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10/11/2018 12:17 PM
Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45999**
Plaintiff-Appellant,	)	
	)	**Ada County Case No.**
v.	)	**CR01-2017-41881**
	)	
JENNIE LYNN PYLICAN,	)	
	)	
Defendant-Respondent.	)	
	)	

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 JONATHAN MEDEMA
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's order suppressing evidence. The state contends that information that Jennie Lynn Pylican entered and then left a fenced storage facility well after business hours created reasonable suspicion of criminal activity.

Statement Of The Facts And Course Of The Proceedings

Deputy Geisel was on patrol at around midnight when he saw a Mazda car approach the Trust Storage Facility. (3/21/18 Tr., p. 29, L. 13 – p. 35, L. 6.) The business hours of the storage facility were 8:00 a.m. to 10:00 p.m. (3/21/18 Tr., p. 24, L. 25 – p. 25, L. 24.) The entrance had a coded gate. (3/21/18 Tr., p. 25, L. 25 – p. 26, L. 8.) Deputy Geisel had driven past that facility after it was closed hundreds of times in the year that the facility had been in existence and had never seen anyone inside. (3/21/18 Tr., p. 24, L. 25 – p. 25, L. 14; p. 28, L. 8 – p. 29, L. 1.) He had seen people trying to access the facility after hours, but they had been unable to do so. (3/21/18 Tr., p. 29, Ls. 1-12.) The area around the storage facility is "probably one of our worst areas for vehicle thefts and residential thefts." (3/21/18 Tr., p. 39, Ls. 16-25.) Deputy Geisel testified that he would "[a]bsolutely" be concerned about the presence of people at a business after hours because it may involve theft or other criminal activity. (3/21/18 Tr., p. 27, L. 24 – p. 28, L. 7.)

Deputy Geisel drove toward the facility and saw the gate closing and the Mazda inside. (3/21/18 Tr., p. 36, L. 14 – p. 37, L. 3.) When he realized the car had entered the facility, Deputy Geisel called in backup. (3/21/18 Tr., p. 35, Ls. 2-6.) After backup arrived, about 15 minutes later, officers approached and saw a blue truck also inside the storage facility. (3/21/18 Tr., p. 38, L. 17 – p. 39, L. 14.) The officers intended to ask the people

what they were doing inside the storage facility after hours. (3/21/18 Tr., p. 39, Ls. 9-20.) When they got to the gate they saw people entering the Mazda car and the truck. (3/21/18 Tr., p. 40, Ls. 10-21.) The officers elected to get back in their police cars and follow the vehicles once they exited. (3/21/18 Tr., p. 40, L. 22 – p. 41, L. 12.) When the Mazda exited at about 12:30, Deputy Geisel followed it and stopped it. (3/21/18 Tr., p. 41, L. 13 – p. 43, L. 19.)

Jennie Pylican was the driver of the Mazda. (3/21/18 Tr., p. 43, L. 20 – p. 45, L. 5.) Deputy Geisel informed Pylican the reasons for the stop were a signal violation and for "being in the storage facility after hours." (3/21/18 Tr., p. 45, Ls. 6-14; see also 11/15/17 Tr., p. 7, Ls. 7-13.) In regard to the latter, Pylican asserted that she and her husband were "moving from one unit to another" and that they had entered the storage facility "prior to 10:00 p.m." and that, although she could not use the code to get in after hours, she was allowed to stay in the facility after closing as long as she entered before closing. (3/21/18 Tr., p.45, Ls. 15-21; p. 45, L. 25 – p. 46, L. 6; State's Exhibit 2 at 00:50-01:18.) Deputy Geisel did not believe her claim of having entered the storage facility before 10:00 p.m. because he witnessed her car enter at just before midnight. (3/21/18 Tr., p. 45, Ls. 22-24; p. 46, Ls. 7-9.)

Deputy Geisel had Pylican and her passenger step from the vehicle to investigate possible criminal activity at the storage facility. (3/21/18 Tr., p. 46, L. 21 – p. 48, L. 20.) While Deputy Geisel was doing this, another deputy conducted an open-air dog sniff around the car. (3/21/18 Tr., p. 47, Ls. 2-4; p. 48, Ls. 21-25.) The drug dog alerted on the car, and the officer found methamphetamine paraphernalia. (11/15/17 Tr., p. 31, L. 13 –

p. 32, L. 3.) The warrants check on Pylican's passenger also revealed a warrant for her arrest. (3/21/18 Tr., p. 49, Ls. 1-15.)

The state charged Pylican with possession of methamphetamine and possession of paraphernalia. (R., pp. 19-20.) She moved to suppress evidence, contending she was seized without legal justification. (R., pp. 26-38, 44-46.) The state objected to the motion, contending there was reasonable suspicion for the detention and that the discovery of the arrest warrant on the passenger would have inevitably extended the stop. (R., pp. 40-42.)

The district court granted the suppression motion. (R., p. 74.) The district court concluded that there was reasonable suspicion to stop Pylican for failing to signal but the officer lacked reasonable suspicion related to being in the storage facility after business hours. (3/22/18 Tr., p. 13, Ls. 1-10; p. 17, Ls. 16-20.) Therefore, the officer unreasonably extended the stop by investigating why Pylican was in the storage facility after hours in addition to the traffic offense. (3/22/18 Tr., p. 17, L. 20 – p. 18, L. 24.) The state filed a notice of appeal within 42 days of the filing of the order granting suppression. (R., pp. 77-79.)

ISSUES

1. Did the district court err when it concluded that Deputy Geisel lacked reasonable suspicion to investigate why Pylican entered a storage facility two hours after it closed?

2. Did the district court err in its alternate holding that Deputy Geisel unreasonably expanded the scope of the stop by having Pylican exit the car?

ARGUMENT

I.
Deputy Geisel Had Reasonable Suspicion To Investigate Why Pylican Entered A Storage Facility Two Hours After It Closed

A. Introduction

The district court concluded that Deputy Geisel lacked reasonable suspicion to investigate why Pylican entered a storage facility two hours after it closed. Application of the relevant law to the facts of this case shows the district court erred.

B. Standard Of Review

"Determinations of reasonable suspicion are reviewed de novo." State v. Morgan, 154 Idaho 109, 111, 294 P.3d 1121, 1123 (2013). "On review of a suppression motion ruling, this Court will accept the district court's findings unless they are clearly erroneous." State v. Danney, 153 Idaho 405, 410, 283 P.3d 722, 727 (2012).

C. Pylican's Entry Into And Presence At The Storage Facility Two Hours After It Closed Merited An Investigative Detention

"An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." United States v. Cortez, 449 U.S. 411, 417 (1981). "[T]he Fourth Amendment is satisfied if the officer's action is supported by reasonable suspicion to believe that criminal activity 'may be afoot.'" United States v. Arvizu, 534 U.S. 266, 273 (2002) (quoting United States v. Sokolow, 490 U.S. 1, 7 (1989)). The court must "look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." Id. (quoting Cortez, 449 U.S. at 417-18). "Although an officer's reliance on a mere 'hunch' is insufficient to justify a stop, the likelihood of criminal activity need

not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard." Id. (quoting Terry v. Ohio, 392 U.S. 1, 27 (1968)). "The Fourth Amendment requires some minimal level of objective justification for making the stop." Sokolow, 490 U.S. at 7. Furthermore, reasonable suspicion "need not rule out the possibility of innocent conduct." Arvizu, 534 U.S. at 277.

Here Deputy Geisel was working on far more than a "hunch." He witnessed enough to reasonably believe that Pylican had entered the storage facility at a time when she had no legitimate right to be there. The owners had taken steps to keep people out of the facility after 10:00, including posting the hours and coding the gate, but Pylican entered at about midnight. This raised the reasonable suspicion that she may be there for illegitimate, criminal reasons such as burglary or theft. Applying the law to the facts of this case shows that it was not only reasonable, but desirable, for Deputy Geisel to find out if Pylican's entry into a closed storage business was for criminal or legitimate purposes.

In holding to the contrary, the district court repeatedly emphasized that the evidence did not exclude innocent explanations of Pylican's conduct. (See, e.g., 3/22/18 Tr., p. 13, Ls. 11-25 (people stating gate codes did not work after hours "could certainly have been lying"); p. 14, Ls. 1-9 (court cannot conclude that being in storage facility after hours "necessarily means" Pylican lacked permission to be there); p. 14, Ls. 10-21 (sometimes businesses allow customers to stay after closing to finish business); p. 14, L. 22 – p. 15, L. 6 (one "reasonable conclusion" was that the blue truck "was in there before 10:00 o'clock and then simply allowed Ms. Pylican to access the facility" for legitimate reasons).) The district court's analysis of innocent explanations for Pylican's conduct was not consistent with applicable legal standards.

The district court next reasoned that the evidence was insufficient to show reasonable suspicion that any sort of theft may have been going on because there was no evidence the people inside two hours after closing "broke in" or were "moving anything from any storage units." (3/22/18 Tr., p. 15, L. 7 – p. 16, L. 15.) However, the district court's requirement of catching someone in the act of the suspected crime is also contrary to the applicable legal standard. In Terry v. Ohio, 392 U.S. 1, 27 (1968), an officer saw two men conferring on a street corner, then take turns walking up the street to a store 300 to 400 feet away and looking in a window before returning to the corner, something that both men did five or six times. Terry, 392 U.S. at 5-6. In addressing Terry the Court later stated:

> Even in *Terry,* the conduct justifying the stop was ambiguous and susceptible of an innocent explanation. The officer observed two individuals pacing back and forth in front of a store, peering into the window and periodically conferring. All of this conduct was by itself lawful, but it also suggested that the individuals were casing the store for a planned robbery. *Terry* recognized that the officers could detain the individuals to resolve the ambiguity.

Illinois v. Wardlow, 528 U.S. 119, 125 (2000) (citations omitted). That Deputy Geisel did not witness an actual crime does not show an absence of reasonable suspicion.

The presence of several people with two vehicles, including a truck, in a storage facility two hours after that business had closed, and when even a customer of the facility should not have been able to get access through the gate, provided reasonable suspicion that Pylican and the others may have been engaged in theft or burglary. That Pylican may not be engaged in such activities, but instead be a patron of the facility moving her own

property at midnight, two hours after the facility closed,[1] did not disprove reasonable suspicion. An investigative stop to ascertain the legitimacy and legality of their activity did not violate her rights against unreasonable seizure.

II.
Deputy Geisel Did Not Unreasonably Expand The Scope Of The Stop By Having Pylican Exit The Car

A. Introduction

The district court also suppressed on the basis that ordering Pylican out of the car was an "independent" constitutional violation. (3/22/18 Tr., p. 21, L. 10 – p. 28, L. 8.) This conclusion also is contrary to established applicable constitutional standards.

B. Standard Of Review

This Court reviews suppression motion orders with a bifurcated standard. State v. Wulff, 157 Idaho 416, 418, 337 P.3d 575, 577 (2014). When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are

[1] The district court also concluded that Deputy Geisel's disbelief of Pylican's statement about being in the storage facility before it closed, because he witnessed her enter about two hours after it closed, was unreasonable. (3/22/18 Tr., p. 19, L. 20 – p. 21, L. 9.) This conclusion is also not supported by the legal standards set forth above. After Pylican stated that she could not use her codes to access the facility after hours, Deputy Geisel asked, "How did you get in?" and Pylican responded, "We were there before ten." (State's Exhibit 2 at 00:50-01:18.) This statement is facially inconsistent with Deputy Geisel's observations of the Mazda entering the storage facility about two hours after closing. The district court merely assumes, without evidence, that Pylican was present before closing but then left and came back. While that is not impossible, the officer was under no obligation to reach the most innocent conclusion from the information he had, and the district court erred by doing so. It was reasonable for Deputy Geisel to conclude that Pylican was lying about when she entered the storage facility based on his observations. More importantly, it was reasonable for Deputy Geisel to continue his investigation into whether Pylican's explanation of her activities was true.

not clearly erroneous, but freely reviews the application of constitutional principles to those facts. Id.

C. An Order To Exit A Car During A Lawful Traffic Stop Does Not Violate The Fourth Amendment

"[O]nce a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." Pennsylvania v. Mimms, 434 U.S. 106, 111 n.6 (1977). See also Mincey v. Arizona, 437 U.S. 385, 406 (1978) ("In [Mimms] we held that once a motor vehicle had been lawfully detained for a traffic violation, police officers could constitutionally order the driver out of the vehicle."); Arizona v. Johnson, 555 U.S. 323, 331 (2009) (characterizing the quoted language above as the Court's holding). The officer may order the occupants from the car even without reasonable suspicion they pose a safety risk. Brendlin v. California, 551 U.S. 249, 258 (2007). See also New York v. Class, 475 U.S. 106, 115 (1986) (police may order occupants from a stopped vehicle "even though they lack any particularized reason for believing the driver possesses a weapon"). Indeed, an order to exit a lawfully stopped car may be issued "as a matter of course." Maryland v. Wilson, 519 U.S. 408, 410 (1997). Finally, the officer's subjective intentions in ordering the occupants from the car are irrelevant to this inquiry. Ohio v. Robinette, 519 U.S. 33, 38 (1996) (citing Whren v. United States, 517 U.S. 806, 813 (1996)).

The order to exit the Mazda did not violate the Fourth Amendment. Deputy Geisel did not need any particularized reason to believe that Pylican or her passenger posed a safety risk, but could issue the order as a matter of course. Thus, Deputy Geisel "was

objectively justified in asking [Pylican] to get out of the car, subjective thoughts notwithstanding." Robinette, 519 U.S. at 38.

The district court concluded that the Supreme Court of the United States upended all of the above decisions in Rodriguez v. United States, ___ U.S. ___, 135 S. Ct. 1609, 1615-16 (2015). (3/22/18 Tr., p. 21, L. 19 – p. 23, L. 16.) The district court's conclusion does not withstand scrutiny.

In Rodriguez, the lower court held that a delay of seven or eight minutes for the drug dog to arrive after the traffic stop was concluded was "an acceptable '*de minimis* intrusion on Rodriguez's personal liberty.'" Rodriguez, 135 S. Ct. at 1614 (quoting 741 F.3d 905, 908 (8th Cir. 2014)). In doing so, the lower court relied heavily on Mimms. Id. at 1615. "In *Mimms,* we reasoned that the government's 'legitimate and weighty' interest in officer safety outweighs the '*de minimis'* additional intrusion of requiring a driver, already lawfully stopped, to exit the vehicle." Id. at 1615 (citation omitted). The lower court wrongly concluded this analysis applied to a *de minimis* extension of the stop, however, as follows:

> Unlike a general interest in criminal enforcement, however, the government's officer safety interest stems from the mission of the stop itself. Traffic stops are "especially fraught with danger to police officers," *Johnson,* 555 U.S., at 330, 129 S.Ct. 781 (internal quotation marks omitted), so an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely. Cf. *United States v. Holt*, 264 F.3d 1215, 1221-1222 (C.A.10 2001) (en banc) (recognizing officer safety justification for criminal record and outstanding warrant checks), abrogated on other grounds as recognized in *United States v. Stewart*, 473 F.3d 1265, 1269 (C.A.10 2007). On-scene investigation into other crimes, however, detours from that mission. See *supra,* at 1615. *So too do safety precautions taken in order to facilitate such detours*. But cf. *post*, at 1624 – 1625 (ALITO, J., dissenting). Thus, even assuming that the imposition here was no more intrusive than the exit order in *Mimms,* the dog sniff could not be justified on the same basis. Highway and officer safety are interests

> different in kind from the Government's endeavor to detect crime in general or drug trafficking in particular.

Id. at 1616 (emphasis added[2]).

This language does not abrogate the standard, set forth above in cases spanning decades, that it does not violate the Fourth Amendment for an officer to order occupants from the car as a matter of course *during* an otherwise legal traffic stop, with or without suspicion of risk and regardless of the officer's subjective intent. Ordering Pylican and her passenger from the car *during the course* of the traffic stop (as opposed to after the purposes of the stop were concluded) was not objectively unreasonable. The presence and use of the drug dog did not render the deputy's actions unreasonable.

It is well established law that an officer can order an occupant from a stopped car. Deputy Geisel did not violate Pylican's rights by ordering her from the car during the course of the investigative detention.

[2] The highlighted sentence is directed at Justice Alito's dissent, in which he pointed out that the officer could have conducted the drug dog sniff prior to giving the verbal warning on the traffic infraction, but delayed doing so only so backup could arrive, which he argued was a constitutionally reasonable safety decision. Rodriguez, 135 S. Ct. at 1624-25. The highlighted sentence therefore stands only for the proposition that safety concerns did not justify holding Rodriguez past the issuance of the warning in order to conduct the dog sniff, and not a wide-spread repudiation of the holding of Mimms and the subsequent cases applying it.

CONCLUSION

The state respectfully requests this Court to reverse the district court's order granting suppression.

DATED this 11th day of October, 2018.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of October, 2018, served a true and correct copy of the foregoing BRIEF OF APPELLANT to the attorney listed below by means of iCourt File and Serve:

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KKJ/dd