4-4-2018

State v. Flores Appellant's Brief Dckt. 45188

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 45188**
Plaintiff-Respondent,	)	
	)	**ADA COUNTY**
v.	)	**NO. CR01-16-35619**
	)	
ARTURO GONZALEZ FLORES,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

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

HONORABLE SAMUEL A. HOAGLAND
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Arturo Flores was convicted of two counts of possession of a controlled substance following a jury trial and was sentenced as a persistent violator to two unified terms of 15 years, with three years fixed, to be served concurrently. He appeals from his judgment of conviction, challenging the district court's denial of his motion to suppress. The district court erred in denying his motion to suppress because the officer who stopped the vehicle in which Mr. Flores was traveling never investigated the traffic violation which purportedly formed the basis for the stop, but instead conducted a drug investigation from the outset, which was not supported by reasonable suspicion of drug activity.

Statement of Facts and Course of Proceedings

The Meridian Police Department received a report on October 26, 2016, from a 14-year-old girl who said her parents were using heroin at the family's residence in East Moskee Street ("the Moskee residence"). (R., p.106.) The police had also been notified by a "concerned citizen" that there was a large amount of stop-and-go traffic at the Moskee residence. (R., p.107.) The police department began undercover surveillance of the Moskee residence at approximately 4:45 p.m. on October 26. (R., p.107.) At approximately 5:11 p.m., a female driver driving a grey Mazda parked at the Moskee residence. (R., p.107.) The passenger, later determined to be Mr. Flores, went into the Moskee residence, while the driver, later determined to be Mrs. Flores, walked to pick up her 12-year-old son from school. (R., p.107; Tr., p.21, Ls.2-6.) Mr. and Mrs. Flores and their son left the Moskee residence in the vehicle between approximately 5:30 and 6:00 p.m. (R., pp.107-08.)

Officer Brian Lueddeke followed the vehicle and observed the child moving unrestrained in the backseat. (R., p.108.) Officer Jacob Durbin also followed the vehicle and observed the driver fail to use a turn signal prior to making a turn. (R., p.108.) Officer Branden Esparza testified at the preliminary hearing that he responded to a request to initiate a traffic stop of the vehicle at approximately 6:00 p.m.[1] (11/30/16 Tr., p.15, Ls.5-7.). He testified he was listening to radio traffic and "overheard them talking about a vehicle that they were following." (11/30/16 Tr., p.21, Ls.12-17.) He said he did not initially know why the officers were following the vehicle. (11/30/16 Tr., p.21, Ls.18-23.) He testified he was not familiar with the investigation taking place at the Moskee residence. (11/30/16 Tr., p.21, L.24 – p.22, L.2.) Officer Esparza said:

> I was not [familiar with the investigation] – I did not realize where [the vehicle] was coming from until later. Then I was advised what the stop was for. Or just prior to me stopping, I was advised that this was a stop that they needed because of possibly some drug business going on at an address. But I didn't recognize what the address was at the time.

(11/30/16 Tr., p.22, Ls.1-7.) The officer was asked whether he observed any traffic infractions, and he answered, "I did not, no." (11/30/16 Tr., p.23, L.25 – p.24, L.2.)

Officer Esparza stopped the vehicle. (11/30/16 Tr., p.15, Ls.9-14.) He asked the passenger for his identification, and Mr. Flores provided his driver's license. (11/30/16 Tr., p.15, L.18 – p.16, L.3.) While Officer Esparza was running a warrants check, another officer arrived with a drug detection dog. (11/30/16 Tr., p.16, Ls.15-17.) Officer Esparza then directed Mr. Flores to exit the vehicle. (11/30/16 Tr., p.16, Ls.18-21.) He patted Mr. Flores down and handcuffed him. (R., p.109.) He next directed Mrs. Flores to exit the vehicle. When Mrs. Flores

[1] Officer Esparza testified only at the preliminary hearing. At the suppression hearing, the district court took judicial notice of the preliminary hearing transcript. (Tr., p.8, Ls.6-10.)

exited the vehicle, she gave the officer a small item which she said contained marijuana. (11/30/16 Tr., p.16, L.24 – p.17, L.9.) The drug dog was then employed by the canine officer and alerted on the vehicle. (11/30/16 Tr., p.30, Ls.11-19.) Officers searched the vehicle and found a large cup in the center console area that contained plastic bags with heroin residue and methamphetamine. (11/30/16 Tr., p.17, L.15 – p.20, L.3, p.33, L.17 – p.35, L.10.)

Following a preliminary hearing, Mr. Flores was charged by Information with two counts of possession of a controlled substance. (R., pp.29-30, 36-37.) The State subsequently filed an Information Part II alleging Mr. Flores is a persistent violator within the meaning of Idaho Code § 19-2514. (R., pp.51-52.) Mr. Flores filed a motion to suppress arguing the evidence seized from the vehicle should be suppressed under the United States and Idaho Constitutions because the officer who stopped the vehicle abandoned the purpose of the stop to pursue a drug investigation that was not supported by reasonable suspicion. (R., pp.67-75.) Following a hearing, the district court denied Mr. Flores' motion to suppress. (R., pp.106-18.) The case proceeded to trial, and the jury found Mr. Flores guilty on both counts. (R., p.154.) The jury then found Mr. Flores guilty of two prior felony convictions, making him subject to the persistent violator enhancement. (R., p.155.) The district court sentenced Mr. Flores as a persistent violator to a unified term of 15 years, with three years fixed, on each count, to be served concurrently. (Tr., p.538, Ls.12-15.) The judgment of conviction was filed on June 16, 2017, and Mr. Flores file a timely notice of appeal on June 19, 2017. (R., pp.213-17, 221-24.)

ISSUE

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

ARGUMENT

The District Court Erred In Denying Mr. Flores' Motion To Suppress

A. Introduction

Officer Esparza testified he pulled over the vehicle in which Mr. Flores was travelling because he "was advised that this was a stop that they needed because of possibly some drug business going on at an address." (11/30/16 Tr., p.22, Ls.1-7.) While Officer Durbin had observed a turn signal violation, Officer Esparza was not aware of the nature of the observed violation. Mr. Flores does not dispute that, under the collective knowledge doctrine, Officer Durbin's knowledge can be imputed to Officer Esparza, and thus does not dispute that the stop of the vehicle in which he was traveling was supported by reasonable suspicion of a traffic violation. However, Mr. Flores contends Officer Esparza abandoned, from the outset, the legitimate purpose of the stop, which was to investigate the traffic violation, because he was not aware of the nature of the violation. Mr. Flores also contends the district court erred in concluding, in the alternative, that the stop of the vehicle was supported by reasonable suspicion of drug activity. Prior to the stop, none of the officers knew the identity of the individuals in the vehicle, and there was insufficient evidence connecting the individuals in the vehicle to the suspected drug activity at the Moskee residence.

B. Standard Of Review

"In reviewing a district court order granting or denying a motion to suppress evidence, the standard of review is bifurcated." *State v. Purdum*, 147 Idaho 206, 207 (2009) (citation omitted). "This Court will accept the trial court's findings of fact unless they are clearly erroneous. However, this Court may freely review the trial court's application of constitutional

principles in light of the facts found." *Id.* (citations omitted). "At a suppression hearing, 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. Aguirre*, 141 Idaho 560, 562 (Ct. App. 2005) (citations omitted).

C. Mr. Flores Was Seized In Violation Of The Fourth Amendment Because Officer Esparza Abandoned From The Outset The Legitimate Purpose Of The Stop, Which Was To Investigate The Traffic Violation

The Fourth Amendment of the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . ." U.S. Const., amend. IV. In *State v. Linze*, the Idaho Supreme Court said:

> The United States Supreme Court has plainly established that a traffic stop is a seizure, but it is not an unreasonable seizure under the Fourth Amendment so long as there is a reasonable suspicion that the vehicle is being driven contrary to traffic laws. The stop remains a reasonable seizure while the officer diligently pursues the purpose of the stop, to which that reasonable suspicion is related. However, should the officer abandon the purpose of the stop, the officer no longer has that original reasonable suspicion supporting his actions. Indeed, when an officer abandons his or her original purpose, the officer has for all intents and purposes initiated a new seizure with a new purpose; one which requires its own reasonableness under the Fourth Amendment. This new seizure cannot piggy-back on the reasonableness of the original seizure. In other words, unless some new reasonable suspicion or probable cause arises to justify the seizure's new purpose, a seized party's Fourth Amendment rights are violated when the original purpose of the stop is abandoned . . . .

161 Idaho 605, 609 (2016) (internal citation omitted). Here, Officer Esparza abandoned the purpose of the stop from the outset by conducting a drug investigation instead of a traffic investigation. The reasonable suspicion which supported a seizure for a traffic investigation did not support a seizure for a drug investigation.

In the district court, counsel for Mr. Flores conceded the traffic stop was supported by reasonable suspicion of a traffic violation, but argued "there's no reasonable suspicion to

completely abandon the purpose of the stop, which was the traffic violation, failing to use a turn signal, and completely throw that out the window and start doing [a] drug investigation." (Tr., p.62, Ls.21-25.) Counsel said, "The issue we have here is: Is there enough reasonable suspicion to deviate from and abandon the purpose of the stop?" (Tr., p.67, Ls.18-21.) Counsel argued that instead of pursing the traffic violation and writing a citation, the officer abandoned the stop to conduct a drug investigation. (Tr., p.67, L.22 – p.68, L.1.)

The district court rejected this argument, reasoning that as long as an officer has an objectively reasonable basis for making a stop based on an observed traffic violation, the officer's subjective motive for making the stop is irrelevant. (R., p.114 (citing *State v. Myers*, 118 Idaho 608 (Ct. App. 1990).) The district court misapprehended defense counsel's argument. It is true that Officer Esparza's subjective motivation for making the stop is not relevant, but that is not the issue. Where, as here, the reasonable suspicion for a stop is based on another officer's knowledge of a traffic violation, and the officer making the stop is not aware of the nature of the violation, the seizure is unlawful at the outset as the officer cannot possibly pursue the original purpose of the stop, which is to investigate the traffic violation.

At the preliminary hearing, Officer Esparza testified he was listening to radio traffic and "overheard them talking about a vehicle they were following." (11/30/16 Tr., p.21, Ls.12-17.) He was asked whether he knew why they were following it, and answered, "Initially, no, until I just – and then I heard that they needed – that – of the violations, they needed a patrol vehicle to stop it. And so then that's where I picked it up." (11/30/16 Tr., p.21, Ls.18-23.) While he arguably was aware of a traffic violation, it is clear Officer Esparza was not aware of the nature of the violation. The officer was asked whether he observed any traffic infractions, and he answered, "I did not, no." (11/30/16 Tr., p.23, L.25 – p.24, L.2.) Officer Esparza testified that

"just prior to me stopping, I was advised that this was a stop that they needed because of possibly some drug business going on at an address." (11/30/16 Tr., p.22, Ls.3-6.) When Officer Esparza stopped the vehicle, he did not—and could not—have diligently pursued the traffic investigation because he was unware of the nature of the violation. Indeed, there is no evidence Officer Esparza intended to, or was in the process of, completing a traffic citation.

The United States Supreme Court has made it clear that "the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop, and attend to related safety concerns." *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015) (internal citations omitted). Mr. Flores was unlawfully seized because the officer who stopped the vehicle in which he was traveling never addressed, and could not have addressed, the traffic violation that provided the reasonable suspicion for the stop, as he was not aware of the nature of the violation. Because Officer Esparza abandoned the legitimate purpose of the stop from the outset, Mr. Flores was seized in violation of his Fourth Amendment rights.

D. The District Court Erred In Concluding, In The Alternative, That The Stop Of The Vehicle In Which Mr. Flores Was Traveling Was Supported By Reasonable Suspicion Of Drug Activity

The district court concluded, in the alternative, that the officers had reasonable suspicion to conduct a drug investigation from the outset based on the totality of the circumstances. (R., pp.116-17.) The district court explained:

> The stop of the vehicle was not an isolated event. Officers had ample information prior to stopping the vehicle regarding the house from which the vehicle came. There was concern regarding children's safety in the home based on the 14-year-old's report that her parents were using heroin and had visitors frequenting the home. A concerned citizen also reported that the home received frequent visitors and stop and go traffic. Defendant and his wife used to be roommates with the 14-year-old girl's parents. Defendant and his wife stopped at the Moskee

> residence for at least 20 minutes and left with Defendant's step-son unbuckled in the backseat, apparently driving quickly and evasively through neighborhoods on an indirect route to the destination of the final stop. Under these facts and circumstances, it was reasonable to investigate into the welfare of Defendant's step-son as well as to inquire as to whether the parents possessed illegal substances.

(R., p.117.) The district court erred in concluding there was reasonable suspicion of drug activity prior to the stop of the vehicle. Most critically, before Officer Esparza stopped the grey Mazda, none of the officers knew the identity of the individuals in the vehicle. The mere fact that the vehicle had stopped for at least 20 minutes at a suspected drug house in the late afternoon did not provide the officers with reasonable suspicion that the people in the vehicle were involved in drug activity.

"A reasonable suspicion exists when the . . . officers can articulate specific facts which, together with rational inferences from those facts, reasonably justify a suspicion that criminal activity is occurring." *State v. Danney*, 153 Idaho 405, 409-10 (2012) (citation omitted). "[T]he reasonableness of the suspicion must be evaluated based on the totality of the circumstances *at the time of the stop*." *Id.* at 410 (emphasis added). Here, at the time of the stop, there were insufficient facts to justify a suspicion that Mr. and Mrs. Flores was involved in drug activity. The fact that they stopped at the Moskee residence for a brief period in the late afternoon indicates they did not live at the Moskee residence, and the fact that they arrived as a couple and left with their son suggests they were in fact there to pick up their son from the nearby school.

At the suppression hearing, the district court admitted an Affidavit for Search Warrant, dated November 1, 2016 ("the Affidavit").[2] (Motion to Augment, Ex. A.) The Affidavit was

[2] The Affidavit for Search Warrant was admitted at the hearing on Mr. Flores' motion to suppress, but was not included in the Clerk's Record. Simultaneously with the filing of this brief, Mr. Flores is filing a Motion to Augment to include a copy of this document in the Clerk's

prepared by Officer Jason Brown in support of a search warrant for the Moskee residence. (*Id.*, pp.1, 3.) In the Affidavit, Officer Brown describes in detail the report from the 14-year-old girl who said her parents were using heroin at the Moskee residence. (*Id.* pp.4-5.) Officer Brown discusses the investigation at the Moskee residence, including information from a "concerned citizen" reporting "stop and go traffic . . . at all hours of the night." (*Id.*, p.6.) Officer Brown describes the surveillance that led to the stop of the vehicle in which Mr. Flores was travelling. (*Id.*, pp.7-8.) Critically, the Affidavit reflects that none of the officers knew the identity of the individuals in the vehicle until *after* the traffic stop. (*Id.*, p.7.) Prior to the stop, the only information the officers had connecting the vehicle to any drug activity at the Moskee residence was the fact that the vehicle arrived at the residence at 5:11 p.m., and departed at 5:30 p.m. (*Id.*) Even with the benefit of the collective knowledge doctrine, this is simply not enough to support a reasonable suspicion of criminal activity sufficient to justify a seizure under the Fourth Amendment.

In concluding there was reasonable suspicion to support a drug investigation, the district court relied, in part, on the fact that Mr. and Mrs. Flores used to be roommates with the parents of the 14-year-old girl who reported her suspicions of her parents' drug activity to the police. This was an error. Though this information is included in the Affidavit, it was not known to the officers at the time of the stop, and thus cannot be considered as part of the totality of the circumstances in determining whether there was reasonable suspicion of drug activity sufficient to justify the stop. Mr. Flores concedes Officer Esparza had reasonable suspicion of a traffic violation, justifying a limited seizure of the vehicle and its occupants to investigate that violation.

Record. The Affidavit for Search Warrant was filed under seal in the district court, and is being filed under seal with this Court.

However, the district court erred in concluding there was reasonable suspicion for a drug investigation.

CONCLUSION

Mr. Flores respectfully requests that this Court vacate his judgment of conviction, reverse the district court's order denying his motion to suppress, and remand this case to the district court for further proceedings.

DATED this 4th day of April, 2018.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 4th day of April, 2018, 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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_____/s/_____
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AWR/eas