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State v. Huston Appellant's Reply Brief Dckt. 48367

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 48367-2020**
Plaintiff-Appellant,	)	
	)	**Gem County Case No.**
v.	)	**CR23-19-182**
	)	
DACE S. HUSTON,	)	
	)	
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 GEM

HONORABLE TYLER D. SMITH, Magistrate Judge
HONORABLE D. DUFF McKEE, District Judge

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The District Court Erred On Intermediate Appeal By Reversing The Magistrate Court's Denial Of Huston's Motion To Suppress

A. Introduction

On intermediate appeal, the district court erroneously reversed the magistrate court's denial of Huston's motion to suppress. (Appellant's brief, pp. 7-23.) The district court erroneously held that Huston was seized without reasonable suspicion when Officer McIntosh parked near (but without blocking) Huston as he was standing outside his vehicle by the road, in the middle of the night, in a rural area; turned on his overhead lights; approached Huston; and explicitly told Huston that he was free to leave and the lights were on only for safety purposes. (Appellant's brief, pp. 8-18.) The district court also erroneously rejected the state's alternative argument that any brief detention was justified as an exercise of the community caretaking function. (Appellant's brief, pp. 18-23.)

B. The Magistrate Court Correctly Determined Huston Was Not Detained Before Officer McIntosh Acquired Reasonable Suspicion Of Criminal Conduct

The district court erroneously concluded Huston was seized despite Officer McIntosh specifically telling him he was free to leave. (Appellant's brief, pp. 8-18.) Huston argues the district court did not err because "Det. McIntosh had no other justification to make contact, other than his curiosity. Therefore, by making contact, Det. McIntosh illegally seized Huston in the roadside pull-out." (Respondent's brief, p. 6.) But whether Officer McIntosh had good reason to make contact with Huston is entirely irrelevant to whether he detained Huston. State v. Pick, 124 Idaho 601, 604, 861 P.2d 1266, 1269 (Ct. App. 1993) ("There is no question but that the officer was authorized to approach Pick's truck and ask questions, even if no obvious criminal activity

was afoot."); State v. Willoughby, 147 Idaho 482, 486, 211 P.3d 91, 95 (2009) ("An encounter between a law enforcement officer and a citizen does not trigger Fourth Amendment scrutiny unless it is nonconsensual."). Whatever the reason for the contact, or even if there was no reason at all, "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." State v. Baker, 141 Idaho 163, 165, 107 P.3d 1214, 1216 (2004).

As discussed in the Appellant's Brief, Officer McIntosh went out of his way to make it clear that Huston was free to leave. (Appellant's brief, pp. 8-18.) Most importantly, he immediately and explicitly told Huston that he was free to leave and the lights were on only for safety. (Tr., p. 11, Ls. 15-21; State's Ex. 2, 00:00 – 00:03.) Huston does not explicitly address any of the Idaho case law—like State v. Henage, 143 Idaho 655, 659, 152 P.3d 16, 20 (2007), and State v. Roark, 140 Idaho 868, 871, 103 P.3d 481, 484 (Ct. App. 2004)—endorsing the common-sense view that where, as here, an officer tells the person approached that he is "free to leave," there is no detention notwithstanding the operation of overhead lights. Instead, he claims in passing that the officer's statement that Huston was free to leave was not part of the totality of the circumstances because there was "no indication he heard he was free to leave based on his compliance." (Respondent's brief, p. 6.) It is unclear what Huston means. The fact that Huston remained on scene after he was told he was free to leave in no way implies that he was seized. The contrary falsely implies that no one who knew they could leave would willingly remain and talk with officers on a consensual basis. See Kentucky v. King, 563 U.S. 452, 463 (2011) ("While 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."). For similar reasons, neither does the fact that Huston remained on scene suggest

that he did not hear Officer McIntosh. To the extent that Huston is suggesting a per se rule according to which what an officer says forms part of the totality of the circumstances only if the officer first confirms that he was heard, such a rule is unsupported by any authority or rationale and is inconsistent with the objective nature of the question whether a seizure has occurred. (See Appellant's brief, pp. 15-16.) Where an officer clearly states that the subject is not free to leave, a finding of a detention does not hinge on the officer first confirming that he was heard. Likewise, where an officer clearly states that the subject is free to leave, a finding that the subject was not detained does not hinge on the officer first confirming that he was heard. Neither does the question whether a detention occurred hinge on whether, for example, the officer confirmed that the subject was aware of the number of officers on scene, confirmed that the subject was aware that guns were or were not drawn, or confirmed that the subject was aware overhead lights were or were not activated.

The district court's holding was contrary to the applicable authority and was error.

C. In The Alternative, Any Brief Detention Was Justified By The Community Caretaking Function

With respect to the state's alternative argument that any brief detention was justified as an exercise of the community caretaking function, Huston relies on two cases: State v. Maddox, 137 Idaho 821, 54 P.3d 464 (Ct. App. 2002), and State v. Schmidt, 137 Idaho 301, 47 P.3d 1271 (Ct. App. 2002). (Respondent's brief, pp. 7-9.) Both cases are distinguishable.

In Maddox, the officer was on patrol "in the foothills" at around 8:00 a.m. when he encountered a vehicle in which Maddox was a passenger. Maddox, 137 Idaho at 823, 54 P.3d at 466. Maddox and the driver claimed they were looking for a friend who was on foot. Id. After speaking with the officer, they proceeded into an undeveloped area up a dirt road before parking

just off of the road on a hillside. Id. Believing they may have found their friend and concerned about the rough terrain, the officer again drove toward the vehicle. Id. As he approached, the vehicle proceeded further up a motorcycle trail and the officer initiated his overhead lights to stop the vehicle. Id.

A divided panel of the Court of Appeals held that the community caretaking function did not justify the stop. Id. at 825-26, 54 P.3d at 468-69. To reach that conclusion the court emphasized several facts, none of which are present here. First, the court in Maddox noted that the officer's concern that the vehicle might get stuck if it proceeded up the hill was a concern about the prospective possibility that Maddox and his companion might later be in need of aid, not a concern that they needed aid then. Id. at 825, 54 P.3d at 468. The court held that officers may not "conduct community caretaking stops whenever they anticipate that a citizen might be about to embark upon an unwise venture." Id. Here, Office McIntosh did not make contact with Huston because he thought Huston "might be about to embark upon an unwise venture," but because he was concerned that something had in fact happened to Huston when he failed to appear around the bend of rural road in the middle of the night where there were no intersecting roads and there was nowhere to go. (Tr., p. 6, L. 14 – p. 7, L. 24.) Next, the court in Maddox emphasized that there was no reason for the officer to activate his overhead lights where the events occurred in an "off-road area" with no possibility of passing traffic and "during daylight hours" when it was clear the officer was in a marked patrol car. Id. at 826, 54 P.3d at 469. The court explicitly distinguished State v. Mireles, 133 Idaho 690, 991 P.2d 878 (Ct. App. 1999), where the Court of Appeals held that an officer was performing his community caretaking function when he pulled behind a stopped vehicle and initiated his overhead lights, because in that case the events occurred in the middle of the night and near a road. Maddox, 137 Idaho at

825-26, 54 P.3d at 468-69. Because of the time and location of the events, the lights in Mireles "served important purposes other than detaining the motorist, including warning oncoming drivers and conveying to the vehicle occupant that the person stopped behind him was a police officer and not someone posing a threat," while there were no "such ancillary purposes" in Maddox. Id. Here, as in Mireles and unlike in Maddox, the stop occurred in the middle of the night and near a road. Thus, the facts on which the Court relied in Maddox to conclude that the officer was not exercising his community caretaking function are absent here, and the facts on which the Court of Appeals relied to find that the community caretaking function was applicable in Mireles are present here.

Huston next relies on Schmidt. Though Schmidt is closer to the facts of this case than are the facts of Maddox, Schmidt is still importantly different. In Schmidt, at about 6:49 in the evening, an officer observed a vehicle parked roughly thirty feet off of the road in an unimproved pullout, initiated his overhead lights, and parked directly in front of the vehicle "essentially block[ing] any exit route." Schmidt, 137 Idaho at 302, 47 P.3d at 1272. The Court of Appeals held that the detention was not justified by the community caretaking function. Id. at 304, 47 P.3d at 1274. Several facts distinguish this case from Schmidt. First, as in Mireles and unlike in Schmidt, the events here occurred in the middle of the night when it would be more unusual and concerning to find a vehicle sitting at the side of a rural road. Second, as in Mireles and unlike in Schmidt, the officer observed the driver suddenly leave the roadway, raising the specter of some immediate need of assistance. The officer in Schmidt just happened upon a vehicle already parked, whereas Officer McIntosh observed Huston's vehicle disappear around a bend and fail to

reappear. Third, the nature of the alleged detention is importantly different.[1] As in Mireles and unlike in Schmidt, the officer simply parked behind the defendant in a manner that did not block him from leaving. "In analyzing community caretaking function cases, Idaho courts have adopted a totality of the circumstances test. The constitutional standard is whether the intrusive action of the police was reasonable in view of all the surrounding circumstances." State v. Wixom, 130 Idaho 752, 754, 947 P.2d 1000, 1002 (1997) (citations, quotation marks, and brackets omitted). Whether a particular detention is justified by the community caretaking function requires looking to the nature and degree of the intrusion to determine whether it is reasonable in the totality of the circumstances. The detention in Schmidt was intrusive in a way that the alleged detention here was not. While the officer in Schmidt blocked the defendant's vehicle so that it could not leave, Officer McIntosh made a concerted effort to park behind (and a good distance behind) Huston's vehicle to ensure that Huston could leave if he wanted to. (Tr., p. 19, Ls. 5-16.) As discussed above, he then immediately told Huston he was free to leave. (Tr., p. 11, Ls. 15-21; State's Ex. 2, 00:00 – 00:03.) Assuming *arguendo* that there was a detention, it was exceptionally non-intrusive and, unlike the detentions in Schmidt and Maddox, was as minimally intrusive as possible to safely investigate and ensure Huston's well-being.

Both because there was no detention of Huston and, even if there was, it was justified as an exercise of the community caretaking function, the district court erred by reversing the magistrate court's denial of Huston's motion to suppress.

[1] Of course, the state's primary position is that there was no detention at all in this case.

CONCLUSION

The state respectfully requests this Court to reverse the district court's order on intermediate appeal reversing the denial of Huston's motion to suppress.

DATED this 16th day of September, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16th day of September, 2021, served a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT to the attorney listed below by means of iCourt File and Serve:

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