

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 46825-2019
 Plaintiff-Respondent,)
) Kootenai County Case No.
 v.) CR28-18-9328
)
 DONALD RAY BRITTON,)
)
 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**

HONORABLE CYNTHIA K.C. MEYER
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Donald Ray Britton appeals from the district court's denial of his motion to suppress evidence.

Statement Of The Facts And Course Of The Proceedings

The relevant facts of this case, found by the district court, are as follows:

On June 13, 2018, at around 8:02 a.m., Sergeant Justin Klitch of the Idaho State Police initiated a traffic stop of [Defendant Britton's] vehicle based on his observation that Defendant failed to signal for the full five seconds before changing lanes on Interstate 90. Sgt. Klitch observed that Defendant's vehicle had an unusually loud or excessively loud muffler. At some point, Sgt. Klitch also saw that Defendant was not wearing a seat belt.

When Sgt. Klitch approached Defendant's vehicle, he explained the reason for the stop. Sgt. Klitch saw that Defendant had glassy, bloodshot eyes and slightly dilated pupils. Defendant was constantly moving or "fidgety." Defendant's body movements were "exaggerated," similar to "tweaking." Sgt. Klitch suspected that Defendant was under the influence because Defendant's movements were "consistent with someone who is under the influence of a [central nervous system] stimulant."

After speaking briefly with Defendant, Sgt. Klitch asked Defendant to step out of the vehicle in order to conduct field sobriety tests. Sgt. Klitch administered the Romberg test to Defendant. During the test, Defendant "swayed," had "eyelid tremors," and completed the Romberg test in 22 seconds, "which is consistent with a stimulant." After the Romberg test, Sgt. Klitch questioned the Defendant about drugs, and asked Defendant if there were any illegal items inside the vehicle. The following conversation took place:

Sgt. Klitch: When was the last time you used illegal drugs, sir?

Defendant: Oh god, years ago. Why?

Sgt. Klitch: Well, if I'm asking I don't think it was years ago, okay?

Defendant: No. I've been—

Sgt. Klitch: Do you want to stick your hands outside of your pockets?

Defendant: I've just been real upset with a bad breakup and stuff. I've been crying a lot, you know, emotional.

Sgt. Klitch: Well, and that's—that's kind of why I'm asking these questions. Maybe you've been going through a rough time, and you've lapsed recently? I don't know...

Defendant: No.

Sgt. Klitch: Okay. Um, I am going to have a canine walk around the vehicle, okay? Do you understand what a canine does?

Defendant: Why? Ok. Well, did somebody call or turn me in or anything? Since I seen you sitting there. Because she is very vindictive and very—

Sgt. Klitch: Nobody called in.

Defendant: Turned me in?

Sgt. Klitch: Listen to what I'm asking you. Is there anything on you or in the vehicle that the canine will alert, [sic] okay? I'm going to work with you right now if you're being honest with me, okay? I suspect that there's something. I'd prefer that you're honest with me. I don't care if you are or not, you know. But I'm willing to work with you if you are, okay? All right?

Defendant: (unintelligible) I tried to get him off it. I took his pipe from him. I'll get it for you.

Sgt. Klitch: Well I'm going to be searching the vehicle, okay? All right, where's the pipe at?

Defendant: (shrugs). It's by the visor.

Sgt. Klitch: All right when I search you am I going to find anything else on your person sir?

Defendant: No.

Sgt. Klitch: What time did you use? Let's quit playing games here.

Defendant: Uh.

Sgt. Klitch: What time did you use?

Defendant: Me?

Sgt. Klitch: Yes sir.

Defendant: I done (unintelligible) yesterday, but that was it.

Sgt. Klitch: Okay. Alright.

Defendant: And that was a stupid thing to do, and I've been trying to get him off, and so I took his pipe and—

Sgt. Klitch: Let me ask you this, okay? I think by now you figured out that I know what I'm doing out here.

Defendant: Oh, I know you do.

Sgt. Klitch: Okay. If there's methamphetamine in the vehicle you need to tell me now. I will find it.

Defendant: I don't know if there is or not.

Sgt. Klitch: (interrupting) Okay.

Defendant: I have not got any. I told you there was a pipe that I took from him yesterday. And all's I know is that's it.

Sgt. Klitch: What time did you use meth? Because it wasn't yesterday.

Defendant: Yes it was officer. It was yesterday after work.

Sgt. Klitch: Okay. What time?

Defendant: Probably about seven. And I hadn't done it in years. It was a stupid thing to do.

Sgt. Klitch: Is that why it's probably still affecting you right now?

Defendant: Probably yeah. That and emotional with the divorce and everything—

Sgt. Klitch: On a scale from one to ten, ten being the highest you've ever been what would you rate yourself right?

Defendant: Probably about a four.

Sgt. Klitch continued to conduct field sobriety tests. After Defendant had completed the field sobriety tests, Sgt. Klitch searched Defendant's vehicle and found the pipe described by Defendant, along with methamphetamine. [Sgt.] Klitch did not arrest Defendant for driving under the influence because Defendant did not fail the field sobriety tests.

(R., pp.127-30 (internal citations omitted).)

Britton was arrested and charged with possession of methamphetamine, possession of paraphernalia, and failure to display insurance. (R., pp.58-59.) Britton filed a motion to suppress evidence, raising three issues: 1) that the stop was "unlawful and without legal justification"; 2) that "even if the stop was justified at its inception, the stop was unlawfully prolonged without legal justification"; and 3) that Britton "was subjected to a custodial interrogation without the benefit of *Miranda*¹ warnings," making his statements to Sergeant Klitch inadmissible. (R., pp.79, 100.)

Regarding his claim that the stop was unlawfully prolonged, Britton argued that Sergeant Klitch "abandoned the purpose of the traffic stop almost immediately and began a drug investigation of Mr. Britton"; he "spoke to Mr. Britton for approximately one minute" before asking Britton to leave the vehicle; and he "did not run" Britton's "information through dispatch" or do any "other regular activities an officer pursuing a traffic citation would do." (R., p.98.) Britton argued that Sergeant Klitch instead "began interrogating him" and "stopped working on the traffic citations," which, according to Britton, showed "[Sergeant] Klitch began a new seizure for the purpose of investigating" drug possession "without reasonable suspicion that Mr. Britton" had drugs. (R., pp.98-99.)

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

The district court held a hearing on Britton’s motion. (R., p.114-22.) The state’s sole witness was Sergeant Klitch, who testified about the traffic stop and described his dash camera video, which was admitted into evidence. (Tr., p.72, L.22 – p.11, L.11.) The court took judicial notice of the preliminary hearing transcript, which contained Sergeant Klitch’s testimony. (R., p.114; Tr., pp.3-32.)

The district court concluded that the stop “was supported by reasonable articulable suspicion that a traffic violation had occurred,” and that Britton “was not subject to custodial interrogation for *Miranda* purposes.”² (R., pp.131, 135 (emphasis altered).) It additionally concluded that Sergeant Klitch had “reasonable articulable suspicion to extend the scope of the stop under [*State v. Grigg*, 149 Idaho 361, 363, 233 P.3d 1283, 1285 (Ct. App. 2010)]:

The *Grigg* court explained that “bloodshot eyes alone are not enough to establish reasonable suspicion that a crime is being committed,” but noted that the officer observed more than bloodshot eyes. The *Grigg* [court] noted that the defendant had glassy, blood shot eyes; “reddening of the conjunctiva of his eyes and eyelid tremors.” The *Grigg* court also considered the officer’s testimony that “based on his training and experience, such characteristics indicate that a person is under the influence of a controlled substance.” The *Grigg* court held “based on the totality of the circumstances, the officer had reasonable and articulable suspicion that Grigg was under the influence of drugs.”

(R., p.134 (internal citations omitted).)

The district court, applying *Grigg*, found that Sergeant Klitch had “reasonable articulable suspicion to expand the scope of the stop to conduct an investigative detention of [Britton] unrelated to the traffic violations that were the original purpose of the stop.” (Id.) The court found that Britton “had glassy, bloodshot eyes and slightly dilated pupils,” that his “movements

² Britton has abandoned his challenge to the initial stop and *Miranda* challenge on appeal; he now only contends that “the district court erred when it denied Mr. Britton’s motion to suppress because the officer did not have reasonable suspicion to justify [deviating] from the mission of the traffic stop.” (Appellant’s brief, p.5.)

were ‘exaggerated,’ as if he was ‘tweaking,’ and was described by Sgt. Klitch as ‘fidgety.’” (Id.) And the court cited Sergeant Klitch’s opinion, based on his “training and experience,” that Britton’s “body movements were consistent with someone that was under the influence of a CNS stimulant.” (Id.) Thus, the district court held that under “the totality of the circumstances” Sergeant Klitch had “reasonable articulable suspicion” that Britton “was driving under the influence of drugs or alcohol, which justified an expansion of the scope of the traffic stop.” (R., pp.134-35.)

The district court denied Britton’s motion to suppress. (R., p.138.) The parties ultimately reached a settlement agreement, under which Britton pleaded guilty to all three counts, reserving his right to appeal from the denial of his motion to suppress. (R., p.142; Tr., p.150, Ls.9-15.) The district court sentenced Britton to three years with eighteen months fixed on the felony count, ordered credit for time served on the misdemeanors, and placed Britton on probation. (R., pp.146-47, 149.) Britton timely appealed. (R., pp.156-59.)

ISSUE

Britton states the issue on appeal as:

Whether the district court erred when it denied Mr. Britton's motion to suppress because the officer did not have reasonable suspicion to justify [deviating] from the mission of the traffic stop.

(Appellant's brief, p.5.)

The state rephrases the issue as:

Has Britton failed to show the district court erred in denying his motion to suppress?

ARGUMENT

Britton Has Failed To Show The District Court Erred In Denying His Motion To Suppress

A. Introduction

Britton argues that “the totality of the circumstances observed by Officer Klitch did not create a reasonable suspicion to justify immediately deviating from the mission of the traffic stop.” (Appellant’s brief, p.7 (emphasis altered).) Specifically, he contends the facts “that Mr. Britton’s eyes were bloodshot, glassy, and slightly dilated; and that his movements were exaggerated and fidgety, as if he were ‘tweaking,’” “do not give rise to a reasonable suspicion that under the totality of the circumstances that Mr. Britton was driving under the influence.” (Id. (footnote omitted).)

This argument fails. As the district court correctly concluded, the facts here are nearly identical to those found in Grigg, in which the Court of Appeals found that “glassy bloodshot eyes,” “coupled with reddening of the conjunctiva of ... eyes and eyelid tremors” and testimony that “such characteristics indicate that a person is under the influence of a controlled substance,” supported a belief that the defendant was “under the influence of drugs.” 149 Idaho at 364, 233 P.3d at 1286 (footnote omitted). Because nearly all of these suspicious factors (and more) existed here, the district court correctly held that the traffic stop was not unreasonably extended.

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); State v. Fees, 140 Idaho

81, 84, 90 P.3d 306, 309 (2004). If findings are supported by substantial evidence in the record, those “[f]indings will not be deemed clearly erroneous.” State v. Stewart, 145 Idaho 641, 648, 181 P.3d 1249, 1256 (Ct. App. 2008) (quoting State v. Jaborra, 143 Idaho 94, 98, 137 P.3d 481, 485 (Ct. App. 2006)).

C. Sergeant Klitch Had Reasonable Suspicion To Investigate Britton For Impaired Driving

“Because a routine traffic stop is normally limited in scope and of short duration, it is more analogous to an investigative detention than a custodial arrest and therefore is analyzed under the principles set forth in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968).” State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). “Under the Fourth Amendment, an officer may stop a vehicle to investigate possible criminal behavior if there is a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws.” State v. Roe, 140 Idaho 176, 180, 90 P.3d 926, 930 (Ct. App. 2004).

“An investigative detention must be temporary and last no longer than necessary to effectuate the purpose of the stop.” State v. Ramirez, 145 Idaho 886, 889, 187 P.3d 1261, 1264 (Ct. App. 2008). “Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose.” Rodriguez v. United States, ___ U.S. ___, 135 S. Ct. 1609, 1616 (2015) (internal quotes, brackets and citations omitted). “[A]s a matter of course in a valid traffic stop, a police officer may order the occupants of a vehicle to exit or to remain inside.” State v. Irwin, 143 Idaho 102, 105, 137 P.3d 1024, 1027 (Ct. App. 2006). “The stop remains a reasonable seizure while the officer diligently pursues the purpose of the stop, to which that reasonable suspicion is related. However, should the officer abandon the purpose of

the stop, the officer no longer has that original reasonable suspicion supporting his actions.” State v. Linze, 161 Idaho 605, 609, 389 P.3d 150, 154 (2016).

The Idaho Court of Appeals, in Grigg, has already addressed the only issue raised here: “whether glassy bloodshot eyes, eye tremors, and reddening of the conjunctiva are enough to establish reasonable suspicion of criminal activity,” justifying an extended detention. 149 Idaho at 364, 233 P.3d at 1286. Grigg made the same essential argument Britton now presses on appeal: he “assert[ed] that having glassy bloodshot eyes, eye tremors, and a white residue near the mouth is not enough to establish reasonable articulable suspicion that an individual is under the influence of a controlled substance.” Id. at 363, 233 P.3d at 1285.

The Grigg Court disagreed. It first acknowledged that “bloodshot eyes *alone* are not enough to establish reasonable suspicion that a crime is being committed,” but it rejected Grigg’s attempt to shoehorn that single-factor standard into a multi-factor case. Id. at 364, 233 P.3d at 1286 (emphasis added). The Grigg Court pointed out that lots of suspicious factors beyond bloodshot eyes were present, and, taken together, they justified a detention “to investigate the crime of drug use or possession”:

In this case, not only did Grigg have bloodshot eyes, but his eyes were also glassy. In addition, the officer testified that Grigg’s glassy bloodshot eyes were coupled with reddening of the conjunctiva of his eyes and eyelid tremors. The officer further testified that, based on his training and experience, such characteristics indicate that a person is under the influence of a controlled substance. Therefore, based on the totality of the circumstances, the officer had a reasonable and articulable suspicion that Grigg was under the influence of drugs.

Id. (footnote omitted). “As a result,” the Court of Appeals concluded, “it was reasonable for the officer to briefly detain Grigg outside his vehicle in order to investigate further,” and Grigg “failed to show that the district court erred in denying his motion to suppress.” Id.

The district court below correctly perceived that Grigg controls this case. The court found that Britton “had glassy, bloodshot eyes and slightly dilated pupils”; that his “movements were ‘exaggerated,’ as if he was ‘tweaking,’” and that he was fidgety. (R., p.134.) All of these findings are supported by the record, including Sergeant Klitch’s testimony about Britton’s eyes and movement, and the dash cam video demonstrating Britton’s fidgety and exaggerated hand and arm movements during his interaction with the officer. (See, e.g. Tr., p.4, L. 20 – p.5, L.4; p.14, Ls.5-12; see State’s Ex. 1, 08:05:12 – 08:05:56.) The district court also relied on Sergeant Klitch’s testimony that, based on his training and experience, Britton’s “glassy, bloodshot eyes” and dilated pupils were “signs of recent drug usage,” and his “body movements” were “consistent with someone that was under the influence of a CNS stimulant.” (R., p.134; Tr., p.14, Ls.3-12; p.16, Ls.7-9.) The district court therefore held that under “the totality of the circumstances” Sergeant Klitch had “reasonable articulable suspicion” that Britton “was driving under the influence of drugs or alcohol, which justified an expansion of the scope of the traffic stop.” (R., pp.134-35.) This is directly in line with the conclusion in Grigg: that bloodshot, glassy eyes, “coupled with reddening of the conjunctiva of ... eyes and eyelid tremors”—plus an officer’s testimony that these factors indicate drug use—make it reasonable to “briefly detain” an individual “outside of his vehicle in order to investigate further.” 149 Idaho at 364, 233 P.3d at 1286.

Per Grigg, Sergeant Klitch therefore had reasonable suspicion to conduct an investigation to determine if Britton was driving impaired. And it was “reasonably related in scope and duration” to that suspicion to ask Britton to step out of the car for field sobriety testing. State v. Roe, 140 Idaho 176, 181, 90 P.3d 926, 931 (Ct. App. 2004). During the testing Britton admitted he had a pipe in the car, which Britton conceded gave the officer “probable cause to detain him”

further. (Tr., p.22, Ls.23-25.) Thus, the district court correctly found that Sergeant Klitch had “reasonable articulable suspicion to extend the scope of the stop” and perform an impaired driving investigation. (R., p.133 (emphasis altered).)

Britton fails to show any error on appeal. In particular, he fails to show that Grigg does not resolve this case. Britton’s sum of the suspicious facts here is not even arithmetically correct, as he argues the “district court pointed to only two facts” showing reasonable suspicion, but goes on to list *five* facts showing the same. (Appellant’s brief, p.7.) Beyond that, the five suspicious facts found by the district court—bloodshot eyes, glassy eyes, slightly dilated eyes, exaggerated movement, and fidgeting—were all things that Sergeant Klitch testified were “signs of recent drug usage.” (Tr., p.14, Ls.3-12.) Under a straightforward application of Grigg to the facts of this case, any “‘new seizure’ by” Sergeant Klitch “was supported by separate reasonable articulable suspicion that” Britton “was driving under the influence of alcohol or drugs.” (R., p.135 (citing State v. Linze, 161 Idaho 605, 389 P.3d 150 (2016).) The district court, therefore, correctly found there was no Fourth Amendment violation. (Id.)

CONCLUSION

The state respectfully requests this Court affirm the denial of Britton’s motion to suppress.

DATED this 10th day of December, 2019.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 10th day of December, 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:

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