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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45863
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO.
v.)	CR-2017-13367
)	
BRANDON LEE ANDERSON,)	
)	
Defendant-Appellant.)	
_____)	

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 KOOTENAI**

HONORABLE LANSING L. HAYNES
District Judge

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

ANDREA W. REYNOLDS
Deputy State Appellate Public Defender
I.S.B. #9525
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

**ATTORNEYS FOR
DEFENDANT-APPELLANT**

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

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STATEMENT OF THE CASE

Nature of the Case

Mr. Anderson appeals from his judgment of conviction, challenging the district court's denial of his motion to suppress. He argued in his Appellant's Brief that the district court erred in concluding the officer who observed him walking after midnight in a suburban neighborhood wearing all black had reasonable suspicion of criminal activity. (Appellant's Br., pp.6-9.) He argued that because his initial detention was unlawful, the district court should have granted his motion to suppress the evidence found subsequent to that detention. (Appellant's Br., pp.6-9.) In its Respondent's Brief, the State argues Mr. Anderson is not entitled to relief because he does not challenge the district court's conclusion that the evidence found on his person was discovered in a lawful search incident to his arrest. (Respondent's Br., pp.6-7, 20-23.) The State next argues the district court did not err in concluding the officer's initial detention of Mr. Anderson was lawful because it was actually a consensual encounter, not a detention, or, alternatively, it was supported by reasonable suspicion. (Respondent's Br., pp.7-18.) Mr. Anderson submits this Reply Brief to respond to the State's legal arguments, and to make clear that he is challenging the district court's conclusion that the initial detention (which the district court correctly concluded was *not* a consensual encounter) was lawful.

Statement of Facts and Course of Proceedings

Mr. Anderson included a statement of facts and course of proceedings in his Appellant's Brief, which he relies on and incorporates herein. (*See* Appellant's Br., pp.1-4.)

ISSUE

Did the district court err in denying Mr. Anderson's motion to suppress?

ARGUMENT

The District Court Erred In Denying Mr. Anderson's Motion To Suppress

A. Introduction

Mr. Anderson argued in his Appellant's Brief that the district court erred in concluding Officer Ballman had reasonable suspicion of criminal activity based on his observation of Mr. Anderson walking after midnight in a suburban neighborhood wearing all black. (Appellant's Br., pp.6-9.) In response, the State argues Mr. Anderson is not entitled to relief because he does not challenge the district court's conclusion that the evidence found on his person was discovered in a lawful search incident to his arrest. (Respondent's Br., pp.6-7, 20-23.)

To be clear, Mr. Anderson is challenging the district court's conclusion that the officer's detention of him "was an appropriate detention at the time that he called Mr. Anderson over" and "therefore, all of the evidence that flows from that appropriate detention is appropriately gathered evidence." (11/17/17 Tr., p.31, Ls.5-11.) Mr. Anderson acknowledges that, if this Court concludes the initial detention was lawful, it must affirm, as he does not challenge the district court's conclusion that he was lawfully searched incident to his arrest after attempting to run from the police. (11/17/17 Tr., p.31, Ls.12-18.) But the fact that he does not challenge what happened subsequent to his initial detention does not mean he cannot challenge the initial detention, and the district court's conclusion that it was reasonable under the Fourth Amendment.

The district court did not rely on the attenuation doctrine in denying Mr. Anderson's motion to suppress, but instead concluded there was no constitutional violation. (11/17/17 Tr., p.30, Ls.17-18, p.31, Ls.5-9.) The district court concluded Mr. Anderson "was detained at

the point that the deputy said, ‘Well, come on over here and let me ask you your name and ask you some questions.’” (11/17/17 Tr., p.30, Ls.18-21.) The district court concluded the detention was lawful because it was supported by reasonable suspicion of criminal activity. (11/17/17 Tr., p.30, Ls.21-23.) The district court found “at the point that Mr. Anderson left the roadway and walked up to a darkened house with no porch light on in the middle of the night after a police car had turned around . . . there was reasonable and articulable suspicion that a crime was afoot.” (11/17/17 Tr., p.30, Ls.1-8.) This is the ruling Mr. Anderson challenges on appeal.

B. The District Court Correctly Concluded The Initial Encounter Between Officer Ballman And Mr. Anderson Was A Detention, Not A Consensual Encounter

The State argues the district court erred in concluding the officer’s initial detention of Mr. Anderson was a detention, rather than a consensual encounter. (Respondent’s Br., pp.7-18.)

The State is incorrect.

“Unless and until there is a detention, there is no seizure within the meaning of the Fourth Amendment and no constitutional rights have been infringed.” *State v. Liechty*, 152 Idaho 163, 167 (Ct. App. 2011). (citation omitted). “[T]he critical inquiry when determining whether a seizure has occurred is whether a reasonable person would have felt free to disregard the police, decline the officer’s request, or otherwise terminate the encounter.” *Id.* at 168. The district court correctly concluded Mr. Anderson was seized within the meaning of the Fourth Amendment because a reasonable person in his position would not have felt free to terminate the encounter. (11/17/17 Tr., p.30, Ls.18-21.)

Officer Ballman testified he directed Mr. Anderson to stand by his marked patrol car. (11/17/17 Tr., p.8, L.24 – p.9, L.5.) He testified he was wearing his uniform and carrying a firearm, and stood approximately four feet away from Mr. Anderson when he began asking him

questions. (11/17/17 Tr., p.9, L.10 – p.10, L.3.) While Officer Ballman did not make any overt shows of force, a reasonable person in Mr. Anderson’s position would not have felt free to disregard the officer’s questions and walk away.

The State asserts Mr. Anderson “was perfectly capable of walking away if he wanted to make an exit.” (Respondent’s Br., p.11.) The State argues Mr. Anderson’s “eventual flight” demonstrates he was free to walk away. (Respondent’s Br., p.11.) Mr. Anderson’s attempted flight does not demonstrate he was free to walk away, as he was actually chased and ultimately apprehended by the police. While he was, of course, perfectly capable of walking, he was not free to terminate the police encounter. The district court correctly concluded Mr. Anderson was seized within the meaning of the Fourth Amendment when Officer Ballman began questioning him.

C. The District Court Erred In Concluding The Detention Was Supported By Reasonable Suspicion Of Criminal Activity

The State argues in its Respondent’s Brief that even if the encounter was not consensual, it did not violate Mr. Anderson’s Fourth Amendment rights because it was supported by reasonable suspicion of criminal activity. (Respondent’s Br., pp.7-18.) Again, the State is incorrect.

The district court found, “[A]t the point that Mr. Anderson left the roadway and walked up to a darkened house with no porch light on in the middle of the night after a police car had turned around [in the] beginning of an attempt to contact that person, that there was reasonable and articulable suspicion that a crime was afoot.” (11/17/17 Tr., p.30, Ls.1-8.) The district court explained “that’s a suspicious criminal activity for a person to do that,” and the suspicion “was

heightened” when Mr. Anderson said he was going to ask for some water and did not know who lived there. (11/17/17 Tr., p.30, Ls.9-14.)

The State contends Mr. Anderson’s conduct was “self-evidently suspicious.” (Respondent’s Br., p.14.) But there is nothing inherently suspicion about Mr. Anderson’s conduct. Officer Ballman testified he found Mr. Anderson suspicious because “[h]e was in a semi-affluent neighborhood in the middle of night approaching darked out houses wearing all black” (11/17/17 Tr., p.10, Ls.21-25.) On cross-examination, Officer Ballman admitted he had no specific information on house burglaries occurring in the area. (11/17/17 Tr., p.12, Ls.4-12.) He also acknowledged Mr. Anderson was not carrying a bag or anything else, which surely makes it unlikely he had committed, or was about to commit, a burglary. (11/17/17 Tr., p.7, Ls.8-12.)

While Mr. Anderson’s conduct could be viewed as suspicious, it could also be viewed as innocent. Mr. Anderson, walking at nighttime, wearing dark clothes, in a neighborhood familiar to him, approached the nearest house when a police car turned around to follow him. (11/17/17 Tr., p.7, Ls.18-22.) Mr. Anderson’s boss testified at trial that he frequently picked Mr. Anderson up for work at a location very near the house where he was arrested, as Mr. Anderson had friends in that area. (12/5/17 Tr., p.170, L.14 – p.171, L.6, p.175, Ls.12-14.) The district court erred in concluding Officer Ballman had reasonable suspicion to detain Mr. Anderson.

CONCLUSION

For the reasons stated above, as well as those set forth in his Appellant's Brief, Mr. Anderson respectfully requests that this Court vacate his judgment of conviction, reverse the district court's order denying his motion to suppress, and remand this case to the district court for further proceedings. Mr. Anderson agrees with the State that, because he pled guilty to attempted unlawful entry without reserving his right to appeal from the denial of his motion to suppress, the conviction for that offense must remain. (*See* Respondent's Br., p.24.)

DATED this 26th day of June, 2019.

/s/ Andrea W. Reynolds
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of June, 2019, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

AWR/eas