6-12-2018

State v. Gouge Respondent's Brief Dckt. 45403

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45403**
Plaintiff-Respondent,	)	
	)	**Kootenai County Case No.**
v.	)	**CR-2017-4327**
	)	
CLARISSA MAE GOUGE,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Clarissa Mae Gouge appeals from her judgment of conviction for possession of methamphetamine, entered upon her conditional guilty plea. On appeal, she challenges the district court's order denying her suppression motion.

Statement Of The Facts And Course Of The Proceedings

In its order denying Gouge's motion to suppress evidence, the district court set forth the facts on this case. (See, e.g., R., pp.57-59, 62-64.) In sum, on March 17, 2017, while on routine patrol, Officer Mongan observed three individuals, a man and two women, seated together in a pickup at a gas station. (R., pp.58-59.) As the officer drove by, the individuals appeared to become nervous, and the man tried to conceal his face. (Id.) Officer Mongan pulled in behind the pickup, leaving enough space for it to exit, and approached the passenger side of the vehicle on foot. (R., p.59.) The officer never activated his lights, approached the vehicle alone, and never displayed a firearm. (Tr., p.7, Ls.4-5; p.9, Ls.11-16; p.15, Ls.1-6.)

Contacting the occupants of the vehicle, Officer Mongan identified the driver as Amanda Mackinnon and the passengers as Michael Withey and Gouge. (R., p.59.) He asked Withey and Gouge if they were on probation, to which both responded affirmatively. (Id.) They discussed some of the terms and conditions of their probation, and then Officer Mongan asked, "Would you guys both be willing to consent to a search of your person?" (R., p.63; see also State's Ex. 1 at 3:39-3:49.) Both Withey and Gouge gave affirmative consent to a search. (Id.) During the search of Gouge, the officer found a baggie of methamphetamine. (R., p.59.)

The state charged Gouge with possession of methamphetamine. (R., pp.42-43.) Gouge sought to suppress the state's evidence, claiming that her consent to the search was coerced and

therefore her constitutional rights were violated. (R., pp.31-35.) After a hearing on the motion (R., pp.55-56), the district court found that Gouge's consent to search was voluntary and denied her suppression motion (R., pp.57-79).

Gouge entered a conditional guilty plea to the possession charge, reserving her right to appeal the district court's ruling on her suppression motion. (R., pp.83-84.) The district court entered judgment against Gouge and sentenced her to a unified term of seven years with three years fixed, to run consecutive to her sentence entered in 2016 for possession of methamphetamine, suspended that sentence, and placed her on the same period of probation as in her 2016 case, with some additional terms. (R., pp.89-91.) Gouge filed a timely notice of appeal. (R., pp.92-94.)

ISSUE

Gouge states the issue on appeal as:

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

(Appellant's brief, p.5.)

The state rephrases the issue as:

Has Gouge failed to show error in the district court's denial of her suppression motion?

ARGUMENT

Gouge Has Failed To Show Error In The District Court's Denial Of Her Suppression Motion

A. Introduction

Gouge argues, as she did below, that her consent to search was coerced and therefore invalid. (Appellant's brief, pp.6-13.) The district court, however, found that Gouge's consent was voluntary. (R., p.62.) That finding is supported by substantial evidence and Gouge has failed to show clear error in the district court's factual findings. Application of the correct legal standards to the facts of this case shows no error by the district court. The district court's denial of Gouge's suppression motion should 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 freely reviews the application of constitutional principles to those facts. State v. Page, 140 Idaho 841, 843, 103 P.3d 454, 456 (2004).

C. Gouge Voluntarily Consented To The Search Of Her Person

The Fourth Amendment of the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. Warrantless searches are "*per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." Katz v. United States, 389 U.S. 347, 357 (1967). A search done pursuant to consent is one such well-established exception to the warrant requirement. Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) (citations omitted); State v. Hansen, 138

Idaho 791, 796, 69 P.3d 1052, 1057 (2003). Freely and voluntarily given consent validates a search. Bustamonte, 412 U.S. at 222 (citations omitted).

The voluntariness of an individual's consent is a question of fact to be determined based upon the totality of the circumstances. State v. Varie, 135 Idaho 848, 852, 26 P.3d 31, 35 (2001) (citing Bustamonte, 412 U.S. at 248-49). An individual's consent is involuntary "if his will has been overborne and his capacity for self-determination critically impaired." State v. Garcia, 143 Idaho 774, 778, 152 P.3d 645, 649 (Ct. App. 2006) (quoting Bustamonte, 412 U.S. at 225). "Importantly, the trial court is the proper forum for the 'careful sifting of the unique facts and circumstances of each case' necessary in determining voluntariness." Garcia, 143 Idaho at 778–79, 152 P.3d at 649–50 (citing Bustamonte, 412 U.S. at 233). "Even if the evidence is equivocal and somewhat in dispute, if the trial court's finding of fact is based on reasonable inferences that may be drawn from the record, it will not be disturbed on appeal, since our standard of review requires that we accept a trial court's factual findings unless they are clearly erroneous." Id. (citations omitted). "Findings will not be deemed clearly erroneous if they are supported by substantial evidence in the record." Id. (citations omitted).

Applying these correct legal standards, the district court determined based on the totality of the circumstances that Gouge voluntarily consented to the search of her person. (R., pp.62-70.) This finding is supported by substantial evidence, including Gouge's testimony from the suppression hearing (Tr., p.14, L.13 – p.15, L.9), and especially the video of the incident (see State's Ex. 1). In its Memorandum Decision and Order Denying Defendant's Motion to Suppress, the district court correctly applied the law to its supported factual findings, and the state adopts as part of its argument on appeal the district court's thorough analysis contained at pages 62-70 of that order, a copy of which is attached as "Appendix A."

On appeal, Gouge argues that the district court erred by allegedly requiring her to show that her consent was involuntary when it noted that Gouge had failed to present evidence supporting her assertion that she was required by her probation officer to agree to a full Fourth Amendment waiver. (Appellant's brief, pp.11-13.) Gouge's claim is belied by the record. First, the state *was* required to show that Gouge voluntary consented, and it met its burden: As shown above, under the totality of the circumstances, the evidence presented by the state at the suppression hearing established that, in circumstances that lacked any element of coercion, Officer Mongan asked Gouge for her consent to a search, and Gouge freely offered her consent. (See State's Ex. 1 at 0:00 – 5:47.)

Next, the only argument raised by Gouge below was that her consent was coerced because, she claimed, she was required to sign a full Fourth Amendment waiver as part of her probationary terms and conditions. (Tr., p.13, Ls.3-13; p.14, Ls.13-22.) It appears that, if such existed, the full waiver must have been part of supplemental terms given to Gouge by her probation officer. While Gouge provided "the judgment and terms and conditions of probation for the case that she was on probation on at this time" to the court (see Tr., p.18, Ls.1-9), the documents she provided did not include any expanded waiver as a term and condition of her probation (see R., pp.36-41). Instead, the only evidence supporting the existence of a supplemental or expanded Fourth Amendment waiver was Gouge's self-serving testimony. The district court merely noted this incontrovertible fact, and then proceeded to analyze the issue *as though Gouge had presented the evidence*, notwithstanding her actual failure to do so. (See R., pp.61-70.)

Moreover, as the district court noted, even if Gouge had been required by her probation officer to accept a full waiver of her Fourth Amendment rights, that would have little relevance

in this case. The district court specifically found that Gouge's consent to search, and the officer's request for affirmative consent to search, was not linked to any probationary waiver of Gouge's Fourth Amendment rights. (R., pp.65-67.) As noted above, where the evidence is equivocal or somewhat in dispute, "if the trial court's finding of fact is based on reasonable inferences that may be drawn from the record, it will not be disturbed on appeal." Garcia, 143 Idaho at 778–79, 152 P.3d at 649–50. Here, the district court's factual finding is based on a reasonable inference from the totality of the circumstances, and therefore it should not be disturbed on appeal.

Relying on State v. Santana, 162 Idaho 79, 394 P.3d 122 (Ct. App. 2017), Gouge also argues that her consent was coerced as the product of an invalid probationary condition. (Appellant's brief, pp.8-11.) Of course, as the district court correctly noted, Gouge failed to put her allegedly expanded terms and conditions of probation into evidence (both below and on appeal) and there is no way to know the breadth of her supposed Fourth Amendment waiver. But even assuming that the waiver were absolute, this case is still entirely distinguishable from Santana. In Santana, relying on the defendant's absolute Fourth Amendment waiver, officers entered Santana's home and conducted a warrantless search without ever asking his consent—in fact, when he was not present and so could not give affirmative consent. See Id., 162 Idaho at 82, 394 P.3d at 125. In stark contrast, the officer in this case asked for Gouge's consent to search, and she affirmatively consented. Santana is inapposite and Gouge has failed to show any error in the district court's denial of her suppression motion.

Ultimately, the district court found that Gouge voluntarily consented to the search in this case. That finding is supported by substantial evidence, including both witness testimony and the video recording of Gouge's encounter with Officer Mongan. Gouge has failed to show clear

error in the district's factual findings. She has failed to show error in the application of the law to those findings. Gouge has failed to show any error in the district court's denial of her suppression motion. The district court's order denying that motion should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Gouge's suppression motion.

DATED this 12th day of June, 2018.

_/s/ Russell J. Spencer_____
RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th day of June, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

KIMBERLY A. COSTER
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

_/s/ Russell J. Spencer _____
RUSSELL J. SPENCER
Deputy Attorney General

RJS/dd