12-12-2013

State v. Spies Appellant's Brief Dckt. 41147

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

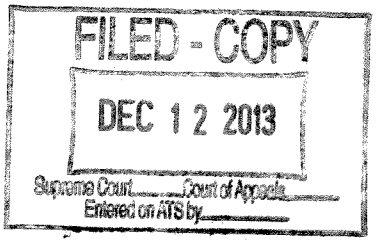
Plaintiff - Respondent,

vs.

CONNOR SPIES,

Defendant - Appellant

Case No. 41147



APPELLANT'S BRIEF

Appeal from the District Court of the Fourth Judicial District
of the State of Idaho, in and for the County of Ada

HONORABLE KATHRYN A. STICKLEN
District Judge

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NATURE OF THE CASE

The Former Juvenile appeals from the District Court's appellate decision reversing the Magistrate Judge's order suppressing evidence found as the result of a traffic stop. the Former Juvenile asserts that the trial court properly applied the applicable legal standard to facts that are supported by substantial evidence, and that this court, sitting in an appellate capacity, should not disturb that order.

STATEMENT OF FACTS AND COURSE OF PROCEEDINGS

Officer Hoodman pulled over Connor Spies (hereinafter Connor) because his vehicle "wasn't able to maintain its lane, it was using turn lanes as lanes of travel." His contemporaneous report did not indicate suspicion of intoxication. The officer conceded at hearing that his police report indicated only the lane issue as a reason for the stop and that Connor at all times drove fully within the lane in which he was currently driving, that the lanes were marked only with raised "tabs", which did not indicate a "turn only" status, that Connor followed the speed limit, and that, even though Connor failed to signal, when the lanes abruptly ended, Connor abruptly reentered the other lane of travel. There was no indication that Connor swerved within, across or out of either set of lanes while driving therein. (see Transcript [Tr.], pp. 7 & 8 in particular)

The court ruled that the infraction of failing to signal itself would have provided cause for a stop of the vehicle, but that since the officer did not actually base the stop on the commission of an infraction, that the driving pattern, in its totality, fell within "the broad range of normal driving behavior, and was therefore insufficient to justify an investigatory detention.

The District Court, sitting in an appellate capacity, disagreed. In its findings the District Court found "that the Magistrate erred in concluding that if there is a reasonable suspicion for the stop, it must be the same basis as that articulated by the officer making the stop." (Memorandum Decision and Order, p. 5) and substituted its factual finding that Connor's driving was not within the range of normal driving behavior for the Trial court's finding that it was. (Memorandum Decision and Order, p. 8)

ISSUES

1. Was the Magistrate correct in ruling that the failure to use a turn signal was not and need not be included in the basis of the stop.

2. Was the Magistrate's finding that the Former's Juvenile's driving fell with the broad range of normal driving behavior supported by substantial evidence.

3. Is Idaho Code §49-808 unconstitutional as applied to Connor's driving conduct.

STANDARD OF REVIEW

On appeal from a trial court's order resolving a motion to suppress evidence, The Appellate Court defers to the trial court's findings of fact if they are supported by substantial evidence, but freely reviews the trial court's determination as to whether constitutional standards have been satisfied in light of the facts found. *State v. Atkinson*, 916 P.2d 1284, 128 Idaho 559

(Idaho App. 1996) citing *State v. Naccarato*, 126 Idaho 10, 12, 878 P.2d 184, 186 (Ct.App.1994); *State v. McAfee*, 116 Idaho 1007, 1008, 783 P.2d 874, 875 (Ct.App.1989). "When a district court has rendered an intermediate appellate decision, we examine the record before the magistrate independently of, but with due regard for, the district court's determination." Id.

ARGUMENT

The former juvenile urges the court to use the opportunity provided by this case to refine and clarify what is meant by the "objective test" for reasonable suspicion.

The District Court agreed with the state's argument that, if there is a reasonable basis for a stop, it need not be the same reason articulated by the officer making the stop. (Memorandum Decision and Order, p. 5). The state seems ready to pounce on this view of the state of the law1. The District Court relies on *Deen v. State* 131 Idaho 435, 958 P. 2d 592 (1998) and *State v. Young,* 144 Idaho 646, 167 P.3d 793 (Ct. App 2007) for the proposition that "This prevents costly resort to the exclusionary rule where a police officer or prosecutor merely fails to articulate the appropriate justification for an otherwise legal search or seizure" *Young* at 648,785.

The former juvenile's concern, expressed here, is that the interpretation used by the District Court, and urged by the state, indicates that the officer or official conducting a seizure need not believe his reason for the seizure is legitimate. "I thought it was ok to stop them for having blue eyes". Would it then fall on court to deduce, from the facts surrounding the seizure,

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1 *cf. Sate v. Morgan,* 154 Idaho 109, 294 P.3d 1124 (2013) " The State argues that because reasonable suspicion is an objective determination, it did not matter that neither the police officer nor the prosecutor appeared to be aware of Boise City Ordinance 10-11-04 at the time of the traffic stop and the subsequent suppression hearing."

whether another, independent and unrelated basis to seize existed, which had never occurred to the officer, and the seizure would be upheld?

This cannot be the intent of the rulings, and Respondent asserts it is proper to assess objectively, based upon the facts possessed, **and used by**, the officer at the time of the seizure, whether reasonable suspicion existed2.

In *State v. Weaver*, 127 Idaho 288 (1995) at 291 this Court indicated:

> "In *State v. Hobson*, 95 Idaho 920, 523 P.2d 523 (1974), we adopted the standard announced by the United States Supreme Court in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), for analyzing the reasonableness of an officer's conduct in a seizure context. First, this Court stated, the information underlying the seizure must possess specificity and some indicia of reliability. In this regard, the officer's conduct must be judged against an objective standard:
> would the facts available to the officer at the moment of the seizure or search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate? [Citations omitted]. Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches.... [Citations omitted]."

"[T]he suspicion for the stop must be based upon objective information available to the officer **when he decided to make the stop**. *State v. Emory*, 119 Idaho 661 (App. 1991) (emphasis added).

The District Court in the case currently at bar found "it is irrelevant what basis Officer Hoodman utilized to make the stop, so long as there was an objective basis present, as there was

here." (Memorandum Decision and Order, p.7) It makes no sense to hold that the justification for the seizure, and the decision to make a seizure can be completely unrelated; only to rule that the reason for making the i.e. violating a rule of the road, endangering the public, suspicion of intoxication, must be justified by the objective facts.

The District Court cites *State v. Young* 144 Idaho 646 (2006) for the proposition that the appellate court can supply reasonable suspicion when an officer did not in fact possess it. Mr. Young was stopped for failing to obey a traffic control device, and the officer and the State had initially relied on a statute which the court found did not apply. The court in upholding the stop noted there was a city code which did apply. The seizure was made based upon an action which the officer believed violated a law, failure to stop in the correct place. That action did in fact violate a law, even though the law originally cited was found inapplicable, it was found that failure to stop at the correct place was a violation.

The trial court herein found that the officer did not consider the failure to signal as part of the "basis of the stop" (Memorandum Decision and Order, p. 4). This is clearly a finding of fact, based upon the evidence and reasonable inferences adduced at a suppression hearing. The district court found substantial evidence to support this finding. (Memorandum Decision and Order, p. 7)

In addition, the Court should not consider the failure to signal as part of the "totality of circumstances" in analyzing whether reasonable suspicion existed, since the requirement to

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2 Note that, in *Deen,* the officer articulated that Deen's seizure was "a public safety investigation" (at 436, 593), and the Court noted that because Idaho Code §49-1401 prohibits presenting a "risk to other drivers" (Id.) the stop was justified.

signal is based upon a statute, Idaho Code §94-808, which is both facially void for vagueness, or in the alternative, at least void as applied to Connor's driving. The Court of Appeals has already ruled that §49-808 is void under some applications. *Burton v. State Dept. of Transportation,* 149 Idaho 746, 240 P.3d 933 (Ct App, 2010). The facts in the current case are analogous to that case. The *Burton* Court distinguished a prior case, *State v. Dewbry*, 133 Idaho 663, 991 P.2d 388 (Ct App. 1999), and noted under its unique facts, an "as applied" vagueness analysis did not apply. Note that, as in *Burton* at 749, 936, no "road signs or arrows informed motorists" of the need to signal. Officer Hoodman, in the case at bar at least twice, referred to the lanes as "merge lanes" (Transcript pp. 11, 12) and agreed with the Magistrate that it was a turn lane (Transcript, p. 16)

The court in *Burton* did not consider a facial challenge. The former Juvenile urges the court to consider it here. Recognizing that a criminal statute is not unconstitutionally vague on its face unless it is "impermissibly vague in all of its applications" *Hoffman Estates v. Flipside, Hoffman Estates, Inc.* 455 U.S. 489, 497, 102 S.Ct 1186, 1193, 71 L.Ed.2d 362 (1982), the Former Juvenile points to the reasoning given by the court in *Burton* at 749, 936:

> "This vagueness in application occurs because the statute does not specify how much or what type of movement to the left or right is necessary to trigger the duty to signal. Admittedly, a very literal interpretation of the statute might lead to a conclusion that a signal is required when two lanes simply merge because a driver in either lane must move the steering wheel at least slightly in order to steer into the emerging lane. But the statute cannot reasonably be given an utterly literal application to *every* type of side-to-side movement, for a vehicle literally moves to the left or the right when a driver weaves a bit within his or her lane or simply negotiates a bend in the road, but no one would contend that a signal is required in those instances".

It should also be noted that nothing in § 808 mentions "lanes", or other language that would support the conclusion it applies when lanes are involved. The term "moves right or left" is simply so undefined, so without guidance that is "simply has no core of circumstances to which it applies and is therefore unconstitutionally vague." *State v. Bitt*, 798 P.2d 43, 118 Idaho 584 (Idaho 1990).

The fact that Connor has been found not to have used a turn signal should not, therefore, be considered a "failure" to do so. He was not required to do so by a constitutionally valid statute. Also note that in his Concurrence to *Dewbry, Infra.* Judge Schwartzman relayed his "empirical, but thoroughly unscientific" observation that "many and Idaho driver would in custom and practice, see no need to operate a turn signal in this hyper-technical situation." At 667, 392.

The magistrate was correct in finding that the driving fell within "the broad range of normal behavior", and his finding was supported by substantial and competent evidence.

"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. Young* 144 Idaho 646 (2006) (citations omitted). The court heard the testimony of Officer Hoodman, who relayed that Connor at all times drove fully within the "lane" in which he was currently driving, that the "lanes" were marked only with raised "tabs", which did not indicate a "turn only" status, that Connor followed the speed limit, and that, even though Connor failed to signal, when the lanes abruptly ended, Connor abruptly reentered the other lane of travel, moving from

fully and properly within one "lane", to fully and properly within the next. There was no indication that Connor swerved within, across or out of either set of lanes while driving therein. The reason the officer originally relayed (and listed in his report) was "the vehicle wasn't able to maintain its lane, it was using turn lanes as lanes of travel." Transcript, p. 7 . There is no law prohibiting conduct that he described. The officer noted that it is suspicious to "hug" the right side of the roadway, but the only fact adduced was that, when available, Connor moved into right hand lanes. Note that the *Idaho Drivers Manual* (Pub. By The Idaho Transportation Department, Division of Motor Vehicles, Boise, Id, Feb. 2013), in chapter 2 "Traffic Laws" indicates "The law requires that we stay as far to the right side of the road as possible" at p. 2-5 and lists some exceptions. The Idaho Code "rules of the road" found in Chapter 6 of Title 49, encourage one to stay to the right (§49-630), and §49-637 discusses only changing lanes when it has been determined it is safe. It was late in the evening, and no evidence was adduced by the state that any other vehicle was affected by the lane change.

The Court was able to listen and reflect on the testimony, assess the officer's credibility, weigh that credibility and reasonable inferences, and in fact asked questions of its own. After this inquiry, there was substantial evidence upon which the court could make its findings. The District Court relied on "what the Court of Appeals characterized as abnormal driving behavior in *Atkinson*3 that what Officer Hoodman testified he observed cannot reasonably be considered to be with the range of normal driving behavior" (Memorandum Decision and Order, p.8) This is

3 reference to *State v. Atkinson*, 128 Idaho 559, 916 P.2d 1284 (Ct App. 1996)

merely an unwarranted substitution of the District Court's assessment for that of the trial court. As noted above. The characterization of the driving is based upon the Court's assessment of the officer's description, and is based upon his findings of fact, and inferences made there from and should not be disturbed, since it is based upon substantial evidence.

CONCLUSION

The ruling of the Magistrate, suppressing all evidence resulting from the seizure of Connor Spies, should be affirmed.

Respectfully submitted this 12 day of December, 2013.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of December, 2013, I caused two true and correct copies of the foregoing Brief of Respondent to be placed in the United States mail, postage prepaid, addressed to:

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