4-6-2015

State v. Howell Respondent's Brief Dckt. 42277

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 42277
Plaintiff-Respondent,	)	
	)	Kootenai Co. Case No.
vs.	)	CR-2013-13847
	)	
KERRY A. HOWELL,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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

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STATEMENT OF THE CASE

Nature of the Case

Kerry A. Howell appeals from the judgment entered upon his conditional guilty plea to burglary. On appeal, Howell challenges the denial of his motion to suppress.

Statement of Facts and Course of Proceedings

At approximately 7:00 a.m. on July 14, 2013, Kootenai County Sheriff's Deputies Howard and Broesch were dispatched to a residential cul-de-sac to investigate "an anonymous report of two suspicious vehicles." (Tr.,[1] p.7, L.7 – p.12, L.7, p.43, L.14 – p.45, L.5.) Upon arriving at the cul-de-sac, Deputy Howard "came upon two vehicles," one of which was a pickup truck with a travel trailer attached to it. (Tr., p.12, Ls.8-24.) Deputy Howard parked his patrol car adjacent to the front end of the pickup truck, and Deputy Broesch parked his patrol car 10 to 20 feet behind Deputy Howard's vehicle. (Tr., p.13, L.7 – p.14, L.8, p.21, Ls.4-11, p.25, L.25 – p.26, L.17, p.47, Ls.8-20; see generally Exhibits.) Deputy Howard then made contact with two men who were near the pickup truck, one of whom was Howell. (Tr., p.9, Ls.22-24, p.14, Ls.9-15, p.32, Ls.16-21.)

Deputy Howard asked Howell and the other man what they were doing in the cul-de-sac, whether they were broken down, and where they were headed. (Tr., p.14, Ls.11-15, p.15, Ls.7-13, p.32, L.25 – p.33, L.7.) Howell told the officer he was headed to the Spirit Lake area but was having issues with the trailer and had pulled

[1] All citations herein to "Tr." are to the transcript of the suppression hearing held on March 4, 2014.

into the cul-de-sac to work on it "and try and solve how it was not trailering correctly." (Tr., p.14, Ls.18-21, p.32, L.25 – p.33, L.7.) Deputy Howard asked Howell for his driver's license and registration, and Howell complied. (Tr., p.33, L.8 – p.34, L.6, p.34, L.19 – p.35, L.5.) The registration indicated Howell was the registered owner of the pickup truck. (Tr., p.34, L.24 – p.35, L.5.) The deputy then asked Howell whether the trailer belonged to him. (Tr., p.15, Ls.17-21.) Howell said it did not, but that it belonged to his girlfriend, Kelly Gilbert. (Tr., p.15, L.23 – p.16, L.10, p.34, Ls.7-9.) When asked whether he had Ms. Gilbert's permission to have the trailer, Howell told the officer the trailer actually belonged to his sister's boyfriend. (Tr., p.16, Ls.15-23.) Howell, however, could not recall his sister's boyfriend's name. (Tr., p.16, Ls.23-25, p.17, Ls.8-9.) At that point, Deputy Howard asked dispatch to run a registration query on the trailer's license plate. (Tr., p.17, Ls.5-8, p.34, Ls.10-16.) The results of that query showed the trailer "was not owned [by] or registered to [Howell's] sister or [his] sister's boyfriend. It was actually registered to someone totally unrelated to him." (Tr., p.17, Ls.13-23.)

The state charged Howell with grand theft by possession of stolen property and two counts of burglary. (R., pp.48-49.) Howell filed a motion to suppress the evidence against him, arguing it was the fruit of an unlawful detention. (R., pp.52-53, 68-79.) Following a hearing, the district court denied the motion. (R., pp.111-12.) Howell thereafter entered a conditional guilty plea to one count of burglary, as alleged in an amended information, reserving the right on appeal to challenge the denial of his motion to suppress. (R., pp.205-11, 213-14.) The district court imposed a unified sentence of 10 years, with five years fixed, and retained

jurisdiction. (R., pp.215-16, 222-23.) Howell timely appealed from the judgment. (R., pp.219-21, 232-36.)

ISSUE

Howell states the issue on appeal as:

> Did the district court err when it denied Mr. Howell's motion to suppress the State's evidence?

(Appellant's brief, p.5.)

The state rephrases the issue as:

Has Howell failed to show error in the denial of his motion to suppress?

ARGUMENT

Howell Has Failed To Show Error In The Denial Of His Motion To Suppress

A. Introduction

Howell challenges the denial of his motion to suppress, arguing "he was illegally seized within the meaning of the Fourth Amendment when Officer Howard took [his] driver's license and registration." (Appellant's brief, p.6.) Howell's argument fails. Correct application of the law to the facts shows the limited seizure that occurred when Deputy Howard took Howell's license and registration was reasonable and did not violate Howell's Fourth Amendment rights.

B. Standard Of Review

In reviewing a decision on a motion to suppress, 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. State v. Diaz, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007).

C. The Limited Seizure That Occurred When Deputy Howard Took Howell's Driver's License And Registration Was Reasonable And Did Not Violate Howell's Fourth Amendment Rights

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures by government officials. However, not every police-citizen encounter triggers Fourth Amendment scrutiny. "A seizure under the meaning of the Fourth Amendment occurs only 'when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a

citizen.'" State v. Nickel, 134 Idaho 610, 612-13, 7 P.3d 219, 221-22 (2000) (quoting Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968)).

"When a defendant seeks to suppress evidence allegedly obtained as a result of an illegal seizure, the burden of proving that a seizure occurred is on the defendant." State v. Fuentes, 129 Idaho 830, 832, 933 P.2d 119, 121 (Ct. App. 1997) (citations omitted). The proper inquiry in determining whether a seizure occurred is "whether, under all the circumstances surrounding the encounter, a reasonable person would have felt free to leave or otherwise decline the officer's requests and terminate the encounter." State v. Reese, 132 Idaho 652, 653, 978 P.2d 212, 213 (1999) (citing State v. Fuentes, 129 Idaho 830, 832, 933 P.2d 119, 121 (Ct. App. 1997)). "'So long as a reasonable person would feel free to disregard the police and go about his business,' an encounter between police and an individual is consensual." Nickel, 134 Idaho at 613, 7 P.3d at 222 (quoting Florida v. Bostick, 501 U.S. 429, 434 (1991)).

Applying the above legal principles to the facts of this case, the district court correctly determined the initial encounter between Howell and the officers was consensual and did not implicate Howell's Fourth Amendment rights. (Tr., p.62, L.8 – p.65, L.10.) When the officers arrived in the cul-de-sac, Howell and his companion were standing outside of their parked vehicles. (Tr., p.32, Ls.16-21.) The officers did not activate the lights or sirens on their patrol vehicles and did not otherwise display any show of force or authority. (Tr., p.13, Ls.7-13, p.32, Ls.22-24, p.48, Ls.12-16, p.63, Ls.14-17.) The officers parked their vehicles next to Howell's truck but did not block the truck in or otherwise position their vehicles in a manner

that would have prevented Howell from driving away. (Tr., p.13, L.7 – p.14, L.8, p.21, Ls.4-11, p.22, L.8 – p.23, L.2, p.25, L.25 – p.26, L.17, p.29, L.18 – p.30, L.1, p.31, Ls.5-9, p.47, Ls.8-20, p.52, L.15 – p.53, L.16, p.63, Ls.4-22; see generally Exhibits.) The officers then exited their patrol vehicles and made contact with Howell, who answered Deputy Howard's questions and voluntarily complied with the officer's request for his driver's license and registration. (Tr., p.14, L.11 – p.17, L.12, p.32, L.25 – p.35, L.5, p.64, Ls.15-22.)

On appeal, Howell does not challenge either the district court's factual findings or its legal determination that the officers needed no reasonable articulable suspicion of criminal activity to approach Howell outside of his parked vehicle and ask him questions. Rather, Howell contends he was unlawfully seized at the moment Deputy Howard secured his driver's license and registration because, at that point, he was not free to leave and the officer had not yet developed any reasonable suspicion justifying an investigative detention.[2] (Appellant's brief, pp.7-9.) The state acknowledges that a limited detention occurred when Deputy Howard took Howell's license and registration. See State v. Page, 140 Idaho 841, 844, 103 P.3d 454, 457 (2004); State v. Godwin, 121 Idaho 491, 493, 826 P.2d 452, 454 (1992); State v. Landreth, 139 Idaho 986, 990-91, 88 P.3d 1226, 1230-31 (Ct. App. 2004); State v. Martinez, 136 Idaho 436, 439, 34 P.3d 1119, 1122 (Ct. App. 2001).

[2] Although Howell raised this issue below (see Tr., p.59, Ls.9-13, p.61, Ls.13-21), the district court did not specifically address it in its oral ruling denying Howell's motion to suppress (see Tr., p.62, L.8 – p.65, L.10). The state believes this Court can resolve the issue by applying the law to the facts testified to at the suppression hearing. In the event this Court deems additional fact-finding related to this issue necessary, the state submits the appropriate remedy is to remand the matter to the district court.

Contrary to Howell's assertions, however, the fact that the officer took Howell's documentation did not transform the voluntary encounter into an *unlawful* seizure. Rather, under well-established principles of search and seizure, the limited detention of Howell for the purpose of verifying his identity and registration status was reasonable and did not violate Howell's constitutional rights.

It is beyond cavil that a police officer may generally ask an individual questions and may ask for identification. E.g., Florida v. Rodriguez, 469 U.S. 1, 105 S.Ct. 308, 83 L.Ed.2d 165 (1984). A limited detention does occur when an officer retains a driver's license or other paperwork of value. Godwin, 121 Idaho at 493, 826 P.2d at 454; Landreth, 139 Idaho at 990, 88 P.3d at 1230; Martinez, 136 Idaho at 439, 34 P.3d at 1122. However, the Idaho appellate courts have consistently held that the brief retention of a motorists driver's license or other identifying paperwork during an otherwise lawful police contact is constitutionally reasonable because the intrusion upon the person's privacy interest is minimal when compared to the valid public/governmental interests, including the officer's need to properly identify the person with whom he is dealing, prepare accurate reports and ensure officer safety. Godwin, 121 Idaho at 493-94, 826 P.2d at 454-55; Landreth, 139 Idaho at 990, 88 P.3d at 1230; State v. Reed, 129 Idaho 503, 505-06, 927 P.2d 893, 895-96 (Ct. App. 1996); see also Martinez, 136 Idaho at 439, 34 P.3d at 1122 ("[T]he police have a strong interest in identifying the individuals they come into contact with in any capacity."); but see Page, 140 Idaho at 844-45, 103 P.3d at 457-58 (public interests that justify taking a driver's license from the operator of an

automobile regardless of suspicion of criminal activity do not justify the taking of identification from a pedestrian who is not otherwise suspected of misconduct).

For example, in Landreth, *supra*, the Idaho Court of Appeals held that, even absent any suspicion of criminal activity, an "officer could properly detain Landreth to run a driver's license check after a legitimate consensual encounter." Landreth, 139 Idaho at 991, 88 P.3d at 1231. The officer in that case was dispatched to a grocery store parking lot in response to a report of a suspicious vehicle moving from parking space to parking space. Id. At 987, 88 P.3d at 1227. Upon his arrival, the officer observed the vehicle and observed that an extension cord was running from the hood of the vehicle to the wall of the grocery store. Id. The officer questioned the driver of the vehicle, Landreth, about his identity and purpose at the grocery store and also asked him for identification. Id. When Landreth produced his driver's license, the officer relayed the "pertinent information" to dispatch and dispatch, in turn, advised the officer that Landreth had an outstanding arrest warrant. Id. The officer arrested Landreth on the warrant and, in a search incident to that arrest, found methamphetamine, marijuana and drug paraphernalia. Id.

In the prosecution that followed, Landreth moved to suppress the evidence obtained during the search incident to arrest, "claiming that his brief detention while the officer ran a driver's query violated his Fourth Amendment right to be free from unreasonable searches and seizures." Id. The district court denied the motion, and the Idaho Court of Appeals affirmed. Id. at 987-91, 88 P.3d at 1227-31. Citing Godwin, *supra*, the Court of Appeals recognized "[t]he Idaho Supreme Court has determined that a police officer's brief detention of a driver to run a status check on

the driver's license, after making a valid, lawful contact with the driver, is reasonable for purposes of the Fourth Amendment." Landreth, 139 Idaho at 990, 88 P.3d at 1230 (citing Godwin, 121 Idaho at 495, 826 P.2d at 456.) Although a limited seizure occurs when an officer takes a motorist's license, "substantial public interests, including the officer's need to positively identify the person with whom he [is] dealing, outweigh[] the minimal police intrusion." Id. (citing Godwin, 121 Idaho at 495-96, 826 P.2d at 456-57). Moreover, "the Idaho statute authorizing officers to demand display of a driver's license, I.C. 49-316, includes the authority to run a status check on the license." Id. (citing Godwin, 121 Idaho at 495-96, 826 P.2d at 456-57).

Applying Godwin to the facts before it, the Court of Appeals concluded Landreth was not unlawfully detained when the officer took his driver's license and ran his information through dispatch. Because "Landreth was already stopped in the parking lot and willingly spoke with the officer," the contact to the point the officer took Landreth's driver's license was a valid, consensual encounter. Landreth, 139 Idaho at 991, 88 P.3d at 1231. Because, under Godwin, "an officer's brief detention of a driver to run a status check on the driver's license, after making a valid, lawful contact with the driver, is reasonable for purposes of the Fourth Amendment," the Court of Appeals held the brief detention of Landreth to run a status check on his driver's license was constitutionally reasonable. Id. In so holding, the Court cautioned its decision did "not countenance officers initiating 'consensual contacts' with individuals merely in order to follow that contact with a request for identification to run a license check or a warrants check." Id. Such was not a concern in

Landreth's case, however, because "the officer had a legitimate reason to make contact with Landreth, even though that reason may not have amounted to reasonable suspicion that would have justified a detention at the outset of the encounter." Id.

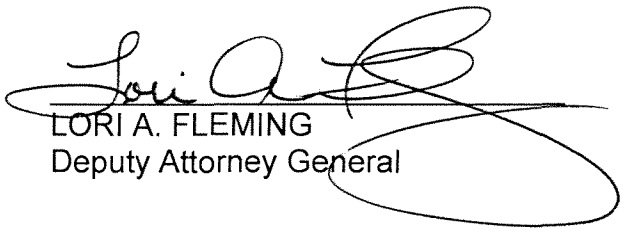
In this case, as in Landreth, Deputy Howard had a legitimate reason to make contact with Howell. The deputy had received a report of "two suspicious vehicles" in a residential cul-de-sac. Following up on that report, the officer made lawful contact with Howell, who was standing in the cul-de-sac near his parked vehicle and willingly answered the officer's questions. During the consensual encounter, Deputy Howard asked Howell for his driver's license and registration, and Howell complied with that request. As in Landreth and Godwin, the officer in this case clearly had a legitimate public interest in confirming Howell's identity. And, as in Landreth and Godwin, the retention of Howell's driver's license and registration for this purpose, during an otherwise valid consensual encounter, constituted a minimal intrusion upon Howell's privacy interests and was reasonable under the Fourth Amendment. Howell has failed to show any basis for reversal of the denial of his motion to suppress.[3]

[3] Howell concedes that, after Deputy Howard took his driver's license and registration, the officers "developed reasonable suspicion that [he] might have been in possession of stolen property." (See Appellant's brief, pp.8-9 (citing 3/4/14 Tr., p.64, Ls.15-22 (district court's finding that officers developed reasonable suspicion while questioning Howell)); compare with 3/4/14 Tr., p.15, L.21 – p.17, L.12, p.33, L.8 – p.34, L.9 (after Deputy Howard took Howell's license, Howell gave inconsistent stories about who owned the trailer).)

CONCLUSION

The state respectfully requests that this Court affirm the judgment and the district court's order denying Howell's motion to suppress.

DATED this 6th day of April 2015.



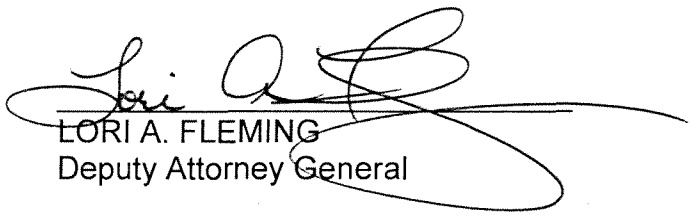
LORI A. FLEMING
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 6th day of April 2015, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SHAWN F. WILKERSON
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.



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