probation. (R., pp.96-101.) Ms. Sanquist filed a notice of appeal timely from the judgments of conviction. (R., pp.105-07.)

[7] Judge Mitchell also inferred that Ms. Sanquist had consented to the search of her purse based on "what little I could hear and see" on the video. (Tr., Vol.2, p.26, Ls.3-19; *compare* Defense Exhibit A, clip 1180013, ~9:00 (showing Ms. Sanquist say, "No, you may not" in response to the request to search her purse); Tr., Vol.1, p.38, Ls.10-11 (Officer Cannon testifying he did not have permission to a search of her purse).) It is not entirely clear to which video clip the judge was referring. (*See generally* Tr., Vol.2, p.26, Ls.3-19.) However, when defense counsel pointed out that the video clips showed Ms. Sanquist saying "No," the judge agreed to review to the exhibits. (Tr., Vol.2, p.26, L.20 - p.27, L.4.) He noted if, indeed, Ms. Sanquist had not consented, that might change his ruling on the motion. (Tr., p.28, Ls.8-10.) However, he also noted that none of the charges against Ms. Sanquist were based on evidence found in her purse. (Tr., Vol.2, p.28, Ls.8-22.) He did not provide any further clarification as to his finding of whether Ms. Sanquist consented to a search of her purse or not. (*See generally* R., Tr.)

ISSUE

Whether the district court erred by denying Ms. Sanquist's motion to suppress the evidence discovered as a result of an unlawfully-extended detention.

ARGUMENT

The District Court Erred By Denying Ms. Sanquist's Motion To Suppress The Evidence Discovered As A Result Of An Unlawfully-Extended Detention

A. Standard Of Review

The standard of review in regard to the district court's denial of a motion to suppress is bifurcated, with the appellate court deferring to the district court's findings of fact which are not clearly erroneous, but freely reviewing its conclusions of law. *State v. Bishop*, 146 Idaho 804, 810 (2009).

B. The Officers Did Not Have Reasonable Suspicion To Continue The Investigative Detention Once The Police Database Corroborated The Information They Had Been Given About The Women's Names

The Fourth Amendment protects people against unreasonable searches and seizures. U.S. CONST. amend IV. Warrantless seizures are presumptively unreasonable, though the State can overcome that presumption by demonstrating the facts fall into one of the well-recognized exceptions to the warrant requirement. *State v. Wulff*, 157 Idaho 416, 419 (2014).

One such exception is the investigatory detention, which allows an officer to briefly stop a suspicious person in order to determine that person's identity or to maintain the *status quo* while gathering relevant information. *Adams v. Williams*, 407 U.S. 143, 145-46 (1972) (citing, *inter alia*, *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968)). However, such detentions are limited in scope and only permissible insofar as the officer has reasonable and articulable suspicion that the person has committed or is about to commit a crime. *State v. Rawlings*, 121 Idaho 930, 932 (1992); *accord Florida v. Royer*, 460 U.S. 491, 497-98 (1983); *State v. Zapp*, 108 Idaho 723, 726 (Ct. App. 1985).

In that context, a deliberately-false response to a police officer's questions, made while the officer is not already investigating the commission of a crime and while the subject of the question is not otherwise-obligated to give an answer, does not constitute a crime under Idaho's statutes. *State v. Brandstetter*, 127 Idaho 885, 888 (Ct. App. 1995); *see* I.C. §§ 18-705, 18-5413(2). Therefore, the district court's conclusion – that there was probable cause for the officers to believe the ultimately-false, but initially-confirmed responses were a crime committed in their presence (Tr., Vol.2, p.27, Ls.8-24.) – is directly contrary to Idaho's statutes and case law.

The district court's reliance on the fact that those responses were ultimately revealed to be false is particularly troubling in this case, since the officers did not *know* the information was false until after they arrested Ms. Sanquist's companion and found her identification while searching her person. (*See* Tr., Vol.1, p.41, L.20 - p.42, L.2.) That is because the determination of whether reasonable suspicion exists must be based on the information *known* to the officers at the time they detain the person. *See, e.g., Bishop*, 146 Idaho at 811.

At the critical moment – the point at which the officers extended the detention of Ms. Sanquist and her companion – the only information the officers *knew* was that the police database *corroborated* the information they had been given. *Compare State v. Pachosa*, 160 Idaho 35, 39 (2016) (holding that the district court should have considered the fact that the officer had run the given name and date of birth through the police database and no profile was found even though one should have been found if the information was accurate in determining whether reasonable suspicion existed to prolong the detention); *State v. Zuniga*, 143 Idaho 431, 436 (Ct. App. 2006) (noting the district court properly considered the fact that a given name did not appear in the police database in determining there was reasonable suspicion to support an

investigative detention). Thus, the falsity of the responses in this case is not properly considered because it is not part of the relevant circumstances – the facts known to the officers at the time they acted.

Rather, the officers' suspicion that, despite being corroborated by the police database, the information the two women had given was false, was a mere hunch. Such hunches do not constitute a valid, reasonable basis for continuing to detain them regardless of whether they are ultimately proved correct. *See Bishop*, 146 Idaho at 811 (reiterating that officers cannot detain a person based only on a mere hunch or "'inchoate suspicion and unparticularized suspicion'") (quoting *Alabama v. White*, 496 U.S. 325, 329 (1990)); *accord United States v. Sokolow*, 490 U.S. 1, 16 (1989) ("For law enforcement officers to base a search, even in part, on a 'pop' guess . . . stretches the concept of reasonable suspicion beyond recognition . . . .") (Marshall, J., dissenting).

What is permitted under the Fourth Amendment when a person's answers to the officer's questions about his identity in such situations lack "the ring of truth," is to detain the person only so far as is necessary to determine the person's identity and ascertain whether outstanding warrants exist. *Zapp*, 108 Idaho at 727. However, once the reasonable suspicions about a person's identity are adequately addressed, such as when the police database clears a given name, the officers do not have authority to continue detaining the person or search her property. *See id.*; *accord Rodriguez v. United States*, ___ U.S. ___, 135 S. Ct. 1609, 1614 (2015) (explaining that the permissible scope of an investigative detention is determined by the seizure's "mission," and authority for the seizure ends when tasks tied to addressing that mission "are—or reasonably should have been—completed"); *State v. Sheldon*, 139 Idaho 980, 983 (Ct. App. 2003) (reiterating that the scope of an investigative detention must be closely related to the

purpose for which it was initiated unless "the detaining officer can point to specific and articulable facts" which would justify expanding that detention to unrelated purposes) (internal quotation omitted).

In fact, the situation Ms. Sanquist's case presents is very similar to the situation the Court of Appeals addressed in *Zapp*. In *Zapp*, the defendant arrived unannounced at his friend's house, where officers were wrapping up arresting his friend for possessing marijuana. *Zapp*, 108 Idaho at 725. When the officers opened the door for Mr. Zapp, he came into the house carrying a can of beer and a paper sack. *Id*. An investigative detention ensued, during which the officers asked Mr. Zapp for his identification. *Id*. Mr. Zapp said he did not have any identification on him, but he gave a name and address when officers asked for that instead. *Id*. There was no indication as to whether the officers checked the information Mr. Zapp gave against the police database. *See generally Zapp*, 108 Idaho 723.

However, the officers continued to question Mr. Zapp because they did not recognize the street address he had given. *Id*. He became nervous and unable to further answer their questions. *Id*. Eventually, after shining a light on him, officers noticed an outline of a wallet in his coat pocket. *Id*. Mr. Zapp produced an identification card from that wallet which revealed his true name and address. *Id*. The officers checked that name against the police database for warrants, but none were found. *Id*. The officers still continued to question Mr. Zapp, asking him what was in his sack. *Id*. Mr. Zapp answered, "'Oh, nothing of interest.' The officer retorted, 'Well, that sparks my interest.'" *Id*. At that point, Mr. Zapp shrugged and offered the sack to the officer, who found marijuana inside it. *Id*. The officers then got a warrant to search Mr. Zapp's car and found more marijuana there. *Id.*

The district court suppressed all the evidence in *Zapp*, finding the consent to search the sack was coerced, the warrantless search of the sack was not otherwise-justified, and that the evidence found in the car was tainted by the illegal search of the sack. *Id*. The Court of Appeals affirmed, holding that searches without probable cause are not authorized as part of this sort of investigative detention. *Id*. Thus, it held the search of Mr. Zapp's bag had been illegal because the officers lacked probable cause to believe the bag contained evidence of a crime. *See id*. Notably, the fact that Mr. Zapp's initial answers to the officers were, at that point, known to have been false did not provide probable cause to further detain him. *See id*.; *see also Brandstetter*, 127 Idaho at 888.

As in *Zapp*, officers initiated an investigative detention of Ms. Sanquist and her companion to determine their identities. Like Mr. Zapp, they both told officers they did not have identification on them, but gave answers when asked their names. Like Mr. Zapp, the name they gave in regard to Ms. Sanquist's companion was ultimately revealed to be false. However, when the officers here ran the given names through their database, it returned with profiles which matched Ms. Sanquist and her companion. Thus, the officers in this case had actually confirmed the information of which they had initially been suspicious. As a result, the initial purpose, the mission, of the stop was, or reasonably should have been, complete at that point, meaning there was no further *reasonable* basis to detain Ms. Sanquist and her companion.

That remains true despite the fact that Ms. Sanquist's companion had been nervous and unable to readily answer the officer's question about her birthdate. "A nervous demeanor during an encounter with law enforcement is of limited significance in establishing the presence of reasonable suspicion because it is common for people to exhibit signs of nervousness when confronted with law enforcement regardless of criminal activity," and therefore, signs of

nervousness, by themselves, are insufficient to establish reasonable suspicion. *State v. Neal*, 159 Idaho 919, ___, 367 P.3d 1231, 1236 (Ct. App. 2016); *compare Zapp*, 108 Idaho at 725-27 (holding there was no justification to continue detaining a person or search his belongings after clearing his name through the police database even though he had been nervous to the point of being unable to answer officers' questions). Thus, at the point the police database corroborated the information the officers had received, they had no specific, articulable facts which might justify continuing to detain the two women in this case. As such, continuing to detain them beyond that point based only on a hunch was unlawful.

And yet, the officers did continue to unlawfully detain Ms. Sanquist and her companion at that point. (*See* Tr., Vol.1, p.55, Ls.17-19 (Officer Johnson testified he was continuing to watch over Ms. Sanquist, who was not free to leave, during that time).) It was during that part of the detention that Officer Johnson testified he saw Ms. Sanquist drop the baggie and cover it with her foot. Because that occurred during the time when the detention was being unlawfully extended, Ms. Sanquist has the ability to challenge the seizure and subsequent search of that baggie even though she discarded it because, '[i]f the abandonment is caused by illegal police conduct, however, the abandonment is not voluntary." *State v. Harwood*, 133 Idaho 50, 52 (Ct. App. 1999); *accord State v. Ross*, 160 Idaho 757, 759-60 (Ct. App. 2016). In that scenario, "the defendant's actions were not truly their own, but were coerced and precipitated by the illegal police conduct." *State v. Schrecengost*, 134 Idaho 547, 550 (Ct. App. 2000); *compare Zapp*, 108 Idaho at 726 (holding that the consent obtained during an unlawfully-extended investigative detention in that case had been impermissibly coerced).

Since the baggie was only found as a result of the unlawfully-prolonged investigatory detention, the evidence found therein should have been suppressed as fruit of that poisonous tree.

See Ross, 160 Idaho at 760; *accord Wong Sun v. United States*, 371 U.S. 471, 484 (1963). Similarly, any statements Ms. Sanquist made after the detention had been unlawfully prolonged should have been suppressed as fruit of that poisonous tree. *See, e.g.*, *Royer*, 460 U.S. at 501 (noting that "statements given during a period of illegal detention are inadmissible even though voluntarily given if they are the product of the illegal detention and not the result of an independent act of free will"). The district court's order denying her motion to that effect should be reversed.

CONCLUSION

Ms. Sanquist respectfully requests this Court reverse the order denying her motion to suppress, vacate her conviction, and remand this case for further proceedings.

DATED this 22nd day of December, 2017.

_____/s/_____
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22nd day of December, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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