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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
) **No. 46158-2018**
)
) **Plaintiff-Respondent,**)
) **Twin Falls County Case No.**
) **CR42-2017-13157**
)
) **v.**)
)
) **BERNARDINO JOSE AVORAN DURAN,**)
)
) **Defendant-Appellant.**)
)
)
)
)
)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF TWIN FALLS**

**HONORABLE THOMAS J. RYAN
District Judge**

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STATEMENT OF THE CASE

Nature Of The Case

Bernardino Jose Avoran Duran appeals from the judgment of the district court entered upon his guilty plea to possession of methamphetamine and possession of marijuana. On appeal Duran argues the district court erred when it denied his motion to suppress.

Statement Of The Facts And Course Of The Proceedings

During the early morning hours of December 26, 2017 Officer Guzman was patrolling a known “high crime” and “high drug” area in an unmarked police car. (3/12/18 Tr., p. 12, L. 18 – p. 16, L. 23.) It was dark and snowy. (Id.) Officer Guzman was driving through the alleyways towards an apartment complex, known to be involved in drug trafficking, when he observed a man, later identified as Duran, who was looking at another police vehicle that had just passed by. (Id.) Duran looked over his right shoulder and then crossed the road, walking a bicycle. (Id.) Officer Guzman turned his rear emergency lights on for safety, got out of his vehicle and approached Duran on foot. (3/12/18 Tr., p. 16, L. 17 – p. 18, L. 15.)

Officer Guzman noticed that Duran appeared unable to control his hands and hold still. (3/12/18 Tr., p. 17, Ls. 3-23; see also Ex. 1¹ at 0:30 to 2:00.) The officer knew from his training that people who are under the influence of methamphetamine are unable to control small hand movements. (Id.) When Officer Guzman approached Duran he asked

¹ A recording of Officer Guzman’s body camera was admitted into evidence and played on the record. (3/12/18 Tr., p. 14, L. 7 – p. 16, L. 15, p. 20, Ls. 12-18; Ex. 1.) The exhibit identification designation is provided in the court minutes. (See R., pp. 40-42.)

him what he was up to and where he lived. (See Ex. 1 at 0:30 to 1:30.) Officer Guzman also asked Duran if he was alright because Duran appeared to have a hard time staying still. (*Id.*) Officer Guzman asked if he could see Duran’s identification, and Duran provided it. (See Ex. 1 at 1:30 to 4:05.) Officer Guzman ran Duran’s identification through dispatch. (See *id.*) Even though he claimed to be cold, Duran removed his hood and gloves during his conversation with Officer Guzman. (See Ex. 1 at 1:55 to 2:43.)

Duran admitted he had been in prison for “essentially murder”², and he had been in trouble for marijuana before, and had done methamphetamine three months ago. (Ex. 1 at 3:16 to 4:10.) Officer Guzman asked if he could pat Duran down because Duran seemed “awfully twitchy.” (Ex. 1 at 4:05 to 5:00.) Duran then said he had a knife and reached into his pocket. (*Id.*) Duran gave Officer Guzman permission to search him and to reach into his pockets. (*Id.*)

Officer Guzman asked Duran why he twitched so much and Duran said that he does a lot of “meth” and it’s just a “habit.” (Ex. 1 at 4:59 to 5:04.) Officer Guzman found a methamphetamine pipe and Duran admitted he had two methamphetamine pipes and that he also had marijuana in his wallet. (See Ex. 1 at 4:05 to 5:52.) Officer Guzman read Duran the Miranda³ warnings and placed Duran under arrest. (See *id.*)

The state charged Duran with possession of methamphetamine and possession of marijuana. (R., pp. 21-23.) Duran filed a motion to suppress. (R., pp. 32-39.) The district court held a hearing on the motion to suppress. (R., pp. 40-41.) The district court

² Duran is slurring his words and speaking rapidly and is difficult to understand at times, and Duran’s explanation of why he went to prison is not entirely clear.

³ Miranda v. Arizona, 384 U.S. 436 (1966).

denied the motion on the grounds that Officer Guzman developed reasonable articulable suspicion to detain Duran. (3/12/18 Tr., p. 37, L. 7 – p. 39, L. 17.)

Duran entered a conditional guilty plea to both charges and reserved the right to appeal the order denying the motion to suppress. (R., pp. 56-58.) The district court entered judgment and sentenced Duran to five years with two years fixed. (R., pp. 62-64.) The district court retained jurisdiction. (Id.) Duran timely appealed. (R., pp. 72-75.)

ISSUE

Duran states the issue on appeal as:

Did the district court err when it denied Mr. Duran's motion to suppress?

(Appellant's brief, p. 7.)

The state rephrases the issue as:

Has Duran failed to show the district court erred when it denied his motion to suppress?

ARGUMENT

The District Court Properly Denied Duran's Motion To Suppress

A. Introduction

Based upon the totality of the circumstances, including Duran's exhibition of symptoms related to being under the influence of methamphetamine, Officer Guzman had reasonable articulable suspicion to temporarily detain Duran to investigate. On appeal, Duran argues that the district court erred because the retention of Duran's license was a detention and Officer Guzman did not have reasonable articulable suspicion to support a detention (See Appellant's brief, pp. 10-12.) Duran's argument fails. The district court properly considered the applicable law and facts. The district court correctly determined that, based upon the totality of the circumstances, Officer Guzman had reasonable articulable suspicion to temporarily detain Duran.

B. Standard Of Review

The appellate court reviews the denial of a motion to suppress using a bifurcated standard. State v. Linze, 161 Idaho 605, 607, 389 P.3d 150, 152 (2016) (citing State v. Purdum, 147 Idaho 206, 207, 207 P.3d 182, 183 (2009)). The appellate court will accept the trial court's findings of fact unless they are clearly erroneous. Id. (citing Purdum, 147 Idaho at 207, 207 P.3d at 183). However, the appellate court freely reviews the trial court's application of constitutional principles in light of the facts found. Id. (citing Purdum, 147 Idaho at 207, 207 P.3d at 183).

The power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences at a suppression hearing, is vested in the trial court.

See State v. Valdez-Molina, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); State v. Schevers, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

C. Duran Has Failed To Show The District Court Erred When It Determined That, Based Upon The Totality Of The Circumstances, Officer Guzman Had Reasonable Articulate Suspicion To Temporarily Detain Duran

After taking evidence and reviewing Officer Guzman’s body camera footage, the district court found that the “investigatory detention was based on specific articulable facts and rational inferences that can be drawn from these facts.” (3/12/18 Tr., p. 37, L. 7 – p. 39, L. 17.) The district court found that Officer Guzman was in a “high crime and a high drug area” after 1:00 a.m. and “Mr. Duran was exhibiting behavior which in the officer’s opinion at that time and that place and based on his training and experience and other knowledge might indicate that the defendant was under the influence of drugs.” (Id.)

On appeal, Duran argues that a limited detention occurred when Officer Guzman took and retained Duran’s identification to perform a warrants check. (See Appellant’s brief, pp. 10-12.) Duran “submits” that, under the totality of the circumstances, Officer Guzman did not have reasonable, articulable suspicion that Duran had committed or was about to commit a crime. (See id.) Duran has failed to show the district court erred. By the time Officer Guzman retained Duran’s driver’s license, Officer Guzman had developed reasonable articulable suspicion, based on the totality of the circumstances, that Duran had committed or was going to commit a crime. Officer Guzman had reasonable suspicion that Duran was involved in drug crime.

Pursuant to the Fourth Amendment of the United States Constitution “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Const. amend. IV. A police officer may detain a person for the purpose of investigating possible criminal behavior “if there is an articulable suspicion that the person has committed or is about to commit a crime.” State v. Wright, 134 Idaho 73, 76, 996 P.2d 292, 295 (2000) (quoting State v. Rawlings, 121 Idaho 930, 932, 829 P.2d 520, 522 (1992)). Such a detention “is permissible if it is based upon specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity.” State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003) (citing Terry v. Ohio, 392 U.S. 1, 21 (1968); United States v. Cortez, 449 U.S. 411, 417 (1981)).

“Investigatory detentions 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. Fairchild, ___ Idaho ___, 429 P.3d 877, 883 (Ct. App. 2018) (citing State v. Morgan, 154 Idaho 109, 112, 294 P.3d 1121, 1124 (2013)). “Reasonable suspicion must be based on specific, articulable facts and the rational inferences that can be drawn from those facts. Reasonable suspicion requires more than a mere hunch or inchoate and unparticularized suspicion.” Id. (quoting Morgan, 154 Idaho at 112, 294 P.3d at 1124). “The reasonableness of the suspicion must be evaluated upon the totality of the circumstances at the time of the stop.” Id. (citing State v. Ferreira, 133 Idaho 474, 483, 988 P.2d 700, 709 (Ct. App. 1999)). Reasonable suspicion “requires less than probable cause but more than mere speculation or instinct on the part of the officer.” Id. (citing Ferreira, 133 Idaho at 483, 988 P.2d at 709). “An officer may draw reasonable inferences

from the facts in his or her possession, and those inferences may be drawn from the officer's experience and law enforcement training." Id. (citing State v. Montague, 114 Idaho 319, 321, 756 P.2d 1083, 1085 (Ct. App. 1988)). "A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct." Id. (quoting United States v. Arvizu, 534 U.S. 266, 277 (2002)).

"Due weight must be given to the reasonable inference that a law enforcement officer is entitled to draw from the facts in light of his experience." State v. Nevarez, 147 Idaho 470, 210 P.3d 578 (Ct. App. 2009) (citing Terry, 392 U.S. at 27). "The assessment of reasonable suspicion 'must be based on common sense judgments and inferences about human behavior.'" Id. (citing Illinois v. Wardlow, 528 U.S. 119, 125 (2000)). "Nervous, evasive behavior is a pertinent factor that may contribute to reasonable suspicion." Id. (citing Wardlow, 528 U.S. at 124).

The district court found that Officer Guzman observed that Duran was exhibiting behaviors that Officer Guzman knew from his training and experience could be an indication that Duran was under the influence of drugs. (3/12/18 Tr., p. 37, L. 7 – p. 39, L. 17.) The reasonable articulable suspicion was further supported by the fact that the encounter occurred after 1:00 a.m. in a high crime and drug area. (Id.)

THE COURT: All right, the court finds that the investigatory detention was based on specific articulable facts and rational inferences that can be drawn from these facts.

Now the reason I say it is this: Officer Guzman testified that he's been a police officer for, at that point, some three years. That he had been through the POST academy, that he had taken two different courses, that he had been trained on drug detection to see when somebody's been under the influence of drugs and also on DUI. He took a DUI class, I think it was ARID, and the drug training that he received was called Operation Rush.

He was a Twin Falls police officer who had specific, articulable facts to know that this was both a high crime and a high drug area. He knew that there was -- the officer knew that in the apartment complex where the defendant appeared to be coming away from that there had been search warrants issued for apartments in that complex, given the hour, the fact that it was after 1 a.m. in the morning, it was based on the totality of the circumstances.

The officer was suspicious that the suspect, or the defendant now, was under the influence of drugs or perhaps was possessing drugs, both of which would constitute a crime.

The officer was not suspicious that the defendant, Mr. Duran, was violating a law that requires him to have a light on his bicycle. He testified today that he still even today doesn't recall whether or not there was a light attached to his bike.

But under the totality of the circumstances I find that it was -- the detention was an investigatory detention that was based upon specific articulable facts and rational inferences drawn from those facts.

The most recent case that we've discussed on the record here this morning is the Fairchild case, which simply reiterates the existing law that a determination that reasonable suspicion exists need not rule out the possibility of innocent conduct.

The conduct that the court observed on Exhibit No. 1, the first tape that was played, showed that Mr. Duran was exhibiting behavior which in the officer's opinion at that time and that place and based on his training and experience and other knowledge might indicate that the defendant was under the influence of drugs. So the initial investigatory stop, which I believe did ripen into a detention, but, again, the detention was based on reasonable articulable facts, was not based on a mere hunch.

From my observation of Mr. Duran's behavior on the video it's true that the behavior that he was exhibiting could have been innocent, but on the other hand, it might not have been innocent.

As I saw Mr. Duran's behavior, he was doing things like pulling off his gloves and blowing on his hands to warm them up, but he was also engaging in hand movements which the officer said that he knew from his training and experience might be an indication that he was under the influence of drugs.

So, anyway, I find that the motion to suppress is denied and for the reasons that I've stated.

(3/12/18 Tr., p. 37, L. 7 – p. 39, L. 16.)

Here, the limited detention occurred when Officer Guzman retained Duran's driver's license to run Duran's name for warrants. A "limited detention does occur when an officer retains a driver's license or other paper work of value." State v. Page, 140 Idaho 841, 103 P.3d 454 (2004) (citing State v. Godwin, 121 Idaho 491, 493, 826 P.2d 452, 454 (1992); State v. Martinez, 136 Idaho 436, 439, 34 P.3d 1119, 1122 (Ct. App. 2001)). However, the detention in this case was justified because, based upon the totality of the circumstances, Officer Guzman had reasonable articulable suspicion that Duran was involved in drug crime. (3/12/18 Tr., p. 37, L. 7 – p. 39, L. 17.)

Duran appeared unable to control his hand movements, appeared very fidgety and displayed signs of methamphetamine use. (3/12/18 Tr., p. 17, Ls. 3-23; see also Ex. 1 at 0:30 to 2:00.) Even though he claimed to be cold, Duran removed his hood and gloves during his conversation with Officer Guzman. (See Ex. 1 at 1:55 to 2:43.) Physical manifestations of potential illegal drug use supports a finding of reasonable suspicion of illegal drug activity. For example, in State v. Perez-Jungo, 156 Idaho 609, 616, 329 P.3d 391, 398 (Ct. App. 2014), the Idaho Court of Appeals held that the officer had reasonable suspicion of potential illegal activity to detain the defendant where 1) the defendant was parked in a remote area late at night; 2) the defendant had bloodshot and glassy eyes; and 3) the defendant had a statuette associated with drug trafficking in his car. Id. As noted by the court, "[i]ndeed, few additional facts are needed beyond bloodshot and glassy eyes to provide reasonable suspicion of impaired driving or illegal drug activity." Id. (citing

State v. Grigg, 149 Idaho 361, 364, 233 P.3d 1283, 1286 (Ct. App. 2010)). Like in Perez-Jungo, Officer Guzman observed that Duran exhibited physical manifestations of potential illegal drug activity. Officer Guzman testified, and his testimony is supported by the video evidence, that Duran appeared unable to control his hand movements and exhibited the signs of potential methamphetamine use.

Duran was also in a known “high drug and high crime” area after 1:00 a.m. on a cold and snowy night. (3/12/18 Tr., p. 12, L. 18 – p. 16, L. 23.) By itself, mere presence in a “high crime area” is not enough to support a reasonable articulable suspicion of criminal activity. See State v. Zuniga, 143 Idaho 431, 435, 146 P.3d 697, 701 (Ct. App. 2006). However, “officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation.” Wardlow, 528 U.S. at 124. A stop that occurs in a “high crime area” is a relevant contextual consideration for a Terry stop. Id. (citing Adams v. Williams, 407 U.S. 143, 144 (1972)); see also State v. McAfee, 116 Idaho 1007, 1010, 783 P.2d 874, 877 (Ct. App. 1989) (unusual activities at unusual areas in high crime areas may contribute to establish reasonable articulable suspicion). Duran’s presence in a high crime, high drug area at 1:00 a.m. on a cold and snowy night is not illegal nor does it, by itself, provide reasonable suspicion of criminal activity. However, it is a relevant consideration. The district court did not err by considering these factors.

In his brief, Duran cites to State v. Bishop, 146 Idaho 804, 811, 203 P.3d 1203, 1210 (2009), and State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). (Appellant’s brief, pp. 11-12.) Neither Bishop nor Sheldon impact the outcome of this case. In Bishop, the Idaho Supreme Court determined that an informant’s tip that the

defendant attempted to sell him methamphetamine provided reasonable suspicion for the investigatory detention. See Bishop, 146 Idaho at 813-815, 203 P.3d at 1212-1214. In Sheldon, the Idaho Court of Appeals held that an officer did not unlawfully extend a traffic stop because the officer had reasonable suspicion to investigate whether the defendant was involved in illegal drugs. See Sheldon, 139 Idaho at 984-985, 88 P.3d at 1224-1225. Duran has failed to show the district court erred. Officer Guzman had reasonable articulable suspicion, based upon the totality of the circumstances, that Duran was potentially involved in drug crime. Thus the temporary detention to run Duran's identification was lawful. The district court did not err.

CONCLUSION

The state respectfully requests this Court affirm the judgment of the district court.

DATED this 22nd day of April, 2019.

/s/ Ted S. Tollefson
TED S. TOLLEFSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of April, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Ted S. Tollefson
TED S. TOLLEFSON
Deputy Attorney General

TST/dd