

12-3-2014

State v. Easterday Respondent's Brief Dckt. 41831

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"State v. Easterday Respondent's Brief Dckt. 41831" (2014). *Idaho Supreme Court Records & Briefs*. 5290.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/5290

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)
)
 Plaintiff-Respondent,)
)
 vs.)
)
 ASHLI MARIE EASTERDAY,)
)
 Defendant-Appellant.)

No. 41831
Twin Falls Co. Case No.
CR-2013-7372

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 RANDY J. STOKER
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

TED S. TOLLEFSON
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
PLAINTIFF-RESPONDENT

REED P. ANDERSON
Deputy State Appellate
Public Defender
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

ATTORNEY FOR
DEFENDANT-APPELLANT

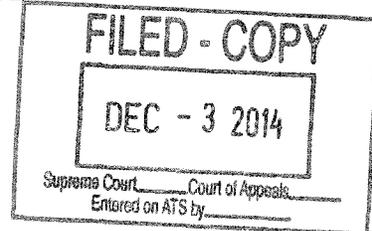


TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of Facts and Course of Proceedings	1
ISSUES	4
ARGUMENT	5
Easterday Failed To Establish The District Court Erred In Denying Her Motion To Suppress	5
A. Introduction	5
B. Standard Of Review	5
C. When Deputy Gorrell Established Probable Cause To Search Containers In the Vehicle The Purse Was A Container In The Vehicle And Not Part Of Esterday's Person	5
1. The Idaho Court Of Appeals Decisions In <i>Smith</i> And <i>Gibson</i> Create A Simple And Workable Rule	10
CONCLUSION	12
CERTIFICATE OF SERVICE	12

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Arizona v. Gant</u> , 556 U.S. 332 (2009).....	9
<u>Hoskins v. State</u> , 149 Idaho 815, 242 P. 3d 185 (Ct. App. 2010)	9
<u>New York v. Belton</u> , 453 U.S. 454 (1981)	9
<u>State v. Calegar</u> , 104 Idaho 526, 661 P.2d 311 (1983)	9
<u>State v. Gallegos</u> , 120 Idaho 894, 824 P.2d 949 (1991).....	6
<u>State v. Gibson</u> , 141 Idaho 277, 108 P.3d 424 (Ct. App. 2005).....	8, 9, 10
<u>State v. Holland</u> , 135 Idaho 159, 15 P.3d 1167 (2000).....	8, 9
<u>State v. Newsom</u> , 132 Idaho 698, 979 P. 2d 100 (1998).....	8, 9
<u>State v. Roe</u> , 140 Idaho 176, 90 P.3d 926 (Ct. App. 2004)	8, 9
<u>State v. Smith</u> , 152 Idaho 115, 266 P. 3d 1220 (Ct. App. 2011).....	5, 6, 7, 11
<u>United States v. Ross</u> , 56 U.S. 798 (1982).....	6

STATEMENT OF THE CASE

Nature of the Case

Easterday appeals from the district court's decision denying her motion to suppress. The district court determined that Deputy Gorrell's search of a purse in Easterday's car was valid pursuant to the automobile exception.

Statement of Facts and Course of Proceedings

Deputy Stacy Gorrell of the Twin Falls County Sheriff's office received information that a citizen wanted to recover his vehicle from his ex-girlfriend. (8/2/13 Tr., p. 12, Ls. 6-15.) Deputy Gorrell located and stopped the vehicle. (8/2/13 Tr., p. 12, L. 19 – p. 13, L. 3.) The vehicle was driven by Easterday. (8/2/13 Tr., p. 13, Ls. 10-18.) The vehicle had a bench seat. (8/2/13 Tr., p. 18, L. 20 – p. 19, L. 1.) A purse was sitting in the middle of the bench seat. (8/2/13 Tr., p. 15, Ls. 4-13, p. 18, L. 20 – p. 19, L. 1.) Easterday was not holding the purse. (Id.) Nor was the purse on her lap. (Id.)

Officer Engbaum of the Buhl Police Department assisted Deputy Gorrell with the traffic stop. (8/2/13 Tr., p. 14, Ls. 8-13.) Officer Engbaum ran his drug dog around the vehicle and the dog indicated on the driver's side and the passenger's side door. (8/2/13 Tr., p. 7, Ls. 13-22.) Deputy Gorrell then asked Easterday to step out of the vehicle. (8/2/13 Tr., p. 14, L. 19 – p. 15, L. 3.) When Easterday exited the vehicle she picked up her purse and took it with her. (8/2/13 Tr., p. 15, Ls. 17-25.) Deputy Gorrell informed Easterday that he needed to search her purse because the purse was sitting on the seat when the dog indicated on the vehicle. (Id; R., pp. 9-10.) Deputy Gorrell searched the purse

and found methamphetamine, scales, a glass pipe and a spoon. (8/2/13 Tr., p. 16, Ls. 1-8.)

The state charged Easterday with Possession of a Controlled Substance (Methamphetamine). (R., pp. 63-64.) Easterday moved to suppress the evidence obtained as a result of the search of her purse. (R., pp. 82-90.) Pursuant to the request of the parties, the district court took judicial notice of the preliminary hearing transcript and the probable cause statement. (10/25/13 Tr., p. 3, L. 9 – p. 4, L. 4.)

The district court issued a written memorandum and denied Easterday's motion to suppress. (R., pp. 94-106.) The district court found that the purse was sitting on the seat next to Easterday when the dog alerted, and at no time did Easterday put the purse on her lap. (R., p. 104.) The court also found there was no evidence that Easterday made the purse part of her person prior to the time that probable cause was established. (R., p. 105.)

The critical issue in this case is whether Easterday had the requisite expectation of privacy at the time that probable cause to search the containers in the automobile she was driving was established. The bright line rule established in *Ross* makes clear that, in the instant case, there was probable cause to search all of [the] containers present in the car that Easterday was driving, including her purse, unless Easterday could establish that any container was a part of her person. It is undisputed that Easterday did not have the purse on her person at the time the dog alerted on the automobile. Rather, this Court finds, based upon the record, that the purse was sitting on the seat beside Easterday at the time that probable cause was established. Unlike the facts in *Newsom*, the facts in the instant case make clear that at no point during the deployment of the drug dog did Easterday remove the purse from its position beside her and place it on her lap such that it became a part of her person, thereby entitling it to protection from the right to search containers in a vehicle pursuant to *Ross*. There is simply no evidence in this case that Easterday attempted, in any way, to

make the purse a part of her person **prior** to the time that probable cause to search was established. Instead, the purse only became a part of Easterday's person when she picked it up and took it with her as she exited the vehicle, and that occurred **after** the drug dog had alerted on the vehicle.

(R., pp. 104-105.) The district court determined that an vehicle occupant cannot defeat the search of a container simply by picking up the container after probable cause had been established. (R., p. 105.)

Just as an officer cannot create a right to search under *Ross* by directing a citizen to leave a purse in a vehicle (as in *Newsom*), a citizen cannot defeat that right to search by taking or attempting to remove personal property from an automobile and making it part of their person **after probable cause to search that personal property arises**.

(R., p. 105.) Easterday pled guilty, but reserved the right to appeal the denial of her motion to suppress. (R., pp. 119-120, 140-146.) Easterday timely appealed the district court's order denying her motion to suppress. (R., pp. 140, 164-167.)

ISSUES

Easterday states the issues on appeal as:

Did the district court err when it denied Ms. Easterday's motion to suppress because Deputy Gorrell impermissibly expanded the search of the car to a search of Ms. Easterday's person?

(Appellant's brief, p.4)

The state rephrases the issues as:

Has Easterday failed to show the district court erred when it held a drug dog's alert on a vehicle established probable cause to search a container in that vehicle?

ARGUMENT

Easterday Failed To Establish The District Court Erred In Denying Her Motion To Suppress

A. Introduction

Easterday argues she was entitled to suppression of evidence because she removed the purse from her vehicle prior to the officer's search of the purse. (Appellant's brief, p. 6.) Easterday's argument fails because the deputy established probable cause to search the vehicle and containers in that vehicle before she removed the purse from the vehicle. See State v. Smith, 152 Idaho 115, 121, 266 P. 3d 1220, 1226 (Ct. App. 2011).

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 those facts. Smith, 152 Idaho at 118, 266 P. 3d at 1223.

C. When Deputy Gorrell Established Probable Cause To Search Containers In the Vehicle The Purse Was A Container In The Vehicle And Not Part Of Esterday's Person

Easterday argues that the purse was not subject to search because it was on her person when she exited the vehicle. (Appellant's brief, p. 6.) Easterday's argument incorrectly applies the automobile exception. Under the automobile exception the issue is not whether the container was on her person when it was searched, but where the container was when probable cause to search was established.

“The automobile exception to the warrant requirement authorizes a warrantless search of a vehicle when there is probable cause to believe the vehicle contains contraband or evidence of criminal activity.” Smith, 152 Idaho at 120, 266 P.3d at 1225 (citing United States v. Ross, 56 U.S. 798, 824 (1982)). “If probable cause justifies the search of a lawfully-stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.” Id. (citing Ross, 56 U.S. at 825.) “The scope of a warrantless search of an automobile is not defined by the nature of the container in which the contraband is secreted.” Id. (citing Ross, 56 U.S. at 824.) “Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found.” Id. (citing Ross, 56 U.S. at 824.) A drug dog alert on a vehicle provides an officer with probable cause to search the vehicle and its contents without a warrant. Id. (citing State v. Gallegos, 120 Idaho 894, 898, 824 P.2d 949, 953 (1991)).

Contrary to Easterday’s argument, an officer is justified in searching any container in that vehicle which may have concealed contraband, even if the occupant removes that container prior to the search. Id. at 121, 266 P.3d at 1226. In Smith, an officer developed probable cause to search Smith’s car when the officer saw a marijuana pipe sitting on the front seat. Id. at 117, 266 P.3d at 1222. A large dog in the back of Smith’s car was growling at the officer. Id. The officer asked Smith to remove the dog so he could search the interior of the car. Id. “Smith grabbed a backpack from the car and used its straps to take the dog from the car.” Id. On the passenger seat the officer found a small amount of

marijuana. Id. The officer then requested Smith put the dog back in the vehicle. Id. Smith did so, but continued to hold the backpack. Id. The officer asked Smith why he was so attached to the backpack, and Smith did not respond. Id. The officer instructed Smith to hand over the backpack. Id. Inside the backpack the officer found a large amount of marijuana and Smith was charged with trafficking in marijuana. Id. at 117-118, 266 P.3d at 1222-1223. Smith moved to suppress the evidence found in the backpack. Id. at 118, 266 P.3d at 1223. The district court denied his motion to suppress. Id. A jury found Smith guilty and Smith appealed, challenging the denial of his motion to suppress. Id.

The Idaho Court of Appeals affirmed the district court's denial of Smith's motion to suppress on two grounds. First, the Idaho Court of Appeals found that the officer's search of Smith's backpack was valid as a search incident to arrest. Id. at 120, 266 P.3d at 1225. And second, and more importantly for this case, the Idaho Court of Appeals found the search was authorized by the automobile exception to the warrant requirement. Id.

The Idaho Court of Appeals held that the officer could search the backpack pursuant to the automobile exception because the backpack was originally part of the contents of the vehicle and it was immaterial that Smith removed the backpack from the vehicle. Id. at 121, 266 P.3d at 1226.

Under the *Ross* exception to the warrant requirement, the officer had probable cause to search Smith's vehicle and was justified in searching any of the vehicle's contents which may have concealed contraband. It is immaterial that Smith removed the backpack from the car prior to the search as it was originally part of the contents of the vehicle. Therefore, under the *Ross* exception to the warrant requirement, the officer's actions in searching Smith's car and its contents were proper.

Id. The same analysis that was applied to Smith's backpack should be applied to Easterday's purse. As in Smith, Deputy Gorrell established probable cause when the purse was in the car, the purse was not on Easterday's person when probable cause was established, the purse was removed from the car prior to the search, and contraband was found in the purse. The holding in Smith authorizes Deputy Gorrell's search of Easterday's purse.

The cases relied upon by Easterday are distinguishable. (Appellant's brief, pp. 7-12. (citing State v. Newsom, 132 Idaho 698, 979 P. 2d 100 (1998); State v. Holland, 135 Idaho 159, 15 P.3d 1167 (2000); State v. Roe, 140 Idaho 176, 90 P.3d 926 (Ct. App. 2004); State v. Gibson, 141 Idaho 277, 108 P.3d 424 (Ct. App. 2005)). In Gibson, the Idaho Court of Appeals held that a drug dog's alert permitted a search of the vehicle under the automobile exception, but the justification to search the vehicle did not extend to a search of Gibson's person, specifically his wallet. Gibson, 141 Idaho at 281, 108 P.3d at 428. Gibson's wallet was in his jacket at the time the drug dog established probable cause to search. Id. In contrast, Easterday's purse was not on her person at the time probable cause to search was established, but was sitting separate from her on the seat. (R., pp. 104-105.)

The other cases relied upon by Easterday are inapplicable because they analyze the scope of the search incident to arrest exception, and do not examine the scope of the automobile exception. The rationale of the search incident to arrest exception is different from the rationale of the automobile exception. Under the search incident to arrest exception, when an officer makes a lawful

custodial arrest of the occupant of an automobile, the officer, may, as a contemporaneous incident to that arrest search the automobile and any containers found within the reach of the arrestee. Roe, 140 Idaho at 182, 90 P.3d at 932 (citing New York v. Belton, 453 U.S. 454, 460 (1981); State v. Calegar, 104 Idaho 526, 530, 661 P.2d 311, 315 (1983)); but see Arizona v. Gant, 556 U.S. 332 (2009). The purpose of the search incident to arrest exception is to allow officers to ensure their safety and to preserve evidence by searching the surrounding area. See e.g. Hoskins v. State, 149 Idaho 815, 817-818, 242 P. 3d 185, 187-188 (Ct. App. 2010). In contrast the automotive exception is based upon the automobile's ready mobility and the lesser expectation of privacy in an automobile as compared to the privacy interest in a home. See e.g. Gibson, 141 Idaho at 281-282, 108 P. 3d at 428-429.

Other than Gibson, the cases cited by Easterday interpret of the scope of the search incident to arrest exception. See Newsom, 132 Idaho 698, 979 P. 2d 100 (the arrest of one occupant of vehicle does not justify the search of the purse held by another occupant of the vehicle); Holland, 135 Idaho at 163, 15 P.3d at 1171 (the arrest of one occupant of the vehicle permits the search of another occupant's purse, if that purse is left in the vehicle); Roe, 140 Idaho 176, 183, 90 P.3d 926, 933 (when one occupant of a vehicle is arrested the search incident to arrest exception permits the search of an unworn pair of shorts found in the vehicle). These cases do not apply to Easterday, because it is undisputed that Deputy Gorrell searched the containers in Easterday's car pursuant to probable cause established by a drug dog and the automobile exception. (R.,

pp. 95-97.) The district court found the search incident to arrest doctrine is not applicable to this case. (R., p. 97.)

It is perhaps important to state at the outset what this case does **not** involve. The State does not attempt to justify the warrantless search of the purse based upon the search incident to arrest doctrine. Indeed, the State concedes that there were no independent grounds to search Easterday's property aside from the dog alert. The canine alert was on the automobile, not on Easterday. There was no basis to arrest Easterday for any crime prior to the search of her purse. Accordingly, the search incident to arrest doctrine is not applicable to this case.

(R., p. 97.) The cases, other than Gibson, relied upon by Easterday analyze the scope of the search incident to arrest doctrine do not apply to this search incident to automobile exception.

1. The Idaho Court Of Appeals Decisions In *Smith* And *Gibson* Create A Simple And Workable Rule

Easterday argues that the district court's decision crates an unworkable rule where women would be discriminated against because they carry purses and not wallets and where a "game" would be created by which the driver of a car would move purses and wallets on and off their persons during the traffic stop. (Appellant's brief, pp. 13-14.) These arguments are not supported by any citations to law or other authority.

Easterday's argument also ignores the straightforward rule gleaned from the Idaho Court of Appeals precedents in Gibson and Smith. In Gibson, the Idaho Court of Appeals held that a drug dog's alert permitted the search of the vehicle under the automobile exception, but the search did not extend to a search of Gibson's person, specifically his wallet. Gibson, 141 Idaho at 281, 108 P.3d at 428. In Smith, the Idaho Court of Appeals held that a backpack is

subject to search if it was in the vehicle at the time of probable cause was established, even if the defendant subsequently picks it up. Smith, 152 Idaho at 121, 266 P.3d at 1226. Thus, if a container is not part of the person at the time probable cause is established then it is subject to search under the automobile exception, even if the defendant subsequently picks it up.

Easterday's argument that a rule of this nature would discriminate against women because women cannot carry their purses while they drive and men can carry their wallets while they drive is without merit. First, many men, like women, carry satchels, briefcases, tote bags, or other containers that contain identification or other personal items. Second, a special "purse" exception to the automobile exception, would create an unworkable dilemma for law enforcement who would have to determine if a bag, satchel, briefcase, or other container would qualify as a "purse" and not be subject to search.

Instead of creating an arbitrary "purse" rule, this court should simply apply the precedent set by Gibson and Smith and hold that if a container is part of a person, like in their pocket, at the time probable cause is established to search the vehicle then the container is not subject to search under the automobile exception, but if it is separate, like sitting on seat, then it is subject to search.

CONCLUSION

The state respectfully requests this Court affirm the district court's order denying Easterday's Motion to Suppress.

DATED this 3rd day of December, 2014.



TED S. TOLLEFSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of December, 2014, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

REED P. ANDERSON
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.



TED S. TOLLEFSON
Deputy Attorney General

TST/pm