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State v. Cox Appellant's Brief Dckt. 47162

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 47162-2019**
Plaintiff-Respondent,	)	
	)	**KOOTENAI COUNTY**
v.	)	**NO. CR28-18-19631**
	)	
HEATHER ROCHELLE COX,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

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

BEN P. MCGREEVY
Deputy State Appellate Public Defender
I.S.B. #8712
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

The district court denied Heather Rochelle Cox's motion to suppress evidence found following a traffic stop of the car she was driving. However, the dash camera footage from the arresting officer showed that Ms. Cox's car stopped before crossing a sidewalk to enter a roadway, meaning the officers did not have the claimed justification that the car did not come to a complete stop. After the denial of the motion, a jury found Ms. Cox guilty of felony possession of a controlled substance and misdemeanor possession of paraphernalia. On appeal, Ms. Cox asserts the district court erred when it denied her motion to suppress, because the court's factual finding that her car did not come to a complete stop was clearly erroneous.

Statement of the Facts and Course of Proceedings

Officer Mauri of the Coeur d'Alene Police Department conducted a traffic stop on a yellow Mustang driven by Ms. Cox, after the officer reportedly saw the Mustang and another vehicle, a Dodge Nitro, leave the parking lot of the Lighthouse Motel without coming to a complete stop. (*See* R., p.16.) However, Officer Mauri admitted at the motion to suppress hearing that his dash camera footage from that night showed the Nitro coming to a complete stop. (*See* Tr. 3/6/19, p.15, L.2 – p.19, L.9; State's Ex. 2 (dash camera footage).) He testified, "At the time of the encounter, it was clear to me the Dodge Nitro did not stop; however, upon reviewing the video, I'm confident the Dodge Nitro did stop." (Tr. 3/6/19, p.19, Ls.14-23.) The officer testified that, after reviewing the dash camera footage, he still felt that the Mustang did not stop all the way before entering the roadway. (*See* Tr. 3/6/19, p.20, L.23 – p.21, L.6.)

Officer Boardman testified that he was in the area of the Lighthouse Motel that night, and he stopped the Dodge Nitro. (*See* Tr. 3/6/19, p.29, Ls.16-22.) He testified he had a good view of

the entrance and exit of the motel, and he "watched two vehicles exit the Lighthouse parking lot in reverse, back onto Sherman, and proceed west on Sherman." (*See* Tr. 3/6/19, p.30, Ls.11-24.) Officer Boardman also testified that he had reviewed Officer Mauri's dash camera footage, and while he had believed the Nitro "had failed to come to a complete stop before backing onto Sherman and proceeding westbound," the "video evidence certainly seems that he made a far more conceded effort to stop before proceeding onto Sherman." (*See* Tr. 3/6/19, p.31, Ls.5-21.) He testified the footage did not change his belief as to the Mustang. (Tr. 3/6/19, p.31, Ls.22-24.)

During the traffic stop, Ms. Cox told Officer Mauri that she was high on marijuana. (*See* R., p.16.) Officer Boardman arrived on scene and searched the car, finding paraphernalia, and Officer Mauri arrested Ms. Cox. (*See* R., pp.16-17.) Officer Mauri found a glass pipe and a plastic bag containing suspected methamphetamine on her person. (See R., p.17.) The suspected methamphetamine later tested positive for methamphetamine. (*See* Ex. 6.)

The State charged Ms. Cox by Information with felony possession of a controlled substance, and misdemeanor possession of paraphernalia. (R., pp.68-69.) She pleaded not guilty to the charges. (R., p.74) Ms. Cox filed a Motion to Suppress, requesting an order "suppressing any and all evidence gathered against" her, "including all statements made by" her, "the observations made by the officers of" her "during and after the stop, and any evidence seized subsequent to the stop." (R., pp.72-73.) She asserted, "The evidence must be suppressed because the warrantless stop and arrest by the officers was unlawful and without legal justification, therefore in violation of the Fourth Amendment to the [C]onstitution of the United States and Article I § 17 of the Constitution of the State of Idaho." (R., p.72.)

Ms. Cox's Memorandum in Aid of Motion to Suppress asserted, "The only issue in this case is whether Ms. Cox stopped prior to the sidewalk as required by I.C. § 49-651."[1] (R., pp.78-79.) She explained that, "To stop is defined by I.C. § 49-120(25) as 'the act of or complete cessation from movement,'" and "[s]topping is defined as 'the act of halting even momentarily of a vehicle.' I.C. § 49-120(26)." (R., p.78.) She further stated, "In *State v. Neal*, 159 Idaho 439, 445-447 (2015), the Idaho Supreme Court outlined the basic [tenets] of statutory construction and found that the line painted along the roadway had no legal existence." (R., p.78.) Ms. Cox asserted: "Applying those rules to I.C. § 49-651, this Court should find a momentary halt of Ms. Cox's vehicle is all that was required. The evidence will show that she halted, even if only for a moment." (R., p.78.) The State argued in opposition that Ms. Cox's vehicle had not come to a complete stop before entering the roadway. (*See* R., pp.80-83.)

Officer Mauri testified that he was on routine patrol on the night of the incident, when Officer Boardman told him that a car at the Lighthouse Motel was associated with a drug house. (*See* Tr. 3/6/19, p.9, L.11 – p.12, L.2.) He testified the Lighthouse Motel was a hot spot for drug sales at the time. (Tr. 3/6/19, p.12, Ls.2-5.) He parked his patrol car where he had an unobstructed view of the Lighthouse Motel's exit. (*See* Tr. 3/6/19, p.9, L.14 – p.10, L.3, p.13, Ls.12.) People accessed the Lighthouse Motel from Sherman Avenue, and a sidewalk separated the motel property from the roadway. (Tr. 3/6/19, p.13, Ls.18-23.)

[1] Section 49-651 provides:

> The driver of a vehicle emerging from an alley, building, private road or driveway within a business or residential district shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across the alley, building entrance, or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the highway to be entered where the driver has a view of approaching traffic.

According to Officer Mauri, as he was watching the motel: "I observed first a silver Dodge Nitro backing up from the parking lot of the Lighthouse Motel onto Sherman Avenue. I then observed immediately after a yellow Mustang backing up from the parking lot onto Sherman Avenue turning westbound onto Sherman Avenue." (Tr. 3/6/19, p.14, Ls.3-11.)

Officer Mauri testified: "I put my vehicle in motion because the first violation I saw was [Ms. Cox] not stop prior to the sidewalk . . . . It was after I started driving that I observed her not stop at all prior to the roadway." (Tr. 3/6/19, p.22, Ls.3-9.) He testified, "she specifically did not stop prior to the sidewalk or prior to entering the roadway." (Tr. 3/6/19, p.22, Ls.14-20.)

Ms. Cox's counsel asserted, based on his review of the dash camera footage, that "it seemed like a stop had occurred, at least what would be required by the law." (*See* Tr. 3/6/19, p.36, Ls.18-23.) The State argued that the dash camera footage and the officers' testimony showed the Mustang did not stop. (*See* Tr. 3/6/19, p.37, Ls.12-16.) Ms. Cox asserted in reply that "the needs of what the law is trying to do here are being met," even if the momentary hesitation before the Mustang entered the roadway was not a complete stop, and the traffic stop was not reasonable. (Tr. 3/6/19, p.38, L.18 – p.40, L.22; *see* Tr. 3/6/19, p.37, Ls.12-16.)

The district court noted, "there must be a reasonable and articulable suspicion that a traffic violation has occurred in order to justify law enforcement stopping the defendant, in this particular matter, of driving that yellow Mustang." (Tr. 3/6/19, p.41, Ls.13-17.) The court then discussed section 49-651, and observed, "So the pertinent language here is that a driver must stop the vehicle immediately before it drives onto the sidewalk that separates a parking lot from a public street or roadway." (*See* Tr. 3/6/19, p.41, L.24 – p.42, L.17.) Based on the statutory definitions of "stop" and "stopping," the district court stated: "You can be stopping but never come to the complete cessation, you never complete that stopping. But the language of the

statute in question here calls for the vehicle to stop, which means the act of or complete cessation from movement." (Tr. 3/6/19, p.43, Ls.19-23; *see* Tr. 3/6/19, p.42, L.18 – p.43, L.15.)

The district court then determined: "The Court is not just relying on its own observations of the video. It is relying on the testimony of Officer Mauri and Officer Boardman." (Tr. 3/6/19 p.43, L.24 – p.44, L.1.) Per the court, both officers "from their vantage points on the night in question . . . believed and reported that the yellow Mustang that was being driven by Ms. Cox that was ultimately stopped by Officer Mauri, did not stop prior to crossing the sidewalk before backing onto Sherman Avenue to . . . proceed westbound." (Tr. 3/6/19, p.44, Ls.1-7.) While the officers "both apparently mistakenly believed that the . . . Dodge Nitro, likewise did not stop," Officer Mauri's dash camera footage showed that the Nitro did stop before crossing the sidewalk and then proceeding onto Sherman. (*See* Tr. 3/6/19, p.44, Ls.8-14.)

However, "the Court's observation of the dash cam is that the yellow Mustang did not come to a complete cessation of movement." (Tr. 3/6/19, p.44, Ls.14-17.) The district court observed that the car "carefully and slowly crossed the sidewalk onto Sherman. But that's not the language of the statute being that one carefully or slowly or with due caution proceeds onto the street." (Tr. 3/6/19, p.44, Ls.18-22.)

The district court was satisfied "that both of these officers were intending to find a reason to stop either the Nitro and/or the Mustang. Certainly the Mustang, possibly the Nitro as well. They were looking for a reason to stop it." (Tr. 3/6/19, p.44, L.24 – p.45, L.4.) The court determined: "And this is a pretext stop for the purpose of engaging in an investigation of possible drug activity. But it's a legitimate pretext stop." (Tr. 3/6/19, p.45, Ls.4-6.) Thus, the district court determined "that the defendant did not obey the traffic laws by stopping before backing onto Sherman, and therefore a traffic violation occurred in the presence of these officers

and there was a reasonable and articulable suspicion to stop that vehicle." (Tr. 3/6/19, p.45, Ls.7-12.)

The district court did not find any "bad faith in the fact that the officers reported and maybe even testified under oath that the Nitro stopped, but that's not the issue before the Court whether the Nitro in fact stopped or not." (Tr. 3/6/19, p.45, Ls.13-17.) The court stated, "It has some bearing on the Court's determination of the credibility of the officers' testimony," but the court thought "the officers were expecting and hoping to see these vehicle[s] engage in a traffic violation so they could stop them, and simply I think were wrong about the Nitro." (Tr. 3/6/19, p.45, Ls.17-24.) The district court nonetheless determined the officers "were right about the Mustang." (Tr. 3/6/19, p.45, Ls.24-25.)

Additionally, the district court did not adopt Ms. Cox's assertion that her conduct was "[c]lose enough for reasonableness," because the issue "is more whether the determination by the police . . . that a traffic violation had occurred was a reasonable determination, and the Court finds that it was under this evidence." (*See* Tr. 3/6/19, p.46, Ls.1-8.) The district court therefore denied Ms. Cox's motion to suppress. (*See* Tr. 3/6/19, p.46, Ls.9-14.)

Ms. Cox ultimately exercised her right to a jury trial. (*See* R., pp.133-45.) At the conclusion of the trial, the jury found Ms. Cox guilty of both charges. (R., p.147.) On the possession of a controlled substance charge, the district court withheld judgment and placed Ms. Cox on supervised probation for a period of two years. (R., pp.207-13, 215-21.) Ms. Cox filed a Notice of Appeal timely from the Order Withholding Judgment.[2] (R., pp.222-26.)

[2] The district court later found that Ms. Cox had violated her probation, set aside the withheld judgment, imposed a unified sentence of four years, with two years fixed, and continued her on probation. (Judgment on Probation Violation, 2/10/20.)

ISSUE

Did the district court err when it denied Ms. Cox's motion to suppress?

ARGUMENT

The District Court Erred When It Denied Ms. Cox's Motion To Suppress

A. Introduction

Ms. Cox asserts the district court erred when it denied her motion to suppress, because the court's factual finding that her Mustang did not come to a complete stop was clearly erroneous. Officer Mauri's dash camera footage shows the Mustang coming to a stop before entering the roadway. Further, the officers' admission that the Nitro made a complete stop, despite their previous reports that it did not, undermines the district court's determination that the officers were credible. Additionally, the district court determined that the traffic stop was a pretext stop, and the officers were looking for a reason to stop the Mustang. Thus, the district court's factual finding that Ms. Cox's Mustang did not come to a complete stop was clearly erroneous.

B. Standard Of Review

"In reviewing an order granting or denying a motion to suppress evidence, this Court will defer to the trial court's factual findings unless clearly erroneous." *State v. Henage*, 143 Idaho 655, 658 (2007). "Findings of fact are not clearly erroneous if they are supported by substantial and competent evidence." *State v. Bishop*, 146 Idaho 804, 810 (2009). "Substantial, competent evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Moore*, 164 Idaho 379, 381 (2018) (internal quotation marks omitted). "Decisions regarding the credibility of witnesses, weight to be given to conflicting evidence, and factual inferences to be drawn are also within the discretion of the trial court." *Bishop*, 146 Idaho at 810. "However, free review is exercised over a trial court's determination as to whether

constitutional requirements have been satisfied in light of the facts found." *Henage*, 143 Idaho at 658.

C. The District Court's Factual Finding That Ms. Cox's Mustang Did Not Come To A Complete Stop Is Clearly Erroneous

The Fourth Amendment to the United States Constitution guarantees "[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.[3] "This guarantee has been incorporated through the Due Process Clause of the Fourteenth Amendment to apply to the states." *State v. Bishop*, 146 Idaho 804, 810 (2009) (citing *Mapp v. Ohio*, 367 U.S. 643, 655 (1961)). "Evidence obtained in violation of the amendment generally may not be used as evidence against the victim of the illegal government action." *Id.* at 810-11. "When a defendant moves to exclude evidence on the grounds that it was obtained in violation of the Fourth Amendment, the government carries the burden of proving that the search or seizure in question was reasonable." *Id*. at 811.

"Because a traffic stop is limited in scope and duration, it is analogous to an investigative detention and is analyzed under the principles set forth in *Terry v. Ohio*, 392 U.S. 1 (1968). *State v. Danney*, 153 Idaho 405, 409 (2012). "The Fourth Amendment's reasonableness requirement has been held to apply to brief investigatory detentions." *Bishop*, 146 Idaho at 811 (citing *Terry*, 392 U.S. at 19). "To determine whether such seizures are reasonable, courts first ask 'whether the officer's action was justified at its inception.'" *Id.* (quoting *Terry*, 392 U.S. at 19-20). "Next, they consider whether the action 'was reasonably related in scope to the circumstances which justified the interference in the first place.'" *Id.* (quoting *Terry*, 392 U.S. at 19-20).

[3] Ms. Cox does not raise a separate assertion pursuant to Article I, § 17 of the Idaho Constitution.

"[L]imited investigatory detentions, based on less than probable cause, are permissible when justified by an officer's reasonable articulable suspicion that a person has committed, or is about to commit, a crime." *Id.* (citing *Florida v. Royer*, 460 U.S. 491, 498 (1983)). "Reasonable suspicion must be based on specific, articulable facts and the rational inferences that can be drawn from those facts." *Id.* "The United States Supreme Court has plainly established that a traffic stop is a seizure, but it is not an unreasonable seizure under the Fourth Amendment so long as there is a reasonable suspicion that the vehicle is being driven contrary to traffic laws." *State v. Linze*, 161 Idaho 605, 609 (2016).

The relevant statute in this case, I.C. § 49-651, provides:

> The driver of a vehicle emerging from an alley, building, private road or driveway within a business or residential district shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across the alley, building entrance, or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the highway to be entered where the driver has a view of approaching traffic.

The statutory definition of "stop" is "the act of or complete cessation from movement." I.C. § 49-120(25). "Stopping" is "the act of any halting even momentarily of the vehicle. I.C. § 49-120(26). The district court in this case determined, "the Court's observation of the dash cam is that the yellow Mustang did not come to a complete cessation of movement." (Tr. 3/6/19, p.44, Ls.14-17.) Per the district court, Ms. Cox "did not obey the traffic laws by stopping before backing onto Sherman, and therefore a traffic violation occurred in the presence of these officers and there was a reasonable and articulable suspicion to stop that vehicle." (Tr. 3/6/19, p.45, Ls.7-12.)

Here, while the standard for showing clear error is high, the district court's factual finding that Ms. Cox's Mustang did not come to a complete stop was clearly erroneous. Officer Mauri's dash camera footage shows the Mustang coming to a stop before entering the roadway.

(*See* Ex. 2, 00:36-00.45.) Further, the officers' admission that the Nitro made a complete stop, despite their previous reports that it did not, undermines the district court's determination that the officers were credible. (*See* Tr. 3/6/19, p.19, Ls.14-23, p.31, Ls.5-21.) Additionally, the district court determined that the traffic stop was a pretext stop, and the officers were looking for a reason to stop the Mustang. (*See* Tr. 3/6/19, p.44, L.24 – p.45, L.6.) Thus, substantial and competent evidence did not support the district court's factual finding. *See Moore*, 164 Idaho at 381; *Bishop*, 146 Idaho at 810. The district court's factual finding that Ms. Cox's Mustang did not come to a complete stop was clearly erroneous.

Because Ms. Cox's Mustang actually came to a stop before entering the roadway, the traffic stop was not justified by reasonable suspicion that a traffic violation had occurred. *See Linze*, 161 Idaho at 609; *Bishop*, 146 Idaho at 810. The district court therefore erred when it denied Ms. Cox's motion to suppress.

CONCLUSION

For the above reasons, Ms. Cox respectfully requests that this Court vacate her order withholding judgment (and subsequent judgment on probation violation), vacate the district court's motion denying the motion to suppress, and remand the case to the district court for further proceedings.

DATED this 13th day of March, 2020.

/s/ Ben P. McGreevy
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of March, 2020, I caused a true and correct copy of the foregoing APPELLANT'S 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

BPM/eas