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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. 48159-2020**
Plaintiff-Respondent,	)	
	)	**ADA COUNTY**
v.	)	**NO. CR01-19-46613**
	)	
WILLIAM JOHN BECKLUND,	)	
	)	
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 ADA

HONORABLE DEBORAH A. BAIL
District Judge

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

Additional Authorities

STATEMENT OF THE CASE

Nature of the Case

William Becklund appeals from his conviction for possession of a controlled substance, challenging the district court's denial of his motion to suppress. The district court erred in denying Mr. Becklund's motion to suppress because the officer who detained him did not have reasonable suspicion of criminal activity, and the officer did not advise him of his rights under *Miranda v. Arizona*, 384 U.S. 486 (1966), prior to subjecting him to a custodial interrogation.

Statement of Facts and Course of Proceedings

Just before noon on November 4, 2019, Officer Johnson was on bicycle patrol near the Interfaith Sanctuary and Corpus Christi house in downtown Boise, Idaho.[1] (R., p.61.) Officer Johnson saw what he believed to be suspicious activity between two people, Mr. Becklund and Jeramiah Martinez. (R., p.61.) He testified he knew Mr. Martinez, as he had been told by "several people . . . to keep an eye on him specifically because he was buying and selling drugs in the area." (Tr., p.28 (p.69, Ls.5-15.) Officer Johnson described the suspicious nature of the activity he observed as follows:

> I saw two individuals, two males standing in close proximately which in and of itself—I guess they are standing in close proximity with their hands raised, and they were closer than what I would describe as conversational distance and kinda tighter body language. Overall I would say it was just more furtive movement. And in totality, I thought it was just—it looked like a hand-to-hand drug deal . . . .

(Tr., p.15 (p.19, L.20 – p.20, L.4.)) He explained further, "they appeared to have hands up, closer together, just a little bit tighter body language, a little bit more guarded, standing very close together." (Tr., p.16 (p.21, Ls.8-12.)) He did not further describe the "furtive movement." (*See*

[1] Officer Johnson testified that both of these facilities serve the homeless population, one as a shelter, and the other as a day facility. (Tr., p.21 (p.43, L.23 – p.44, L.5.))

id.) Officer Johnson testified he observed what looked like a sunglasses case in Mr. Becklund's hand.[2] (R., p.62; Tr., p.16 (p.21, Ls.13-17.))

Officer Johnson rode his bicycle towards the two men, and they walked away. (R., p.63.) Officer Johnson followed Mr. Becklund and "confronted him about what [he] saw."[3] (Tr., p.17 (p.26, Ls.4-8.)) After being confronted by Officer Johnson, Mr. Becklund emptied out a black pouch he was carrying, which contained a number of needles. (Tr., p.17 (p.27, Ls.8-13.)) Officer Johnson testified he "detained him at that point." (Tr., p.17 (p.27, Ls.22-24.) He testified Mr. Becklund was not free to leave. (Tr., p.20 (p.37, L.19 – p.38, L.3.))

After Mr. Becklund emptied the pouch, Officer Johnson twice asked him to sit down. (Plaintiff's Ex. 1 at 00:30-36.) Mr. Becklund sat down, and the officer twice asked him to "set the case out in front of you." (*Id.* at 00:44-47.) Officer Johnson asked him, "How much do you got in there?" (*Id.* at 00:54-55.) Mr. Becklund answered, "There's nothing in there." (*Id.* at 1:00-01.) Mr. Becklund said he finds syringes in the port-a-potties and does not want kids to touch them. (*Id.* at 1:04-10.) The officer told Mr. Becklund he did not believe he found the syringes in the port-a-potties. (*Id.* at 1:12-15.) The officer said, "You were over there just giving him something." (*Id.* at 1:19-22.) At this point, another police officer on a bicycle can be seen close by, though the officer did not become involved at this point. (*Id.* at 1:25-35.)

Officer Johnson continued to question Mr. Becklund about what he was doing, and asked him to "be straight up with me." (*Id.* at 1:29-34.) The officer asked Mr. Becklund what he would

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[2] Officer Johnson's on-body video recording reflects that Mr. Becklund was carrying a number of items, not just a sunglasses case. (*See* Plaintiff's Ex. 1, at 00:12-30.) Mr. Becklund was carrying a large blue bag, a small black pouch, a clear glasses-size case, a silver bottle with a blue lid, and a red pen. (*See Id.*)

[3] The events occurring after this point are reflected in Officer Johnson's on-body video recording, which was admitted into evidence at the suppression hearing. (*See* Tr., p.19 (p.35, Ls.4-24); Plaintiff's Ex. 1.)

find when he tested the syringes, and Mr. Becklund answered, "I'm guessing probably meth." (*Id.* at 1:38-45.) The officer said, "So you're in possession of methamphetamine." (*Id.* at 1:45-48.) He again asked, referring to the glasses case, "How much you got in here?" (*Id.* at 1:48-52.) Mr. Becklund replied, "There's nothing in there." (*Id.* at 1:53-53.) The officer asked, "Do you want me to look?" (*Id.* at 1:54-55.) He asked, "How much meth have you got in here?" (*Id.* at 1:58-59.) He asked, "Am I okay to look?" and Mr. Becklund responded, "Go for it." (*Id.* at 2:03-06.) Officer Johnson searched the glasses case. (*Id.* at 2:07-3:00.) He later told Mr. Becklund that he found a methamphetamine pipe and "some methamphetamine cleaning tools" in the case, though he did not say anything about those items at the time of the search. (*Id.* at 5:12-35.)

After searching the case, Officer Johnson asked Mr. Becklund for identification. (*Id.* at 2:30-33.) Mr. Becklund provided the officer with identification. (*Id.* at 3:00-04.) Officer Johnson next asked Mr. Becklund about a knife he saw in his pocket, which Mr. Becklund described as "a little pocket knife." (*Id.* at 3:06-12.) The officer asked him to set it down next to him and "don't get up." (*Id.* at 3:12-16.) Mr. Becklund asked if he could have a cigarette and the officer answered, "No cigarette just yet." (*Id.* at 3:15-24.) The officer again asked Mr. Becklund, "Do you have any more methamphetamine on you?" (*Id.* at 3:30-32.) Mr. Becklund answered, "No," and the officer asked him, "Are you certain of that?" (*Id.* at 3:33-37.) Mr. Becklund explained that he did not, unless someone stuck it in his pocket while he was asleep, which could have happened. (*Id.* at 3:38-46.)

The video reflects that, at this point, Mr. Becklund is seated on the ground with his back up against a fence; two police officers, with their bikes nearby, are standing above him. (*See id.* at 3:58-4:03.) Officer Johnson asked Mr. Becklund to stand up, and take his "big red jacket off." (*Id.* at 4:09-24.) Mr. Becklund complied, and the officer asked him to put his hands behind his

back, and handcuffed him, continuing to question him about additional "meth needles." (*Id.* at 4:30-5:24). He told Mr. Becklund he was under arrest. (*Id.* at 5:34-36.) Officer Johnson ultimately found drugs in Mr. Becklund's jacket. (*See* Conf. Exs., p.15; *see also* Tr., p.37 (p.105, Ls.5-12.) Officer Johnson did not advise Mr. Johnson of his *Miranda* rights at any point. (*See* Plaintiff's Ex. 1; *see also* Tr., p.27 (p.68, Ls.7-19.))

The State charged Mr. Becklund by Information with one count of possession of a controlled substance (methamphetamine), and one count of possession of drug paraphernalia. (R., pp.24-25.) The State subsequently filed an Information Part II alleging Mr. Becklund was a persistent violator within the meaning of Idaho Code § 19-2514. (R., pp.30-31.) Mr. Becklund filed a motion to suppress, arguing suppression was warranted because (1) he was seized without reasonable suspicion of criminal activity; and (2) he was not advised of his *Miranda* rights. (R., pp.32-47.) The State filed a brief in opposition. (R., pp.34-47.) The district court held a hearing on the motion. (*See* Tr., pp.12-37.) Following the hearing, the district court issued a memorandum decision and order denying Mr. Becklund's motion to suppress. (R., pp.60-79.)

The district court concluded Officer Johnson had reasonable articulable suspicion of criminal activity when he detained Mr. Becklund. (R., p.71.) The district court explained its reasoning as follows:

> In this case, Officer Johnson was able to reasonably articulate exactly why he believed he had witnessed the Defendant William Becklund engage in an illicit drug transaction with Martinez. Officer Johnson had patrolled this neighborhood on his bicycle for approximately 15 years. He had an intimate understanding of the neighborhood and its high incidence of illicit drug use. His familiarity with the high incidence of criminal drug activity in the neighborhood was bolstered by statistical reports and briefings provided to him by his employer, the Boise Police Department. Officer Johnson, a 20-year law enforcement veteran had witnessed hand to hand illicit drug transactions on several occasions and was familiar with how such exchanges occur. Officer Johnson also had personal knowledge of reputed drug activity by Mr. Martinez. When Officer Johnson first observed the Defendant and Mr. Martinez, he noticed that they were standing very close

> together in a tighter or guarded orientation with their hands held higher than is normal for persons engaged in casual conversation. He observed these two persons make what he described as furtive movements. The Defendant was holding what appeared to be a clear or white case, possibly a sunglass case that was an item of interest for Officer Johnson regarding the suspected drug transaction. Among the crowd, these two individual's positioning and activity stood out. He recognized their physical positioning as abnormal for casual conversation. Officer Johnson's observation lead him to believe he was witnessing a hand to hand illicit drug transaction between the Defendant and Mr. Martinez. As Officer Johnson rode up on the parties, the Defendant walked away at a quicker pace than a normal walking pace . . . . Officer Johnson's suspicion was further supported by Defendant's act of dumping several syringes out of a bag almost immediately after Officer Johnson confronted him.

(R., pp.70-71.)

The district court also concluded there was no *Miranda* violation because Mr. Becklund was not subjected to a custodial interrogation prior to being handcuffed. (R., p.75.) The district court explained its reasoning as follows:

> While the discussion included some investigative or probing questions by the Officer, the Defendant sat unrestrained on the ground in a public location during daylight. He appeared to feel free to provide whatever responses or statements he subjectively felt explained the circumstances. He did not appear to be forced or coerced into responding to any of the questions. This was a rather rambling dialogue that occurred concurrent with the officer securing the scene and the evidence that had been dumped on the ground by Defendant. During the conversation the Officer asked the Defendant for his identification; inquired about what the Officer had observed; and inquired about whether the Defendant possessed any other syringes or drugs.

(R., pp.76-77.)

Following the district court's denial of his motion to suppress, Mr. Becklund pled guilty to possession of a controlled substance, reserving his right to appeal from the denial of his motion. (R., pp.80-92.) The district court accepted Mr. Becklund's guilty plea, and sentenced him to a unified term of five years, with two years fixed, and then suspended the sentence. (Tr., p.128, Ls.11-25.) The judgment of conviction was entered on July 14, 2020, and Mr. Becklund filed a timely notice of appeal. (R., pp.98-106.)

ISSUE

Did the district court err in denying Mr. Becklund's motion to suppress?

ARGUMENT

The District Court Erred In Denying Mr. Becklund's Motion To Suppress

A. Introduction

The district court erred in denying Mr. Becklund's motion to suppress for two reasons. First, suppression of the physical evidence is necessary because Officer Johnson violated Mr. Becklund's rights under the Fourth Amendment by detaining him absent reasonable suspicion of criminal activity. Second, suppression of the statements Mr. Becklund made prior to being arrested is necessary under the Fifth Amendment because he was subjected to a custodial interrogation without being advised of his *Miranda* rights. For either or both of these reasons, this Court should reverse the denial of Mr. Becklund's motion to suppress.

B. Standard Of Review

This Court reviews a district court's order granting or denying a motion to suppress using a bifurcated standard of review. *State v. Pylican*, 167 Idaho 745, 750 (2020). "This Court will accept the trial court's findings of fact unless they are clearly erroneous." *Id.* (quotation marks and citation omitted). "However, this Court may freely review the trial court's application of constitutional principles in light of the facts found." *Id.* (quotation marks and citation omitted).

C. Suppression Of The Physical Evidence Is Warranted Under The Fourth Amendment Because Officer Johnson Detained Mr. Becklund Absent Reasonable Suspicion Of Criminal Activity

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. U.S. Const., amend. IV. While a seizure must generally be based on probable cause in order to satisfy the Fourth Amendment, an officer may detain an individual for a limited investigatory detention if he has reasonable articulable suspicion that the individual has

committed, or is about to commit, a crime. *See Florida v. Royer*, 460 U.S. 491, 499-500 (1983); *Terry v. Ohio*, 392 U.S. 1, 19 (1968). "Whether an officer possessed reasonable suspicion is evaluated based on the totality of the circumstances known to the officer at or before the time of the stop." *State v. Gonzales*, 165 Idaho 667, 673 (2019) (quotation marks and citations omitted). "Not every suspicious or abnormal behavior is sufficient to establish reasonable suspicion." *Id.* (citation omitted). "The officer must be able to articulate more than an inchoate and unparticularized suspicion or hunch of criminal activity." *Id.* (quotation marks and citation omitted).

Officer Johnson testified that he suspected Mr. Becklund and Mr. Martinez were involved in a "hand-to-hand drug deal" because they were "standing in close proximity . . . with their hands raised." (Tr., p.15 (p.19, L.20 – p.20, L.4.)) He testified he observed "furtive movement," but did not describe the nature of the furtive movement. (*See id.*) He explained, "[T]hey appeared to have hands up, closer together, just a little bit tighter body language, a little bit more guarded, standing very close together." (Tr., p.16 (p.21, Ls.8-12.)) And he observed what looked like a sunglasses case in Mr. Becklund's hand. (R., p.62; Tr., p.16 (p.21, Ls.13-17.))

The district court concluded Officer Johnson had reasonable suspicion of criminal activity because he "was able to reasonably articulate exactly why he believed he had witnessed the Defendant William Becklund engage in an illicit drug transaction with [Mr.] Martinez." (R., p.70.) The district court placed great weight on Officer Johnson's testimony that the particular neighborhood in which he observed Mr. Becklund and Mr. Martinez was known to have a "high incidence of illicit drug use." (R., p.70.) The district court also emphasized the fact that Officer Johnson "had personal knowledge of reputed drug activity by Mr. Martinez." (R., p.70.)

Neither of these factors is significant in determining whether Officer Johnson had reasonable suspicion that Mr. Becklund was involved in criminal activity. The Idaho Supreme Court recognized in *Gonzales* that "[a]n individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable particularized suspicion that the person is committing a crime." 165 Idaho at 673 (quotation marks and citation omitted). "Similarly, an individual's proximity to others suspected of or associated with criminal activity, without more, is also insufficient." *Id.* (citation omitted).

It is true, of course, that "innocent acts, when considered together, may be suspicious enough to justify an investigative detention." *Gonzales*, 165 Idaho at 673. What additional facts can be considered in this case? The district court pointed to the following:

(1) Mr. Becklund and Mr. Martinez were "standing in close proximity with their hands raised" and were engaged in some unspecified "furtive movement."

(2) Mr. Becklund was carrying what looked like a sunglasses case.

(3) As Officer Johnson rode his bicycle towards Mr. Becklund and Mr. Martinez, Mr. Becklund "walked away at a quicker pace than a normal walking pace."

(4) Mr. Becklund dumped several syringes out of a pouch after Officer Johnson said something to him.

(Tr., p.15 (p.19, L.20 – p.20, L.4), p.16 (p.21, Ls.13-17); R., pp.62, 70-71.) None of these factors, even when viewed together, provided Officer Johnson with reasonable suspicion of criminal activity.

First, there is nothing suspicious about the manner in which Mr. Becklund and Mr. Martinez were standing. The fact that they were close together with their hands raised cannot even support "a hunch" of criminal activity. The officer's testimony that they were engaged in some unspecified "furtive movement" should be discounted, as it is contrary to his testimony that they were just standing together with their hands raised. Furtive movements can, of course,

factor into a reasonable suspicion analysis, but Officer Johnson did not actually testify to any furtive movements on the part of Mr. Becklund and Mr. Martinez. *See State v. Henage*, 143 Idaho 655, 662 (2007) (noting the officer did not articulate any furtive movements or behavior); *see and compare United States v. Davis*, 202 F.3d 1060, 1063 (8th Cir. 2000) (officer encountering two individuals in known troubled area justified in frisking individual where, during frisk of defendant's cohort, defendant moved behind officer, adjusted his jacket, and inserted his hand into his jacket pocket).

Second, the fact that Mr. Becklund was carrying what looked like a sunglasses case, along with numerous other items, *see infra* n.2, is of little significance. Officer Johnson did not testify that he observed Mr. Becklund open or close the case, and did not articulate why the case itself was significant.

Third, the fact that Mr. Becklund "walked away at a quicker than normal walking pace" when approached by Officer Johnson on his bicycle should not weigh into the analysis. As an initial matter, the district court's finding in this regard is contradicted by the video evidence, which does not show Mr. Becklund walking away at a fast pace. (*See* Plaintiff's Ex. 1 at 00:03-08.) Moreover, even if he was walking away quickly, the fact that Mr. Becklund was hoping not to speak to law enforcement cannot support a finding of reasonable suspicion. *See Gonzales*, 165 Idaho at 674 (stating the driver's decision not to speak with the officer cannot be considered when evaluating whether there was reasonable suspicion to detain the passenger because the driver had every right to refuse to speak with the officer); *see also Florida v. Royer*, 460 U.S. at 498 (stating a person "may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish these grounds.").

Fourth, while it may seem suspicious that Mr. Becklund dumped several syringes on the ground when confronted by Officer Johnson, we cannot draw much significance from this act as we do not know what precipitated it. Officer Johnson could not recall when he said to Mr. Becklund right before he dumped the pouch out, Tr., p.17 (p.26, Ls.4-8), and the video recording of this part of the encounter does not include audio. (*See* Plaintiff's Ex. at 00:15-25.) It appears that Mr. Becklund dumped the pouch out upon request. *See id.* If so, his act of dumping the pouch out was hardly suspicious.

The mere fact that Officer Johnson articulated the basis for his suspicion, as the district court found, does not make that suspicion reasonable. Officer Johnson had a hunch that Mr. Becklund was engaged in criminal activity, based largely on his presence near a homeless shelter, with a person the officer suspected of being involved in drug activity. These factors cannot support reasonable suspicion for the purposes of the Fourth Amendment, and the other factors relied on by the district court are insignificant. The district court should have concluded Officer Johnson detained Mr. Becklund absent reasonable suspicion, and should have granted Mr. Becklund's motion to suppress.

D. Suppression Of The Statements Mr. Becklund Made Prior To His Arrest Is Warranted Under The Fifth Amendment Because He Was Subjected To A Custodial Interrogation Without Being Advised Of His *Miranda* Rights

In *Miranda v. Arizona*, the United States Supreme Court held a person must be informed of his or her Fifth Amendment privilege against self-incrimination prior to being subjected to custodial interrogation; otherwise, any incriminating statements made by the person are inadmissible at trial. 384 U.S. at 444-45; *see also State v. Henson*, 138 Idaho 791, 795 (2003) (discussing *Miranda*). "As a practical matter, *Miranda* and its progeny establish that *Miranda* warnings are required where a suspect is in custody." *State v. Huffaker*, 160 Idaho 400, 404

(2016) citation omitted). Whether a suspect is in custody is determined by "whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *Id.* (quotation marks and citations omitted). "The test to determine whether a defendant is in custody is objective." *Id.* at 405. "The only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *Id.* (quotation marks and citation omitted).

The United States Supreme Court recently clarified that "[d]etermining whether an individual's freedom of movement was curtailed . . . is . . . the first step in the analysis, not the last." *Howes v. Fields*, 565 U.S. 499, 509 (2012). Mr. Becklund easily satisfies this first step, as his freedom of movement was curtailed by Officer Johnson, who testified that Mr. Becklund was not free to leave after being detained. (Tr., p.20 (p.37, L.19 – p.38, L.3.)) In light of the officer's testimony, it would be unreasonable for Mr. Becklund to believe he was at liberty to terminate the interrogation and leave.

The next question in the custody analysis is "whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Howes*, 565 U.S. at 599. In answering this question, the Idaho Supreme Court has considered "where the questioning occurred, the duration of the interrogation, whether the defendant is informed that the detention may not be temporary, and the intensiveness of the questions and requests of the police officer." *State v. Andersen*, 164 Idaho 309, 313, 429 P.3d 850, 854 (2018) (citation omitted). The district court concluded these factors did not support a finding that Mr. Becklund was in custody. The district court erred.

The district court explained:

> While the discussion included some investigative or probing questions by the Officer, the Defendant sat unrestrained on the ground in a public location during

> daylight. He appeared to feel free to provide whatever responses or statements he subjectively felt explained the circumstances. He did not appear to be forced or coerced into responding to any of the questions.

(R., pp.76-77.) The fact that Mr. Becklund was not restrained, and was interrogated in public, does not mean the questioning was not coercive. To "coerce" means "[t]o compel by force or threat." BLACK'S LAW DICTIONARY (11th ed. 2019). Here, Officer Johnson compelled Mr. Becklund's incriminating statements by refusing to accept his repeated denials of possessing illegal drugs.

The interrogation began when Officer Johnson twice asked Mr. Becklund to sit down. (*See* Plaintiff's Ex. 1 at 00:30-36.) While the officer's tone was not threatening, his questioning was intense. He asked Mr. Becklund over and over again about methamphetamine:

- He first asked, referring to the sunglasses case Mr. Becklund was holding, "How much do you got in there?" (*Id.* at 00:54-55.)
- Less than a minute later, he again asked, referring to the same case, "How much you got in here?" (*Id.* at 1:48-52.)
- And just ten seconds later, "How much meth have you got in here?" (*Id.* at 1:58-59.)

While the questioning was not prolonged, this actually weighs in favor of this being a custodial interrogation, as it was clear Officer Johnson would not accept Mr. Becklund's denials. Even after Mr. Becklund agreed to allow Officer Johnson to search his glasses case, *Id.* at 2:03-06, Officer Johnson did not stop his questioning. After searching the glasses case, Officer Johnson again asked Mr. Becklund, "Do you have any more methamphetamine on you?" (*Id.* at 3:30-32.) Mr. Becklund answered, "No," and the officer asked him again, "Are you certain of that?" (*Id.* at 3:33-37.)

Throughout the questioning, Mr. Becklund was seated on the ground, with his back up against a fence, and two police officers, with their bikes nearby, were standing above him. (*See*

Plaintiff's Ex. 1 at 3:58-4:03.) A reasonable person in Mr. Becklund's position would have felt he was in custody, as he was not free to leave, and was subjected to coercive questioning, that was going to end, one way or another, in his arrest. The district court should have granted Mr. Becklund's motion to suppress the statements he made prior to his arrest, as they were obtained during a custodial interrogation, conducted without *Miranda* warnings.

CONCLUSION

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

DATED this 24th day of May, 2021.

/s/ Andrea W. Reynolds
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of May, 2021, 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

AWR/eas