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State v. Fuller Appellant's Brief Dckt. 44172

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 44172
 Plaintiff-Appellant,)
) Kootenai County Case No.
 v.) CR-2015-20159
)
 ANTONIA KATE FULLER,)
)
 Defendant-Respondent.)
)

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**

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals the district court's order granting suppression of evidence. Specifically, the state challenges the district court's holding that seeing Fuller's car tires cross over the white line marking the right edge of the road did not provide reasonable suspicion to conduct a traffic stop.

Statement Of The Facts And Course Of The Proceedings

Deputy Ballman pulled over a Chevy Tahoe for failure to maintain its lane of travel. (R., pp. 7-8.) The driver verbally identified herself as Antonia K. Fuller. (R., p. 8.) Fuller did not have a driver's license or insurance documentation. (Id.) Dispatch indicated her license was invalid. (Id.) Deputy Ballman arrested Fuller and thereafter conducted an inventory search of her vehicle. (Id.) He found methamphetamine, pills and drug paraphernalia. (Id.)

The state charged Fuller with two felony counts of possession of methamphetamine and possession of Hydrocodone and misdemeanor counts of possession of drug paraphernalia, failure to provide proof of insurance and failure to purchase a driver's license. (R., pp. 54-56.) Fuller moved to suppress evidence, claiming "the traffic stop was unlawful." (R., pp. 52-53, 59-63.) The parties stipulated that Fuller "did, in fact, cross the fog line with her tire and that she did not have her turn signal on when she did so." (3/28/16 Tr., p. 3, L. 10 – p. 4, L. 1.) The district court granted the suppression motion after concluding that crossing over the fog line was not a traffic offense, and therefore the officer

lacked reasonable suspicion to stop Fuller's car. (4/1/16 Tr., p. 3, L. 10 – p. 7, L. 22; R., p. 84.) The state filed a timely notice of appeal. (R., pp. 5, 87.¹)

¹ A copy of the notice of appeal was not included in the record provided on appeal. The state is, contemporaneously with the filing of this brief, filing a motion to augment with a copy of the notice.

ISSUE

Did the district court err when it concluded that seeing Fuller's tires cross the white line marking the right edge of the road did not provide reasonable, articulable suspicion for the traffic stop?

ARGUMENT

The District Court Erred When It Concluded That Seeing Fuller's Tires Cross The White Line Marking The Right Edge Of The Road Did Not Provide Reasonable, Articulate Suspicion For The Traffic Stop

A. Introduction

In concluding that crossing the fog line does not provide reasonable suspicion a motorist is not driving in a single lane of travel, the district court relied on State v. Neal, 159 Idaho 439, 362 P.3d 514 (2015). (4/1/16 Tr., p. 4, Ls. 19-23.) The district court concluded that “the overall reading of the Neal case” leads to the legal conclusion that “the fog line is not a road barrier; the fog line is, in fact, a warning that one is getting near the road barrier.” (4/1/16 Tr., p. 5, Ls. 18-25.) The district court then concluded there was no reasonable suspicion because Fuller “did not drive off the road” and therefore her “vehicle did not leave its lane of travel.” (4/1/16 Tr., p. 6, Ls. 1-11.) The district court’s holding is not consistent with the language or analysis of the majority opinion in Neal, and is directly contrary to controlling authority of the Idaho Court of Appeals.

B. Standard Of Review

“The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court’s findings of fact that are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found.” State v. Colvin, 157 Idaho 881, 882, 341 P.3d 598, 599 (Ct. App. 2014).

C. The District Court Erred When It Failed To Follow The Holding In Neal

“A traffic stop by an officer constitutes a seizure of the vehicle’s occupants and implicates the Fourth Amendment’s prohibition against unreasonable searches and seizures.” State v. Young, 144 Idaho 646, 648, 167 P.3d 783, 785 (Ct. App. 2006) (citing Delaware v. Prouse, 440 U.S. 648, 653 (1979)). Ordinarily, a warrantless seizure must be based on probable cause to be reasonable. Florida v. Royer, 460 U.S. 491, 499-500 (1983); State v. Bishop, 146 Idaho 804, 811, 203 P.3d 1203, 1210 (2009). However, limited 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. Royer, 460 U.S.at 498; Bishop, 146 Idaho at 811, 203 P.3d at 1210.

“An officer may also stop a vehicle to investigate possible criminal behavior if there is reasonable articulable suspicion that the vehicle is being driven contrary to traffic laws.” Young, 144 Idaho at 648, 167 P.3d at 785 (citing United States v. Cortez, 449 U.S. 411 (1981)). “Reasonable suspicion requires less than probable cause but more than speculation or instinct on the part of the officer.” State v. Horton, 150 Idaho 300, 302, 246 P.3d 673, 675 (Ct. App. 2010) (citation omitted). Whether an officer possessed reasonable suspicion is evaluated based on the totality of the circumstances known to the officer at or before the time of the stop. Bishop, 146 Idaho at 811, 203 P.3d at 1210; State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). Here the officer observed Fuller drive her vehicle over the line marking the right edge of

the roadway. (3/28/16 Tr., p. 3, L. 10 – p. 4, L. 1.) The officer therefore had reasonable suspicion Fuller had violated I.C. § 49-630(1) (vehicle to be driven on right half of roadway) and I.C. § 49-637 (driver to maintain lane of traffic).

The district court acknowledged there was “one bit of language” in Neal supporting the state’s argument that by driving over, as opposed to on, the line Fuller violated I.C. §§ 49-630(1) and 49-637. (4/1/16 Tr., p. 5, Ls. 8-18.) That bit of language is the holding: “We hold that driving onto but not across the line marking the right edge of the road does not violate Idaho Code section 49-637” Neal, 159 Idaho at 447, 362 P.3d at 522. Contrary to the district court’s analysis, nothing in the opinion suggests that driving “across the line marking the right edge of the road” does not violate I.C. §§ 49-630(1) and 49-637. Id. Because Fuller drove “across the line marking the right edge of the road” she left the travelled roadway, went onto the shoulder, and therefore violated I.C. §§ 49-630(1) and 49-637. Id. The district court erred by expanding the holding of Neal to crossing the line marking the right edge of the road when the Idaho Supreme Court specifically limited that holding to driving on, and not over, that line.

Moreover, there is Idaho authority on the question addressed by the district court. In State v. Slater, 136 Idaho 293, 298, 32 P.3d 685, 690 (Ct. App. 2001), the Idaho Court of Appeals held that “when Officer Burns observed Slater’s tires cross the fog line, albeit fleetingly, Burns now possessed the requisite reasonable suspicion that Slater had violated I.C. § 49-630 by driving on the shoulder of the highway, rather than on the ‘roadway.’” (citing State v. Dewbre, 133 Idaho 663, 665-67, 991 P.2d 388, 390-92 (Ct. App. 1999)). This

holding was not called into question by the holding or analysis in Neal, and has, since Neal was decided, been reaffirmed by the Idaho Court of Appeals. State v. Garcia-Rodriguez, 2016 WL 3223372 (Idaho App. 2016), *pet. rev. pending*.

In this case the officer observed Fuller's vehicle cross "the line marking the right edge of the road." Neal, 159 Idaho at 447, 362 P.3d at 522. She was, therefore, temporarily out of her lane of travel and off the roadway. Slater, 136 Idaho at 298, 32 P.3d at 690. The officer therefore had reasonable suspicion and conducted the traffic stop consistent with the Fourth Amendment. The district court erred by holding otherwise.

CONCLUSION

The state respectfully requests this Court to reverse the district court's order suppressing evidence and remand the case for further proceedings.

DATED this 18th day of August, 2016.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 18th day of August, 2016, served a true and correct copy of the foregoing BRIEF OF APPELLANT by emailing an electronic copy to:

ERIC D. FREDERICKSEN
INTERIM STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd