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Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
By: Brad Thies, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 48088-2020**
Plaintiff-Respondent,	)	
	)	**ELMORE COUNTY NO. CR20-19-128**
v.	)	
	)	
RONALD ALLEN DOERR, JR.,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
________________________________	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

HONORABLE JAMES CAWTHON
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Ronald Doerr challenges the district court's denial of his motion to suppress. He argues the district court erred by holding his initial encounter with a police officer was consensual. He asserts the officer seized him without reasonable suspicion, and therefore the district court should have granted his motion. Accordingly, he respectfully requests the Court reverse the district court's order denying his motion to suppress, vacate his judgment of conviction, and remand this case for further proceedings.

Statement of Facts and Course of Proceedings

The State filed a criminal complaint alleging Mr. Doerr committed the crime of driving under the influence ("DUI"), a felony due to a prior felony DUI conviction. (R., pp.15–17.) This allegation arose after a police officer approached Mr. Doerr in his parked truck. (R., p.9.) Mr. Doerr had pulled up behind an ongoing traffic stop, drove away, and then stopped in a nearby parking lot. (R., p.9.) The officer could smell alcohol once Mr. Doerr rolled down his window and started talking to the officer. (R., p.9.) The officer conducted a DUI investigation, and two breath tests showed Mr. Doerr's blood alcohol levels were .169 and .170. (R., p.9.)

Mr. Doerr waived a preliminary hearing, and the magistrate judge bound him over to district court. (R., pp.28, 29, 33–34.) The State charged Mr. Doerr by information with felony DUI. (R., pp.30–32.)

Mr. Doerr filed a motion to suppress. (R., p.38.) He argued the officer seized him without reasonable suspicion in the parking lot. (R., pp.38, 40–43.) The State opposed the motion and argued the encounter was consensual. (R., pp.46–49.)

The district court held a hearing on Mr. Doerr's motion. (R., pp.53–54.) Sergeant Genz with the Elmore County Sheriff's Office testified. (Tr. Vol. II,[1] p.5, L.8–p.16, L.15.) He testified that, at about 1:15 a.m., he responded to another officer's call for back up on a traffic stop. (Tr. Vol. II, p.6, L.22–p.7, L.2.) The other officer told Sergeant Genz that a vehicle had pulled in behind him during the traffic stop. (Tr. Vol. II, p.7, Ls.2–3.) As Sergeant Genz arrived, he saw the other vehicle, a truck, pull out from the traffic stop and turn into a nearby parking lot for an apartment building. (Tr. Vol. II, p.7, Ls.15–18.) Sergeant Genz parked his patrol car on a street by the parking lot, turned on his rear emergency lights, and walked over to the truck. (Tr. Vol. II, p.7, Ls.20–25, p.8, Ls.1–16.) Sergeant Genz testified, "I just walked up to [the truck], and he rolled down the window." (Tr. Vol. II, p.8, Ls.20–21.) Sergeant Genz started a conversation with the driver, Mr. Doerr, about "what he was going here, what was going on." (Tr. Vol. II, p.8, L.23–p.9, L.4.) Sergeant Genz detected "the strong odor of alcoholic beverage" coming from inside the truck within about thirty seconds to a minute. (Tr. Vol. II, p.10, Ls.9–11.) Sergeant Genz testified that he had a flashlight that he pointed at the truck, but not directly in Mr. Doerr's eyes. (Tr. Vol. II, p.14, L.21–p.15, L.7, p.15, L.25–p.16, L.77.) After detecting the odor of alcohol, Sergeant Genz decided to detain Mr. Doerr. (Tr. Vol. II, p.10, Ls.15–17.) On cross-examination, Sergeant Genz reviewed his police report and agreed that it said, "I had him roll down his window, which he did." (Tr. Vol. II, p.14, Ls.6–11; *see* Def.'s Ex. A, p.4.)

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[1] There are two electronic documents with the transcripts on appeal. The first, thirty-one-page document contains three transcripts: the district court's oral ruling on the motion to suppress, held on September 3, 2019 (pages 1 to 11 of the overall document); the motion to suppress hearing, held on July 2, 2019 (pages 12 to 22 of the overall document); and the entry of plea hearing, held on March 2, 2020 (pages 23 to 31 of the overall document). Each transcript is cited with reference to its internal pagination. The first transcript of the district court's oral ruling is cited as Volume I, the second transcript of the motion to suppress hearing is cited as Volume II, and the entry of plea hearing is cited as Volume III. The second, eight-page document contains one transcript: the sentencing hearing, held on July 15, 2020. It is cited as Volume IV.

After Sergeant Genz's testimony, Mr. Doerr argued Sergeant Genz seized him by commanding him to roll down his window and obstructing his vision with the flashlight. (Tr. Vol. II, p.19, L.14–p.20, L.6, p.20, Ls.9–15.) The State conceded Sergeant Genz did not have reasonable suspicion to initiate a traffic stop with Mr. Doerr, but maintained the initial encounter was consensual. (Tr. Vol. II, p.20, L.20–p.23, L.6.) The district court took the matter under advisement. (Tr. Vol. II, p.25, Ls.16–18.)

The parties filed supplemental briefing. (R., pp.55–63, 65–66.) In addition to his previous arguments, Mr. Doerr argued the district court should consider the potential criminal liability for resisting and obstructing an officer, I.C. § 18-705, when determining whether Sergeant Genz seized Mr. Doerr. (R., pp.58–63.) Mr. Doerr explained that he may have thought that he could not terminate the encounter because, if the encounter was a lawful seizure and Mr. Doerr did not comply, he could be charged with resisting and obstructing. (R., pp.58–63.) The State responded that the fear of a resisting and obstructing charge does not alter the analysis for a consensual encounter, and there was no evidence that Mr. Doerr did not feel free to leave. (R., p.66.)

At another hearing, the district court orally ruled on the motion. The district court identified the issue as whether Sergeant Genz seized Mr. Doerr, as shown by the totality of the circumstances. (Tr. Vol. I, p.6, Ls.7–13.) The district court found that Sergeant Genz's flashlight use was reasonable for officer safety. (Tr. Vol. I, p.9, Ls.13–25.) The district court disagreed with Mr. Doerr's position that Sergeant Genz commanded him to roll down the truck window. (Tr. Vol. I, p.10, Ls.1–5.) The district court found that Sergeant Genz asked Mr. Doerr to roll down the window. (Tr. Vol. I, p.10, Ls.10–12.) The district court summarized:

> The facts . . . indicate that when Officer Genz walked up to the vehicle he was a single officer. . . . He was wearing a uniform, but he did not have his gun drawn. He simply had his flashlight at 1:15 in the morning and asked the person to roll down their window. . . . Additionally, where the officer parked his car as

> compared to the defendant's car did not prevent the defendant from leaving the parking lot and could easily have done that without running over the officer as the officer approached from the side of the vehicle.

(Tr. Vol. I, p.10, Ls.13–19, p.11, Ls.6–11.) The district court determined, based on the totality of the circumstances, a reasonable person would feel free to leave and, therefore, Sergeant Genz did not seize Mr. Doerr. (Tr. Vol. I, p.15, L.5–p.16, L.1, p.16, Ls.7–10, p.17, Ls.7–13.) In other words, the district court ruled this was a consensual encounter. (Tr. Vol. I, p.14, Ls.9–13.) The district court also rejected Mr. Doerr's argument on the fear of a resisting and obstructing charge. (Tr. Vol. I, p.17, L.14–p.21, L.19.) The district court orally denied Mr. Doerr's motion to suppress. (Tr. Vol. I, p.21, L.20–p.22, L.1.)

Mr. Doerr entered a conditional guilty plea to felony DUI, reserving his right to appeal the district court's denial of his motion to suppress. (Tr. Vol. III, p.4, L.21–p.5, L.3, p.12, L.6–p.14, L.12.) The district court sentenced him to seven years, with two years fixed, and retained jurisdiction. (Tr. Vol. IV, p.13, L.22–p.14, L2.) Mr. Doerr timely appealed from the district court's judgment of conviction. (R., pp.88–91, 93–95.)

ISSUE

Did the district court err when it denied Mr. Doerr's motion to suppress evidence obtained after his warrantless seizure?

ARGUMENT

The District Court Erred When It Denied Mr. Doerr's Motion To Suppress Evidence Obtained After His Warrantless Seizure

A. Introduction

Mr. Doerr argues the district court erred by denying his motion to suppress evidence from his warrantless seizure. Mindful of *State v. Ray*, 153 Idaho 564 (2012), and *State v. Randle*, 152 Idaho 860 (Ct. App. 2012), he nonetheless maintains the district court erred by determining his initial encounter with Sergeant Genz was consensual.

B. Standard Of Review

The Court "defer[s] to the trial court's factual findings unless clearly erroneous. 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." *State v. Henage*, 143 Idaho 655, 658 (2007) (citations omitted).

C. The District Court Erred When It Denied Mr. Doerr's Motion To Suppress Evidence Obtained After His Warrantless Seizure

"The Fourth Amendment of the United States Constitution protects citizens from unreasonable search and seizure." *State v. Hansen*, 138 Idaho 791, 796 (2003); *see* U.S. CONST. amend. IV. A warrantless seizure is presumptively unreasonable, unless the State shows the seizure fits within a well-established exception to the warrant requirement. *State v. Green*, 158 Idaho 884, 886–87 (2015); *see State v. Hunter*, 156 Idaho 568, 570 (Ct. App. 2014) (same). The defense, however, has the burden to prove a seizure occurred. *State v. Page*, 140 Idaho 841, 843 (2004).

"The test to determine if an individual is seized for Fourth Amendment purposes is an objective one, evaluating whether under the totality of the circumstances 'a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter.'" *Henage*, 143 Idaho at 658 (quoting *Florida v. Bostick*, 501 U.S. 429, 436 (1991)). "A seizure does not occur simply because a police officer approaches an individual on the street or other public place and asks a few questions." *State v. Fry*, 122 Idaho 100, 102 (Ct. App. 1991) (citing *Bostick*, 501 U.S. 429; *Florida v. Royer*, 460 U.S. 491, 497 (1983)). "So long as police do not convey a message that compliance with their requests is required, the encounter is deemed 'consensual' and no reasonable suspicion is required." *Id.*

On the other hand, a seizure occurs "when an officer, by means of physical force or show of authority, restrains the liberty of a citizen." *State v. Liechty*, 152 Idaho 163, 167 (Ct. App. 2011).

> Examples of circumstances that might indicate seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.

Id. at 168 (quoting *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)). In addition, "whether the officer used overhead emergency lights and whether the officer took action to block a vehicle's exit route" "may indicate a seizure." *Id.* "The critical question is whether, taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he or she was not at liberty to ignore the police presence and go about his or her business." *State v. Robertson*, 134 Idaho 180, 184 (Ct. App. 2000) (citing *State v. Ferreira*, 133 Idaho 474, 479 (Ct. App. 1999)).

Mr. Doerr acknowledges that *State v. Ray*, 153 Idaho 564 (2012), and *State v. Randle*, 152 Idaho 860 (Ct. App. 2012), are instructive. In *Randle*, a police officer knocked on the driver's side window of a parked car with the engine running. 152 Idaho at 861. The officer had parked his patrol car about two car lengths back and left his headlights on. *Id.* After knocking, the driver opened his door, and the officer saw two open beer cans. *Id.* Shortly thereafter, the officer started a DUI investigation. *Id.* at 861–62. The Court of Appeals held:

> After this review of the totality of the circumstances surrounding the encounter between Randle and the officer, we conclude that, when the officer parked behind Randle's vehicle, left the patrol car's headlights on, approached Randle's vehicle and knocked on the window, such conduct would not have communicated to a reasonable person that he or she was not at liberty to ignore the officer's presence and go about his or her business. As such, we agree with the district court that by such conduct, the officer did not seize Randle within the meaning of the Fourth Amendment.

Id. at 866. Thus, the Court of Appeals affirmed the district court's denial of the driver's motion to suppress. *Id.* at 867. Similarly, in *Ray*, a Toyota driver pulled into a turnout while a state trooper was initiating a traffic stop with another car. 153 Idaho at 565. The trooper parked his patrol car behind the car intended for the traffic stop and left about three to five car lengths for the Toyota behind him. *Id.* The trooper then walked back to the Toyota to advise the driver that he was stopping the other car, and the trooper smelled marijuana once the driver rolled his window down. *Id.* The Idaho Supreme Court held this was not a seizure. *Id.* at 568. The Idaho Supreme Court explained:

> The trooper's actions in walking toward the Toyota certainly indicated that he wanted to talk to the driver. In addition, the average person may not have felt comfortable just driving away at that point, knowing that the officer wanted to say something. However, that does not constitute a seizure under either the Idaho or the United States Constitution. A law enforcement officer does not seize a person merely by approaching the person in a public place and asking the person if he or she would answer some questions. . . .
>
> When approaching the Toyota, the trooper did not draw his gun or make any hand gestures indicating that the Toyota should not leave, nor did he even

> shine his flashlight at the Toyota. Considering the totality of the circumstances in this case, the trooper did not seize the Toyota by walking up to the driver's door. His actions certainly indicated that he wanted to talk to the driver, but that does not constitute a seizure.

Id. (citations omitted). Thus, the Idaho Supreme Court reversed the district court's order granting the defendant's motion to suppress. *Id.*

Mindful of *Randle* and *Ray*, Mr. Doerr maintains Sergeant Genz seized him when Sergeant Genz approached his truck in uniform, shined his flashlight on the truck, and asked him to roll down his window. Mr. Doerr contends a reasonable person would not feel free to terminate the encounter. Further, Mr. Doerr submitted to Sergeant Genz's authority by rolling down his window, answering Sergeant Genz's questions, and, eventually, turning off his truck's engine and exiting the truck. (Tr. Vol. II, p.9, Ls.6–13, p.10, Ls.2–5.) *See State v. Willoughby*, 147 Idaho 482, 488 (2009) ("Certainly, not every motorist who observes a police vehicle's activated overhead lights has been seized. Rather, the motorist must actually submit to the show of authority."). Thus, while mindful of *Randle* and *Ray*, Mr. Doerr argues Sergeant Genz conducted a seizure without reasonable suspicion. (*See* R., p.66 (State's concession of no reasonable suspicion).)

Due to this Fourth Amendment violation, the district court should have granted Mr. Doerr's motion to suppress. The evidence, such as the breath test, would not have been obtained but for the illegal seizure. The evidence was "come by at exploitation of that illegality." *Wong Sun v. United States*, 371 U.S. 471, 488 (1963) (evidence obtained through unconstitutional police conduct subject to exclusion); *see also State v. Bishop*, 146 Idaho 804, 810–11 (2008) (same). Therefore, the district court erred by denying Mr. Doerr's motion to suppress the evidence obtained after his illegal seizure.

CONCLUSION

Mr. Doerr respectfully request the Court reverse the district court's order denying his motion to suppress, vacate his judgment of conviction, and remand this case for further proceedings.

DATED this 7th day of December, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of December, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

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E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JCS/eas