7-13-2017

State v. Snapp Respondent's Brief Dckt. 44642

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 44642**
Plaintiff-Respondent,	)	
	)	**Canyon County Case No.**
v.	)	**CR-2015-24528**
	)	
JAMES EDWARD SNAPP, JR.,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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

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STATEMENT OF THE CASE

Nature Of The Case

James Edward Snapp appeals from the judgment entered upon his conditional guilty plea to trafficking in methamphetamine and/or amphetamine, claiming the district court erred in denying his motion to suppress.

Statement Of The Facts And Course Of The Proceedings

Officer Brian Jones initiated a traffic stop after he saw Snapp speeding. (Tr.[1], p.22, L.6 – p.25, L.7.) Snapp did not immediately stop, but instead he continued to travel down a "really long driveway." (Tr., p.28, Ls.11-23.) As Snapp "continu[ed] down the driveway," "he started to open his driver's side door." (Tr., p.29, Ls.5-12.) Officer Jones followed Snapp's vehicle, "trying to get it to stop." (Tr., p.29, Ls.16-17.) Snapp eventually stopped after pulling "up close to [a] house." (Tr., p.29, Ls.18-21.) Before Snapp stopped, Officer Jones saw Snapp "throw something from the vehicle." (Tr., p.29, Ls.21-25, p.30, Ls.12-16.) In Officer Jones' experience, "when people have thrown things on [him], it's been contraband or evidence of a crime." (Tr., p.31, Ls.1-14.)

Snapp denied throwing anything from his car, but a search of the area revealed a black bag with a "white, crystal shard substance" inside, which was

[1] As with the Appellant's Brief, all "Tr." references herein are to the transcript of the suppression hearing held on June 27, 2016; however, the state notes that the transcript references in the district court's memorandum decision are to the preliminary hearing transcript (R., pp.55-57), which transcript does not appear to be included in the record on appeal.

later identified as "about a quarter pound of methamphetamine." (Tr., p.30, Ls.18-22, p.31, L.15 – p.34, L.5, p.37, Ls.11-24; R., p.57.) The state charged Snapp with trafficking in methamphetamine and/or amphetamine. (R., pp.10-11, 24-25.) Snapp filed a motion to suppress seeking suppression of "any and all evidence and statements, admissions, and/or confessions made by and/or attributed to [him] that were obtained as the result of the unlawful traffic stop." (R., p.33.) In his memorandum in support of his motion to suppress, Snapp argued he was entitled to suppression because, he asserted, Officer Jones abandoned the original purpose for the stop and unlawfully conducted a warrantless search of his property. (R., pp.39-40.)

The district court held a hearing on Snapp's motion after which it entered a written decision denying Snapp's request for suppression. (R., pp.55-63.) Specifically, the district court concluded Officer Jones (1) had reasonable suspicion to abandon the original purpose of the traffic stop, (2) could "find and seize the back bag" under the plain view exception, and (3) could search the black bag because "Snapp relinquished any reasonable expectation of privacy regarding the contents of the bag" because he "denied tossing the bag out of the door," and "thereby denied ownership of the bag." (R., pp.60-63.)

On the day set for trial, Snapp entered a conditional guilty plea to the trafficking charge, reserving the right to appeal the denial of his motion to suppress. (R., pp.71-83, 86-87.) The district court imposed a unified seven-year sentence, with three years fixed. (R., pp.98-99.) Snapp filed a timely notice of appeal. (R., pp.100-102.)

ISSUE

Snapp states the issue on appeal as:

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

(Appellant's Brief, p.7.)

The state rephrases the issue on appeal as:

Has Snapp failed to establish the district court erred in concluding that Snapp was not entitled to suppression of the methamphetamine he abandoned by throwing it in his yard when the officer was attempting to initiate a traffic stop?

ARGUMENT

Snapp Has Failed To Establish The District Court Erred In Denying His Suppression Motion

A. Introduction

Snapp contends the district court erred in denying his motion to suppress because, he argues, "the search of the curtilage of his residence, and the seizure (and resulting search) of the black bag" of methamphetamine he threw from his car when Officer Jones was attempting to initiate a traffic stop "were unlawful."[2] (Appellant's Brief, pp.8-22.) Application of the correct legal standards to the facts shows the district court correctly concluded Snapp was not entitled to suppression.

B. Standard Of Review

The standard of review of a suppression motion is bifurcated: when a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts. State v. Diaz, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007).

C. Snapp Has Failed To Demonstrate Error In The Denial Of His Suppression Motion

Snapp contends he was entitled to suppression of the methamphetamine found in the black bag he threw from his car onto "the curtilage of his residence"

[2] Snapp does not challenge the district court's conclusion that Officer Jones did not unlawfully prolong the stop. (Appellant's Brief, pp.8-22.)

as Officer Jones was attempting to initiate a traffic stop. (Appellant's Brief, pp.8-22.) This is so, Snapp claims, because the open view doctrine, the plain view exception, and the abandoned property exception do not apply to the facts of his case. (Appellant's Brief, pp.9-22.) Snapp is incorrect. The district court correctly concluded that application of Fourth Amendment principles did not warrant suppression in this case.

"'The touchstone of the Fourth Amendment is reasonableness. The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable.'" State v. Rios, 160 Idaho 262, 265, 371 P.3d 316, 318 (2016) (quoting Florida v. Jimeno, 500 U.S. 248, 250 (1991)). Thus, suppression is only warranted where the search or seizure is constitutionally unreasonable. Id.; see also Utah v. Strieff, 136 S.Ct. 2056, 2061 (2016) (quotations, citations and ellipses omitted) ("Suppression of evidence has always been our last resort, not our first impulse" because application of the exclusionary rule is only warranted "where its deterrence benefits outweigh its substantial societal costs."); State v. Loman, 153 Idaho 573, 575, 287 P.3d 210, 212 (Ct. App. 2012) (citations omitted) (recognizing that although warrantless searches are presumptively unreasonable, the presumption may be overcome "if the search falls within a well-recognized exception to the warrant requirement or was otherwise reasonable under the circumstances"). Both the seizure of the black bag of methamphetamine, and the search of that bag comported with Fourth Amendment reasonableness requirements.

1. Officer Jones' Entry Onto Snapp's Property For The Purpose Of Seizing The Black Bag Of Methamphetamine He Saw Snapp Throw From His Car Was Constitutionally Reasonable

"Under the open view doctrine, a police officer's observations made from a location open to the public do not constitute a search. This is because one cannot have a reasonable expectation of privacy in what is knowingly exposed to public view." State v. Christensen, 131 Idaho 143, 146, 953 P.2d 583, 586 (1998) (citations omitted). "[W]hen the police come onto private property to conduct an investigation or for some other legitimate purpose and restrict their movements to places where ordinary visitors could be expected to go, observations from such vantage points are lawful." State v. Tietsort, 145 Idaho 112, 115, 175 P.3d 801, 804 (Ct. App. 2007) (citations omitted). "Direct access routes to the house, including driveways, parking areas, and pathways to the entry, are areas to which the public is impliedly invited." Id. "Police officers restricting their activity to such areas are permitted the same intrusion and the same level of observation as would be expected from a reasonably respectful citizen." Id. "Only a substantial and unreasonable departure from the normal access routes will exceed the scope of the implied invitation and intrude upon constitutionally protected privacy interests." State v. Heibert, 156 Idaho 637, 644, 329 P.3d 1085, 1092 (Ct. App. 2014) (citation omitted); see also State v. Cada, 129 Idaho 224, 232-233, 923 P.2d 469, 477-478 (Ct. App. 1996) (considering "whether the officer acted secretly, approached the house in daylight, attempted to talk with the resident," and whether discovery is "accidental[ ]" as factors relevant to analysis under open view doctrine). "[T]he

plain view exception applies to warrantless seizures of readily visible items." Christensen, 131 Idaho at 146, 953 P.2d at 586.

Officer Jones' entry onto Snapp's property in order to seize the bag of methamphetamine he saw Snapp throw from his moving car did not constitute a "substantial and unreasonable departure from the normal access route" under the facts of this case. As Officer Jones was attempting to initiate a traffic stop on the car Snapp was driving, Snapp opened the car door and threw "a dark-colored squarish-type object" from his moving car. (Tr., p.28, L.16 – p.30, L.4.) Officer Jones "saw the general vicinity where [Snapp] threw" the object, but "didn't see exactly where it landed." (Tr., p.30, Ls.8-11.) Officer Jones testified that, in his experience, when he sees someone throw something when he is trying to initiate a traffic stop, "it's been contraband or evidence of a crime." (Tr., p.31, Ls.1-14; see also p.46, L.23 – p.47, L.8.) Consequently, Officer Jones, with the assistance of other officers, looked for the object in the area where Officer Jones saw Snapp throw it. (Tr., p.31, L.24 – p.32, L.11.) That area was "kind of up towards the house in the corner area" which "was kind of a yard" with "weeds and objects and stuff." (Tr., p.32, Ls.8-18.) Officer Jones began looking at a point about "10 feet" from the house, and then moved toward the house where he eventually found the object "about a foot away from the house," and "about three feet off of the pathway" that leads to the house. (Tr., p.32, L.19 – p.33, L.25.) Officer Jones seized the bag at that time. (See Tr., p.46, Ls.19-22, p.48, Ls.7-17, p.49, Ls.11-18.) In doing so, Officer Jones did not substantially or unreasonably depart from the normal access route. Although Officer Jones was not on the

pathway to the home when he seized the bag of methamphetamine, his movements were restricted to the area where the bag was thrown, and his departure from the pathway was neither substantial nor unreasonable. Snapp has failed to show otherwise.

Moreover, Snapp's conduct invited Officer Jones to move beyond the implied invitation to "normal access route[s]." State v. Jenkins, 143 Idaho 918, 155 P.3d 1157 (2007), is instructive. In Jenkins, law enforcement received a report that Jenkins had committed a battery. 143 Idaho at 919, 155 P.3d at 1158. An officer attempted to stop Jenkins as he pulled into his driveway. Id. Rather than stopping in the driveway, Jenkins opened his garage door and pulled inside. Id. The officer exited his patrol car, and went inside the garage to talk to Jenkins about the battery. Id. at 919-920, 155 P.3d at 1158-1159. "[B]ecause Jenkins smelled of alcohol, [the officer] conducted field sobriety tests," and the state ultimately charged Jenkins with battery and driving under the influence. Id. at 920, 155 P.3d at 1159. Jenkins sought to suppress the evidence obtained during the investigation inside his garage "on the grounds that it was obtained through a warrantless entry into his private garage." Id. Although the Court of Appeals concluded that, "[o]n the facts of th[e] case, Jenkins had a reasonable expectation of privacy in his temporarily opened and attached garage," it held that, because the officer had probable cause to arrest Jenkins, "Jenkins could not thwart the arrest . . . by fleeing inside." Jenkins, 143 Idaho at 922, 155 P.3d at 1161 (citing United States v. Santana, 427 U.S. 38 (1976)).

Similarly, Snapp could not thwart the discovery of contraband in his possession by throwing it in his yard. Like the officer in Jenkins, Officer Jones had probable cause to believe that Snapp violated the law. Specifically, Officer Jones had probable cause to believe Snapp was in possession of contraband and that he was trying to conceal that evidence when he threw it from his car after Officer Jones attempted to stop him. See I.C. § 37-2732 (possession of a controlled substance); I.C. § 18-2603 (concealing or destroying evidence); compare State v. Loman, 153 Idaho 573, 576, 287 P.3d 210, 213 (Ct. App. 2012) (noting Loman's evasive actions to discard his coat by throwing it inside a car when stopped by law enforcement "gave rise to probable cause to believe that the coat contained drugs or some other contraband that Loman rather desperately wanted to keep away from the officer" and upholding search of coat under automobile exception). Officer Jones' limited entry onto Snapp's property in order to seize the bag of methamphetamine Snapp threw from his car did not violate the Fourth Amendment's reasonableness requirement.

2. Officer Jones' Search Of The Black Bag Snapp Abandoned By Throwing It From His Moving Car Did Not Violate The Fourth Amendment

"There can be nothing unlawful in the Government's appropriation" or search "of abandoned property." Abel v. United States, 362 U.S. 217, 241 (1960). "One who voluntarily abandons property prior to [a] search cannot be said to possess the requisite privacy interest" under the Fourth Amendment. State v. Ross, 160 Idaho 757, 759, 378 P.3d 1056, 1058 (Ct. App. 2016) (citing Abel, supra). "Abandonment, in the Fourth Amendment context, occurs through

words, acts, and other objective facts indicating that the defendant voluntarily discarded, left behind, or otherwise relinquished his or her interest in his or her property." Ross, 160 Idaho at 759-760, 378 P.3d at 1058-1059 (citing State v. Harwood, 133 Idaho 50, 52, 981 P.2d 1160, 1162 (Ct. App. 1999)). "If the abandonment is caused by illegal police conduct, however, the abandonment is not voluntary." Ross, 160 Idaho at 760, 378 P.3d at 1059 (citation omitted).

Snapp abandoned his black bag of methamphetamine by throwing it out the window of his car and subsequently denying that he did so because his words and actions indicate that he "voluntarily discarded, left behind, or otherwise relinquished" any interest in the bag. (Tr., p.29, L.5 – p.30, L.22.) The district court correctly concluded as much. (R., p.63 ("[B]ecause Snapp denied tossing the bag out of the door, he thereby denied ownership of the bag" and, "[b]y doing so, Snapp relinquished any reasonable expectation of privacy regarding the contents of the bag.").)

On appeal, Snapp argues he "did not abandon the black bag, because he did not disclaim ownership, and he threw it onto his own private property." (Appellant's Brief, p.15.) In making this assertion, Snapp claims that, "[j]ust because one denies throwing an item does not mean one necessarily also denies ownership of that item." (Appellant's Brief, p.17.) This argument ignores the relevant test, which allows consideration of a suspect's words, actions, and other objective facts evidencing an intent to discard, leave behind, or otherwise relinquish ownership in property. That standard was satisfied in this case.

Snapp also argues that he did not abandon his bag of methamphetamine because he threw the bag "into his own private property." (Appellant's Brief, p.17.) Thus, Snapp reasons, he maintained a reasonable expectation of privacy in the bag because he had a reasonable expectation of privacy on his property. (Appellant's Brief, p.17.) This argument fails to the extent it is based on the false premise that one cannot abandon a piece of personal property so long as the personal property rests on real property one does not abandon. Such an argument does not make logical or legal sense. To accept Snapp's argument would mean that someone could leave a bag of methamphetamine in Snapp's house, and Snapp could not disclaim ownership of it even if it did not belong to him. Such a result defies logic and is surely one society would not be willing to accept.

Snapp's argument also ignores the legal standard for abandonment, which merely requires "words, acts, and other objective facts indicating that the defendant voluntarily discarded, left behind, or otherwise relinquished his or her interest in his or her property." Ross, 160 Idaho at 759, 378 P.3d at 1058. Nothing in this standard requires showing voluntary relinquishment of an ownership interest only while on public property. Nevertheless, Snapp notes that "courts in some other jurisdictions have indicated one cannot abandon an item on one's own property." (Appellant's Brief, pp.17-18 (citing Work v. United States, 243 F.2d 660, 662-63 (D.C. Cir. 1957), State v. Reed, 641 S.E.2d 320, 323 (N.C. Ct. App. 2007), and Brown v. State, 540 A.2d 143 (Md. Ct. Spec. App. 1988).) The Court should decline to consider this argument because it is not preserved

since Snapp never claimed in district court that "one cannot abandon an item on one's own property." (See generally R., pp.33-34, 37-41 (motion to suppress and supporting memorandum); Tr., p.50, L.20 – p.55, L.10, p.62, L.14 – p.64, L.25 (argument at suppression hearing).) See State v. Garcia-Rodriguez, 2017 WL 2569786 *3, --- P.3d --- (Idaho 2017) ("We decline to adopt a 'wrong result-wrong theory' approach to reverse a lower court's decision based on issues neither raised nor argued below.").

Even if considered, Snapp's reliance on Work, Reed, and Brown is unavailing. In Work, the court held the challenged evidence, which the defendant concealed in a trash can after officers illegally entered her home, must be suppressed because the concealment was the direct consequence of the officers' "unlawful entry." 243 F.2d at 661-662. In other words, the concealment was not a voluntary abandonment, but was the product of illegal police conduct. Because Snapp's abandonment was not the product of "illegal police conduct," Work does not support Snapp's claim.

In Reed, officers contacted the defendant on his patio and requested a DNA sample, which he declined to provide. 641 S.E.2d at 321. The officers, however, obtained the sample regardless of the defendant's lack of consent after they kicked one of the defendant's cigarette butts into the common area. Id. The officers thereafter retrieved the cigarette and submitted it for testing. Id. The court held that the defendant had a reasonable expectation of privacy on his patio and that the search and seizure of the cigarette was unconstitutional because the cigarette was not abandoned. The court explained: "It is possible

that had defendant placed the cigarette butt in the common area, he may have lost his reasonable expectation of privacy; the police may not, however, by removing evidence from the curtilage, proceed as if the evidence had been left open to the public by the defendant." Id. at 323. Since Officer Jones did not surreptitiously remove the black bag from Snapp's property or force Snapp's abandonment of the bag, Reed does not support Snapp's argument.

Brown also does not support Snapp's argument. In Brown, officers went to the defendant's home to investigate a report that he was dealing and manufacturing PCP. 540 A.2d at 145. After the defendant failed to answer the door when the officers knocked, one officer went to the rear of the residence where he saw someone stick his hand through the window and throw something out. Id. at 146. The officers then searched the area inside the defendant's fenced yard[3] and found the items thrown from the window; those items were packets of PCP-laced parsley. Id. The court held there was no abandonment because the property "remained physically located in an area where [defendant] not only retained dominion but also had a reasonable expectation of privacy." Id. at 150. Unlike in Brown, where the defendant secretly sought to dispose of his drugs in an enclosed backyard, Snapp threw his bag of drugs while Officer Jones was pursuing him, and then denied doing so. Snapp's words and actions, and the objective facts surrounding those words and actions, present a typical

[3] Unlike a fenced backyard, with respect to the "front door area," the court in Brown stated that, "although within the curtilage area," it was "entitled to extremely limited Fourth Amendment protection because Brown could not reasonably expect a great amount of privacy in an area where the public was welcome." 540 A.2d at 149.

abandonment scenario. Snapp has failed to show error in the district court's conclusion that "Snapp relinquished any reasonable expectation of privacy regarding the contents of the bag." (R., p.63.)

Officer Jones' actions were not arbitrary, and Snapp had no reasonable expectation of privacy in the bag of methamphetamine he threw from his car. See Rios, 160 Idaho at 264-265, 371 P.3d at 318-319 (quotations and citation omitted) (the Fourth Amendment "protect[s] Idaho citizens' reasonable expectation[s] of privacy against arbitrary governmental intrusion"). Consequently, Snapp has failed to show the district court erred in denying his motion to suppress.

CONCLUSION

The state respectfully requests that this Court affirm the judgment entered upon Snapp's conditional guilty plea to trafficking in methamphetamine and/or amphetamine.

DATED this 13th day of July, 2017.

_/s/ Jessica M. Lorello_____
JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of July, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

BEN P. McGREEVY
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_/s/ Jessica M. Lorello_____
JESSICA M. LORELLO
Deputy Attorney General

JML/dd