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State v. McGraw Respondent's Brief 2 Dckt. 44935

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Appellant,)	NO. 44935
)	
v.)	ADA COUNTY
)	NO. CR01-16-27824
BRIAN MCGRAW,)	
)	
Defendant-Respondent.)	
_____)	
)	
STATE OF IDAHO,)	
)	
Plaintiff-Appellant,)	NO. 44942
)	
v.)	ADA COUNTY
)	NO. CR01-16-25070
LACEY KILLEEN,)	
)	
Defendant-Respondent.)	
_____)	

BRIEF OF RESPONDENT BRIAN MCGRAW

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

HONORABLE MICHAEL REARDON
District Judge

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STATEMENT OF THE CASE

Nature of the Case

The State appeals from the district court's order granting Brian McGraw's motion to suppress. This Court should affirm because the district court correctly concluded that the officer who stopped the vehicle in which Mr. McGraw was a passenger abandoned the purpose of the stop when he handed his ticket book to one of his colleagues in order to run his drug dog around the vehicle, which unreasonably extended the stop, in violation of the Fourth Amendment of the United States Constitution.

Statement of Facts and Course of Proceedings

Officer Jason Green was on routine patrol when he ran a license plate he observed on a vehicle parked at Walmart, recognized the name of the registered owner, and then "determined [he] was going [to] follow the vehicle to see if it made any traffic infractions." (2/10/17 Tr., p.9, Ls.4-14, p.35, L.11 – p.36, L.12, p.39, L.24 – p.40, L.5.) Officer Green was asked at the suppression hearing, "Were you looking for a reason to pull her over?" (2/10/17 Tr., p.40, Ls.19-20.) He answered, "As I said, I was looking for a reason—for a traffic infraction, yes, sir." (2/10/17 Tr., p.40, Ls.21-22.)

After following the vehicle for approximately four miles, Officer Green observed the driver fail to signal a lane change "for an appropriate amount of time" and observed the vehicle "fail[] to maintain [its] lane." (2/10/17 Tr., p.10, L.24 – p.11, L.5, p.22, Ls.2-13.) Officer Green initiated a traffic stop, and asked the driver and the passenger for identification. (2/10/17 Tr., p.11, Ls.6-15.) The driver, Lacey Killeen, provided her license and proof of insurance. (2/10/17 Tr., p.12, Ls.3-13, p.13, Ls.16-22.) The passenger identified himself as Brian McGraw.

(2/10/17 Tr., p.12, Ls.14-18, p.13, Ls.16-22.) Officer Green asked Ms. Killeen and Mr. McGraw if “anybody was on probation or parole” and Mr. McGraw stated he was on parole. (2/10/17 Tr., p.12, Ls.17-25.) Officer Green testified that, at that point, he “determined that [he] was going to eventually utilize my narcotics detection canine around the vehicle.” (2/10/17 Tr., p.13, Ls.5-8.)

After verifying that Ms. Killeen’s license and registration were valid, and that there were no outstanding warrants for Ms. Killeen or Mr. McGraw, Officer Green asked Ms. Killeen to step out of the vehicle. (2/10/17 Tr., p.14, Ls.14-24.) Officer Green asked her for permission to search the vehicle, and she did not consent. (2/10/17 Tr., p.15, Ls.6-14.) Officer Green began filling out a citation for Ms. Killeen for failure to maintain a lane. (2/10/17 Tr., p.15, Ls.15-19, p.30, Ls.11-15.)

Officer Green testified that Officer Marshall Plaisted then “took over the citation writing” while he retrieved his canine. (2/10/17 Tr., p.15, L.23 – p.16, L.5.) Officer Plaisted testified, “At that point Officer Green was filling out a traffic citation. He handed it to me and asked that I continue to fill it out. I believe we discussed what the citation was going to be for and I began filling out the citation.” (2/10/17 Tr., p.47, Ls.15-19.) After watching the on-body video recording of the traffic stop at the suppression hearing, Officer Plaisted acknowledged he did not start writing the citation immediately after Officer Green handed him his ticket book. (2/10/17 Tr., p.55, Ls.4-6.) Officer Plaisted also acknowledged it took him more time to complete the citation than it would have if Officer Green had completed it. (2/10/17 Tr., p.58, Ls.10-17.) Indeed, the video recording reflects that there was an approximately 40-second delay from when Officer Plaisted received the ticket book from Officer Green, and when Officer Plaisted resumed writing the citation. (State’s Ex. 2, 2:44-3:25.)

After handing off his ticket book, Officer Green walked his canine around Ms. Killeen's vehicle, and the dog alerted at an open window. (2/10/17 Tr., p.16, Ls.8-18.) A search of the vehicle revealed marijuana in the center console, methamphetamine in a "female-style sock" in the glove box, and methamphetamine in Ms. Killeen's purse. (2/10/17 Tr., p.17, L.11 – p.18, L.9.) The State charged Mr. McGraw by Information with felony possession of a controlled substance. (R., pp.33-34.) The district court consolidated Mr. McGraw's case with Ms. Killeen's case, CR01-16-25070. (R., pp.44-45, 46-47.) Mr. McGraw filed a motion to suppress all evidence arguing, *inter alia*, that "law enforcement delayed the duration of the stop in order to conduct a K9 search of the vehicle," in violation of the United States and Idaho Constitutions, relying on *Rodriguez v. United States*, __ U.S. __, 135 S.Ct. 1609 (2015), and *State v. Linze*, 161 Idaho 605 (2016). (R., pp.59-60, 61-65.)

The district court granted Mr. McGraw's motion to suppress, concluding Officer Green abandoned the purpose of the stop when he handed his ticket book to Officer Plaisted in order to run his dog around the vehicle. (2/10/17 Tr., p.72, Ls.2-11.). The district court explained its reasoning as follows:

It is clear to me given the sequence of events that Officer Green himself actually did abandon the purpose of the stop when he handed the ticket book off to Officer Plaisted.

And I appreciate that it took somewhere between two and five seconds to exchange the ticket book, but that act and the act of Officer Plaisted then leaving the hood of the car and going into the car to turn the lights off and going around the back of the car to begin writing the citation and, frankly, while he was moderately engaging Ms. Killeen in an apparent effort to complete the citation, it appeared to me that he was likely covering Officer Green at the same time. It would be difficult to believe, and I would find it incredible, if he were to have told me that he wasn't paying attention to Officer Green while he was ostensibly writing the citation and he wasn't continuously writing the citation from my review of the evidence. So I think that Officer Green, in fact, did abandon that purpose.

(2/10/17 Tr., p.70, L.11 – p.71, L.7.) The district court entered a written order granting Mr. McGraw's motion to suppress, and the State filed a timely appeal. (R., pp.95-96, 97-100.) On August 8, 2017, the Idaho Supreme Court entered an order granting the State's motion to consolidate this appeal with the appeal in Ms. Killeen's case, No. 44942, stating that Mr. McGraw and Ms. Killeen may each file his/her own Respondent's Brief.

ISSUE

Did the district court correctly grant Mr. McGraw's motion to suppress?

ARGUMENT

The District Court Correctly Granted Mr. McGraw's Motion To Suppress

This Court should affirm the district court's order granting Mr. McGraw's motion to suppress because the district court correctly concluded that Officer Green abandoned the purpose of the stop when he handed his ticket book to Officer Plaisted in order to run a drug dog around Ms. Killeen's vehicle, which unreasonably extended the stop, in violation of the Fourth Amendment of the United States Constitution.

"In reviewing a district court order granting or denying a motion to suppress evidence, the standard of review is bifurcated." *State v. Purdum*, 147 Idaho 206, 207 (2009) (citation omitted). "This Court will accept the trial court's findings of fact unless they are clearly erroneous. However, this Court may freely review the trial court's application of constitutional principles in light of the facts found." *Id.* (citations omitted). "At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court." *State v. Aguirre*, 141 Idaho 560, 562 (Ct. App. 2005) (citations omitted).

The Fourth Amendment of the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" U.S. Const. amend. IV. "The seizure of a vehicle's occupants in order to investigate a traffic violation is a 'reasonable seizure' under the Fourth Amendment so long as the seizing officer had reasonable suspicion that a violation had occurred." *Linze*, 161 Idaho at 608 (citing *Rodriguez*, 135 S.Ct. at 1614.) However, "[b]ecause addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose." *Rodriguez*, 135 S.Ct. at 1614 (internal quotation marks and brackets omitted). "Authority for the

seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.*

In *Rodriguez*, the United States Supreme Court held “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.” 135 S.Ct. at 1612. The Court explained, “[t]he critical question . . . is . . . whether conducting the sniff prolongs—*i.e.*, adds time to—the stop.” *Id.* at 1615 (internal quotation marks omitted). In *Linze*, the Idaho Supreme Court held a police officer violated Mr. and Mrs. Linze’s rights under the Fourth Amendment by delaying a traffic stop for two and a half minutes while performing a back-up function for a drug dog sweep. 161 Idaho at 609. The Court explained that a traffic stop “remains a reasonable seizure while the officer diligently pursues the purpose of the stop” but if the officer abandons the purpose of the stop, the seizure is no longer supported by the original reasonable suspicion for the stop. *Id.*

Here, Officer Green abandoned the (purported) purpose of the stop when he handed his ticket book to Officer Plaisted, and asked Officer Plaisted to continue writing the citation for Ms. Killeen while he ran his drug dog around the vehicle.¹ The State argues in its Appellant’s Brief that the purpose of the stop was not abandoned because “the officers cumulatively continued to diligently pursue the purpose of the stop.” (Appellant’s Br., p.5.) The State is incorrect. While the officers may, arguably, have “cumulatively continued” to pursue the traffic citation, there is no question that the handing off of the ticket book from Officer Green to Officer Plaisted mid-citation delayed, *i.e.*, added time, to the stop. The analysis is straightforward under *Rodriguez*, and the constitutional violation is clear.

¹ The purported purpose of the stop was the observed traffic violations. However, it is clear the actual reason Officer Green followed, and eventually stopped, Ms. Killeen’s vehicle was to conduct a drug investigation. The State has never argued that there was reasonable suspicion or probable cause for a drug investigation.

The video recording of the incident, which was introduced into evidence at the suppression hearing, reflects that there was an approximately 40-second delay from when Officer Plaisted received the ticket book from Officer Green, and when Officer Plaisted resumed writing the citation. (State's Ex. 2, 2:44-3:25.) In addition to this obvious, objective delay, the district court also found Officer Plaisted "was likely covering Officer Green" while he ran his drug dog around the vehicle, and "wasn't continuously writing the citation." (2/10/17 Tr., p.70, L.16 – p.71, L.6.) These factual findings are fully supported by the record, are not clearly erroneous, and have not been challenged by the State on appeal. The officers violated Mr. McGraw's rights under the Fourth Amendment when they prolonged the traffic stop in order to run a drug dog around Ms. Killeen's vehicle. The district court correctly granted Mr. McGraw's motion to suppress.

CONCLUSION

Mr. McGraw respectfully requests that this Court affirm the district court's order granting his motion to suppress.

DATED this 30th day of August, 2017.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30th day of August, 2017, I served a true and correct copy of the foregoing RESPONDENT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

BRIAN MCGRAW
2784 E RED CEDAR LN #L-102
BOISE ID 83716

MICHAEL REARDON
DISTRICT COURT JUDGE
E-MAILED BRIEF

MARK COONTS
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas