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State v. Doerr Respondent's Brief Dckt. 48088

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 48088-2020**
Plaintiff-Respondent,	)	
	)	**Elmore County Case No.**
v.	)	**CR20-19-128**
	)	
RONALD ALLEN DOERR, JR.,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Ronald Allen Doerr, Jr., appeals from his conviction for felony driving under the influence, entered on a conditional guilty plea, and argues that the district court erred by denying his motion to suppress.

Statement Of The Facts And Course Of The Proceedings

At around 1:00 a.m., a Mountain Home police officer initiated a traffic stop. (9/3/19 Tr., p. 7, L. 15 – p. 9, L. 3.[1]) Another vehicle pulled behind the officer who, concerned for his safety, called for back-up, and Sergeant Greg Genz responded. (Id.) When the officer who initiated the stop stepped out of his vehicle, the vehicle that had pulled behind him drove away and into the parking lot of an adjacent apartment building. (Id.) When Sergeant Genz arrived on scene, he parked on a nearby street and turned on the police vehicle's "rear lights" so that "other drivers would know" he was parked there, but did not turn on the overhead, emergency lights. (9/3/19 Tr., p. 8, L. 24 – p. 9, L. 9.) Sergeant Genz then walked up to the truck, asked the driver—later identified as Doerr—if he would roll down his window, and Doerr did so. (9/3/19 Tr., p. 9, Ls. 10-12.) Sergeant Genz was carrying a flashlight for his own safety. (9/3/19 Tr., p. 9, Ls. 13-25.) He was alone, wearing a uniform, and did not have a gun drawn. (9/3/19 Tr., p. 10, Ls. 13-19.) When Doerr rolled down the window, Sergeant Genz almost immediately smelled the strong odor of alcohol. (9/3/19 Tr., p. 11, Ls. 12-14.) He asked Doerr what he "was doing" and if he

[1] The district court announced its decision on Doerr's motion to suppress evidence—at issue on appeal—in a hearing on September 3, 2019. The hearing on the motion to suppress was held on July 2, 2019. The factual recitation below relies primarily on the district court's factual findings, none of which are challenged on appeal.

could see Doerr's driver's license, which Doerr could not locate. (9/3/19 Tr., p. 10, Ls. 10-22; p. 11, Ls. 12-19.) Doerr had "bloodshot and glassy eyes" and "slurred speech," and, when asked by Sergeant Genz whether he had been drinking, admitted drinking earlier in the evening. (Id.) Sergeant Genz initiated a DUI investigation, asking Doerr to turn off the vehicle and stop out. (9/3/19 Tr., p. 11, L. 20 – p. 12, L. 4.) Doerr failed field sobriety tests, consented to the breath test and blew .169 and .170, and was then arrested for DUI. (9/3/19 Tr., p. 11, L. 20 – p. 12, L. 15.)

The state charged Doerr with driving under the influence enhanced to a felony due to a prior felony DUI conviction within the previous fifteen years. (R., pp. 30-32.) Doerr filed a motion to suppress arguing that he was unlawfully detained. (R., pp. 40-44.) At the hearing on the motion to suppress, defense counsel argued that Doerr was detained when Sergeant Genz asked if he would roll down his window while shining a flashlight on or in his vehicle, and that Sergeant Genz had no reasonable suspicion of criminal conduct to justify that alleged detention. (7/2/19 Tr., p. 19, L. 14 – p. 20, L. 15.) The state argued that Doerr was detained only after Doerr rolled down the window and Sergeant Genz smelled alcohol and observed other indications Doerr was under the influence, at which point Sergeant Genz had reasonable suspicion for a DUI investigation. (7/2/19 Tr., p. 20, L. 20 – p. 23, L. 6.) But, in the alternative, the state argued that any earlier detention was justified by legitimate concerns about officer safety. (7/2/19 Tr., p. 21, L. 19 – p. 22, L. 20.) Defense counsel asked for an opportunity to submit supplemental briefing which the district court permitted, and both sides submitted supplemental briefing. (7/2/19 Tr., p. 17, L. 9 – p. 19, L. 13; p. 23, L. 9 – p. 24, L. 6; R., pp. 55-67.)

The district court addressed the merits in a later hearing. The court held that, considering the totality of the circumstances, Doerr was not detained by Sergeant Genz when Sergeant Genz approached Doerr's parked vehicle with his flashlight on and asked if Doerr would roll down his window. (9/3/19 Tr., p. 14, Ls. 9 – p. 17, L. 13.) The court held that that encounter was consensual until Sergeant Genz instructed Doerr to turn off and exit his vehicle, which occurred after he smelled alcohol, noticed Doerr's slurred speech and glassy, bloodshot eyes, and Doerr admitted drinking that evening. (9/3/19 Tr., p. 11, L. 12 – p. 12, L. 15.) The court therefore held that the detention was lawful and denied the motion to suppress. (9/3/19 Tr., p. 20, L. 11 – p. 22, L. 4.)

Doerr entered a conditional guilty plea, reserving the right to appeal the denial of his motion to suppress. (R., pp. 73-83.) The district court entered judgment and imposed a sentence of seven years with two years fixed, but retained jurisdiction. (R., pp. 88-91.) Doerr timely appealed. (R., pp. 93-95.)

ISSUE

Doerr states the issue on appeal as:

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

(Appellant's brief, p. 5.)

The state rephrases the issue as:

> Has Doerr established that the district court erred by denying his motion to suppress?

ARGUMENT

Doerr Has Not Shown That The District Court Erred By Denying His Motion To Suppress

A. Introduction

As he did below, and mindful of authority to the contrary, Doerr argues on appeal that he was seized "when Sergeant Genz approached his truck in uniform, shined his flashlight on the truck, and asked him to roll down his window." (Appellant's brief, p. 9.). He claims that the district court therefore erred by denying his motion to suppress. (Id.) That argument fails for two reasons. First, and primarily, the district court correctly concluded that Sergeant Genz did not seize Doerr merely by approaching his parked vehicle with a flashlight and asking if he would roll down his window. But, in the alternative, if Doerr was briefly detained then, the detention was reasonable and consistent with the Fourth Amendment as a means of ensuring officer safety, which was the reason for which Sergeant Genz was called as back-up.

B. Standard Of Review

In reviewing a decision on a motion to suppress, 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. Sergeant Genz Did Not Detain Doerr By Approaching Doerr's Vehicle With A Flashlight And Asking Doerr If He Would Roll Down His Window

The Fourth Amendment to the U.S. Constitution and Article I, Section 17 of the Idaho

Constitution prohibit unreasonable seizures. U.S. Const. amend. IV; Idaho Const. art. I, § 17.[2] This prohibition "is not implicated, however, by every contact between police and citizens." State v. Nickel, 134 Idaho 610, 612, 7 P.3d 219, 221 (2000). "An encounter between police and an individual does not trigger Fourth Amendment scrutiny unless it is non-consensual." Id. The test to determine whether an encounter constitutes a seizure, and so implicates the Fourth Amendment, "is an objective one." State v. Baker, 141 Idaho 163, 165, 107 P.3d 1214, 1216 (2004). "[A] seizure occurs 'only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.'" Id. (quoting United States v. Mendenhall, 446 U.S. 544, 554 (1980)). "[W]hile 'most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response.'" State v. Nelson, 134 Idaho 675, 679, 8 P.3d 670, 674 (Ct. App. 2000) (quoting I.N.S. v. Delgado, 466 U.S. 210, 216 (1984)). Thus, the question is not whether the particular person involved in the encounter in fact engaged with the officer, or whether most people would have, but whether "the circumstances of the encounter are so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave." Delgado, 466 U.S. at 216. "When a defendant seeks to suppress evidence that is alleged to have been obtained as a result of an illegal seizure, the defendant bears the burden of proving that a seizure occurred." State v. Pachosa, 160 Idaho 35, 38, 368 P.3d 655, 658 (2016) (quotation marks omitted).

The district court correctly found that Sergeant Genz did not seize Doerr merely by approaching his parked vehicle with a flashlight and asking if he would roll down his window.

[2] Doerr does not argue on appeal that the Idaho Constitution provides any greater protection in this case than does the Fourth Amendment.

The court found that the use of a flashlight in the middle of the night was a perfectly reasonable safety measure (9/3/19 Tr., p. 9, Ls. 10-25); that Sergeant Genz was alone and did not have a gun drawn (9/3/19 Tr., p. 10, Ls. 13-19); that Sergeant Genz asked if Doerr would roll down his window, but did not command Doerr to do so and did not use a tone of voice that might indicate a command (9/3/19 Tr., p. 10, Ls. 1-12); and that the patrol vehicle was not in any way blocking Doerr's vehicle, was not even parked in the same lot, and did not have its emergency lights on (9/3/19 Tr., p. 8, L. 24 – p. 9, L. 9). As the court correctly concluded, a reasonable person under those circumstances would not have believed he was being detained and was not free to leave. (9/3/19 Tr., p. 14, L. 9 – p. 20, L. 15.)

That conclusion follows from a large number of Idaho appellate cases. For example, under relevantly identical facts, the Court of Appeals in State v. Pieper, 163 Idaho 732, 418 P.3d 1241 (Ct. App. 2018), found that there was no detention:

> The officers did not seize Pieper without reasonable suspicion when they parked their patrol car elsewhere in the parking lot, approached Pieper's car on foot from either side of the vehicle, and shined flashlights into the interior of Pieper's vehicle. First, the officers did not block Pieper's vehicle nor activate the patrol car's overhead emergency lights. Second, the officers' use of flashlights did not make the encounter more intrusive. Our Supreme Court has held the use of lights to illuminate an area can significantly enhance officer safety and does not constitute a seizure of people in the illuminated area. *State v. Baker*, 141 Idaho 163, 165, 107 P.3d 1214, 1216 (2004). Third, the officers did not display their weapons or make any physical contact throughout the initial encounter. Nor did the officers use a tone of voice indicating compliance with their requests might be compelled. Finally, the officers lawfully asked Pieper and his passenger for identification. Even when officers have no basis for suspecting a particular individual, they may generally ask the individual questions and ask to examine identification. *Fry*, 122 Idaho at 102, 831 P.2d at 944. It was essentially at this moment that marijuana was seen in plain view in the backseat of the car. Thus, the officers did not seize Pieper without reasonable suspicion. Because the initial encounter with officers was consensual, Pieper is not entitled to suppression of any evidence resulting from the alleged illegal seizure and the district court correctly denied his motion to suppress.

Id. at 735, 418 P.3d at 1244. See also State v. Zubizareta, 122 Idaho 823, 828, 839 P.2d 1237, 1242 (Ct. App. 1992) (holding that where officer asked Zubizareta to turn off the engine of his vehicle, "[t]here was no sign of force or authority beyond the officer's uniform to require Zubizareta to submit or to limit his ability to refuse. A parallel situation occurred when the officer asked Zubizareta to roll down the window. The request was not a seizure, although an order may have been."); Baker, 141 Idaho at 164-66, 107 P.3d at 1215-17 (holding that officer did not seize the defendant by approaching the defendant's car after using a spotlight to illuminate it); State v. Randle, 152 Idaho 860, 861, 276 P.3d 732, 733 (Ct. App. 2012) (holding that Randle was not seized when, at around midnight, an "officer parked his patrol car approximately two car lengths behind Randle. . . left his headlights on and approached the driver's side of Randle's vehicle. . . . knocked on Randle's window and Randle opened his door"); State v. Page, 140 Idaho 841, 844, 103 P.3d 454, 457 (2004) (holding that the record was "devoid of evidence" that an officer detained the defendant where he approached the defendant, asked questions, and made requests with which the defendant complied).

Doerr has not shown that he was seized when Sergeant Genz simply approached his vehicle on foot, with a flashlight in the middle of the night, and asked if he would roll down his window.

D. Even If Doerr Was Very Briefly Seized When Sergeant Genz Approached With A Flashlight And Asked If He Would Roll Down His Window, The Seizure Was Lawful

Below, the state argued in the alternative that, even if Doerr was detained when he claimed that he was, the detention was lawful as a measure to ensure officer safety. (7/2/19 Tr., p. 21, L. 19 – p. 22, L. 20.) While the district court did not rule on that basis, this Court can

affirm on that basis. See State v. Garcia-Rodriguez, 162 Idaho 271, 275, 396 P.3d 700, 704 (2017) (holding that appellate court may affirm on an alternative basis raised below).

As the district court found, "this is an unusual factual situation" in which, at around 1:00 a.m., an officer was conducting a traffic stop when another vehicle, driven by Doerr, pulled behind the officer and stopped. (7/2/19 Tr., p. 7, L. 19 – p. 8, L. 23.) The officer did not know how, if it all, Doerr was related in any way to the traffic stop. (Id.) When the officer got out of his vehicle, Doerr drove away, but only to an adjacent parking lot where he again stopped. (Id.) The officer thought Doerr's conduct was "highly unusual" and was understandably "concerned about his safety." (Id.) The officer therefore called for back-up and Sergeant Genz responded. (7/2/19 Tr., p. 8, L. 18 – p. 9, L. 3.) Thus, an officer who was conducted a traffic stop by himself had reason to be concerned for his safety based on the unusual behavior of another vehicle, that vehicle remained on scene, and Sergeant Genz was called as back-up for purposes of officer safety.

Under those circumstances, even assuming that Sergeant Genz somehow detained Doerr by approaching his parked vehicle with a flashlight and asking if he would roll down his window, that very brief, extraordinarily non-intrusive detention was reasonable and lawful. Reasonable concerns regarding the safety of officers attempting to effectuate their duties may support brief, non-intrusive detentions. See State v. Pierce, 137 Idaho 296, 300, 47 P.3d 1266, 1270 (Ct. App. 2002) (where defendant was standing near residence that was the subject of a search warrant, officers could briefly detain defendant and ascertain his identity and purpose for being there due to legitimate safety concerns); State v. Howard, 167 Idaho 588, ___, 473 P.3d 857, 860 (Ct. App. 2020) (concerns for officer safety justified continued detention of passenger in traffic stop even after driver—the party suspected of a traffic violation—had fled the scene). As explained in

Terry, reasonableness under the Fourth Amendment requires balancing the need for the seizure against the invasion the seizure entails. Terry v. Ohio, 392 U.S. 1, 21 (1968). The balance in this case supports the conclusion that no Fourth Amendment violation occurred. Sergeant Genz did nothing more than approach Doerr's vehicle—without a gun drawn and with no show of force—to ask what was going on and to ensure the safety of the other officer at the scene.

Even assuming that that approach constituted a brief, non-invasive detention, it was reasonable and lawful under the Fourth Amendment.

CONCLUSION

The state respectfully requests this Court to affirm Doerr's judgment of conviction.

DATED this 23rd day of February, 2021.

/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of February, 2021, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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