

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 46567-2018
 Plaintiff-Respondent,)
) Ada County Case No.
 v.) CR01-2017-50749
)
 JEFFREY EDWARD GREER,)
)
 Defendant-Appellant.)
)
)

BRIEF OF RESPONDENT

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

HONORABLE DEBORAH A. BAIL
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

COLLEEN D. ZAHN
Deputy Attorney General
Chief, Criminal Law Division

ANDREW V. WAKE
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

ATTORNEYS FOR
PLAINTIFF-RESPONDENT

JENNY C. SWINFORD
Deputy State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712
E-mail: documents@sapd.state.id.us

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 The Facts And Course Of The Proceedings.....	1
ISSUE	3
ARGUMENT	4
The District Court Properly Denied Greer’s Motion To Suppress	4
A. Introduction.....	4
B. Standard Of Review	4
C. The District Court Correctly Determined That Officer Morlock Properly Detained Greer To Execute An Outstanding Warrant.....	4
D. The Methamphetamine Was In Plain View	8
CONCLUSION.....	10
CERTIFICATE OF SERVICE	10

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Atkins v. City of Chicago</u> , 631 F.3d 823 (7th Cir. 2011)	6
<u>Hill v. California</u> , 401 U.S. 797 (1971)	7
<u>State v. Baker</u> , 141 Idaho 163, 107 P.3d 1214 (2004)	8
<u>State v. Bromgard</u> , 139 Idaho 375, 79 P.3d 734 (Ct. App. 2003).....	6
<u>State v. Christensen</u> , 131 Idaho 143, 953 P.2d 583 (1998).....	8, 9
<u>State v. Dominguez</u> , 137 Idaho 681, 52 P.3d 325 (Ct. App. 2002)	4, 9
<u>State v. Fain</u> , 116 Idaho 82, 774 P.2d 252 (1989).....	4
<u>State v. Northover</u> , 133 Idaho 655, 991 P.2d 380 (Ct. App. 1999).....	6
<u>State v. Schwarz</u> , 133 Idaho 463, 988 P.2d 689 (1999).....	5
<u>State v. Willoughby</u> , 147 Idaho 482, 211 P.3d 91 (2009).....	4
<u>United States v. Marshall</u> , 79 F.3d 68 (7th Cir. 1996).....	7

STATEMENT OF THE CASE

Nature Of The Case

Jeffrey Edward Greer entered a conditional guilty plea to felony possession of a controlled substance. On appeal, he argues that the district court erred in denying his motion to suppress evidence.

Statement Of The Facts And Course Of The Proceedings

In the Decision and Order Re: Motion to Suppress that is at issue in this appeal, the district court made the following factual findings:

On December 14, 2017, around 3:30 a.m., Boise Police Officer Andrew Morlock went looking for the defendant, Jeffrey Greer because he had been advised that a warrant for Failure to Appear had been issued for him. At the start of his shift, he checked that the warrant was still outstanding and active. He obtained a booking photograph and description of the defendant and the address of his residence. He was looking specifically for the defendant. Officer Morlock drove past the residence in his patrol car with all lights turned off. He continued eastbound and, a block further from the residence, he saw a man sitting in a 2012 Honda Civic coupe. Driving slowly, using his left alley light, he recognized the defendant who also turned towards him as he passed by. The alley light is a bright white light. The defendant's appearance matched the booking photograph. Officer Morlock made a U-turn and hit his overhead red-blue lights and arrested the defendant on the no-bond arrest warrant. Before the arrest, the defendant put the driver's side window down and pleaded extensively for the officer not to arrest him on the warrant. The window was still down when the defendant got out of the car in response to the officer's instructions. The defendant was placed in handcuffs in the back of the patrol car. Officer Morlock walked around the outside of the defendant's car and shined a flashlight inside but did not see anything that concerned him. He returned to his patrol car and asked the defendant what he wanted him to do with the car. The defendant asked him to secure it where it was. Officer Morlock, who had the keys, went back to put the window up and lock the car. The driver's door was still open. The officer leaned into the car to put the keys in the ignition in order to close the window. As he looked down, he saw a baggie in plain view which appeared to contain illegal drugs in the console. He seized the baggie. The substance in the baggie later tested positive for methamphetamine. Although he had not seen it previously when he was shining his flashlight inside the car while he walked around the exterior, once he leaned into the car to turn on the ignition, it was easily visible.

(R., pp. 45-46.)

Greer was charged with felony possession of a controlled substance. (R., pp. 23-24.) He moved to suppress “all evidence obtained as a result of the unlawful detention and search by Officer Morlock.” (R., pp. 32-33.) He argued that Officer Morlock had no grounds to make contact with him initially (R., p. 35), that it is “not unreasonable to question” whether the methamphetamine was in plain view because Officer Morlock did not see it when he initially walked around the vehicle (R., p. 36), and that “[i]t appears a deliberate decision was made [by Officer Morlock] to turn off [his] body camera prior to securing the vehicle,” (id.).

The district court conducted a hearing at which Officer Morlock testified. (See generally 6/18/18 Tr.¹). It then issued an order denying the motion. (R., pp. 45-48.) In addition to the factual findings quoted above, it found “credible that [Officer Morlock] did not see the baggie until he was inside the car. His quick flashlight walk around it did not give the same view that he had when he leaned in to turn on the car so he could put the window up,” at which point “[t]he baggie was in plain view.” (R., p. 46.) It concluded that Greer was lawfully arrested on an outstanding warrant, and that the methamphetamine was properly seized under the plain view doctrine. (R., pp. 46-48.)

Greer agreed to enter a conditional guilty plea, reserving the right to appeal the denial of his motion to suppress. (R., pp. 57-58.) The district court accepted that plea. (R., p. 49.) It then imposed a unified sentence of seven years, with two years fixed, and suspended the sentence. (R., pp. 66-71.) Greer timely appealed. (R., pp. 72-74.)

¹ References to “6/18/18 Tr.” are to the transcript of the hearing on Greer’s motion to suppress, which is one of two transcripts (along with the transcript of his entry of plea and sentencing) contained in the file titled “Appeal Transcripts Record.pdf”.

ISSUE

Greer states the issue on appeal as:

Did the district court err when it denied Mr. Greer's motion to suppress?

(Appellant's brief, p. 5)

The state rephrases the issue as:

Has Greer failed to establish that the district court erred by denying his motion to suppress?

ARGUMENT

The District Court Properly Denied Greer's Motion To Suppress

A. Introduction

Mindful of the district court's factual findings, Greer argues on appeal that the district court erred in concluding that Officer Morlock had reasonable suspicion to seize him, and that the methamphetamine in his vehicle was in plain view. (Appellant's brief, p. 6.) The district court did not err.

B. Standard Of Review

On review of a ruling on a motion to suppress, the appellate court defers to the trial court's findings of fact unless clearly erroneous but exercises free review of the trial court's determination as to whether constitutional standards have been satisfied in light of the facts. State v. Willoughby, 147 Idaho 482, 485-86, 211 P.3d 91, 94-95 (2009). At a suppression hearing, "the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence and draw factual inferences is vested in the trial court." State v. Dominguez, 137 Idaho 681, 684, 52 P.3d 325, 328 (Ct. App. 2002) (citing State v. Fain, 116 Idaho 82, 86, 774 P.2d 252, 256 (1989)).

C. The District Court Correctly Determined That Officer Morlock Properly Detained Greer To Execute An Outstanding Warrant

Greer does not dispute that there was a valid and active warrant for his arrest, or that he was arrested by Officer Morlock on that warrant. Instead, he contends that Officer Morlock "did not have reasonable suspicion to seize him to determine whether he was the subject of the arrest warrant" because (1) Officer Morlock did not confirm that the warrant was active with dispatch

just prior to making contact with him and (2) Officer Morlock was not certain Greer was the subject of the warrant when he contacted him. (Appellant's brief, pp. 7-8.)

As discussed below, Officer Morlock reasonably believed both that the warrant was active and that Greer, the subject of the warrant, was in the parked vehicle. But, as an initial matter, it is irrelevant whether he did.

Greer cites no case law to suggest that, where an arrest warrant is valid and active, an officer's efforts to confirm that fact are in any way relevant to the question whether the officer can execute the warrant. It is not unconstitutional to execute a valid and active arrest warrant because, though the officer believed correctly that the warrant was active and valid, he or she could have been wrong.

Nor is it relevant whether Officer Morlock's belief that Greer was in the parked vehicle was reasonable. The warrant constituted "a probable cause determination to support [Greer's] arrest [that] had already been made by a neutral, detached magistrate." State v. Schwarz, 133 Idaho 463, 468, 988 P.2d 689, 694 (1999) (holding that pat-down search was justified as a search incident to arrest where the officer was aware that the defendant had an outstanding arrest warrant, notwithstanding the fact that the officer stated that he conducted the search for other reasons). Where a neutral and detached magistrate has already determined that there is probable cause to arrest a defendant, and the defendant does not dispute that the warrant was active and valid, he cannot complain that the officer lacked a lawful basis to detain him. The warrant itself provided that basis. Because the defendant can be lawfully detained and arrested on the warrant, his mere detention on that warrant does not violate his constitutional rights. "[A] person named in a valid warrant has no right to be at large, and so suffers no infringement of his rights when he is apprehended unless some other right of his is infringed, as would be the case had the police

roughed up [Greer] gratuitously in the course of trying to determine whether he was the person named in the warrant.” Atkins v. City of Chicago, 631 F.3d 823, 827 (7th Cir. 2011). Nothing of the sort happened here. The constitutional violation Greer alleges involves only his detention, which is exactly what the arrest warrant permitted.

Greer cites State v. Bromgard, 139 Idaho 375, 79 P.3d 734 (Ct. App. 2003), for the proposition that Officer Morlock was required to have a “reasonable belief” that he was in the vehicle before Officer Morlock could detain him to execute the warrant. (Appellant’s brief, p. 7.) In Bromgard, the Court of Appeals determined that it was appropriate for an officer to initiate a traffic stop based on the reasonable belief that the driver was the subject of an arrest warrant, id. at 379, 79 P.3d at 738, not that the stop would have been unjustified otherwise, or that the defendant would have been entitled to the suppression of any evidence. The court in Bromgard relied exclusively on State v. Northover, 133 Idaho 655, 991 P.2d 380 (Ct. App. 1999). Id. Northover did not hold that it is unconstitutional to detain the subject of a valid and active arrest warrant absent a reasonable belief that that person is named in the warrant, but instead held only that officers are required to have a reasonable belief that the subject of an arrest warrant is in a private residence before they may enter the residence to execute the warrant. Northover, 133 Idaho at 659, 991 P.2d at 384. That is, the court recognized an additional requirement on the execution of a warrant where it involves some additional imposition on the defendant’s privacy or the privacy of some third-party, over and above the detention authorized by the warrant itself. But where the execution of the warrant involves only the detention of the defendant, which is exactly what is explicitly authorized by the warrant, he can hardly complain that there is not a lawful basis for his detention.

Finally, there are cases in which someone *other* than the individual named in the arrest

warrant is detained and arrested and, in such circumstances, whether officers reasonably believed that that person was named in the warrant may be relevant to a later motion to suppress. “In circumstances where the police mistake a person for someone else they seek to validly arrest, the arrest is constitutional if the arresting officers (1) have probable cause to arrest the person sought and (2) reasonably believe that the person arrested is the person sought.” United States v. Marshall, 79 F.3d 68, 69 (7th Cir. 1996) (citing Hill v. California, 401 U.S. 797, 802 (1971)). That is so because, under those circumstances, though the officers were authorized to detain the subject of the warrant, they were not authorized to detain the person who they mistook for the subject of the warrant. Had Officer Morlock detained the wrong person, mistakenly believing that person was Greer, that person would potentially have had grounds for a suppression motion and the reasonableness of Officer Morlock’s belief would have been relevant. But the purely hypothetical possibility that Officer Morlock might have been mistaken, though he was not, does not constitute a violation of Greer’s constitutional rights when Officer Morlock did only what the warrant authorized him to do—detain Greer.

Nevertheless, to the extent that this Court disagrees, Officer Morlock reasonably believed both that the arrest warrant was active and that Greer was in the parked vehicle. As to the warrant, Officer Morlock testified that he verified that it was active just prior to driving to the address near which he found Greer sitting in a parked vehicle. (6/18/18 Tr., p. 28, L. 11 – p. 29, L. 13.) With respect to whether Greer was in the vehicle, he testified that when he drove past it, directing his “alley light” towards it, Greer turned towards him and he recognized Greer from a booking photograph that he viewed when he verified that the warrant was active. (6/18/18 Tr.,

p. 16, L. 23 – p. 18, L. 10.²) According to Officer Morlock, the individual in the vehicle matched the booking photograph of Greer “[t]o a tee.” (Id.) As the district court found, “The defendant’s appearance matched the booking photograph.” (R., p. 45.) There is nothing in the record to contradict that finding or that suggests that Officer Morlock was uncertain whether it was Greer in the vehicle. Even on the view Greer advocates on appeal, Officer Morlock was required only to have a “reasonable belief” that Greer was in the vehicle prior to detaining him. (Appellant’s brief, p. 7.) Officer Morlock’s observation of Greer in the vehicle certainly provided at least that.

Because Greer was the subject of an arrest warrant that Officer Morlock was attempting to effectuate, Greer does not challenge the validity of that warrant, and Officer Morlock did nothing more than detain Greer, Greer’s motion to suppress was properly denied. That is so whether or not Officer Morlock reasonably believed Greer was in the vehicle prior to detaining him, and whether or not he had recently confirmed that the warrant was active. But even if Officer Morlock was required to have a reasonable belief that Greer was in the vehicle prior to detaining him, the district court correctly concluded that Officer Morlock recognized Greer in the vehicle prior to detaining him. (R., pp. 45-46.) Likewise, even if Officer Morlock was required to have recently verified that the warrant was active, he had done so.

D. The Methamphetamine Was In Plain View

“[W]arrantless searches are presumed to be unreasonable unless the search can be justified under one of the exceptions to the warrant requirement.” State v. Christensen, 131 Idaho 143, 146, 953 P.2d 583, 586 (1998). “The plain view exception allows police officers to

² Greer has not argued that the use of the “alley light” was a seizure. See State v. Baker, 141 Idaho 163, 167, 107 P.3d 1214, 1218 (2004) (holding that use of spotlight on patrol car to illuminate parked car did not constitute a seizure).

make warrantless seizures of evidence viewed from a location where the officer has a right to be.” Id.

Officer Morlock testified that when he initially walked around Greer’s vehicle with a flashlight, he did not observe anything concerning. (6/18/18 Tr., p. 18, L. 25 – p. 20, L. 5.) He then asked Greer what he should do about the vehicle, the driver’s door of which was open and the windows of which were down, and Greer asked Officer Morlock to secure it. (6/18/18 Tr., p. 20, L. 6 – p. 22, L. 12.) As Officer Morlock was turning the vehicle on so that he could roll-up the windows, he noticed the baggie of methamphetamine in the console. (Id.) The district court found that the methamphetamine was in plain view as Officer Morlock leaned into the car to turn it on and roll-up the windows. (R., p. 46.)

Greer argues on appeal that the district court erred because “Officer Morlock ‘could have seen the drugs if they were in plain view from walking around’ the car with the flashlight.” (Appellant’s brief, p. 8 (quoting 6/18/18 Tr., p. 40, Ls. 17-19).) The district court found otherwise, concluding that Officer Morlock’s “quick flashlight walk around [the car] did not give the same view that he had when he leaned in to turn on the car so that he could put the window up.” (R., p. 46.) Greer provides no reason to believe that the district court’s finding was clearly erroneous. Dominguez, 137 Idaho at 684, 52 P.3d at 328 (“[T]he power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence and draw factual inferences is vested in the trial court.”).

Greer next suggests “that it was ‘troubling’ that Officer Morlock turned off his body cam when securing the car.” (Appellant’s brief, p. 8 (quoting 6/18/18 Tr., p. 41, L. 6 – p. 42, L. 20).) Officer Morlock testified that he turned his body camera off after he arrested Greer and walked around the exterior of Greer’s vehicle because he “believed the investigation to be complete,”

and did not believe there was any reason to keep the camera on while he was merely securing Greer's vehicle. (6/18/18 Tr., p. 23, L. 11 – p. 24, L. 20.) That Greer finds that "suspicious" provides no reason to question the district court's factual findings, much less to conclude that they are clearly erroneous.

CONCLUSION

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

DATED this 4th day of October, 2019.

/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of October, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General

AVW/dd