5-10-2017

State v. Fairchild Appellant's Reply Brief Dckt. 44617

IN THE SUPREME COURT OF THE STATE OF IDAHO

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

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

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I.
The Officer Had Reasonable Suspicion To Stop Fairchild

In this case a citizen called the police to report what he believed was a suspicious transaction occurring on a dead-end street in his neighborhood, where he had seen suspicious occurrences in the past, when a car and a truck pulled up quickly and the occupant of the car got out and entered the truck where he was for about ten minutes. (State's Exhibit 2.) An officer responded, knew that the truck was registered to a person with a known drug history, parked his patrol car where he could observe and, when the vehicles took off, stopped the car. (Tr., p. 19, L. 25 – p. 24, L. 18.) Application of the law to the facts in this case shows the officer had reasonable suspicion that Fairchild was involved in a drug transaction. (Appellant's brief, pp. 4-5.)

The district court erred by failing to consider the totality of the circumstances, instead, and contrary to applicable legal standards, discounting or ignoring circumstances because of possible innocent explanations. (Appellant's brief, pp. 5-8.) In response to the state's argument, Fairchild argues that the district court properly downplayed evidence that Fairchild was engaged in a "transaction," that the two individuals left when the officer parked within sight, and that the truck was registered to someone with a known drug history. (Respondent's brief, pp. 6-14.) Fairchild's attempt to limit the scope of the totality of the circumstances, like the district court's, is inconsistent with applicable law.

Fairchild argues there was no reasonable suspicion that he was engaged in a "transaction" in the truck, but only speculation that he was. (Respondent's brief, pp. 9-10, see also p. 13.) He argues that this conclusion is reasonable because the citizen reported being "'concerned about a transaction *or something* going down behind my house.'" (Respondent's brief, p. 9 (emphasis original) (citing State's Exhibit 2 at 0:00-0:10).) He argues the citizen "did not know it was a transaction because, as the district court found, he did not see a transaction occur." (Respondent's brief, p. 9.) Fairchild cites no authority for the proposition that it is unreasonable to suspect criminal activity unless a citizen or witness has seen the crime committed. The law is contrary to his argument. See, e.g., Illinois v. Wardlow, 528 U.S. 119, 124 (2000) (headlong flight may give rise to reasonable suspicion); State v. Gottardi, 161 Idaho 21, 383 P.3d 700, 707 (Ct. App. 2016) (officers had reasonable suspicion of drug activity where: "the facts the officer possessed when he approached Gottardi outside the apartment were that Gottardi had some familiarity with the wanted felon, the felon was wanted on drug charges, and Gottardi had engaged in 'lookout behavior' and 'suspicious' behavior indicative of drug activity"); State v. Perez-Jungo, 156 Idaho 609, 615, 329 P.3d 391, 397 (Ct. App. 2014); ("reasonable suspicion does not require a belief that any *specific* criminal activity is afoot to justify an investigative detention; instead, all that is required is a showing of objective and specific articulable facts giving reason to believe that the individual has been or is about to be involved in *some* criminal activity" (emphasis original)).

Fairchild next argues that the fact that the vehicles took off when the officer arrived and parked within sight of them, one of them driving through a field, was not suspicious because there was no direct evidence that the drivers' motivation was to avoid the officer and this was "not part of the facts found by the district court." (Respondent's brief, p. 10.) As a matter of law, however, efforts to avoid law enforcement can be suspicious, Wardlow, 528 U.S. at 124 (flight can provide reasonable suspicion); Padilla v. State, 161 Idaho 624, ___, 389 P.3d 169, 171-72 (2016) (same), so Fairchild's argument reinforces, rather than refutes, the state's argument that the district court failed to include the totality of the circumstances in its analysis.

Fairchild next argues that the district court properly excluded from the totality of the circumstances the fact that the registered owner of the truck had a drug history. (Respondent's brief, p. 13.) Specifically, Fairchild argues this fact was properly found "not suspicious" because "'it is unclear whether that was even the same individual driving the truck that day.'" (Respondent's brief, p. 13 (emphasis omitted) (quoting R., p. 85).) Again, this argument reinforces, rather than refutes, the state's argument that the district court erred by excluding some of the facts from the totality of the circumstances because they are subject to innocent explanations.

The purpose of an investigative stop is "to confirm or dispel the officers' suspicion." State v. Williams, No. 43129, 2016 WL 4492579, at *7 (Idaho Ct. App. Aug. 26, 2016) (citing United States v. Brignoni-Ponce, 422 U.S. 873, 881-81 (1975)); see also State v. Simmons, 120 Idaho 672, 677, 818 P.2d 787, 792

(Ct. App. 1991). That the suspicious circumstances might in fact be completely innocent does not render an investigative stop unreasonable. Navarette v. California, ___ U.S. ___, 134 S.Ct. 1683, 1691 (2014); United States v. Arvizu, 534 U.S. 266, 277 (2002) ("A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct."). This is true even if it is considerably more likely that the conduct is innocent than that it is criminal. Navarette, ___ U.S. at ___, 134 S.Ct. at 1687; United States v. Sokolow, 490 U.S. 1, 7 (1989) ("level of suspicion" required for investigative stop "is considerably less than proof of wrongdoing by a preponderance of the evidence"). Here the district court erred by rejecting some of the circumstances underlying the officer's suspicion because they were capable of innocent explanation. Fairchild essentially advocates for this Court to commit the same error. When the totality of the circumstances is considered under the proper legal standards, the officer had reasonable suspicion to stop Fairchild's car to confirm or dispel his suspicion that Fairchild may have just been involved in a drug transaction.

II.
The District Court Erred In Its Application Of The Attenuation Doctrine

Fairchild's arrest and search after discovery of an outstanding arrest warrant was an intervening circumstance rendering discovery of the methamphetamine beyond the scope of the exclusionary rule under the attenuation doctrine even if the initial stop were invalid. (Appellant's brief, pp. 8-14.) Specifically, the state contends that the district court erroneously concluded

that the arrest occurred, and the search started, before the warrant was discovered. (Id.) In fact, the arrest and search occurred only after dispatch informed the officer of the outstanding warrant. (Id.)

On appeal Fairchild does not dispute that the officer was informed of the outstanding arrest warrant prior to the arrest and search, but asserts the arrest and search incident thereto were unlawful because "the warrant was not confirmed as valid until *after* Mr. Fairchild was arrested and searched." (Respondent's brief, p. 15 (emphasis original).) This argument is without legal basis.

The officer testified that the procedure followed in his agency was that, once he reported the name of a contact to dispatch, dispatch ran that name first through a database for outstanding warrants. (Tr., p. 37, Ls. 4-9.) If a warrant came up on the database, dispatch informed the officer, and then got the "actual paperwork" and looked "at the warrant to verify that the warrant is still valid and not just in their database." (Tr., p. 34, L. 22 – p. 35, L. 2; p. 36, Ls. 11-24; p. 37, Ls. 10-14.) The officer conducted an initial search of Fairchild after dispatch informed him of the warrant, but before dispatch informed him that it had pulled the actual paperwork to confirm the warrant. (Tr., p. 34, L. 18 – p. 35, L. 5; p. 36, L. 11 – p. 39, L. 18; State's Exhibit 3.) Under these facts,[1] because the officer searched and arrested Fairchild only after learning of the existence of the arrest

[1] The district court's factual findings are consistent with this testimony and the video of the encounter, with the exception of when the warrant was "discovered." (R., pp. 80-82, 92.) As already shown, however, that finding is clearly erroneous (Appellant's brief, pp. 13-14) and Fairchild does not argue otherwise (Respondent's brief, pp. 2-3, 15-16).

warrant, discovery and execution of the warrant attenuated any taint even if the initial stop was invalid. (Appellant's brief, pp. 9-14.)

The only authority Fairchild cites holds that discovery of a valid warrant is a prerequisite to application of the attenuation doctrine. (Respondent's brief, pp. 17-19.) The state does not contend otherwise. Because both parties agree that a valid warrant is required, but both parties also agree the warrant in this case was valid, this argument is irrelevant. Fairchild has cited no authority for his only relevant argument, that the second step in the process used by police in this case—physically pulling the paperwork to confirm the validity of the warrant—must be completed prior to a constitutionally valid arrest and search. (Respondent's brief, pp. 14-21.) Review of the law shows not only an absence of support for Fairchild's argument, but that the argument is directly contrary to applicable law.

It is beyond cavil that the constitutionality of a search incident to arrest depends on a lawful arrest. See State v. Calegar, 104 Idaho 526, 529, 661 P.2d 311, 314 (1983); State v. Baxter, 144 Idaho 672, 680, 168 P.3d 1019, 1027 (Ct. App. 2007); State v. McIntee, 124 Idaho 803, 805, 864 P.2d 641, 643 (Ct. App. 1993). An arrest pursuant to an invalid warrant is unlawful, and requires suppression of evidence seized in any search incident thereto. State v. Koivu, 152 Idaho 511, 272 P.3d 483 (2012) (rejecting application of good faith exception where arrest was pursuant to invalid warrant of attachment); see also State v. Kerley, 134 Idaho 870, 11 P.3d 489 (Ct. App. 2000) (arrest of defendant on warrant for different person with similar name and description required

suppression of evidence found incident to arrest). This standard has been consistently applied under facts such as those present in this case to uphold searches incident to arrest conducted only upon a report of the existence of an arrest warrant by dispatch, without more. See, e.g., State v. Nickel, 134 Idaho 610, 611, 7 P.3d 219, 220 (2000) ("The check with dispatch revealed an outstanding arrest warrant from the City of Caldwell."); State v. Pedersen, 157 Idaho 790, 791, 339 P.3d 1194, 1195 (Ct. App. 2014) ("After dispatch indicated that Pedersen had an active arrest warrant, Jagosh arrested and handcuffed Pedersen."); State v. Bowman, 134 Idaho 176, 178, 997 P.2d 637, 639 (Ct. App. 2000) ("Ada County dispatch confirmed the existence of an outstanding misdemeanor warrant for Bowman.").

Likewise, an arrest on a valid warrant after dispatch reports the warrant attenuates searches incident to arrest from any illegality in the initial detentions. Utah v. Strieff, ___ U.S. ___, 136 S.Ct. 2056, 2060 (2016) ("Officer Fackrell relayed Strieff's information to a police dispatcher, who reported that Strieff had an outstanding arrest warrant"); State v. Page, 140 Idaho 841, 843, 103 P.3d 454, 456 (2004) ("Officer Marshall was then told by dispatch that Page had an outstanding warrant for his arrest"). Like the search incident to arrest cases cited above, the courts in neither Strieff nor Page required any special steps to confirm the validity of the warrant, much less imposed a constitutional requirement that the warrant itself be pulled and examined prior to the arrest or search. This case is factually indistinguishable from Strieff and Page and other search incident to

arrest cases where an officer relied on a report of an arrest warrant provided by dispatch.

In this case the district court distinguished Page on the basis that "the warrant was discovered *after* the Defendant had been unlawfully arrested." (R., p. 92 (emphasis original).) That factual finding is clearly erroneous; dispatch reported the warrant to the officer prior to the search or arrest. Page argues it is legally significant that dispatch had not yet confirmed the warrant by pulling the paperwork to make sure it was entered in the database correctly. He has failed, however, to show that this fact has any legal significance. Multiple cases show it does not. Because the officer was informed of a valid warrant, and took steps to enforce that warrant, the attenuation doctrine applies even if the initial stop was invalid. The district court erred by suppressing evidence of methamphetamine possession by Fairchild.

CONCLUSION

The state respectfully requests this Court to reverse the district court's order granting suppression and remand for further proceedings.

DATED this 10th day of May, 2017.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 10th day of May, 2017, served a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT by emailing an electronic copy to:

REED P. ANDERSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/ Kenneth K. Jorgensen
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