3-25-2015

State v. Meyer Appellant's Brief Dckt. 42699

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff/Respondent, v. KARLIE LYNN MEYER Defendant/Appellant.	)	APPELLANT'S BRIEF SUPREME COURT NO. 42699 CR-14-00004335

APPELLANT'S BRIEF

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

HONORABLE LANSING HAYNES
District Judge

JOHN M. ADAMS
Kootenai County Public Defender

JAY LOGSDON
Deputy Public Defender
400 Northwest Blvd.
P.O. Box 9000
Coeur d'Alene, ID 83816

ATTORNEY FOR APPELLANT

LAWRENCE G. WASDEN
Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010

ATTORNEY FOR RESPONDENT

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STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from a withheld judgment after a conditional plea. The defendant had argued at a Motion to Suppress that the deputy that had stopped her vehicle lacked both the proper training to recognize the violation claimed to form the basis for the stop, and the equipment to investigate and prove his suspicions. The District Court denied the Motion. The defendant would then enter a conditional plea to the charge of Possession of a Schedule II Controlled Substance to wit: Methamphetamine. The Court entered a withheld judgment. The defendant timely appealed from the withheld judgment.

B. Course of Proceedings & Statement of Facts

Deputy Edmunds of the Kootenai County Sheriff's Department stopped the defendant on March 11, 2014 at approximately 7:30 PM. Tr. p. 4, L. 16-22. On August 11, 2014, the District Court took evidence and heard argument on the defendant's Motion to Suppress. Tr. p. 1.

The State offered the testimony of Deputy Edmunds, who testified to pulling the defendant over for having a muffler that sounded unusually loud based on his experience. Tr. p. 5, L. 5-12. The deputy clarified that at a distance of approximately 200 feet, the vehicle seemed louder than other cars on the street, though he could not describe how much louder, other than it drew his attention while having a conversation with another deputy. Tr. p. 5, L. 11-12, p. 6, L. 1-4. The deputy testified further that on a scale of noise quietest to loudest, he would put the vehicle at a five or six. Tr. p. 6, L. 12-15. He testified that his wife owned a later edition of the

same model car, somewhere between a 1997 to a 2001 edition, ten years ago, and that his wife's car had been quieter than the defendant's. Tr. p. 6, L. 20-25, p. 7, L. 1-7.

On cross-examination, the deputy testified that the defendant owned a 1993 edition Pontiac Sunfire. Tr. p. 13, L. 21-24. The deputy had no experience with that edition. Tr. p. 13, L. 25, p. 14, L. 1-2. The deputy testified that he had no training as a mechanic. Tr. p. 14, L. 3-4. He testified that his experience with automobiles came from buying them from craigslist and tinkering with them. Tr. p. 14, L. 5-9. He testified that after pulling over the defendant's vehicle he could not see anything wrong with her exhaust. Tr. p. 14, L. 14-16. The deputy did not and does not carry a no. 1551 sound level meter or any other tool that can measure decibel levels as part of his duties. Tr. p. 14, L. 17-23. The deputy had no training to discern noise level. Tr. p. 14, L. 24-25, p. 15, L. 1.

The defense called Christopher Foster. Tr. p. 20, L. 10. Mr. Foster testified to having worked on the defendant's exhaust in January or February of 2014. Tr. p. 23, L. 10-20. He testified that prior to his work on the car it was at about a nine or ten on the sound scale and a four when he was finished. Tr. p. 22, L. 13-24.

The Court eventually denied the Motion to Suppress, holding:

> THE COURT: ...whether there was a reasonable and articuable suspicion that criminal activity was afoot or a traffic infraction was being committed at the time of the stop. The defense argument as I have heard it today is that without a device to measure the actual decibel level of the engine sound or the sound produced by a faulty muffler or exhaust system, it is unreasonable for law enforcement to stop a motorist on the suspicion of a muffler or exhaust sound violation.

The Court is not adopting the argument offered by the defense today that the Court believes that this particular decibel level articulated in the statute is a decibel level required to convict a person or to have a person found guilty of the traffic infraction. It isn't the decibel level that would prohibit a stop for what the officer believes to be a loud exhaust or muffler.

This Court accepts the testimony of Mr. Foster today that he tried to correct that problem. But whether it was corrected from an unbelievably loud muffler or exhaust system down to a fairly loud muffler or exhaust system, the Court has no way of determining.

The Court knows that the deputy found it was louder that most cars' mufflers and so he was going to stop – and so there were reasons to stop that vehicle. It could be to check out whether there is a defective equipment problem, to advise the motorist that there is possibly a problem with the motor or exhaust system, or to just look into the matter a little bit more.

The Court finds that to be a reasonable basis on which law enforcement can stop a motorist. And, therefore, this stop or this detention was based on a reasonable and articuable suspicion that a traffic infraction or equipment violation was in existence on that vehicle.

Tr. p. 37, L. 11-25, p. 38, L. 1-23.

On September 18, 2014, the Court took a conditional plea from the defendant. The state dismissed all counts but the Possession of a Controlled Substance to which the defendant pled guilty. On November 5, 2014, the Court entered a withheld judgment in the case

The defendant timely appealed from the District Court's withheld judgment.

ISSUES ON APPEAL

I. Whether the deputy had sufficient training and experience to have reasonable and articuable suspicion that the defendant's exhaust was too loud or that her muffler was defective.

II. Whether law enforcement may perform a traffic stop where they lack the necessary equipment to investigate the infraction or crime they suspect is ongoing.

ARGUMENT

I.

A. Introduction

The District Court erred in denying the defendant's Motion to Suppress. The Court held that an officer may make a stop of a vehicle purely on the basis that the officer subjectively believes its exhaust is louder than other cars on the road. This holding is contrary to authorities that require that the suspicion of ongoing criminal conduct be reasonable before law enforcement may seize citizens. Further, as law enforcement in this case had no way of investigating his suspicion, the seizure he performed was objectively unreasonable as it served no purpose. Because no other basis for the stop of the defendant's car was provided by the state, the Motion to Suppress should have been granted.

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 the facts as found. *State v. Atkinson*, 128 Idaho 559, 561 (Ct.App.1996). 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. Valdez–Molina*, 127 Idaho 102, 106 (1995); *State v. Schevers*, 132 Idaho 786, 789 (Ct.App.1999).

This Court exercises free review over the application and construction of statutes. *State v. Reyes*, 139 Idaho 502, 505 (Ct.App.2003).

C. The officer lacked the requisite training have reasonable suspicion that the defendant's muffler was not working properly or that her exhuast was too loud in violation of I.C. § 49-937.

The Fourth Amendment to the United States Constitution guarantees every citizen the right to be free from unreasonable searches and seizures. *State v. Ramirez,* 145 Idaho 886, 888 (Ct.App. 2008); *State v. Salois,* 144 Idaho 344, 347 (Ct.App. 2007); *State v. Cerino,* 141 Idaho 736, 737 (Ct.App. 2005). Its purpose is "to impose a standard of 'reasonableness' upon the exercise of discretion by government officials, including law enforcement agents, in order to 'safeguard the privacy and security of individuals against arbitrary invasions.' " *Delaware v. Prouse,* 440 U.S. 648, 653-54 (1979) *quoting Marshall v. Barlows, Inc.,* 436 U.S. 307, 312 (1978).

The stop of a vehicle constitutes a seizure of its occupants and is therefore subject to Fourth Amendment restraints. *Prouse*, 440 U.S. at 653; *Ramirez,* 145 Idaho at 888; *State v. Aguirre*, 141 Idaho 560, 562 (Ct. App. 2005); *State v. Roark,* 140 Idaho 868, 870 (Ct.App.2004). Although a vehicle stop is limited in magnitude compared to other types of seizures, it is nonetheless a "constitutionally cognizable" intrusion and therefore may not be conducted "at the unbridled discretion of law enforcement officials." *State v. Grantham*, 146 Idaho 490, 496 (Ct. App. 2008) *quoting Prouse,* 440 U.S. at 661.

In the case before the Court Deputy Edmunds claims that he witnessed a violation I.C. § 49-937. The statute states:

> (1) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke, and no person shall use a muffler cut-out, bypass, or similar

device upon a motor vehicle on a highway. When any motor vehicle was originally equipped with a noise suppressing system or when any motor vehicle is required by law or regulation of this state or the federal government to have a noise suppressing system, that system shall be maintained in good working order. No person shall disconnect any part of that system except temporarily in order to make repairs, replacements or adjustments, and no person shall modify or alter that system or its operation in any manner, except to conform to the manufacturer's specifications. No person shall knowingly operate and no owner shall knowingly cause or permit to be operated any motor vehicle originally equipped or required by any law or regulation of the state or the federal government to be equipped with a noise suppressing system while any part of that system is disconnected or while that system or its operation is modified or altered in any manner, except to conform to the manufacturer's specifications.

(2) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

(3) No person shall modify the exhaust system of a motor vehicle or a motorcycle in a manner which will amplify or increase the noise of the vehicle or motorcycle above that emitted by the muffler originally installed on the vehicle by the manufacturer.

(4) A showing that the sound made by a passenger motor vehicle or motorcycle exceeds the maximum allowable decibel level shall be prima facie evidence of a violation of subsection (1) of this section.

(5) No person shall sell, offer for sale, or install any noise suppressing system or device which will produce excessive or unusual noise.

Excessive or unusual noise is defined by I.C. § 49-106 as:

(7) "Excessive" or "unusual noise" means any sound made by a passenger motor vehicle or a motorcycle at any time under any condition of grade, speed, acceleration or deceleration, which exceeds ninety-two (92) decibels, or any lower decibel level that is fixed by law or rules adopted by the board of health and welfare, on the "A" scale of a general radio company No. 1551-B sound level meter, or equivalent, stationed at a distance of not less than twenty (20) feet to the side of a vehicle or motorcycle as the vehicle or motorcycle passes the soundmeter or is stationed not less than twenty (20) feet from a stationary motor or engine.

In *State v. Shearer*, 136 Idaho 217, 219-221 (2001), the Idaho Supreme Court upheld the

statute against a vagueness challenge by finding that unusual and excessive noise means 92 decibels and that a noise could be either excessive or that the noise suppression system itself could have been modified to differ from the manufacturer's specifications and violate the law without any inconsistency. *See, also*, *State v. Medel*, 139 Idaho 498, 502 (2003).

Thus, the deputy in this matter should have been providing the court with objective facts supporting his suspicion that the defendant's exhaust created more that 92 decibels of sound if one was listening from 20 feet away or more, or that her muffler had been modified in some way. The deputy instead testified that the car was louder than others on the road based on his experience as a patrol deputy. Tr. p. 5, L. 11-12, p. 6, L. 1-4. He was unable to provide expert testimony on sound, mufflers, or even a measuring device for decibel levels. Tr. p. 14, L. 17-25, p. 15, L. 1. His department does not issue him any such device or provide him with such training. *Id.*

Comparatively, in cases involving visual estimation of a car's speed officers generally testify to having received training. *See, e.g.*, *State v. Estes*, 148 Idaho 345 (Ct.App. 2009); *Ferguson v. State*, 587 S.E.2d 195, 196 (Ga.App.2003); *State v. Kincaid*, 796 N.E.2d 89, 95 (County Ct.Ohio 2003); *State v. Ali*, 679 N.W.2d 359 (Minn.Ct.App.2004); *People v. Olsen*, 239 N.E.2d 354 (N.Y.1968). In spite of this and existence of various jurisdictions that allow for conviction on the basis of such testimony alone, the Court of Appeals held visual speed estimation *could not* prove speeding beyond a reasonable doubt in *Estes*. The Court held:

> Although the officer implied that he met a certification standard requiring that he be able to make estimations falling within 5 miles per hour of the actual speed, he did not testify as to the required accuracy rate. That is, he did not disclose whether certification required that he be able to meet that 5–mile–per–hour variance standard 65 percent of the time or 99 percent of the time, nor what his actual rate

> was. An accuracy frequency approaching 100 percent would give far greater support to a finding of guilt beyond a reasonable doubt than would a substantially lower accuracy rate. Here, the trial evidence is void of any information at all on the officer's accuracy rate. In addition, the State produced no evidence of the distance between the officer's location and Estes' vehicle when the officer made his estimation, the angle of his view, or how long he observed the vehicle before reaching his conclusion. We do not hold, as some courts apparently have, that an officer's estimate can never be sufficient to prove a speeding infraction. We hold only that on this evidentiary record, and given that the difference between the estimated speed and the speed limit in this case was not great, the State failed to prove beyond a reasonable doubt that Estes' vehicle was travelling above the speed limit.

Estes, 148 Idaho at 348-49. This matter involves the aural detection of a modified or defective muffler and is therefore analogous to the ocular estimation of speed as both involve reliance upon unaided human senses to detect law violations. The court's holding in *Estes* therefore would imply that the deputy in this matter could not have proven the existence of an infraction. But in this case, unless Estes, the officer at least had some training and understanding on estimating speeds. In this case, the deputy had essentially no training or any way to know if there was a law violation beyond his hunch. Suspicion cannot be called reasonable and articuable if the officer does not even understand the *sine qua non* of the offense.

i. <u>The community caretaking function cannot be the basis for the stop in this matter.</u>

The District Court also indicated that regardless of the statute, the officer might have made the stop simply on the basis of the fact that the vehicle's exhaust was louder than other vehicles and thus something was wrong. Tr. p. 37, L. 11-25. The District Court therefore held that the stop was allowable under the community caretaking function exception to the Fourth Amendment. However, the community caretaking function is inapplicable in this matter.

> In analyzing community caretaking function cases, Idaho has adopted a totality of the circumstances test. The constitutional standard is whether the intrusive action

> of the police was reasonable in view of all the surrounding circumstances. Reasonableness is determined by balancing the public need and interest furthered by the police conduct against the degree and nature of the intrusion upon the privacy of the citizen. In order for the community caretaking function analysis to apply, an officer must possess a subjective belief that an individual is in need of immediate assistance, although the officer may harbor at least an expectation of detecting or finding evidence of a crime.

State v. Schmidt, 137 Idaho 301, 303-04 (Ct.App.2002) *citing State v. Wixom*, 130 Idaho 752, 754 (1997). *State v. Godwin*, 121 Idaho 491, 495 (1992); *In re Clayton*, 113 Idaho 817, 818 (1988); *State v. Deccio*, 136 Idaho 442, 445 (Ct.App.2001).

In this case it is impossible for the community caretaking function to provide a basis for the stop because the deputy cannot have thought the defendant in need of assistance without having thought she was in violation of the law. I.C. § 49-937 and I.C. § 49-106 essentially define a "defective" muffler. What the District Court held assumes that the defendant might have required assistance despite not having a muffler in violation of the law. The community caretaking function is not a tool for allowing officers to act on hunches. There would be no purpose in having laws incorporate an objective standard so that citizens can act in accord with the law if officers may seize a citizen on the basis of wanting to assist them. *See H & V Engineering v. Board of Professional Engineers*, 113 Idaho 646 (1987); *Parker v. Levy,* 417 U.S. 733, 755 (1974); *Keyishian v. Board of Regents*, 385 U.S. 589 (1967); *Winters v. New York*, 333 U.S. 507 (1948). If the caretaking function is not intended to swallow the Fourth Amendment whole, then it cannot be the basis for the stop in this matter. Moreover, as a muffler is not even required for a vehicle to work, it is impossible for a muffler to create a situation involving a person that requires "immediate" assistance. Karim Nice, *How Mufflers Work*, HowStuffWorks (2015) available at http://auto.howstuffworks.com/muffler.htm (last visited March 16, 2015).

The District Court also relied on I.C. § 49-902 to justify the stop in this matter. However, I.C. § 49-902 is not intended to allow every car to be pulled over that differs from the norm or even appears to be in less than good shape. It is only to require that the vehicles being driven on the road are safe. I.C. § 49-902 ("It shall be unlawful for any person to drive, or move, or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in an *unsafe* condition as to endanger any person..." [emphasis added]). It is absurd to believe that the deputy in this case, who testified to not being a mechanic, was intending to somehow assist the driver of the car he pulled over. If the vehicle was louder than usual, presumably the driver knew it. Nothing about a loud exhaust endangers the safety of other human beings. The law is entirely intended to protect the public from disturbing noises. Therefore, I.C. 49-902 cannot be a basis for the stop in this case.

D. A stop is objectively unreasonable if the officer has no way of investigating or proving the existence of a criminal violation.

In *Commonwealth v. Baez*, 710 N.E.2d 1048 (Ct.App.Mass.1999), the Court of Appeals of Massachusetts upheld a stop for an unlawfully tinted window. The Court found:

> We think the standard to be used in determining the legality of a stop based on a suspected violation of c. 90, § 9D, is whether the officer reasonably suspected, based on his visual observations, that the tinting of the windows exceeded the permissible limits of § 9D. Here, the trooper testified that he was familiar with the state law concerning tinted windows, that he was in possession of a device to measure levels of transparency and that, while on highway patrol, his attention was drawn to the defendant's car because its side windows appeared to the trooper to be (and, as later measured, were) darker than the legal limit. He drove his cruiser next to the defendant's car in order to get a better look at the windows. He concluded, based on his experience, that the window tint exceeded the permissible limit and ordered the car over. In such circumstances, the stop was reasonable and warranted.

Id. at 1051 *citing People v. Niebauer*, 214 Cal.App.3d 1278, 263 Cal.Rptr. 287 (1989). The differences between the officer in *Baez* and the deputy in this case reveal the problem with the District Court's holding. The officer in *Baez* had the prerequisite training, tools, and experience to articulate why he was suspicious that an infraction existed. The deputy in this case had none of those things. He was simply acting on a hunch garnered by the shared experience of motorists that some older cars are louder than others. That alone is not a violation of I.C. § 49-937.

This Court must also decide if the Fourth Amendment and Section 17 consider seizures "reasonable" where law enforcement had no way of investigating its hunch or proving the infraction to any court's satisfaction. The *Terry* stop, as it now commonly known, is an investigative stop. *See* 392 U.S. 1 (1968). The Supreme Court has never held that an officer can seize a person for a crime he knows he cannot prove. A stop for a possible ordinance violation that requires certain equipment to investigate cannot be reasonable where law enforcement lacks that equipment.

A court must look to the totality of the circumstances known to the officer and decide, objectively, if the stop was motivated by reasonable and articuable suspicion that a crime had occurred, is ongoing, or will occur, and the need to investigate. *See Whren v. U.S.*, 517 U.S. 806, 817 (1996) ("It is of course true that in principle every Fourth Amendment case, since it turns upon a "reasonableness" determination, involves a balancing of all relevant factors.") That was not the case here.

This Court should note that this interpretation of the protections of the Fourth Amendment is not related to the concerns discussed in *Whren*. In *Whren*, the Supreme Court

assessed the ability of courts to look at the subjective motivations of officers, and whether certain actions deviated from "general police practices." *Id.* at 814-15. This case is not about Deputy Edmunds' motivation; on the contrary, he may very well have been motivated by the sound of the muffler. Further, the general practice of the officers is of no concern here- it would appear that in general they do not carry devices capable of measuring decibel levels. The issue is whether officers may stop a vehicle without the ability to investigate the suspected infraction, or the training to have more than a hunch that the infraction has occurred, such that the stop serves no purpose.

A contrary answer would allow law enforcement to pull over cars at will, claiming speeding, tinted windows, or overly loud mufflers with no proof but their testimony of their own personal peccadilloes. The need for pointless stops is clearly outweighed by a citizen's interest in being left alone. The Supreme Court has described the interest of private citizens in not being stopped by the police:

> We cannot assume that the physical and psychological intrusion visited upon the occupants of a vehicle by a random stop to check documents is of any less moment than that occasioned by a stop by border agents on roving patrol. Both of these stops generally entail law enforcement officers signaling a moving automobile to pull over to the side of the roadway, by means of a possibly unsettling show of authority. Both interfere with freedom of movement, are inconvenient, and consume time. Both may create substantial anxiety. For Fourth Amendment purposes, we also see insufficient resemblance between sporadic and random stops of individual vehicles making their way through city traffic and those stops occasioned by roadblocks where all vehicles are brought to a halt or to a near halt, and all are subjected to a show of the police power of the community.

Prouse, 440 U.S. at 657.

If the police wish to enforce I.C. § 49-937 or 902, then they need to carry the proper equipment and be trained to determine whether a violation has occurred. The law is not some

vague command allowing the police to seize and ticket the owners of mufflers that the individual officer finds strange or offensive.

CONCLUSION

The stop in this case was made without reasonable and articuable suspicion of a law violation and the evidence and statements collected as a consequence of this violation of the Fourth Amendment and Article I § 17 should have been suppressed. This Court should reverse the ruling of the District Court and remand the case with instructions to grant the Motion to Suppress.

DATED this 19 day of March, 2015.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY: _____
JAY LOGSDON, ISB 8759
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that I have this 23 day of March, 2015, served a true and correct copy of the attached BRIEF SUPPORTING APPEAL via interoffice mail or as otherwise indicated upon the parties as follows:

X	Lawrence G. Wasden Attorney General P.O. Box 83720 Boise, Idaho 83720-0010	[X] First Class Mail [ ] Certified Mail [ ] Facsimile (208) 854-8071
X	Stephen W Kenyon Clerk of the Courts Idaho Supreme Court of Appeals P.O. Box 83720 Boise, ID 83720-0101	[X] First Class Mail