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State v. Watson Appellant's Brief Dckt. 46228

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 46228-2018**
Plaintiff-Respondent,	)	
	)	**ADA COUNTY NO. CR01-17-30719**
v.	)	
	)	
ERIN COLLEEN WATSON,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE MICHAEL REARDON
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Erin Coleen Watson appeals from her judgment of conviction for possession of methamphetamine and drug paraphernalia. Mindful that Officer Morlock did not extend the duration of the stop when he asked Ms. Watson about whether she had any warrants, whether she had anything illegal in the car, and whether he could search, Ms. Watson argues that the district court erred by denying her motion to suppress.

Statement of Facts and Course of Proceedings

The State charged Ms. Watson with possession of methamphetamine and paraphernalia after officers found what they believed to be methamphetamine and a pipe while searching her car during a traffic stop. (R., pp.9–10, 24–25.) The State also alleged Ms. Watson was a persistent violator. (R., pp.44–45.)

Ms. Watson moved to suppress all of the evidence against her, arguing that Officer Morlock unlawfully prolonged the stop in two ways: "First, Officer Morlock impermissibly extended the duration of a routine traffic stop by investigating narcotics activity absent any reasonable suspicion. Second, Officer Morlock impermissibly extended the duration of the traffic stop by not diligently completing his citation and releasing Ms. Watson." (R., pp.55–59.)

At a hearing on the motion, the State called Officer Morlock and introduced two videos taken by his body camera. (*See* State's Ex. 1[1].) Officer Morlock testified that he pulled Ms. Watson over after she came to a very fast stop at two stop signs, rolling through the second

[1] State's Exhibit 1 contains two separate files. Ms. Watson refers to the video of the beginning of the stop as State's Exhibit 1A.

stop sign. (Tr.,[2] p.9, L.15–p.10, L.4.) After Officer Morlock activated his lights, Ms. Watson took a very long time to pull over. (Tr., p.10, Ls.12–13.) During that time, he ran her license plate, which came up expired, and saw her doing something in the center console of her car. (Tr., p.10, L.13–p.11, L.18.)

When Officer Morlock went to speak with Ms. Watson, she said she did not have a license. (Tr., p.12, Ls.10–12.) He then told her his reasons for pulling her over, and asked why she was driving erratically. (State's Ex. 1A at 3:30–4:45.) He next asked whether she had any "crazy warrants," whether there was anything illegal in the car, and whether she was opposed to them "checking." (State's Ex. 1A at 4:45–5:05.) In response to Officer Morlock's questions, Ms. Watson said she had a "DWP," she shook her head "no" to having anything illegal in the car, and when he asked whether she was opposed to them checking, she said that she "can't say no." (State's Ex. 1A at 4:55–5:10.) Officer Morlock then asked about whether she had a "Fourth Waiver" and who was her "PO"; she said she did, and appears to have given her probation officer's name. (State's Ex. 1A at 5:05–5:20.) He then asked if she had anything illegal on her and pulled her out of the car. (State's Ex. 1A at 5:15–5:45.)

At the hearing on the motion to suppress, Officer Morlock acknowledged that by the time he started asking Ms. Watson about her parole status and whether he could search her car, he had deviated from the original purpose of the stop and had begun some sort of controlled substance investigation. (Tr., p.20, L.9–p.21, L.1.) He testified that he suspected she was under the influence of methamphetamine because, among other things, he saw her toes "curl up . . . almost uncontrollably" and she was "very fidgety with her fingers." (Tr., p.15, Ls.2–25.) He also

[2] Citations to "Tr." refer to the transcript containing the February 20, 2018 motion to suppress hearing.

acknowledged that, although Ms. Watson was on parole and said that she had signed a Fourth Amendment waiver, he did not know whether that waiver included all law enforcement officers or just probation and parole officers. (Tr., p.22, L.25–p.23, L.24.)

Because Officer Morlock's earlier observations made him believe Ms. Watson was under the influence of a controlled substance, and because dispatch said that Ms. Watson's license was suspended, Officer Morlock took Ms. Watson out of her van and he placed her in handcuffs. (Tr., p.13, L.18–p.14, L.4, p.14, L.16–p.17.) Officer Morlock asked her a handful of questions about why she was on parole, whether she had been using drugs, and whether he could search her pockets. (State's Ex. 1A at 5:20–8:15.) He then said "so you don't mind me checking your car?" and "you don't mind? Ok." (State's Ex. 1A at 8:15–8:30.) Ms. Watson said something unintelligible in response to Officer Morlock's questions. (State's Ex. 1A at 8:15–8:30.)

Officer Morlock then went to sit in his patrol car to fill out the citation and verify whether Ms. Watson's license was suspended or invalid. (Tr., p.14, Ls.4–15, p.16, L.18–p.6, p.24, Ls.12–24, p.27, L.3–p.32, L.23.) He turned his body camera off during that time, and acknowledged that there was no record of when he finished running Ms. Watson's records as a result. (Tr., p.24, Ls.4–11, p.26, L.10–p.27, L.2.)

At some point while Officer Morlock was in his car looking up information and writing Ms. Watson a citation, Officer Green and his drug dog got there and ran a sniff of Ms. Watson's car. (Tr., p.17, L.7–p.18, L.10.) According to Officer Morlock, the dog alerted on Ms. Watson's car when Officer Morlock had finished filling out the citation and was discussing it with her. (Tr., p.18, Ls.11–21; *see* State's Ex. 1b at 4:20–4:30 (Officer Morlock telling Ms. Watson that the dog had alerted).) Officer Morlock testified that he had diligently worked on the citation until the time that the dog alerted, but acknowledged that some of the things he discussed with

Ms. Watson before handing her the citation were not necessary. (Tr., p.18, L22–p.19, L.3, p.39, Ls.15–20, p.44, Ls.4–22.)

The State argued that Officer Morlock might have had reasonable suspicion to conduct a drug investigation not long after pulling Ms. Watson over; that he likely could have arrested her after verifying that she had an invalid license, which would have led to an inventory search and "inevitable discovery" of the methamphetamine; that she said she could not refuse a search of her car and thus consented to the search of her car; and that the dog sniff also justified the search. (Tr., p.45, L.15–p.48, L.3.) Therefore, any prolongation of the stop to investigate drugs was supported by reasonable suspicion and the search was supported by consent and the dog alert. (Tr., p.48, L.16–p.49, L.6.)

Defense counsel argued that the stop quickly turned into a drug investigation which was unsupported by reasonable suspicion, that Ms. Watson saying that she couldn't refuse the search did not amount to consent, that Officer Morlock's testimony was not consistent about when Officer Green and the drug dog got there, and that Officer Morlock had finished writing the citation when the dog alerted. (Tr., p.49, L.10–p.51, L.10.)

The court denied Ms. Watson's motion, explaining:

> [A]t about 7:25 or so in the video, Mr. Wingrove is correct that there's a conversation that Officer Morlock has with Ms. Watson asking if he can check her person.
>
> But after he sits her on . . . the curb at 8:25, he then asks her again, you don't mind if I check your car, and she acknowledges that she doesn't mind.
>
> So there are two elements—two instances during this stop that Ms. Watson consents to a search of her car. It's—if we—whether or not the stop is extended—and I'm not saying that it was or it wasn't—I tend to think that it wasn't unreasonably extended because I'm not satisfied given the evidence that was presented that Officer Morlock purposefully malingered in the gathering of the information to fill out the citation.
>
> It appeared to me that at about the same time or moments after that process concluded at curbside after he got out of his car, he was aware the dog had alerted.

> *I don't know that Ms. Watson was ever going to be free to go, frankly, from the time she was pulled over because, in addition to his testimony that he observed the indicia of her being under the influence of methamphetamine, it seems to me that you would have also given him reasonable suspicion to engage in a DUI investigation. He didn't do that, but—and why he didn't do that, I can only speculate.* It may have been that he believed there was going to be something found in the search that was going to obviate the need for that.
>
> But, at any rate, regardless of whether it was extended—and I'm not finding that it was—I would have to find that Ms. Watson consented to the search, and, therefore, the search was lawful and I'm going to deny the motion to suppress.

(Tr., p.51, L.24–p.53, L.13 (emphasis added); *see also* R., p.78.)

Ms. Watson later entered a conditional guilty plea to possession of methamphetamine and paraphernalia, reserving her right to challenge the order denying her motion to suppress on appeal. (R., pp.65–77.) In exchange, the State would dismiss the persistent violator enhancement and agreed to recommend probation, with an underlying unified sentence of five years, with two years fixed. (R., pp.67, 73.)

The court sentenced Ms. Watson to a unified term of five years, with two years fixed, and placed her on probation. (R., pp.82–85.) Ms. Watson timely appealed. (R., pp.90–91.)

ISSUE

Did the district court err by denying Ms. Watson's motion to suppress?

ARGUMENT

The District Court Erred By Denying Ms. Watson's Motion To Suppress

The United States and Idaho Constitutions prohibit unreasonable searches and seizures. U.S. CONST. amend. IV; IDAHO CONST. art. I, § 17. Warrantless searches and seizures are presumptively unreasonable. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973); *Halen v. State*, 136 Idaho 829, 833 (2002). To overcome that presumption, the State has the burden of proving that the search or seizure falls within a well-recognized exception to the warrant requirement and was reasonable in light of the surrounding circumstances. *Schneckloth*, 412 U.S. at 219; *Schmerber v. California*, 384 U.S. 757, 767 (1966) (overruled on other grounds in *Missouri v. McNeely*, 133 S. Ct. 1552, 1555 (2013)); *Halen*, 136 Idaho at 833. If the government fails to meet this burden, the evidence acquired as a result of the illegal search or seizure, including later-discovered evidence derived from the original illegal search, is inadmissible. *Wong Sun v. United States*, 371 U.S. 471, 485 (1963); *State v. Koivu*, 152 Idaho 511, 518–19 (2012).

To pass muster under the Fourth Amendment, warrantless seizures must generally be based on probable cause. *Florida v. Royer*, 460 U.S. 491, 499–500 (1983). However, limited 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. Morgan*, 154 Idaho 109, 112 (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. The test for reasonable suspicion is based on the totality of the circumstances known to the officer at or before the time of the stop." *Id.* (internal citations and quotations omitted).

If a person is detained, the scope of their detention must be carefully tailored to its underlying justification. *Royer*, 460 U.S. at 500; *see also State v. Grantham*, 146 Idaho 490, 496 (Ct. App. 2008). An investigative detention "must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Royer*, 460 U.S. at 500; *see also Grantham*, 146 Idaho at 496. "Authority for [a] seizure thus ends when tasks tied to the infraction are—*or reasonably should have been*—completed." *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015) (internal citations omitted) (emphasis added). "[T]he investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." *Royer*, 460 U.S. at 500.

Officers "may conduct certain unrelated checks during an otherwise lawful stop." *Rodriguez*, 135 S. Ct. at 1615 (internal citations omitted); *see also Grantham*, 146 Idaho at 496. For example, officers can ask a driver questions unrelated to the purpose of the stop, "so long as [those] inquiries do not measurably extend the duration of the stop." *Id.* at 1609 (quoting *Arizona v. Johnson*, 555 U.S. 323, 333 (2009). Officers cannot, however, conduct unrelated checks "in a way that prolongs the stop absent the reasonable suspicion ordinarily demanded to justify detaining an individual." *Id*. at 1615 (internal citations omitted); *see also Grantham*, 146 Idaho at 496. Therefore, officers can only expand "the length and scope of the initial investigatory detention . . . if there exist objective and specific articulable facts that justify reasonable suspicion that the detained person is, has been, or is about to engage in criminal activity." *State v. Perez-Jungo*, 156 Idaho 609, 614–15 (Ct. App. 2014).

The standard of review of a suppression motion is bifurcated. This Court accepts the trial court's findings of fact if they are supported by substantial evidence, but freely reviews the

application of constitutional principles to the facts. *State v. Page*, 140 Idaho 841, 843 (2004) (citing *State v. Holland*, 135 Idaho 159, 161 (2000)).

Mindful that Officer Morlock did not extend the duration of the stop when he asked Ms. Watson about whether she had any warrants, whether she had anything illegal in the car, and whether he could search, *see Rodriguez*, 135 S. Ct. at 1615; *Joshnson*, 555 U.S. at 333, Ms. Watson argues that the district court erred by denying her motion to suppress. The only facts to arguably support Officer Morlock's drug investigation were that she came to a very fast stop at two stop signs, rolling through second stop sign; took a long time to pull over; reached in the center console; and fidgeted while talking to Officer Morlock. (Tr., p.9, L.15–p.11, L.18, p.15, Ls.2–25.) Ms. Watson contends those facts, and the rational inferences that can be drawn from them, did not amount to reasonable, articulable suspicion that Ms. Watson had committed, or was about to commit, a crime. *See Morgan*, 154 Idaho at 112. The district court therefore erred by denying Ms. Watson's motion to suppress.

CONCLUSION

Ms. Watson respectfully requests that the Court vacate her judgment of conviction, reverse the order denying her motion to suppress, and remand this case for further proceedings.

DATED this 14th day of March, 2019.

/s/ Maya P. Waldron
MAYA P. WALDRON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of March, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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/s/ Evan A. Smith
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MPW/eas