6-26-2019

State v. Smith Appellant's Brief Dckt. 46641

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Idaho Supreme Court
Karel Lehrman, Clerk of the Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 46641-2019**
Plaintiff-Respondent,	)	
	)	**CANYON COUNTY NO. CR14-18-12530**
v.	)	
	)	
JUSTIN JAMES SMITH,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HONORABLE THOMAS W. WHITNEY
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Pursuant to a conditional plea agreement, Mr. Smith pleaded guilty to one felony count of driving under the influence. The district court imposed a sentence of eight years, with two years fixed. On appeal, mindful that his driving pattern gave rise to reasonable suspicion for the officer to make the traffic stop, he asserts the district erred when it denied his motion to suppress.

Statement of the Facts and Course of Proceedings

In June of 2018, the State filed a complaint alleging that Mr. Smith had committed one felony count of driving under the influence of alcohol, and three related misdemeanors. (R., pp.11-13.) Mr. Smith waived his right to a preliminary hearing, and the case was bound over to the district court. (R., pp.23-24.) On the same day, the State filed an Information, and an Information Part II alleging that Mr. Smith had pled guilty to a felony driving under the influence charge within the past 15 years. (R., pp.17-22.)

Subsequently, defense counsel filed a motion to suppress the evidence, and an affidavit and memorandum in support of the motion. (R., pp.26-27, 31-38.) In the memorandum, counsel argued that the officer who stopped Mr. Smith—Sergeant Drinkwine—lacked reasonable suspicion to make the stop based on his observations that Mr. Smith was allegedly weaving within his lane of travel and driving ten miles under the speed limit. (R., pp.36-37.) Counsel argued that the totality of the circumstances did not provide reasonable suspicion for the stop because, among other things, Mr. Smith's driving fell "within the broad range of normal driving behavior." (R., pp.37-38.)

Sergeant Drinkwine testified at the hearing on the motion to suppress. (Tr., p.4, L.11 – p.38, L.7.) He said he first noticed Mr. Smith's car because it was "driving slowly for no

apparent reason." (Tr., p.10, Ls.10-25.) Specifically, it was travelling approximately 25 miles per hour in a zone where the posted speed limit was 35. (Tr., p.11, Ls.1-14.) He said he followed Mr. Smith's car for a "little over a mile" and noticed that it was "weaving within its lane of travel going from the fog line to the lane divider or yellow line several times." (Tr., p.12, Ls.2-12.) He said the car then turned into a subdivision, and he continued up the road but turned around to see if the car came back out of the subdivision right away. (Tr., p.12, L.20 – p.13, L.8.) He said that it did, and then it began traveling again in the same direction. (Tr., p.13, Ls.9-21.) He stated that he followed the car again at that point, and noticed that it was again traveling approximately 10 miles per hour under the posted speed limit and weaving. (Tr., p.13, Ls.20-25.) He testified that the car was not weaving the whole time he followed it, but it "traveled from the fog line to the centerline numerous times." (Tr., p.14, Ls.1-17; *see also* Tr., p.32, Ls.12-16.)

Shortly thereafter, the district court ruled on the motion to suppress from the bench. (Tr., p.44, L.10 – p.53, L.20.) It found that the "numerous weaves combined with the too slow travel" gave rise to reasonable suspicion that Mr. Smith was impaired. (Tr., p.47, Ls.9-12.) It said that it did not "place any weight" on the fact that Mr. Smith had turned into the subdivision because he had "every legal right" to do so. (Tr., p.47, Ls.13-24.) Similarly, it stated that the time of day the events took place had "nothing to do with the court's analysis of" the case. (Tr., p.48, Ls.12-21.) It went on to note that this situation was different than the cases defense counsel cited in support of the motion. Specifically, it said that, because the "weaving occurred numerous times over a period of a mile," and Mr. Smith was driving "substantially under the speed limit," his driving pattern was "not within the broad range of normal driving . . . ." (Tr., p.49, Ls.9-19.) Based on these findings, it held Sergeant Drinkwine had an "objective and

particularized basis to believe that the defendant was committing the crime of driving under the influence in violation of Idaho Code Section 18-8004." (Tr., p.53, Ls.2-9.) As such, it denied Mr. Smith's motion to suppress. (Tr., p.53, Ls.10-14.)

Mr. Smith entered a conditional guilty plea to one felony count of driving under the influence, which preserved his right to appeal the district court's denial of his motion to suppress. (Tr., p.55, L.20 – p.56, L.6, p.70, Ls.8-20.) Subsequently, the district court imposed a sentence of eight years, with two years fixed. (R., p.86.) Mr. Smith filed a timely notice of appeal. (R., pp.76-78.)

ISSUE

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

ARGUMENT

The District Court Erred When It Denied Mr. Smith's Motion To Suppress

Searches or detentions conducted without a warrant are presumptively unreasonable. *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971); *State v. Butcher*, 137 Idaho 125, 129 (Ct. App. 2002). The Fourth Amendment to the United States Constitution, and Article 1 Section 17 of the Idaho Constitution protect "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; Idaho Const. art. 1, § 17. The purpose of this constitutional right is to "impose a standard of reasonableness upon the exercise of discretion by governmental agents and thereby safeguard the individual's privacy and security against arbitrary invasions." *State v. Maddox*, 137 Idaho 821, 824 (Ct. App. 2002) (citing *Delaware v. Prouse*, 440 U.S. 648, 653-54 (1979)). An Idaho traffic stop "constitutes a seizure of the motorist and is therefore subject to Fourth Amendment strictures, but because it is limited in scope and duration, it is analogous to an investigative detention . . . ." *State v. Stewart*, 145 Idaho 641, 644 (Ct. App. 2008) (citing *Prouse*, 440 U.S. at 653). In order for a traffic stop to comply with the Fourth Amendment's protections, an officer must have "reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws . . . ." *State v. Atkinson*, 128 Idaho 559, 561 (Ct. App. 1996) (citation omitted). The reasonableness of the suspicion is evaluated under a totality of the circumstances test. *Id.*

This Court uses a bifurcated standard to review a district court's order on a motion to suppress. *State v. Wulff*, 157 Idaho 416, 418 (2014). The Court will accept "the trial court's findings of fact unless they are clearly erroneous, but may freely review the trial court's application of constitutional principles in light of those facts." *Id.* "Determinations of

reasonable suspicion are reviewed de novo." *State v. Morgan*, 154 Idaho 109, 111 (2013). Constitutional questions are also reviewed de novo. *State v. Dunlap*, 155 Idaho 345, 377 (2013).

"While a driving pattern may give rise to reasonable suspicion of intoxication, the test is whether the driving pattern falls outside 'the broad range of what can be described as normal driving behavior'" *State v. Neal*, 159 Idaho 439, 443 (2015) (quoting *State v. Emory*, 119 Idaho 661, 664 (Ct. App. 1991) (parenthetical omitted)). In *Atkinson*, the Idaho Court of Appeals held that a driver's pattern of weaving, in which he never left the lane of travel but touched the lines on the edges of the lane three separate times, was "not within the range of normal driving behavior and was an objective indication that the driver was impaired." 128 Idaho at 561; *see also State v. Flowers*, 131 Idaho 205 (Ct. App. 1998) (holding weaving in the lane of travel, driving ten miles per hour under the speed limit, and crossing the fog line gave rise to reasonable suspicion that the defendant was driving under the influence).

Mindful of *Atkinson* and *Flowers*, Mr. Smith asserts the district erred when it denied his motion to suppress. He submits that his driving pattern was within the normal range of driving behavior, and thus Sergeant Drinkwine did not possess reasonable suspicion to make the traffic stop. As such, his Fourth Amendment rights were violated, and the district court erred in denying his motion to suppress evidence.

CONCLUSION

Mr. Smith respectfully requests that this Court vacate the district court's order of judgment and commitment and reverse the order which denied his motion to suppress.

DATED this 26th day of June, 2019.

/s/ Reed P. Anderson
REED P. ANDERSON
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 BRIEF, to be served as follows:

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

RPA/eas