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State v. Droogs Appellant's Brief Dckt. 45852

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 45852**
Plaintiff-Respondent,	)	
	)	**KOOTENAI COUNTY NO. CR-2017-**
v.	)	**1740**
	)	
STEVEN PATRICK DROOGS,	)	**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 RICH CHRISTENSEN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Steven Patrick Droogs appeals from his judgment of conviction for battery with the intent to commit a serious felony. First, he challenges the district court's decision to deny his motion to suppress evidence obtained during his illegal detention, flight, and attic stand-off. Mindful that Mr. Droogs sought to suppress evidence that was not derived from any exploitation of his unlawful detention, he contends that the district court erred by denying his motion. Second, he asserts that the district court abused its discretion by imposing an excessive sentence of sixteen years with six years fixed. This Court should vacate his judgment of conviction, reverse the order denying his motion to suppress, and remand for further proceedings. Alternatively, he asks the Court to reduce his sentence as it sees fit.

Statement of Facts and Course of Proceedings

Deputy Larsen stopped Mr. Droogs as he was walking down a rural road around 7 a.m. on a cold, February morning, purportedly to see if Mr. Droogs needed any help. (R., pp.202–03.) Mr. Droogs said he was fine and was just going to a friend's house to return a cell phone. (R., p.203.) Deputy Larsen persisted, offering to give Mr. Droogs a ride. (*Id.*) In response to the officer's prompts, Mr. Droogs gave Deputy Larsen a fake name and then submitted to a pat down search for weapons, which Deputy Larsen claimed was needed before he allowed Mr. Droogs in his car. (*Id.*) Just as Deputy Larsen started that pat down, Mr. Droogs ran away and went inside a nearby house. (R., pp.203–04.) Mr. Droogs hid in the attic and refused

officers' orders for him to come out. (Tr.,[1] p.63, L.17–p.67, L.10.) Eventually, Deputy Nelson and his police dog, which was sent in to attack Mr. Droogs, were able to subdue him. (Tr., p.67, L.17–p.70, L.1.) Officers removed Mr. Droogs from the house approximately three hours after the standoff began. (R., p.204.)

The State charged Mr. Droogs with misdemeanor providing false information to a law enforcement officer for giving Deputy Larsen the wrong name, and with misdemeanor obstructing an officer and felony battery on an officer related to his refusal to leave the attic. (R., pp.219–20.) It also alleged that he was a persistent violator. (R., pp.220–21.)

Mr. Droogs filed a motion to suppress all "statements, observations, evidence, information or any other fruits obtained as a result of [his] detention, arrest, search, seizure, and subsequent questioning." (R., pp.129–30.) Mr. Droogs argued that Deputy Larsen illegally detained him as he was walking down the road, and that although his flight was an intervening circumstance, "Deputy Larsen's misconduct was flagrant enough to warrant exclusion of evidence discovered as a result of the stop." (R., pp.145–51.) He also asserted that officers also unlawfully seized Mr. Droogs by deploying the police dog. (R., pp.151–56.) The State countered that Deputy Larsen was legitimately engaged in a community caretaking function and thus did not illegally detain Mr. Droogs, that Deputy Larsen had reasonable suspicion to detain Mr. Droogs after he ran away, and that the reasonableness of the officer's use of the police dog to subdue Mr. Droogs was not grounds for a motion to suppress. (R., pp.184–93.)

After a hearing, the court denied Mr. Droogs' motion. (R., pp.203–15.) The Court concluded that Deputy Larsen illegally detained Mr. Droogs "when he instructed him to come

[1] Unless otherwise indicated, citations to "Tr." refer to the electronic document containing transcripts of the October 30, 2017 motion to suppress hearing and the January 12, 2018 sentencing hearing.

over to his patrol car and put his hands behind his back so that the deputy could grab onto them while checking him for weapons." (R., p.210.) But the court also held that "once he fled he was no longer seized, but even if he was there is nothing to suppress." (*Id.* (citing *State v. Lusb*y, 146 Idaho 506, 509 (2008), for the proposition that "when a suspect responds to an unconstitutional search or seizure by a physical attack on the officer, evidence of this new crime is admissible notwithstanding the prior illegality").) The court first explained that "[i]t is for the moving party to identify evidence he or she requests the court to suppress—not for this Court to guess," and that the court was unable to identify any evidence to suppress. (R., pp.210–11.) Next, it said that "if Droogs attempted to stretch the exclusionary rule from the temporary seizure to his stand-off in the attic, the temporal proximity is too great with too many intervening circumstances between them." (R., p.214.) Finally, as for Mr. Droogs' argument that the officers used unreasonable force by deploying the police dog, the court concluded that was an issue for the jury to decide and thus was not properly raised in a motion to suppress. (R., p.215.)

Mr. Droogs later entered an *Alford* plea to battery with the intent to commit a serious felony, reserving his right to challenge the court's denial of his motion to suppress on appeal. (R., p.218; *see generally* 11/9/2017 Tr.) In exchange for his plea, the State agreed to recommend a sentence of ten years fixed, plus ten years indeterminate, to run concurrently to Mr. Droogs' sentence in an earlier case.[2] (11/9/2017 Tr., p.6, Ls.15–17.)

At sentencing, the State recommended a unified twenty year term, with ten years fixed, per the plea agreement. (Tr., p.88, L.22–p.89, L.1.) It justified that recommendation by pointing to the "scenario that led up to the actual battery," including "the conduct which essentially

[2] Mr. Droogs was on parole for involuntary manslaughter at the time of this offense. (PSI, pp.7–9.)

amounts to suicide by cop, the statements to Deputy Larsen about having a gun," the attic standoff itself, and Mr. Droogs' criminal history. (Tr., p.89, L.11–p.90, L.18.)

Defense counsel asked for a unified sentence of five years, with three years fixed. (Tr., p.94, L.23–p.95, L.1.) He told the court that Mr. Droogs was "not at all the person that I saw in the reports." (Tr., p.92, Ls.21–22.) He described Mr. Droogs as "very pleasant" and "very intelligent,' and said that he'd take a hundred clients like Mr. Droogs if he could. (Tr., p.92, L.22–p.93, L.7.) He explained that Mr. Droogs took responsibility for his actions, but also asked the court to recognize that none of this would have happened if Deputy Larsen hadn't unlawfully detained Mr. Droogs. (Tr., p.93, Ls.7–18.) Defense counsel also discussed the positive steps Mr. Droogs had taken since he was paroled, including moving away from bad influences in Lewiston and getting involved in Narcotics Anonymous. (Tr., p.93, L.20–p.94, L.6.)

After concluding that Mr. Droogs was a danger to society, the district court sentenced him to a unified term of sixteen years, with six years fixed. (Tr., p.98, L.23–p.100, L.23; R., pp.228–29.) Mr. Droogs timely appealed. (R., pp.230–32.)

ISSUES

I. Did the district court err by denying Mr. Droogs' motion to suppress?

II. Did the district court abuse its discretion when it sentenced Mr. Droogs to a unified term of sixteen years, with six years fixed, for battery with the intent to commit a serious felony?

ARGUMENT

I.

The District Court Erred By Denying Mr. Droogs' Motion To Suppress

The Fourth Amendment protects the people's right to be free from unreasonable searches and seizures. U.S. CONST., amend. IV; *see also* ID. CONST., art. I, § 17; *Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (the Fourth Amendment applies to the states through the Due Process Clause of the Fourteenth Amendment). Evidence that the State obtains in violation of these constitutional protections is generally excluded from a prosecution of the victim of the violation. *State v. Page*, 140 Idaho 841, 846 (2004); *Wong Sun v. United States*, 371 U.S. 471, 484–85 (1963). This rule applies to evidence obtained directly from the illegal government action and evidence discovered through the exploitation of the original illegality. *Page*, 140 Idaho 841, 846 (2004); *Wong Sun*, 371 U.S. at 484–85. The ultimate question is thus "whether the police acquired the evidence from 'exploitation of [the] illegality or instead by means sufficiently distinguishable to be purged of the primary taint.'" *State v. Bigham*, 141 Idaho 732, 734 (Ct. App. 2005) (quoting *United States v. Green*, 111 F.3d 515, 520 (7th Cir. 1997); *Wong Sun*, 371 U.S. at 488).

According to the attenuation doctrine, evidence is admissible "when the connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance, so that 'the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained.'" *State v. Cohagan*, 162 Idaho 717, 721 (2017) (quoting *Utah v. Strieff*, 136 S.Ct. 2056, 2061 (2016)). When determining whether unlawful conduct has been adequately attenuated, courts consider the totality of the circumstances, including "(1) the elapsed time between the misconduct and the acquisition of the evidence, (2) the occurrence of intervening circumstances, and (3) the

flagrancy and purpose of the improper law enforcement action." *Id.* at 771–72 (quoting *Page*, 140 Idaho at 846); *see also Brown v. Illinois*, 422 U.S. 590, 603–04 (1975).

"Our law requires citizens to endure even an unlawful arrest without resorting to force or self-help, on the ground that the indignity and inconvenience if the arrest turns out to be improper are less serious than the injuries engendered by encouraging citizens to make their own snap judgments and take the law into their own hands." *State v. Schrecengost*, 134 Idaho 547, 551 (Ct. App. 2000) (citing Wayne R. LaFave, 1 SEARCH AND SEIZURE § 1.13(a) (2d ed. 1987)); *see also Padilla v. State*, 161 Idaho 624, 627 (2016) (holding that the totality of the circumstances showed the officer had reasonable suspicion to detain Padilla because, when the officer saw Padilla walking down an alley at night, turned on his overhead lights, and got out of his patrol car, Padilla took off running between two houses). "It appears to be a nearly universal rule in American jurisdictions that when a suspect responds to an unconstitutional search or seizure by a physical attack on the officer, evidence of this new crime is admissible notwithstanding the prior illegality." *State v. Lusby*, 146 Idaho 506, 509 (Ct. App. 2008). "Because there has been no exploitation of the officer's unconstitutional conduct," in such a situation, "the purpose of the exclusionary rule—to deter police misconduct—would not be advanced by suppressing evidence" of the new crime. *Id.* at 510 (holding that "evidence of Lusby's alleged battery on an officer or other forceful resistance is not suppressible. The officers did not derive evidence of this new criminal conduct from any exploitation of the unlawful entry."); *see also State v. Deisz*, 145 Idaho 826, 831 (Ct. App. 2008) ("the causal connection between the allegedly unlawful police entry and the acquisition of the evidence of Deisz's violent attack which immediately followed that entry was broken, and the exclusionary rule does not require suppression of the evidence. A contrary ruling 'would effectively give the victim of

police misconduct carte blanche to respond with any means, however violent.'") (internal citation omitted).

The standard of review of a suppression motion is bifurcated. This Court accepts the trial court's findings of fact if they are supported by substantial evidence, but freely reviews the application of constitutional principles to the facts. *Page*, 140 Idaho at 843 (citing *State v. Holland*, 135 Idaho 159, 161 (2000)).

Mindful that Mr. Droogs sought to suppress evidence that was not derived from the exploitation of his unlawful detention, *see Wong Sun*, 371 U.S. at 484–85; *Cohagan*, 162 Idaho at 721; *Lusby*, 146 Idaho at 509; *Deisz*, 145 Idaho at 831; *Padilla*, 161 Idaho at 627, he nevertheless contends that the district court erred by denying his motion to suppress. As found by the district court, Deputy Larsen illegally detained Mr. Droogs "when he instructed him to come over to his patrol car and put his hands behind his back so that the deputy could grab onto them while checking him for weapons." (R., p.210.) And although Mr. Droogs' flight was an intervening circumstance, "Deputy Larsen's misconduct was flagrant enough to warrant exclusion of evidence discovered as a result of the stop." (R., pp.145–51.) Indeed, it was Deputy Larsen's decision to unlawfully detain Mr. Droogs which set off the chain of events leading to Mr. Droogs' arrest and prosecution. Therefore, the court should have suppressed all "statements, observations, evidence, information or any other fruits obtained as a result of the detention, arrest, search, seizure, and subsequent questioning" of Mr. Droogs. (R., pp.129–30.)

II.

The District Court Abused Its Discretion When It Sentenced Mr. Droogs To Sixteen Years, With Six Years Fixed, For Battery With The Intent To Commit A Serious Felony

When a defendant challenges his sentence as excessively harsh, this Court will conduct an independent review of the record, taking into account "the nature of the offense, the character of the offender, and the protection of the public interest." *State v. Miller*, 151 Idaho 828, 834 (2011). The Court reviews the district court's sentencing decision for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable, and thus excessive, "under any reasonable view of the facts." *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). "A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution." *Miller*, 151 Idaho at 834.

Mr. Droogs' sentence is excessive in light of the mitigating evidence in this case. First, Mr. Droogs' background, including his upbringing, substance use, and criminal history, sheds light on this offense. His parents were "raging alcoholics" and drug users. (PSI, p.9.) Growing up in that environment, Mr. Droogs became a user himself. (PSI, pp.12–13.) He first used marijuana at just four years of age, and started using harder drugs as a teenager. (*Id.*)

Mr. Droogs brings with him a handful of felony offenses and roughly twenty years of incarceration. (PSI, pp.5–9, Tr., p.91, L.14–p.92, L.9.) He was on parole for an involuntary manslaughter charge for killing a friend of his in Lewiston when this offense took place. (PSI, p.7.) Recognizing the toll his past criminal actions have taken on both his life and the lives of others, Mr. Droogs wants to keep on the straight and narrow. (PSI, p.14.)

Mr. Droogs got drug treatment during his last period of incarceration, but relapsed when he was released and moved back to Lewiston, where he was confronted with constant reminders

of having killed his friend and also with old friends who were themselves users. (PSI, pp.8–9, 13.) Mr. Droogs acknowledges that his drug use is a problem in his life, he wants to stop using drugs, and he wants to take advantage of drug treatment. (PSI, p.13.)

Next, Mr. Droogs' accountability and remorse stands in mitigation. As he told the court at sentencing:

> Your Honor, I could have handled myself considerably better that day. I know that I made some really dumb absent-minded decisions, and there's no excuses for it. I don't try to pretend to make excuses for me. I wish I would have acted in a more mature manner.
>
> There's things that I don't agree with what was said and what was, but the facts are that I acted in a manner that wasn't productive and wasn't, you know, wasn't—I wasn't mature, let me just put it way, and I value maturity. And I apologize. If I had done anything to harm anybody or put anybody at risk, then I apologize. I never meant, when I started that day off, to put anybody in a bad spot.

(Tr., p.97, L.15–p.98, L.3.)

Finally, Mr. Droogs' motivation to become a productive, law-abiding member of society and his goals for the future favor a lower sentence. He told the presentence investigator,

> I have spent a great deal of time pondering all the possibilities that could still "be" with the remainder of my life. What I've come to understand and know is I am not a complete waist [sic]. The ironic aspect is I had spend [sic] a great deal of my life apon waisting [sic] time on lost causes that have proven harmful to others as well to myself. I am begging the courts to see through my shortcomings and help me rather than throw me away.

(PSI, p.14.) Similarly, he told the court at sentencing,

> I just implore, please, that I'm—my life isn't a waste. It isn't. I'm intelligent enough to make better decisions. And if you gave me the opportunity, I know I would do the right thing.

(Tr., p.98, Ls.4–7.) Mr. Droogs told the presentence investigator that he wants to figure out how to be productive and free in society, and that spending so much time in prison, as well as relapses and old associates and environments, have hampered his ability to reach his goals. (PSI, p.14.)

He knows that, to be successful out in society, he will need, "[e]mployment, housing, a solid support system, [and] someone to help me navigate the world of today verses yesterdays." (*Id.*) He also readily acknowledges that he doesn't have all of the answers—he is open to learning whatever might be helpful to him in the future. (*Id.*) He just knows he doesn't want to continue to make the same mistakes, and does not want to spend "all of [his] middle age years incarcerated." (*Id.*) In light of these mitigating factors, Mr. Droogs' sentence of sixteen years, with six years fixed, for battery with the intent to commit a serious felony was excessive.

CONCLUSION

Mr. Droogs respectfully asks that this Court vacate his judgement of conviction, reverse the order denying his motion to suppress, and remand his case for further proceedings. Alternatively, he requests that the Court reduce his sentence as it deems appropriate.

DATED this 10th day of January, 2019.

/s/ Maya P. Waldron
MAYA P. WALDRON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of January, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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/s/ Evan A. Smith
EVAN A. SMITH
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MPW/eas