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State v. Anderson Appellant's Brief Dckt. 45863

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 45863**
Plaintiff-Respondent,	)	
	)	**KOOTENAI COUNTY**
v.	)	**NO. CR-2017-13367**
	)	
BRANDON LEE ANDERSON,	)	
	)	
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 LANSING L. HAYNES
District Judge

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

ANDREA W. REYNOLDS
Deputy State Appellate Public Defender
I.S.B. #9525
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

ATTORNEYS FOR DEFENDANT-APPELLANT

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEY FOR PLAINTIFF-RESPONDENT

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STATEMENT OF THE CASE

Nature of the Case

Brandon L. Anderson appeals from his judgment of conviction, challenging the district court's denial of his motion to suppress. The district court erred in concluding the officer who observed Mr. Anderson walking after midnight in a suburban neighborhood wearing all black had reasonable and articulable suspicious of criminal activity. While the district court praised the officer's "good police work," detaining a citizen based on a hunch is not good police work.

Statement of Facts and Course of Proceedings

Just after midnight on July 23, 2017, Officer Ballman was on routine patrol in the Dalton Gardens area in Kootenai County, Idaho. (11/17/17 Tr., p.26, Ls.9-23.) Officer Ballman saw Mr. Anderson "wearing all black" walking on the side of the road, and suspected he was going to commit a burglary, or was "possibly scoping houses for burglary in the future." (11/7/17 Tr., p.7, Ls.2-17, p.15, Ls.7-10.) The officer turned his patrol car around, and Mr. Anderson walked up to the front door of a house. (11/17/17 Tr., p.26, L.24 – p.27, L.2-7.) The officer pulled into the driveway and contacted Mr. Anderson. (11/17/17 Tr., p.8, Ls.4-8.) The officer testified at the suppression hearing that he found the circumstances suspicious because Mr. Anderson "was in a semi-affluent neighborhood in the middle of [the] night approaching darked out houses wearing all black." (11/17/17 Tr., p.10, Ls.21-25.)

The officer asked Mr. Anderson if he lived there, and Mr. Anderson did not answer at first, but then said he was going to ask for some water. (11/17/17 Tr., p.27, Ls.8-13.) As found by the district court, Mr. Anderson "[m]ay have said something about, well, I know somebody a few houses away and maybe I was going to get some water from them." (11/17/17 Tr., p.27, Ls.13-15.) The officer "called Mr. Anderson over to him and asked him his name" and "[m]ay

have told him to stand by the patrol car." (11/17/17 Tr., p.27, Ls.17-19.) Mr. Anderson provided his brother's name to the officer. Another officer arrived on scene, told Mr. Anderson he was under arrest for outstanding warrants, and Mr. Anderson "made a run for it and was seized." (11/17/17 Tr., p.12, Ls.13-23; p.27, Ls.23-25.) A glass pipe was found during a search of Mr. Anderson's pockets, and the pipe later tested positive for marijuana. (12/5/17 Tr., p.142, Ls.4-13, p.167, Ls.18-22.)

Mr. Anderson was charged by Information with two counts of battery on an officer, providing false information to police, delaying an officer, possession of a controlled substance, possession of drug paraphernalia, and attempted unlawful entry. (Vol. I R., pp.64-67.) He was not charged with any counts relating to Officer Ballman's suspicion that he was going to commit a burglary. He was not found to be in possession of any burglary tools or stolen items.

Mr. Anderson filed a motion to dismiss the charge of providing false information to police, arguing he could not have committed that crime as set forth at Idaho Code § 18-5413 when he provided false information to Officer Ballman because the officer was not investigating a criminal offense at the time. (Vol. I R., pp.86-89.) Mr. Anderson filed a motion to suppress all evidence against him under the United States and Idaho Constitutions arguing he was detained absent reasonable suspicion of criminal activity. (Vol. I R., pp.82-85, 90-91.)

The district court held a hearing on Mr. Anderson's motions, and heard testimony from Officer Ballman. (11/17/17 Tr., p.6, L.10 – p.18, L.17.) The district court also considered the transcript of the preliminary hearing. (*See* 11/17/17 Tr., p.19, Ls.15-18; Motion to Augment, Ex. A.)[1] The district court granted Mr. Anderson's motion to dismiss finding the officer "was not

[1] The Clerk's Record does not include a copy of the transcript of the preliminary hearing, held on August 4, 2017. Mr. Anderson is filing a Motion to Augment simultaneously with the filing of this brief in order to include a copy of the preliminary hearing transcript in the Record.

investigating the commission of an attempted burglary" when Mr. Anderson provided false information. (11/17/17 Tr., p.29, Ls.10-23; R., pp.106-07.)

The district court denied Mr. Anderson's motion to suppress. (R., pp.106-07.) The district court found Mr. Anderson was detained, but concluded the detention was lawful because the officer had reasonable and articulable suspicion of criminal activity. (11/17/17 Tr., p.30, Ls.21-23.) The district court found it suspicious that "Mr. Anderson left the roadway and walked up to a darkened house with no porch light in the middle of the night after a police car had turned around." (11/17/17 Tr., p.30, Ls.1-8.) The district court found the suspicion was "heightened" when Mr. Anderson said he was going to ask the homeowner for water. (11/17/17 Tr., p.30, Ls.9-16.) The district court also found, however, "There's absolutely no evidence of an attempted burglary having been committed or being in the commission of it." (11/7/17 Tr., p.29, Ls.16-18.)

Prior to trial, Mr. Anderson pled guilty to the charge of attempted unlawful entry. (*See* Vol. I R., pp.129, 170; 12/4/17 Tr., p.25, L.9 – p.31, L.9.) The remaining charges were then tried to a jury. (Vol. I R., pp.171-85.) Mr. Anderson's boss testified he frequently picked Mr. Anderson up for work at a location very near the house where he was arrested, as Mr. Anderson had friends in that area. (12/5/17 Tr., p.170, L.14 – p.171, L.6, p.175, Ls.12-14.)

The jury found Mr. Anderson guilty on both counts of battery, delaying, possession of a controlled substance, and possession of paraphernalia. (Vol. II R., pp.1-2.) On the felony offenses, the district court sentenced Mr. Anderson to two unified terms of seven years, with two years fixed, to be served concurrently, and retained jurisdiction. (Vol. II R., pp.19-21; 2/1/18 Tr., p.23, L.24 – p.24, L.3.) On the misdemeanors, the district court sentenced Mr. Anderson to 180 days in jail, with credit for time served. (Vol. II R., p.18; 2/1/18 Tr., p.24, Ls.4-8.) The

judgments of conviction were entered on February 2, 2018. (Vol. II R., pp.18-21.) Mr. Anderson filed a timely notice of appeal on February 15, 2018. (Vol. II R., pp.25-28.) The district court placed Mr. Anderson on probation following a rider review hearing on September 19, 2018. (Motion to Augment, Ex. B.)[2]

[2] The Clerk's Record does not contain a copy of the district court's Judgment on Retained Jurisdiction, filed September 26, 2018, which reflects that Mr. Anderson was placed on probation on September 19, 2018. Mr. Anderson is filing a Motion to Augment simultaneously with the filing of this brief in order to include a copy of the judgment in the Record.

ISSUE

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

ARGUMENT

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

A. Introduction

The district court concluded Officer Ballman detained Mr. Anderson before he learned there were warrants out for Mr. Anderson's arrest, but the detention was lawful because the officer had reasonable and articulable suspicion of criminal activity, praising the officer's "absolutely good police work." Officer Ballman detained Mr. Anderson based on a hunch. This was not good police work. The fact that Officer Ballman ultimately learned there were warrants out for Mr. Anderson's arrest does not make his initial detention of Mr. Anderson lawful. When Office Ballman detained Mr. Anderson, he did not have reasonable articulable suspicion that Mr. Anderson had committed or was about to commit a crime. The district court erred in denying Mr. Anderson's motion to suppress.

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. Officer Ballman Detained Mr. Anderson Absent Reasonable Suspicion Of Criminal Activity

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. U.S. Const., amend. IV. Limited investigatory detentions based on less than probable cause are permissible "when justified by an officer's reasonable articulable suspicion that a person has committed, or is about to commit, a crime." *State v. Bishop*, 146 Idaho 804, 811 (2009) (citation omitted).

Here, the district court concluded Mr. Anderson was detained within the meaning of the Fourth Amendment when Officer Ballman said, "Well, come on over here and let me ask you your name and ask some questions." (11/17/17 Tr., p.30, Ls.18-21.) The district court concluded the detention was lawful because the officer had reasonable and articulable suspicion of criminal activity. (11/17/17 Tr., p.30, Ls.21-23.) The district court found it suspicious that "Mr. Anderson left the roadway and walked up to a darkened house with no porch light in the middle of the night after a police car had turned around." (11/17/17 Tr., p.30, Ls.1-8.) The district court found the suspicion was "heightened" when Mr. Anderson said he was going to ask the homeowner for water. (11/17/17 Tr., p.30, Ls.9-16.) The district court erred.

"Reasonable suspicion must be based on specific, articulable facts and the rational inferences that can be drawn from those facts." *Bishop*, 146 Idaho at 811 (citations omitted). While the quantity and quality of information necessary to establish reasonable suspicion is less than that necessary to establish probable cause, "reasonable suspicion requires more than a mere hunch or inchoate and unparticularized suspicion." *Id.* (quotation marks and citation omitted); *see also State v. Neal*, 159 Idaho 919, __, 367 P.3d 1231, 1237 (Ct. App. 2016) (recognizing "a hunch is not sufficient to meet the stringent requirements of the Fourth Amendment").

Here, Officer Ballman had only a hunch that Mr. Anderson might have been involved in criminal conduct when he observed him walking on the side of the road "wearing all black." (11/7/17 Tr., p.7, Ls.2-17.) Mr. Anderson walked up to the front door of a house after the officer turned his patrol car around. (11/17/17 Tr., p.26, L.24 – p.27, L.7, p.8, Ls.4-8.) The officer asked Mr. Anderson if he lived at the house, and Mr. Anderson did not answer at first, but then said he was going to ask for some water. (11/17/17 Tr., p.27, Ls.8-13.)

Officer Ballman testified at the suppression hearing that he suspected Mr. Anderson was going to commit a burglary or scope a house out for a future burglary. (11/17/17 Tr., p.15, Ls.2-10.) He said he found the circumstances suspicious because Mr. Anderson "was in a semi-affluent neighborhood in the middle of [the] night approaching darked out houses wearing all black." (11/17/17 Tr., p.10, Ls.21-25.)

The fact that Mr. Anderson was walking after midnight in a suburban neighborhood wearing all black, and approached a house when followed by a police car, does not create reasonable and articulable suspicion of criminal activity. Mr. Anderson did not have a backpack, and was not carrying a bag or anything else in his hands. (11/7/17 Tr., p.7, Ls.8-12.) Officer Ballman was not investigating a particular home burglary. He testified that home burglaries were "constantly occurring," but acknowledged he was not aware of any recent burglaries having been committed in the area. (11/7/17 Tr., p.12, Ls.4-7, p.17, L.25 – p.18, L.9.)

This case differs significantly from previous cases in which our Supreme Court and Court of Appeals have found reasonable suspicion of criminal activity sufficient to support a detention for a burglary investigation. In *State v. Rawlings*, 121 Idaho 930 (1992), the Idaho Supreme Court considered a case where officers had responded to a reported burglary of a business in the early morning. *Id.* at 931. When police arrived at the business, they saw signs of forced entry and

believed the perpetrator might still be on the premises. *Id.* at 932-33. They then saw the defendant—the only person in the area—walking a short distance away, and stopped him for questioning. *Id.* at 933. The Supreme Court found the detention was supported by reasonable suspicion of criminal activity. *Id.* In *State v. Robertson*, 134 Idaho 180 (Ct. App. 2000), the Court of Appeals considered a case where an officer had responded to a nighttime report that a security alarm had sounded at a business which the officer knew had previously been burglarized. *Id.* at 183. The officer observed the defendant—the only person in the area—about 100 to 125 feet from the business, and detained him for questioning. *Id.* The Court concluded the seizure was lawful. *Id.* at 185.

In the present case, the district court specifically found that Officer Ballman was not investigating an attempted burglary, but was merely questioning "a suspicious guy in the middle of the night." (11/7/17 Tr., p.29, Ls.10-16.) The district court said, "There's absolutely no evidence of an attempted burglary having been committed or being in the commission of it." (11/7/17 Tr., p.29, Ls.16-18.) This finding cannot be reconciled with the district court's conclusion that Mr. Anderson's detention was lawful. Officer Ballman did not have reasonable and articulable suspicion of criminal activity before he learned there were outstanding warrants for Mr. Anderson, and his detention of Mr. Anderson thus violated his rights under the Fourth Amendment. The district court should have granted Mr. Anderson's motion to suppress.

CONCLUSION

Mr. Anderson 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 31st day of January, 2019.

/s/ Andrea W. Reynolds
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of January, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

AWR/eas