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State v. Harper Appellant's Reply Brief Dckt. 44819

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44819
)	
v.)	CANYON COUNTY NO. CR 2015-24285
)	
DAVID JOHN HARPER,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

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

HONORABLE THOMAS J. RYAN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

The State charged David John Harper with trafficking in marijuana. Mr. Harper filed a motion to suppress the statements and evidence obtained as a result of his traffic stop, on the basis that I.C. § 49-638(1), the statute used to justify reasonable suspicion for the traffic stop, was unconstitutionally vague as applied to his conduct. The district court denied the motion to suppress. The matter proceeded to a jury trial, where the jury found Mr. Harper guilty. The district court imposed a unified sentence of three years fixed. Mr. Harper appealed, asserting the district court erred when it denied his motion to suppress.

In its Respondent's Brief, the State argues the district court did not err when it denied Mr. Harper's motion to suppress, because section 49-638(1) is not unconstitutionally vague. (*See Resp. Br.*, pp.5-15.) The State also argues that, even if section 49-638(1) is unconstitutionally vague, suppression is not warranted under United States Supreme Court precedent imposing a good faith exception for an officer's acts performed pursuant to a statute later declared unconstitutionally vague. (*See Resp. Br.*, pp.15-17.)

This Reply Brief is necessary to address the State's good faith exception argument. Mr. Harper submits that, under Article I, § 17 of the Idaho Constitution, there is no good faith exception for an officer's acts performed pursuant to a statute later declared unconstitutionally vague.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Harper's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

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

ARGUMENT

The District Court Erred When It Denied Mr. Harper's Motion To Suppress

A. Introduction

Mr. Harper asserts the district court erred when it denied his motion to suppress, because I.C. § 49-638(1) is void for vagueness as applied to his conduct. Because section 49-638(1), the statute used to justify Mr. Harper's traffic stop, is unconstitutionally vague as applied to his conduct, there was no reasonable and articulable suspicion that his car was being driven contrary to traffic laws. The traffic stop therefore violated Mr. Harper's constitutional right to be free from unreasonable searches and seizures. The district court should have suppressed the statements and evidence obtained as a result of the traffic stop.

B. Idaho Code § 49-638(1) Is Unconstitutionally Vague As Applied To Mr. Harper's Conduct

Mr. Harper asserts I.C. § 49-638(1) is unconstitutionally vague as applied to his conduct. He asserts section 49-638(1) failed to provide fair notice that his conduct was proscribed. Even if section 49-638(1) provided fair notice that his conduct was proscribed, Mr. Harper asserts the statute failed to provide sufficient guidelines, such that the police had unbridled discretion in determining whether to seize him.

The State argues Mr. Harper has not shown section 49-638(1) is unconstitutionally vague. (Resp. Br., p.8.) The State contends Mr. Harper has not established section 49-638(1) failed to give him adequate notice his behavior was prohibited, because, "[a]s other jurisdictions have repeatedly found, a reasonably intelligent individual could form some idea of what it means to follow another vehicle more closely than is 'reasonable and prudent.'" (Resp. Br., p.12.) The State argues section 49-638(1) "also provides sufficient guidelines for law enforcement." (Resp.

Br., p.12.) Because the State's argument on whether section 49-638(1) is unconstitutionally vague is not remarkable, no further reply is necessary. Accordingly, Mr. Harper refers the Court to pages 7-14 of the Appellant's Brief.

C. Under Article I, § 17 Of The Idaho Constitution, There Is No Good Faith Exception For An Officer's Acts Performed Pursuant To A Statute Later Declared Unconstitutionally Vague

In reply to the State's good faith exception argument, Mr. Harper submits that, under Article I, § 17 of the Idaho Constitution, there is no good faith exception for an officer's acts performed pursuant to a statute later declared unconstitutionally vague.

The State argues that even if this Court determines that section 49-638(1) is constitutionally vague, "suppression is not required." (Resp. Br., p.15.) The State recognizes that, "[b]ecause the district court determined the statute was not unconstitutionally vague, this argument was not raised before the district court." (Resp. Br., p.15.) The State contends this Court "should still affirm the district court's order denying suppression based upon the 'right result-wrong theory' rule." (Resp. Br., p.15.)

The State then argues that, "[u]nder United States Supreme Court precedent, a constitutionally valid seizure is not rendered invalid by a subsequent determination that the law on which the seizure was based is unconstitutionally vague." (Resp. Br., p.16 (citing *Michigan v. DeFillippo*, 431 U.S. 31, 37-40 (1979); *United States v. Dexter*, 165 F.3d 1120, 1125 (7th Cir. 1999).) The United States Supreme Court in *DeFillippo* held, "[t]he subsequently determined invalidity of the Detroit ordinance on vagueness grounds does not undermine the validity of the arrest made for violation of that ordinance, and the evidence discovered in the search of respondent should not have been suppressed." *DeFillippo*, 431 U.S. at 40. The Idaho Court of Appeals has characterized *DeFillippo* as "imposing a good faith exception for an

officer's acts performed pursuant to a statute later declared unconstitutionally vague.” *State v. Pettit*, Nos. 44198 & 44199, ___ P.3d ___, 2017 WL 4321108, at *4 (Idaho Ct. App. Sept. 29, 2017).

The State “acknowledges the Idaho Court of Appeals’ recent decision in *State v. Pettit*, Docket Nos. 44198/44199 (Idaho App. Sept. 29, 2017) (petition for review pending), questioned the applicability of *DeFillippo* under the Idaho Constitution.”¹ (Resp. Br., p.17.) In *Pettit*, the State argued on appeal that the district court erred when it affirmed the magistrate’s order granting the respondent’s motion to suppress. *Pettit*, 2017 WL 4321108, at *2. The Court of Appeals held the arresting officer did not have reasonable suspicion to stop the respondent’s car, and also held the officer made an objectively reasonable mistake of law. *Id.* at *2-4.

The *Pettit* Court then turned to the issue of “whether an objectively reasonable mistake of law amounts to a good faith exception to Idaho’s independent exclusionary rule, so that here, suppression would be inappropriate.” *Id.* at *4. The Court of Appeals emphasized that, pursuant to Idaho Supreme Court precedent, a good faith exception was not allowed under Article I, §17 of the Idaho Constitution. *Id.* (citing *State v. Koivu*, 152 Idaho 511 (2012); *State v. Guzman*, 122 Idaho 981 (1992)). The State argued, *inter alia*, “that not creating a good faith exception is inconsistent with the United States Supreme Court’s decision in [*DeFillippo*].” *Id.* The *Pettit* Court decided *DeFillippo* had “no bearing on whether Idaho’s independent exclusionary rule is operable, allowing courts to suppress evidence even as to a reasonable mistake of law.” *Id.* The Court of Appeals declined to follow *DeFillippo* “and adopt a good faith exception for an officer’s objectively reasonable mistake of law.” *Id.* Thus, the *Pettit* Court affirmed the district court’s ruling suppressing the evidence. *Id.*

Here, the State argues that, while Mr. Harper “provided a cursory citation to the Idaho Constitution on appeal and before the district court,” his argument “is based upon the United States Supreme Court decision in *Kolender* and [the] United States Constitution, and thus *DeFillippo* is still controlling.” (Resp. Br., p.17.) However, the State has recognized its argument based on *DeFillippo*, that suppression is not warranted even if section 49-638(1) is unconstitutionally vague, was not raised before the district court. (See Resp. Br., p.15.) The State also recognizes that Mr. Harper invoked Article I, § 17 of the Idaho Constitution, before the district court and on appeal. (See Resp. Br., p.17 (citing R., p.37; App. Br., p.8).)

Thus, in light of the above, Mr. Harper submits that, under Article I, § 17 of the Idaho Constitution, there is no good faith exception for an officer’s acts performed pursuant to a statute later declared unconstitutionally vague. See *Pettit*, 2017 WL 4321108, at *4.

CONCLUSION

For the above reasons, as well as the reasons contained in the Appellant’s Brief, Mr. Harper respectfully requests that this Court vacate the district court’s judgment and commitment, reverse the order denying his motion to suppress, and remand the case to the district court for further proceedings.

DATED this 27th day of December, 2017.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

¹ The Idaho Supreme Court’s Clerk Office has indicated to undersigned counsel that the Petition for Review in *Pettit* was denied on December 14, 2017.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27th day of December, 2017, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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