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State v. Hays Appellant's Reply Brief Dckt. 40999

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	No. 40999
Plaintiff-Appellant,)	
)	Bonner Co. Case No.
vs.)	CR-2012-5115
)	
DORIS NEPA HAYS,)	
)	
Defendant-Respondent.)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

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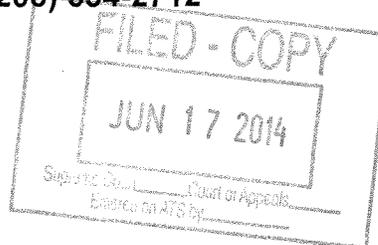


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ARGUMENT

The District Court Erred When It Granted Hays' Suppression Motion On The Erroneous Legal Theory That An Officer Unlawfully Extends A Traffic Stop By Filling Out A Citation While Another Officer Investigates A Possible Drug Crime

A. Introduction

Officer Koch pulled over Hays for speeding. (R., pp.142, 148.) Hays produced her driver's license and registration but failed to present proof of valid insurance. (R., pp.142-43.) Due to Hays' nervousness, trembling, and dilated pupils, Officer Koch took fifteen seconds and contacted Deputy Osborn, a drug dog handler, and then ran Hays' information through dispatch. (R., pp.143, 151.) While Officer Koch wrote out a citation for Hays' failure to have proof of valid insurance, Deputy Osborn arrived and contacted Hays. (R., pp.143-44.) During their conversation, before Officer Koch finished writing and delivering the citation, Hays handed a baggie of marijuana to Deputy Osborn. (R., p.145; Tr., p.31, L.8 – p.33, L.5.) Deputy Osborn ran his drug dog around Hays' car and it alerted. (Tr., p.56, Ls.2-22; p.62, Ls.1-7.) During the subsequent search of Hays' car, officers found methamphetamine. (Tr., p.42, Ls.11-22.)

Hays moved to suppress the methamphetamine, arguing, among other things, that her detention was illegally extended. (R., pp.99-100, 112-30.) The district court agreed, determining that Deputy Osborn's questioning Hays while Officer Koch finished writing her citation illegally extended her detention and that Officer Koch should have delivered the citation before, factually, any such citation could have existed. (R., pp.151-52.)

The state appealed, arguing that the Court of Appeals' decision in State v. Parkinson, 135 Idaho 357, 17 P.3d 301 (Ct. App. 2000), controlled the outcome of this

case and that the district court erred by not applying the correct legal standards to the facts. (Appellant's brief, pp.9-15.) In response, Hays contends that Parkinson is distinguishable from her case and asserts that whether a traffic stop was extended is a question of fact. (Respondent's brief, pp.4-9.) Hays' arguments fail. First, Parkinson is on all fours with this case. Second, while the duration of a traffic stop may be a question of fact, the *lawfulness* of that duration is, in fact, a question of law. The district court should be reversed.

B. A Traffic Stop Is Not Extended When One Officer Asks A Driver Questions About Drugs While Another Finishes Writing Out The Traffic Citation

After a hearing on Hays' suppression motion, the district court made the correct legal conclusion that detaining Hays was reasonable based on her speeding. (R., p.148.) The district court then went on to determine, however, that Hays' detention was impermissibly extended when Deputy Osborn arrived on scene with his drug dog to question Hays regarding drugs and perform an open air sniff outside Hays' vehicle while Officer Koch continued to write out Hays' citation. (R., pp.151-52.) The district court's ruling directly contradicts the holding of the Court of Appeals in Parkinson.

In this case, as in Parkinson, the defendant was pulled over for speeding. (Compare R., pp.142, 148 with Parkinson, 135 Idaho at 359, 17 P.3d at 303.) In each case, the defendant failed to produce proof of valid insurance. (Compare R., pp.142-43 with Parkinson, 135 Idaho at 359, 17 P.3d at 303.) In both cases, the officer who pulled over the defendant took her information back to his patrol vehicle, contacted dispatch to check the status of the driver's license, and began to write out a citation for not having proof of valid insurance. (Compare R., p.143 with Parkinson, 135 Idaho at 359, 17 P.3d

at 303.) As the first officer wrote out the citation, a second officer arrived on scene with a drug dog; after briefly conferring with the first officer, the second “contacted [the defendant] and asked her a series of questions” regarding drugs and other contraband. (Compare R., pp.143-44 with Parkinson, 135 Idaho at 359, 17 P.3d at 303.) The second officer eventually ran his drug dog around the vehicle, and the drug dog alerted. (Compare R., p.146 and Tr., p.56, Ls.2-22; p.62, Ls.1-7 with Parkinson, 135 Idaho at 359-60, 17 P.3d at 303-04.) In both cases, the officers found methamphetamine during a subsequent search of the vehicle in question. (Compare Tr., p.42, Ls.11-42 with Parkinson, 135 Idaho at 360, 17 P.3d at 304.)

Similar to this case, in Parkinson the district court suppressed the drug evidence on the basis that the second officer’s questioning and running the drug dog around the vehicle violated the defendant’s Fourth Amendment rights. Parkinson, 135 Idaho at 361, 17 P.3d at 305. In Parkinson, the Court of Appeals reversed, holding that it is permissible for one officer to question a vehicle’s driver about drugs and weapons and to take a drug dog around the vehicle while another officer is busy checking with dispatch on the driver’s status and writing out a traffic citation. Id. at 362-63, 17 P.3d at 306-07. The same result should apply to this case, and the district court should therefore be reversed.

On appeal, Hays attempts to distinguish Parkinson. (Respondent’s brief, p.7.) Her attempts are unavailing. The only distinguishing feature between this case and Parkinson is that in Parkinson the Court correctly held that it was permissible for one officer to ask unrelated questions about drugs while another officer was busy writing out a traffic citation, whereas the district court in this case concluded that it was not. On the

basis of that erroneous legal conclusion, the district court's order granting Hays' suppression motion should be reversed and this case remanded.

Hays also asserts that "the question of whether or not an officer's actions extended the length of a traffic stop is a factual question." (Respondent's brief, p.6.) As recognized by the case Hays cites for this proposition, the relevant question is in fact whether a traffic stop has been *unlawfully* extended. State v. Ramirez, 145 Idaho 886, 891, 187 P.3d 1261, 1266 (Ct. App. 2008). The state submits that whether an officer's actions *unlawfully* extend a traffic stop involves at least some legal question.

Hays further asserts that "[t]he district court *specifically* found that Officer Koch had completed his citation before Ms. Hays's [sic] turned over the bag of marijuana." (Respondent's brief, p.6 (emphasis original).) The district court made no such finding. Rather, the court specifically found that the officer "wait[ed] in his car until 13:31 minutes into the stop—after Hays has handed the marijuana to Osborn—to exit his vehicle. The citation is finally delivered to Hays at 14:51 minutes into the stop...." (R., p.151.) As is clear from the transcript, Officer Koch had not finished writing out the citation before Hays voluntarily relinquished her marijuana. (Tr., p.32, L.16 – p.33, L.6.) As is clear from the district court's factual findings, Officer Koch had not delivered the traffic citation to Hays until more than two minutes after Hays relinquished the marijuana. (R., pp.145, 151.) Deputy Osborn's unrelated drug investigation, therefore, did not extend the initial purpose of the stop—writing and delivering the citation for lack of insurance.

Ultimately, Hays' argument is that Officer Koch took too long to write out Hays' citation. This belief is not supported by the facts found by the district court. Officer Koch radioed dispatch to check if Hays' license was valid. (R., p.143.) At 6:49 minutes

into the traffic stop, he ended his transmission and, at that point, “had all the information he needed and began to write the citation.” (Id.) At 11:30 minutes, Officer Koch had reached “just about at the very bottom of the citation, filling out the court date.” (R., p.144.) Within forty-three seconds, Hays handed Deputy Osborn her baggie of marijuana. (R., p.145.) At 13:31 minutes, after Hays handed out the marijuana and supplied the officers with probable cause to investigate other crimes, Officer Koch exited his car and approached Hays with citation in hand. (R., p.145.) In less than five and a half minutes from the moment Officer Koch concluded with dispatch and *could* begin writing the traffic citation, Hays had already handed over her marijuana. In less than seven minutes Officer Koch was approaching Hays with a completed citation, in a traffic stop that took less than 15 minutes between the initial stop and the ultimate citation. That is hardly an unusual amount of time for a traffic stop.

But even if it were a lengthy detention, that still would not show that Officer Koch had unlawfully extended Hays’ detention. Officer Koch began writing the traffic citation as soon as he finished speaking with dispatch. (Tr., p.21, L.25 – p.22, L.6.) There was no delay; in fact Officer Koch was “approximately midway through the citation,” filling out the vehicle information, before Deputy Osborn arrived. (Tr., p.28, Ls.12-16.) After Deputy Osborn arrived, Officer Koch gave him his “P.C. for the stop” (Tr., p.28, L.20 – p.29, L.3.), and then continued filling out the citation. While Deputy Osborn spoke to Hays, Officer Koch determined and filled in Hays’ court date, indicated on the citation that he had served the citation on Hays, indicated the date he served the citation, indicated his officer identification number, indicated on Hays’ copy of the citation that her infraction was for not having insurance, covered the misdemeanor portion of the

citation with the clerk of court decal, tore out Hays' copy of the citation, and gathered her license and registration so he could return them when he physically served the citation (Tr., p.30, L.20 – p.32, L.2); all the while explaining to his ride along what was happening (see Tr., p.33, Ls.19-22). Furthermore, prior to Deputy Osborn's arrival, Officer Koch needed to constantly look up at Hays' vehicle for his personal safety, watching her as she "scroung[ed] around in the front seat" "diggin[g]" for something. (Tr., p.23, L.23 – p.25, L.9.) The facts establish that Officer Koch diligently pursued the purpose of the traffic stop.

The district court erred by concluding that Officer Koch unlawfully extended the duration of Hays' detention. Its order should be reversed and this case remanded.

Hays does not attempt on appeal to defend the district court's erroneous conclusions that Hays was in custody during her traffic stop (R., pp.152-53); that Hays should have been Mirandized (R., pp.153-54); or that Hays' confession was coerced (R., pp.154-56). As set forth in the state's opening brief, the district court erred in each of those conclusions. (Appellant's brief, pp.15-21.) Its order should be reversed and this case remanded for further proceedings.

CONCLUSION

The state respectfully requests that this Court reverse the district court's order suppressing evidence and remand for further proceedings.

DATED this 17th day of June, 2014.



RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of June, 2014, served a true and correct copy of the attached REPLY BRIEF OF APPELLANT by causing a copy addressed to:

KIMBERLY E. SMITH
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



RUSSELL J. SPENCER
Deputy Attorney General

RJS/pm