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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48097-2020
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO. CR28-19-18132
v.)	
)	
JONATHAN JORGE PONCE,)	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 JOHN T. MITCHELL
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Jonathan Ponce contends the district court erred when it denied his motion to suppress. Mindful of the fact that the district court found that the officers' actions did not add any time to the stop, Mr. Ponce asserts that the officers unlawfully prolonged his detention by conducting an investigation into the presence of controlled substances instead of completing the mission of the traffic stop without reasonable suspicion to justify that investigation. As such, this Court should reverse the order denying the motion to suppress.

Statement of the Facts and Course of Proceedings

On June 25, 2019, at approximately 9:00 p.m., Officer Kyle Cannon observed a vehicle make three separate turns without the use of a turn signal.¹ (Tr., p.8, L.8—p.10, L.15.) Because the officer did not have a dash camera or body worn camera at the time, he requested that another patrol unit assist him with making a traffic stop on the vehicle. (Tr., p.11, Ls.3-13.) Officer Kyle Erickson stopped the vehicle, and Officer Cannon arrived at the stop shortly thereafter. (Tr., p.11, L.4—p.13, L.9.) After stopping the vehicle, Officer Erickson approached Mr. Ponce's vehicle and asked for his license, registration, and insurance. (Plaintiff's Exhibit 1c,² 20:59:53.) Mr. Ponce handed his insurance and driver's license to the officer, as well as an expired copy of the vehicle's registration. (Plaintiff's Exhibit 1c, 21:00:02—21:00:30.)

¹ According to Officer Cannon, it was still daylight outside at that time and was "starting to become dusk." (Tr., p.14, L.23—p.15, L.1.) The officer testified that the subsequent stop of the vehicle took place in a residential neighborhood that was close to downtown Coeur d'Alene. (Tr., p.15, L.2—p.16, L.10.)

² The exhibit introduced at the motion to suppress hearing as "Plaintiff's Exhibit 1" contains four separate video files. Plaintiff's Exhibit 1a refers to the video titled "1573240", and it contains Officer Erickson's dash cam. (Tr., p.4, Ls.19-22.) Plaintiff's Exhibit 1b refers to the video titled "1573262", and it contains Officer Amy Knisley's body camera video. (Tr., p.4, Ls.23-24.)

After arriving at the stop, Officer Cannon was informed that the driver of the vehicle was Jonathan Ponce. (Tr., p.13, Ls.10-19.) Officer Cannon indicated that he had previously had contact with Mr. Ponce regarding the expired license plate on the same vehicle, and the officer noticed that Mr. Ponce's license plate was still expired. (Plaintiff's Exhibit 1c, 21:02:57; Tr., p.12, L.15—p.13, L.21.) Officer Cannon then began to write a ticket for the expired license plate using the e-ticket machine in Officer Erickson's vehicle.³ (Tr., p.13, L.20—p.14, L.4, p.16, Ls.11-18.)

Officer Cannon asked Officer Erickson to re-approach Mr. Ponce's vehicle to clarify his address and phone number. (Tr., p.17, Ls.11-22; Plaintiff's Exhibit 1a, 21:04:53.) While waiting for Officer Erickson to return with that information, Officer Cannon began to converse with Officer Joseph Scholten. (Tr., p.18, L.5—p.19, L.14.) The officers had the following exchange:

Officer Scholten: "You want me to chat with him at all about leaving that area or anything, or do you want to leave it alone?"

Officer Cannon: "Leave it."

Officer Scholten: "Leave it alone?"

Officer Cannon: "Yeah."

Officer Scholten: "You need to get a sniff or anything, or you just going to get out of here?"

Plaintiff's Exhibit 1c refers to the video titled "1573724", and it contains Officer Erickson's body camera video. (Tr., p.4, Ls.24-25.) Plaintiff's Exhibit 1d refers to the video titled "1574124", and it contains Officer Joseph Scholten's body camera video. (Tr., p.5, Ls.2-4.) Citations to Plaintiff's Exhibits 1b, 1c, and 1d will reference the time listed in the upper-left corner. Citations to Plaintiff's Exhibit 1a, which lists the time of day using a twelve-hour clock rather than a twenty-four-hour clock, will reference the time in the bottom-right corner with twelve hours added to that time so that citations to times across videos will be uniform. While not raised at the district court, it would appear that the time stamp from Plaintiff's Exhibit 1a is approximately forty seconds ahead of corresponding events in the other exhibits. Citations will still refer to the time showing in Plaintiff's Exhibit 1a even though the time seems to be off by forty seconds. If quotations to the video are necessary, they are reproduced to the best of appellate counsel's ability.

³ Officer Cannon did not prepare a citation for any turn signal violation. (Tr., p.16, Ls.17-18.)

Officer Cannon: “I’m writing him a ticket. I warned him before about that registration. And eight-two⁴ is on.”

(Plaintiff’s Exhibit 1a, 21:05:00—21:05:16; *See R.*, p.31.)

Officer Erickson finished speaking with Mr. Ponce and informed Officer Cannon about the requested information. (Tr., p.19, L.15—p.20, L.10; Plaintiff’s Exhibit 1c, 21:04:20—21:05:42.)

Officer Cannon then asked Officer Erickson, “do you want to talk with [Mr. Ponce] outside of the car?” (Plaintiff’s Exhibit 1c, 21:08:11.) Officer Erickson immediately returned to Mr. Ponce’s vehicle and asked him to step out of the vehicle so that he would talk with the officer. (Plaintiff’s Exhibit 1c, 21:08:20.) Mr. Ponce obeyed this request. (Plaintiff’s Exhibit 1c, 21:08:30.) Officer Erickson discussed the expired vehicle registration and the failure to use turn signals with Mr. Ponce. (Plaintiff’s Exhibit 1c, 21:09:10—21:11:30.) Officer Erickson then asked Mr. Ponce about where he and the passenger were headed to prior to being pulled over. (Plaintiff’s Exhibit 1c, 21:11:33—21:11:45.)

While Officer Erickson was interacting with Mr. Ponce, Officer Cannon called into dispatch and engaged in a conversation with another officer⁵, where the following exchange occurred:

Officer Cannon [over dispatch]: “Eight-two, eight-two, eight-two, eight. Stop’s at Fifth and Garden.”

Officer Cannon [to other officer]: “Dispatch didn’t even put that on here.”

Other Officer: “What’s up?”

Officer Cannon: “Dispatch didn’t even put the location of the stop. They put Ninth and Locust, and I’ve told them twice where we are at. Well, they have it in our description I guess.”

⁴ According to Mr. Ponce’s Memorandum in Support of Defendant’s Motion to Suppress, “eight-two” refers to Officer Amy Knisley, who operates a K9 unit. (*R.*, p.31.) During these conversations, the officers discussed whether a K9 unit was available or would arrive at the stop. (Tr., p.21, Ls.1-4.)

⁵ It is unclear from the videos and record as to which officer was part of this conversation with Officer Cannon.

(Plaintiff's Exhibit 1a, 21:08:48—21:09:17; *See R.*, p.31.)

Approximately one minute later, Officer Cannon engaged in another conversation with Officer Scholten about the female passenger in the vehicle. (Tr., p.19, L.15—p.20, L.10.) The following conversation occurred between the officers:

Officer Cannon: “Hey, Joe? Do you mind chatting with her just because we have come across her before? Remember her? Kaya Herbaugh. She was with, she was with, that one guy we served a just search warrant on. She was in the apartment at Third and Roosevelt. “

Officer Scholten: “She was?”

Officer Cannon: “Yeah, when we did that search warrant.”⁶

(Plaintiff's Exhibit 1a, 21:10:41—21:11:11; *See R.*, p.31.)

Seconds later, Officer Scholten approached the passenger side of the vehicle.⁷ (Plaintiff's Exhibit 1c, 21:10:38.) Eventually, Officer Erickson told Mr. Ponce “let's go chat over there” and directed Mr. Ponce away from his vehicle and toward a nearby sidewalk. (Plaintiff's Exhibit 1c, 21:12:22.)

A few seconds after his conversation with Officer Scholten regarding the passenger, Officer Cannon completed the citation but had difficulty printing it out.⁸ (Tr., p.21, L.13—p.22,

⁶ According to Officer Cannon, he was “multi-tasking” throughout these various conversations, and he was working on or gathering information for the citation while talking with the other officers. (Tr., p.20, Ls.11-25.)

⁷ While not shown directly in any of the exhibits, the female passenger was removed from the vehicle sometime after Mr. Ponce and prior to the drug dog being deployed. (*See, e.g.*, Plaintiff's Exhibit 1c, 21:13:36.)

⁸ According to Officer Cannon, he had to make three of four attempts to print the citation so that the information on it could be properly read. (Tr., p.21, L.13—p.22, L.3.) The officer testified that these same printing issues had previously occurred several times. (Tr., p.21, L.18—p.22, L.1.) The first attempt at printing the citation seems to occur at approximately 21:11:27 in Exhibit 1a. Officer Cannon subsequently inquires of one of the other officers “does this mean that paper is in wrong?” The other officer informed Officer Cannon about how to load the paper into the e-citation machine. Officer Cannon then stated, “oh, crap, it fell off the hinge.” A second unsuccessful printing attempt occurred at 21:13:40. A third printing attempt occurred at 21:14:00, which was apparently successful. When he approached Mr. Ponce after the drug dog

L.12.) After the first attempt at printing out the citation but before the second attempt, Officer Amy Knisley arrived with her drug dog. (Plaintiff's Exhibit 1a, 9:13:16; Tr., p.22, Ls.16-21.) The drug dog subsequently alerted on Mr. Ponce's vehicle while Officer Cannon was in the process of exiting Officer Erickson's squad car to speak with Mr. Ponce about the traffic citation. (Exhibit 1b, 21:13:25; Tr., p.22, L.22—p.23, L.10.) Officer Cannon subsequently spoke with Mr. Ponce about the citation and whether there were controlled substances in the vehicle. (Plaintiff's Exhibit 1c, 21:14:58; Tr., p.23, L.16—p.24, L.6.)

Officers began to search Mr. Ponce's vehicle based on the positive alert, and Officer Cannon left his conversation with Mr. Ponce so that he could determine the status of the search. (Tr., p.25, Ls.1-12.) Officer Cannon was subsequently informed that a "black tar substance" was located in the vehicle. (Tr., p.26, 8-17.) Officer Cannon asked Mr. Ponce about the substance found in the vehicle, and Mr. Ponce allegedly admitted that the substance was his and might be heroin.⁹ (Tr., p.26, Ls.8-21.)

The State charged Mr. Ponce with possession of a controlled substance (heroin). (R., pp.8-9.) Mr. Ponce filed a motion to suppress all the evidence found in his case, arguing, *inter alia*, that: (1) there was no reasonable articulable suspicion to stop him; (2) Officer Cannon deviated from the mission of the traffic stop and unlawfully prolonged the detention of Mr. Ponce by directing other officers on unrelated matters in order to secure sufficient time for a K9 unit to arrive; and (3) Mr. Ponce's incriminating statements should be excluded under

alert, Officer Cannon told Mr. Ponce "sorry it took me so long. I am not the smartest guy. I had some technical issues." (Plaintiff's Exhibit 1c, 21:14:57—21:15:05.)

⁹ Throughout this encounter, Mr. Ponce was neither handcuffed by law enforcement nor informed of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). (Tr., p.26, Ls.6-7, p.27, L.21—p.28, L.6.) Ultimately, at least six officers arrived at the scene of the stop. (Tr., p.31, Ls.12-17.) Mr. Ponce was not arrested during this encounter, and he was allowed to leave the traffic stop without being taken into police custody. (Tr., p.27, Ls.1-16.)

Miranda.¹⁰ (R., pp.28-38.) In its Memorandum in Opposition to Motion to Suppress, the State argued that: (1) Officer Cannon had reasonable, articulable suspicion that Mr. Ponce had committed a traffic violation and therefore the stop was not unreasonable; (2) Officer Cannon never abandoned the original purpose of the stop, and the traffic stop was therefore not unlawfully extended; and (3) Mr. Ponce was not in custody for the purposes of *Miranda*, and therefore Mr. Ponce’s statements should not be suppressed. (R., pp.39-50.)

The district court held a hearing on the motion to suppress, and four of the police officers involved with the investigation testified. (Tr., p.4, L.3-p.74, L.16.) Mr. Ponce argued that the traffic stop was unlawfully extended when Officer Cannon directed officers to investigate matters unrelated to the traffic stop.¹¹ (Tr., p.55, L.21—p.56, L.3.) The State argued that the original purpose of the traffic stop was never “abandoned” since the officers did not “give it up completely.”¹² (Tr., p.66, Ls.10-18.)

The district court ruled on the motion at the end of the hearing, and it found the following in reaching its decision:

1. Officer Cannon’s testimony was credible regarding Mr. Ponce not using his turn signal properly, so there was reasonable suspicion to conduct a traffic stop. (Tr., p.71, Ls.12-16.)
2. There was reasonable suspicion to investigate Mr. Ponce’s expired vehicle registration. (Tr., p.71, Ls.16-20.)
3. “There’s no law out there that an officer abandons the purpose of the stop by asking another officer to do something or responding to another’s question

¹⁰ *Miranda v. Arizona*, 384 U.S. 436 (1966).

¹¹ In particular, defense counsel focused on the conversations that Officer Cannon had with other officers at the stop regarding the availability of a K9 unit and investigating the passenger of the vehicle. (Tr., p.62, Ls.14-25.)

¹² The State contended that all abandonment cases involved “officers either never writing a citation or putting the task down and never finishing it or coming back to it. That’s not what happened here.” (Tr., p.66, Ls.14-18.)

about what is going on. That's not abandonment. There was no abandonment by Cannon. I think that's quite clear." (Tr., p.72, Ls.3-10.)

4. Officer Cannon was credible when he stated that his conversations did not add any time to the stop. Even if it did add time to the stop, it would have been "merely seconds." (Tr., p.72, Ls.11-24.)
5. Officer Knisley had arrived at the scene prior to the citation being issued. (Tr., p.72, Ls.20-24.)
6. Mr. Ponce was not in custody for the purposes of *Miranda*, and therefore *Miranda* was not implicated by the officers' questions and Mr. Ponce's responses. (Tr., p.72, L.25—p.74, L.8.)

In light of these findings, the district court denied Mr. Ponce's motion to suppress. (R., p.55; Tr., p.74, Ls.8-10.)

Pursuant to a plea agreement, Mr. Ponce entered a conditional guilty plea to possession of a controlled substance (heroin) while reserving his right to appeal the district court's order denying his motion to suppress. (R., pp.58-60; Tr., p.76, Ls.6-23, p.80, Ls.5-10.) The district court sentenced Mr. Ponce to three years, with one year fixed, and retained jurisdiction.¹³ (R., pp.76-78, 82-84; Tr., p.110, Ls.15-21, p.111, Ls.4-6.) Mr. Ponce timely appealed from the district court's judgment of conviction.¹⁴ (R., pp.130-34.)

¹³ Mr. Ponce was sentenced in a separate matter, CR28-20-6055, at the same sentencing hearing. (Tr., p.110, L.22—p.11, L.11.) That other matter is not currently being appealed.

¹⁴ Mr. Ponce does not challenge the district court's finding that there was reasonable suspicion to conduct an initial traffic stop on his vehicle. Mr. Ponce also does not challenge the district court's findings on the *Miranda* issue.

ISSUE

Did the district court err by denying Mr. Ponce's motion to suppress because the officer did not have reasonable suspicion to justify a deviation from the original purpose of the traffic stop?

ARGUMENT

The District Court Erred When It Denied Mr. Ponce’s Motion To Suppress Because The Officer Did Not Have Reasonable Suspicion To Justify A Deviation From The Original Purpose Of The Traffic Stop

A. Introduction

Mindful of the Idaho Supreme Court’s recent decision in *State v. Pylican*,¹⁵ Mr. Ponce argues that the district court erred by denying his suppression motion because he asserts that he was unlawfully seized when the officers prolonged his detention by conducting an investigation into the presence of controlled substances instead of completing the mission of the traffic stop without reasonable suspicion to justify that investigation. This seizure violated Mr. Ponce’s Fourth Amendment rights, and all evidence obtained from the unlawful seizure, including the contraband in the vehicle and any statements made by Mr. Ponce, must be suppressed as the fruit of the illegality.

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); *State v. Linze*, 161 Idaho 605, 607 (2016).

¹⁵ Since this case has not been included in the Pacific Reporter or Idaho Reports yet, the Westlaw citation for this case is *State v. Pylican*, No. 47308, 2020 WL 4280191 (Idaho July 27, 2020).

C. The District Court Should Have Granted Mr. Ponce's Motion To Suppress Because Officer Cannon Did Not Have Reasonable Suspicion to Justify A Deviation From The Original Purpose Of The Traffic Stop

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV. “The Fourth Amendment of the United States Constitution protects citizens from unreasonable search and seizure.” *State v. Hansen*, 138 Idaho 791, 796 (2003). “The stop of a vehicle by law enforcement constitutes a seizure of its occupants to which the Fourth Amendment applies.” *Linze*, 161 Idaho at 608 (citing *Delaware v. Prouse*, 440 U.S. 648, 653 (1979)).

When an officer stops a vehicle for a traffic violation, the Fourth Amendment requires that detention last no longer than the time it takes, or reasonably should have taken, to complete the mission of the traffic stop. *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). “Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.* As such, the officer may conduct other, unrelated checks during a traffic stop without additional reasonable suspicion only if those other tasks do not prolong the time it takes, or should have taken, to complete the mission of the traffic stop. *Id.* at 355. However, if the deviation increases the time the stop should have taken, effectively, a new seizure has occurred. *Linze*, 161 Idaho at 609. The Fourth Amendment requires that new seizure be justified by its own reasonable suspicion and it “cannot piggy-back on the reasonableness of the original seizure.” *Id.*

Completing the mission of the traffic stop includes ordinary inquiries incident to that traffic stop, including: checking the driver's license, determining whether there are outstanding

warrants against the driver, and inspecting the automobile's registration and proof of insurance. *Rodriguez*, 575 U.S. at 355. Investigations into other potential criminal activity, including the use of a dog sniff, are “not an ordinary incident of a traffic stop.” *Id.* at 356-357. “The critical questions, then, is not whether the dog sniff occurs before or after the officer issues a ticket . . . but whether conducting the sniff ‘prolongs’—i.e. adds time to—‘the stop.’” *Id.* at 357 (internal citation omitted.) “[A] police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures.” *Id.* at 350. “This rule is both broad and inflexible. It applies to all extensions of traffic stops including those that could reasonably be considered *de minimis*.” *Linze*, 161 Idaho at 608.

Mindful of the Idaho Supreme Court’s decision in *State v. Pylican* and the district court’s determination that the officers’ conversations did not add time to the stop, Mr. Ponce asserts that the district court erred by denying his motion to suppress. In *Pylican*, the Idaho Supreme Court clarified its ruling from *Linze*, holding that:

[W]e expressly recognized in *Linze* that it was the extra time required to complete the dog sniff that offended the Fourth Amendment in *Rodriguez* . . . However, the stop in *Linze* is distinguishable from *Pylican*'s stop because in this case the district court made no findings that *any* specific amount of time was added to the stop due to the officer's actions in permitting a dog sniff to take place while he simultaneously began his investigation into the traffic offense.

State v. Pylican, No. 47308, 2020 WL 4280191, at *9 (Idaho July 27, 2020) (international quotations omitted) (emphasis in original).

Here, Officer Cannon and Officer Erickson had reasonable suspicion that Mr. Ponce had not properly used his turn signal in violation of Idaho law. During the investigation involved with that stop, the officers developed reasonable suspicion to believe that Mr. Ponce was driving with an expired vehicle registration. However, Mr. Ponce asserts that Officer Cannon’s conversations with other officers, including Officer Scholten, at the scene of the stop were

deviations from the original purpose of the stop. *See Linze*, 161 Idaho at 609. “The rule isn't concerned with when the officer deviates from the original purpose of the traffic stop, it is concerned with the fact that the officer deviates from the original purpose of the stop at all.” *Id.* at 609. The discussions between the officers regarding questioning Mr. Ponce about the area that he had driven out of, inquiring about the status of the drug dog arriving at the scene, and speaking with the passenger about an unrelated investigation were all impermissible deviations from the original purpose of the stop and not ordinary inquiries incident to the traffic stop. Therefore, Mr. Ponce respectfully asserts that the district court erred by denying his motion to suppress the evidence found and that this case be remanded to the district court for further proceedings.

CONCLUSION

Mr. Ponce respectfully requests that this Court vacate the district court's order of judgment and commitment and reverse the order which denied his motion to suppress.

DATED this 10th day of December, 2020.

/s/ Jacob L. Westerfield
JACOB L. WESTERFIELD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th 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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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JLW/eas