2-7-2017

State v. Fairchild Appellant's Brief Dckt. 44617

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 44617**
Plaintiff-Appellant,	)	
	)	**Canyon County Case No.**
v.	)	**CR-2016-12011**
	)	
TAYLOR JAMES FAIRCHILD,	)	
	)	
Defendant-Respondent.	)	
	)	

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 GEORGE A. SOUTHWORTH
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR PLAINTIFF-APPELLANT

ERIC D. FREDERICKSEN
State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712

ATTORNEY FOR DEFENDANT-RESPONDENT

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's order suppressing evidence. The state contends that the officer had reasonable suspicion to conduct an investigative stop of Fairchild and, even if the stop was not justified, the discovery of an outstanding arrest warrant was an intervening circumstance justifying Fairchild's arrest and search incident thereto.

Statement Of The Facts And Course Of The Proceedings

A concerned citizen called the Canyon County Sheriff's Office to report a suspicious "transaction" occurring behind his house and to request that an officer be sent. (State's Exhibit 2.) The citizen gave the dispatch operator his name, address and phone number. (Id.) He reported that two cars pulled up "really fast" to the dead end behind his house, and the drivers met and were sitting in one of the vehicles. (Id.) The location was one where the citizen noticed suspicious activity in the past. (Id.) He described the vehicles, a truck and a sedan, including the license plates. (Id.) The men had been sitting in the truck for about ten minutes. (Id.)

A Caldwell police officer responded to the location reported by the citizen. (Tr., p. 19, L. 25 – p. 21, L. 10.) While en route the officer ran the plate numbers provided by the citizen and the one belonging to the truck showed the vehicle registered to a person the officer had previously found in possession of drugs and paraphernalia. (Tr., p. 25, L. 18 – p. 28, L. 17.) The officer entered the vicinity and confirmed the presence of the two vehicles. (Tr., p. 22, L. 24 – p. 23,

L. 19.) Once the officer arrived, the truck drove off through a field and the sedan drove off on the road. (Tr., p. 23, L. 20 – p. 24, L. 18.)

The officer stopped the sedan and contacted its driver, the defendant Taylor Fairchild. (Tr., p. 28, L. 23 – p. 32, L. 11.) After ascertaining Fairchild's identity the officer contacted dispatch, who informed him that Fairchild "had a warrant." (Tr., p. 34, Ls. 8-23.) While dispatch confirmed the warrant (meaning pulled the actual paperwork "to verify that the warrant is still valid and not just in their database") the officer took Fairchild into custody, searched him, and discovered methamphetamine in his pocket. (Tr., p. 34, L. 23 – p. 35, L. 5; p. 36, L. 16 – p. 41, L. 2.)

The state charged Fairchild with possession of methamphetamine. (R., pp. 14-15.) Fairchild moved to suppress the evidence seized as a result of the stop and search. (R., p. 27.) The district court granted the suppression motion. (R., pp. 78-94.) The state filed a notice of appeal timely from the order suppressing evidence. (R., pp. 98-100.)

ISSUES

1. Did the district court err when it concluded there was no reasonable, articulable suspicion for the stop?

2. Even if the stop was unlawful, did the district court err when it rejected application of the attenuation doctrine and held evidence discovered as a result of an arrest pursuant to a valid arrest warrant was inadmissible?

ARGUMENT

I.
The District Court Erred When It Concluded There Was No Reasonable, Articulable Suspicion For The Stop

A. Introduction

The district court concluded that the officer lacked reasonable suspicion to justify the stop. (R., pp. 82-86.) Review of the totality of the circumstances, however, shows that the investigatory stop was justified by reasonable suspicion that Fairchild may have been involved in illegal activity.

B. Standard Of Review

"Determinations of reasonable suspicion are reviewed de novo." State v. Morgan, 154 Idaho 109, 111, 294 P.3d 1121, 1123 (2013). "On review of a suppression motion ruling, this Court will accept the district court's findings unless they are clearly erroneous." State v. Danney, 153 Idaho 405, 410, 283 P.3d 722, 727 (2012).

C. The Totality Of The Circumstances Shows Reasonable Suspicion For The Stop

"An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." United States v. Cortez, 449 U.S. 411, 417 (1981). "[T]he Fourth Amendment is satisfied if the officer's action is supported by reasonable suspicion to believe that criminal activity 'may be afoot.'" United States v. Arvizu, 534 U.S. 266, 273 (2002) (quoting United States v. Sokolow, 490 U.S. 1, 7 (1989)). The court must "look at the 'totality of the circumstances' of each case to see whether the

detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." Id. (quoting Cortez, 449 U.S. at 417-18). "Although an officer's reliance on a mere 'hunch' is insufficient to justify a stop, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard." Id. (quoting Terry v. Ohio, 392 U.S. 1, 27 (1968)). "The Fourth Amendment requires some minimal level of objective justification for making the stop." Sokolow, 490 U.S. at 7. Furthermore, reasonable suspicion "need not rule out the possibility of innocent conduct." Arvizu, 534 U.S. at 277.

The totality of the circumstances included (1) a citizen reporting that a sedan and a pickup had pulled into the dead end behind his house; (2) this was a place where he had seen suspicious transactions occur before; (3) one of the drivers got into the other vehicle where the two men engaged in some sort of transaction; and (4) the citizen believed that the transaction was suspicious. The officer (1) confirmed the citizen's observations of the two vehicles and their location; (2) ascertained that one of the vehicles belonged to a man with a known drug history; and (3) when the officer approached, the two vehicles took off, one of them driving through a field. Although this evidence did not establish that the two men were involved in a drug transaction by a preponderance of the evidence, or even probable cause, it was reasonable to *suspect* that Fairchild's transaction in the truck may have involved drugs.

In concluding that the citizen's and officer's suspicions that Fairchild's transaction in the truck may have involved drugs were not reasonable, the court

emphasized that the citizen stated that what he saw could be "nothing," that the transaction occurred in "a well-kept subdivision on a bright, sunny morning," that it was "unclear" whether the registered owner of the truck (who had a known history of drug use) was the driver of the truck, that neither the citizen nor the officer saw drugs or money exchange hands, and that the location was not "a high-crime or high-drug neighborhood." (R., pp. 85-86.) Although these facts are *part* of the totality of the circumstances, they do not show that suspicion that Fairchild was involved in a drug transaction was unreasonable for two reasons.

First, all of the facts articulated by the district court are consistent with reasonable suspicion. The citizen's acknowledgment that the transaction he witnessed could have been "nothing" is consistent with reasonable suspicion because, even if there was more than a 50% chance the transaction was "nothing," suspicion can still be reasonable. Arvizu, 534 U.S. at 273 (evidence establishing reasonable suspicion less than required for probable cause and "considerably short" of a preponderance). Likewise, even assuming that drug transactions often happen at night or in high-crime areas, absence of these factors does not render suspicion unreasonable. Indeed, the facts in Terry warranting a determination of reasonable suspicion were that an officer saw two men conferring on a street corner, then take turns walking up the street to a store 300 to 400 feet away and looking in a window before returning to the corner, something that both men did five or six times. Terry, 392 U.S. at 5-6. In addressing Terry the Court stated:

> Even in *Terry,* the conduct justifying the stop was ambiguous and susceptible of an innocent explanation. The officer observed two

> individuals pacing back and forth in front of a store, peering into the window and periodically conferring. All of this conduct was by itself lawful, but it also suggested that the individuals were casing the store for a planned robbery. *Terry* recognized that the officers could detain the individuals to resolve the ambiguity.

Illinois v. Wardlow, 528 U.S. 119, 125 (2000) (citations omitted); see also Navarette v. California, ___ U.S.___, 134 S. Ct. 1683, 1691 (2014) ("we have consistently recognized that reasonable suspicion need not rule out the possibility of innocent conduct" (quotations omitted)); Sokolow, 490 U.S. at 9-10 (reasonable suspicion existed even though facts were "consistent with innocent travel"). The district court's concerns that the events witnessed by the citizen and the officer may have been "nothing," that they occurred during daylight in a relatively drug- and crime-free neighborhood, and that neither the citizen nor the officer saw the actual transaction (which occurred inside a car) did not render their suspicions unreasonable.

Second, the district court failed to address several of the circumstances in the totality. As noted above, Fairchild conducted some sort of transaction that a nearby resident found suspicious, spending about ten minutes in a truck registered to a man with known drug affinity, in a place where other suspicious transactions had been observed, and both men left in different directions when an officer approached—the man in the truck driving away through a field rather than on the road. One rational inference from these facts is that the transaction Fairchild participated in involved controlled substances. See State v. Danney, 153 Idaho 405, 409–10, 283 P.3d 722, 726–27 (2012) ("A reasonable suspicion exists when the officer—or officers—can articulate specific facts which, together

with rational inferences from those facts, reasonably justify a suspicion that criminal activity is occurring."). The district court erred when it concluded that the investigative stop was not justified by reasonable suspicion.

II.
Even If The Stop Was Unlawful, The District Court Erred When It Rejected Application Of The Search Incident To Arrest Exception And The Attenuation Doctrine

A. Introduction

Even if the traffic stop were not justified by reasonable suspicion, the methamphetamine should not have been suppressed because it was found as the result of a proper arrest on an existing arrest warrant. The district court rejected both the search incident to arrest exception and the attenuation doctrine based on the erroneous determination that the arrest warrant was not discovered until after the officer had taken Fairchild into custody and searched him. (R., pp. 86-93.)

B. Standard Of Review

"The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact that are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found." State v. Colvin, 157 Idaho 881, 882, 341 P.3d 598, 599 (Ct. App. 2014).

C. Evidence Found As A Result Of Fairchild's Arrest Was Admissible Regardless Of The Initial Legality Of The Traffic Stop

After making the traffic stop and acquiring Fairchild's identification, dispatch informed the officer of an outstanding arrest warrant for Fairchild. (Tr., p. 34, Ls. 8-23; State's Exhibit 3.) The officer then took Fairchild into custody and discovered methamphetamine in his pocket. (Tr., p. 34, L. 23 – p. 35, L. 5; p. 36, L. 16 – p. 41, L. 2; State's Exhibit 3.) The methamphetamine was therefore found as part of a valid search incident to arrest. See Chimel v. California, 395 U.S. 752, 762-63 (1969); State v. Kerley, 134 Idaho 870, 874, 11 P.3d 489, 493 (Ct. App. 2000). The discovery and execution of a valid arrest warrant, leading to the discovery of contraband, required application of the attenuation doctrine and the conclusion that the contraband was not subject to the exclusionary rule even if the initial investigatory stop was not justified by reasonable suspicion.

The exclusionary rule applies to suppress evidence obtained as a result of an illegal search or seizure. Segura v. United States, 468 U.S. 796, 804 (1984). One of the exceptions to the exclusionary rule is the attenuation doctrine: "Evidence is admissible when the connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance, so that the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained." Utah v. Strieff, ___ U.S. ___, 136 S.Ct. 2056, 2061 (2016) (internal quotations omitted).

The three factors a court considers under an attenuation analysis include: (1) the "temporal proximity between the unconstitutional conduct and the discovery of evidence"; (2) "the presence of intervening circumstances"; and (3) "the purpose and flagrancy of the official misconduct." Strieff, 136 S.Ct. at 2062 (citations omitted, punctuation altered); see also State v. Page, 140 Idaho 841, 846, 103 P.3d 454, 459 (2004) (citation omitted). Applying these factors in Strieff, the Court found suppression was not appropriate, reiterating that "[s]uppression of evidence has always been our last resort, not our first impulse." Strieff, 136 S.Ct. at 2061 (quotations, citation and ellipses omitted).

In Strieff, a narcotics detective was investigating a tip that there was "'narcotics activity' at a particular residence." 136 S.Ct. at 2059. During the detective's surveillance of the residence, "[h]e observed visitors who left a few minutes after arriving at the house," which behavior was indicative of drug dealing. Id. The detective "observed Strieff exit the house and walk toward a nearby convenience store." Id. Once in the store's parking lot, the detective "detained Strieff, identified himself, and asked Strieff what he was doing at the residence." Id. "As part of the stop," the detective "requested Strieff's identification," which Strieff provided, and the detective "relayed Strieff's information to a police dispatcher, who reported that Strieff had an outstanding arrest warrant." Id. The detective arrested Strieff and, pursuant to a search incident to that arrest, he discovered methamphetamine. Id. Strieff moved to suppress the methamphetamine, "arguing that the evidence was inadmissible because it was derived from an unlawful investigatory stop." Id.

Addressing Strieff's Fourth Amendment claim, the Supreme Court noted that the attenuation doctrine is one exception to the exclusionary rule. Strieff, 136 S.Ct. at 2061. But, first, the Court addressed the "threshold question: whether this doctrine applies at all to a case like this, where the intervening circumstance that the State relies on is the discovery of a valid, pre-existing, and untainted arrest warrant." Id. The Court "conclude[d] that the warrant breaks the causal chain." Id. at 2062. In reaching this conclusion, the Court noted that the "warrant was valid," it predated the detective's investigation, and "it was entirely unconnected to the stop." Id. Moreover, once the warrant was discovered, the detective "had an obligation to arrest Strieff." Id. "And once Officer Fackrell was authorized to arrest Strieff, it was undisputedly lawful to search Strieff as an incident to his arrest." Id. at 2063.

With respect to the flagrancy prong, the Court found that the detective "was at most negligent." Strieff, 136 S.Ct. at 2063. According to the Court, the detective made "two good-faith mistakes" in stopping Strieff, one of which was that he "should have asked Strieff whether he would speak with him, instead of demanding that Strieff do so." Id. at 2063. The other "mistake" was that the detective did not know how long Strieff had been inside the suspect residence before leaving. Id. However, "these errors in judgment hardly rise to purposeful or flagrant violation of Strieff's Fourth Amendment rights." Id. While the detective's "decision to initiate the stop was mistaken, his conduct thereafter was lawful," including the check for warrants, which was a "negligibly burdensome precaution." Id. (quotations, citation and brackets omitted). "Moreover," there

was no indication that the stop "was part of any systematic or recurrent police misconduct." Id. Rather, the evidence "suggest[ed] that the stop was an isolated instance of negligence that occurred in connection with a bona fide investigation of a suspected drug house." Id. As such, there was no purposeful or flagrant misconduct. Id.

In holding that "the arrest warrant attenuated the connection between the unlawful stop and the evidence seized from Strieff incident to arrest," the Court also rejected Strieff's argument that the detective's conduct "was flagrant because he detained Strieff without the necessary level of cause (here, reasonable suspicion)." Strieff, 136 S.Ct. 2056. As noted by the Court, such an argument "conflates the standard for an illegal stop with the standard for flagrancy." Id. "For the violation to be flagrant, more severe police misconduct is required than the mere absence of proper cause for the seizure." Id.

Similar to Strieff, this Court applied the attenuation factors in Page to conclude that suppression was not warranted. In Page, an officer approached a pedestrian who "was walking down the middle of a roadway carrying some bags" at 2:00 a.m. Page, 140 Idaho at 842, 103 P.3d at 455. The officer asked to speak with Page, and asked him for identification. Id. After Page provided his license, the officer took it back to his patrol car to "check his name with the station to let them know who he had stopped." Id. Dispatch reported that Page had an outstanding warrant. Id. Page was arrested on the warrant and a search incident to arrest revealed drugs and paraphernalia. Id. This Court ultimately concluded that Page was not entitled to suppression even though the officer

improperly detained Page by taking his license without reasonable suspicion or probable cause to support a detention. Specifically, the Court stated:

> Here, there was a minimal lapse of time between the seizure of the license and the search pursuant to a valid arrest warrant. The police officer's conduct was certainly not flagrant, nor was his purpose improper. Clearly, once the officer discovered that there was an outstanding warrant, an intervening event . . ., he did not have to release Page and was justified in arresting him at that point.

Page, 140 Idaho at 846-847, 103 P.3d at 459-460.

The present case is indistinguishable from Strieff and Page. The officer stopped Fairchild based on a report of suspicious activity, at least partly confirmed by the officer's own observations. (Tr., p. 28, L. 23 – p. 32, L. 11.) After detaining Fairchild the officer obtained Fairchild's identification and contacted dispatch, who informed him that Fairchild "had a warrant." (Tr., p. 34, Ls. 8-23.) After learning of the arrest warrant from dispatch the officer took Fairchild into custody and searched him incident to arrest, discovering methamphetamine in his pocket. (Tr., p. 34, L. 23 – p. 35, L. 5; p. 36, L. 16 – p. 41, L. 2.) Just as in Strieff and Page, even assuming the stop was not justified the three factors show attenuation: the time was short, but the discovery of an outstanding arrest warrant was an intervening circumstance and the officer did not act in any way flagrantly.

The district court's rejection of the search incident to arrest exception and the attenuation doctrine was based on the clearly erroneous finding that "the warrant was discovered *after* the Defendant had been unlawfully arrested." (R., p. 92 (emphasis original).) The evidence in the record, however, clearly

shows that the officer handcuffed and searched Fairchild only after dispatch informed him of the arrest warrant. (Tr., p. 34, L. 23 – p. 35, L. 5; p. 36, L. 16 – p. 41, L. 2; State's Exhibit 3.) Dispatch informing the officer of an arrest warrant, leading to arrest and search incident thereto, was the salient intervening circumstance in Strieff, 136 S.Ct. at 2060 ("Officer Fackrell relayed Strieff's information to a police dispatcher, who reported that Strieff had an outstanding warrant"), and Page, 140 Idaho at 843 ("Officer Marshall was then told by dispatch that Page had an outstanding warrant for his arrest"). There is no evidence tending to show that dispatch informed the officer of the search warrant only after the officer took Fairchild into custody and searched him. Because the evidence was obtained pursuant to a search incident to arrest following the discovery of a valid, preexisting arrest warrant, the district court erred in finding the search incident to arrest exception and the attenuation doctrine inapplicable.

CONCLUSION

The state respectfully requests this Court to reverse the district court's order suppressing evidence.

DATED this 7th day of February, 2017.

__/s/ Kenneth K. Jorgensen_____
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7th day of February, 2017, served a true and correct copy of the foregoing BRIEF OF APPELLANT by emailing an electronic copy to:

ERIC D. FREDERICKSEN
STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

_/s/ Kenneth K. Jorgensen_____
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd