3-31-2020

State v. Karst Appellant's Reply Brief Dckt. 46680

Electronically Filed
3/31/2020 9:43 AM
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,	)	
	)	
Plaintiff-Respondent,	)	**NO. 46680-2019**
	)	
v.	)	**KOOTENAI COUNTY NO. CR-2017-22041**
	)	
DESIREE ELAINE KARST,	)	
	)	**APPELLANT'S REPLY BRIEF**
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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT OF THE CASE

Nature of the Case

Desiree E. Karst appeals from the district court's order denying in part and granting in part her motion to suppress evidence obtained from a traffic stop. She argues the district court should have fully granted her motion because the police officer unlawfully prolonged the stop to request a drug dog, without reasonable suspicion of drug-related criminal activity. The State responds and argues the officer's drug dog request was not an abandonment of the stop's original purpose. In support, the State relies on the Court of Appeals' recent decision in *State v. Still*, No. 45792, 458 P.3d 220 (Aug. 28, 2019), *petition for review denied* (Mar. 9, 2020), which held an officer's request for a drug dog during a traffic stop was not a Fourth Amendment violation. Ms. Karst now replies to address the impact of *Still*. She respectfully submits *Still* is manifestly wrong and should be overruled or abrogated by this Court. If this Court declines to do so, Ms. Karst acknowledges *Still* controls the outcome of this appeal.

Statement of Facts and Course of Proceedings

The statement of facts and course of proceedings were articulated in Ms. Karst's Appellant's Brief. (App. Br., pp.1–4.) They are not repeated here, but are incorporated by reference.

ISSUE

Did the district court err by denying Ms. Karst's motion to suppress evidence obtained from an unlawfully prolonged traffic stop?

ARGUMENT

The District Court Erred By Denying Ms. Karst's Motion To Suppress Evidence Obtained From An Unlawfully Prolonged Traffic Stop

Ms. Karst replies only to address the effect and reasoning of *Still*. As argued by the State, (Resp. Br., pp.9–12), Ms. Karst agrees *Still* controls. However, Ms. Karst asserts this Court should overrule or abrogate *Still* because it is manifestly wrong. "Stare decisis requires that this Court follows controlling precedent unless that precedent is manifestly wrong, has proven over time to be unjust or unwise, or overruling that precedent is necessary to vindicate plain, obvious principles of law and remedy continued injustice." *State v. Owens*, 158 Idaho 1, 4–5 (2015). Ms. Karst submits *Still* is manifestly wrong due to its conflict with Fourth Amendment precedent from the United States Supreme Court and Idaho on the scope of an officer's permissible conduct during a routine traffic stop.

In *Still*, the defendant argued a police officer unlawfully extended a traffic stop for a ten-second radio call to request a drug dog. 458 P.3d at 223, 225. The Court of Appeals disagreed. *Id.* at 225–26. The Court of Appeals first reviewed the controlling precedent on dog sniffs during traffic stops: *Rodriguez v. United States*, 575 U.S. 348 (2015), and *State v. Linze*, 161 Idaho 605 (2016). *Still*, 458 P.3d at 223–25. (*See also* App. Br., pp.7–9 (discussing these cases).) The Court of Appeals distilled those opinions to hold: "[B]ased on the context and the language of *Rodriguez* and *Linze*, an abandonment occurs when officers deviate from the purpose of the traffic mission in order to investigate, or engage in safety measures aimed at investigating crimes unrelated to roadway safety for which the officers lack reasonable suspicion." *Still*, 458 P.3d at 225. In light of this reasoning, the Court of Appeals identified the issue on appeal as whether "a radio call to inquire if a drug-dog unit is available constitutes an abandonment of the traffic mission so as to amount to an unlawful extension of [the] traffic

stop." *Id.* The Court of Appeals held it did not. *Id.* The *Still* Court determined *Rodriguez* and *Linze* prohibit "abandoning the stop to investigate other crimes," but do not prohibit "all conduct that in any way slows the officer from completing the stop as fast as humanly possible." *Id.* The Court of Appeals explained, by calling for a drug dog, the officer was not conducting a dog sniff, taking safety measures to facilitate the dog sniff, or pursuing "any other alternate investigation." *Id.* The Court of Appeals held a call to inquire on a drug dog was, "[a]t most," "a precursor to an alternate investigation." *Id.* As a "precursor," the Court of Appeals held "the call itself does not amount to a Fourth Amendment violation." *Id.* The Court of Appeals also emphasized "any pause" in a traffic stop does not require the conclusion "that the officers abandoned the purpose of the traffic stop. In fact, such a conclusion is inimical to the Fourth Amendment's reasonableness requirement and is contrary to United States Supreme Court precedent." *Id.*

Ms. Karst submits the *Still* decision is manifestly wrong because it conflicts with the "broad and inflexible" rule from *Rodriguez* and *Linze*. *Linze*, 161 Idaho at 608. *Rodriguez* did not distinguish between an "alternate investigation" and a "precursor." The United States Supreme Court was clear that an officer cannot engage in conduct that "is not fairly characterized as part of the officer's traffic mission." *Rodriguez*, 575 U.S. at 356. An officer's "[a]uthority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonable should have been—completed," and the officer cannot "add[ ] time" to the stop for an unrelated task. *Id.* at 354, 357. *Linze* followed suit. Applying *Rodriguez*, *Linze* held a traffic stop "remains a reasonable seizure while the officer diligently pursues the purpose of the stop." *Linze*, 161 Idaho at 609. If the officer abandons that purpose, the officer has initiated a new seizure with a new purpose that must be supported by reasonable suspicion. *Id.* The rule "applies to all extensions of traffic stops including those that could reasonably be considered *de minimis*." *Id.* at 605. Thus, *Rodriguez* and

Linze were not focused on identifying whether an officer's other task was a "precursor" or a full-fledged investigation. *Rodriguez* and *Linze* were focused on whether an officer was pursuing the purpose of the stop or not. If he was not, the officer had abandoned the stop's purpose and started a new seizure. Whether the officer stopped pursing the purpose of the stop to conduct a "precursor" or an actual investigation was irrelevant. *Still*'s creation of an exception to the *Rodriguez*/*Linze* rule for a precursor to an investigation is wholly inconsistent with that case law.

Moreover, *Still*'s creation of separate Fourth Amendment standards for a precursor and an investigation begs the question: what is the difference between the two? According to *Still*, a precursor is any police action that "may (or may not) result in an alternate investigation." 458 P.3d at 225. Under this definition, any police conduct leading up to the dog sniff itself (the alternate investigation) would be a permissible "precursor." An officer could place a call for a dog sniff, coordinate with other officers, or assist in any other way to clear the path for the alternate investigation. Under *Still*, none of this conduct would be viewed as impermissibly adding time to the stop, yet this conduct could add minutes or even hours to the seizure for the new purpose. This is plainly contrary to *Rodriguez* and *Linze*.

Along with creating this division between precursors and investigations, *Still* imposes an additional burden on trial courts to distinguish between the two when evaluating the validity of a traffic stop. Prior to *Still*, application of *Rodriguez* and *Linze* was relatively easy. If the officer abandoned the traffic stop's purpose, even for a de minimis amount of time, the officer started a new seizure that required justification under the Fourth Amendment. *Still* complicates this straightforward analysis. Now, there must be a determination of whether the officer's action was a precursor or an actual investigation. This inquiry demands a detailed analysis of the officer's tasks tied to any one investigation in order to draw the line between a precursor and an

investigation. Such analysis is unnecessarily complex and, again, contrary to *Rodriguez* and *Linze*.

Further, *Rodriguez* and *Linze* are rendered meaningless if precursors to prolong traffic stops are permitted. The purpose of *Rodriguez* and *Linze* was to prevent suspicionless seizures, which are prohibited by the Fourth Amendment. As such, the *Rodriguez/Linze* rule prohibits an officer from "piggy-back[ing]" on an otherwise routine traffic stop to start a new investigation without reasonable suspicion. *Linze*, 161 Idaho at 609. *Still* eviscerates this purpose. Under *Still*, an officer could "pause" the traffic stop investigation for any amount of time to call and wait for a drug dog—both are "precursors" to the actual alternate investigation of the dog sniff. 458 Idaho at 225. Once the canine unit arrives, the officer could resume tasks related to the traffic stop's mission while the dog sniff occurs. Thus, under the guise of a precursor, the officer could conduct a seizure unrelated to the traffic stop's mission without any permissible Fourth Amendment basis. Due to these permissible, unlimited pauses, this precursor exception created by *Still* operates to undo the Fourth Amendment protections guaranteed in *Rodriguez* and *Linze*.

Finally, and contrary to the concern expressed in *Still*, the *Rodriguez/Linze* rule does not require the conclusion that the Fourth Amendment prohibits "any pause" in a traffic stop. *See Still*, 458 P.3d at 225 ("We cannot conclude that any pause during a traffic stop requires a conclusion under *Rodriguez* and *Linze* that the officers abandoned the purpose of the traffic stop. In fact, such a conclusion is inimical to the Fourth Amendment's reasonableness requirement and is contrary to United States Supreme Court precedent."). *Rodriguez* and *Linze* did not alter the touchstone of the Fourth Amendment: reasonableness. *See, e.g.*, *State v. Rios*, 160 Idaho 262, 264 (2016); *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). And "[t]he reasonableness of a seizure . . . depends on what the police in fact do." *Rodriguez*, 575 U.S. at 357. If an officer "pauses" to

check information with dispatch, correct a mistake in his work, slowly write out on a citation, or simply collect his thoughts, that is entirely reasonable. Officers are human, and they are not perfect. Those are all "tasks tied to the traffic infraction." *Rodriguez*, 575 U.S. at 354. But, if an officer "pauses" the traffic stop's mission to start an alternate investigation, such as to request a drug dog, that is unreasonable. The officer has now abandoned the original purpose of the traffic stop. *Linze*, 161 Idaho at 609. In that situation, "the officer has for all intents and purposes initiated a new seizure with a new purpose; one which requires its own reasonableness under the Fourth Amendment." *Id.* The "seized party's Fourth Amendment rights are violated when the original purpose of the stop is abandoned," unless supported by reasonable suspicion or another established exception. *Id.* In sum, "any pause" is not a Fourth Amendment violation, unless its sole purpose is to further an alternate investigation.

For all of these reasons, and those stated in the Appellant's Brief, Ms. Karst maintains the district court erred by denying her motion to suppress because the police officer unlawfully prolonged the traffic stop by about nineteen seconds to request a drug dog. (*See* App. Br., pp.6–10.) She further argues this Court should overrule or abrogate *Still* as it is manifestly wrong. If this Court declines, Ms. Karst agrees with the State and acknowledges *Still* controls. (*See* Resp. Br., pp.9–12.)

CONCLUSION

Ms. Karst respectfully requests this Court reverse or vacate the district court's order denying her motion to suppress in part, vacate her judgment of conviction, and remand this case for further proceedings.

DATED this 31st day of March, 2020.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of March, 2020, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

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JCS/eas