4-3-2018

State v. Vaughn Appellant's Reply Brief Dckt. 45104

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	**NO. 45104**
	)	
v.	)	**ADA COUNTY NO. CR-FE-2016-9419**
	)	
RONALD EUGENE VAUGHN,	)	**REPLY BRIEF**
	)	
Defendant-Appellant.	)	
	)	

REPLY 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 RONDALD EUGENE VAUGHN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Mr. Vaughn contends that the district court erred when it determined his statements made prior to receiving *Miranda*[1] warnings were admissible during his jury trial. Despite the fact that the district court actually ruled on the merits of the *Miranda* issue after hearing arguments from both parties, the State now argues that the *Miranda* issue is being raised for the first time on appeal. That sort of argument has actually been rejected by the Court of Appeals. The State's arguments on the merits of the *Miranda* issue are similarly unpersuasive.

Since the totality of the circumstances reveals that a reasonable person in Mr. Vaughn's situation would not have believed he was free to go, Mr. Vaughn's unwarned statements during that time were elicited while he was in custody. Since that issue was sufficiently preserved below, this Court should reverse the decision to admit those unwarned statements, vacate the judgment of conviction, and remand this case for further proceedings.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Vaughn's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

ISSUE

Whether the district court erred when it concluded Mr. Vaughn was not in custody for *Miranda* purposes during the pretext traffic stop.

ARGUMENT

The District Court Erred When It Concluded Mr. Vaughn Was Not In Custody For *Miranda* Purposes During The Pretext Traffic Stop

A. The *Miranda* Issue Was Sufficiently Preserved For Appeal By The District Court's Ruling On The Merits Of That Issue After It Heard Arguments From Both Parties

In his Appellant's Brief, Mr. Vaughn explained that the *Miranda* issue was properly raised on appeal because the district court had implicitly rejected the prosecutor's argument under I.C.R. 12 by ruling on the merits of Mr. Vaughn's argument. (App. Br., p.6 (citing *State v. DuValt*, 131 Idaho 550, 553 (1998); *State v. Beck*, 157 Idaho 402, 405 (Ct. App. 2014); *State v. Middleton*, 114 Idaho 377, 380 (Ct. App. 1988).) The State does not challenge the propriety of the district court's decision to reject the I.C.R. 12 argument. (*See generally* Resp. Br.) Rather, its only response is that, because the parties and the district court had discussed the implications of I.C.R. 12's timing rules, the *Miranda* issue had not actually been argued or ruled on below, and therefore, that issue cannot be raised for the first time on appeal under *State v. Garcia-Rodriguez*, 162 Idaho 271, 396 P.3d 700 (2017). (Resp. Br., pp.6-11; *e.g.*, Resp. Br., p.9 (arguing that when, in response to the prosecutor's question about the I.C.R. 12 argument, the district court clarified its preference was for such motions to be brought earlier, the district court was "making it even more apparent that it was not ruling on an eleventh-hour motion to suppress").)

The Court of Appeals has already rejected a remarkably-similar argument because it "oversimplifies" what happened below. *See State v. Dice*, 126 Idaho 595, 598 (Ct. App. 1994). The *Dice* Court explained that, despite the prosecutor's argument under I.C.R. 12, the suppression issue in that case still had, in fact, been raised below because the parties had argued, and the district court had ruled on, the merits of that issue. *Id.* As the Idaho Supreme Court has

succinctly summarized, where the specifics of such issues have been argued to, and, "in essence" ruled on by the district court, the appellate court is able to address them on appeal. *Northcutt v. Sun Valley Co.*, 117 Idaho 351, 357 (1990); *accord DuValt*, 131 Idaho at 553; *see Dice*, 126 Idaho at 598 (proceeding to evaluate both the I.C.R. 12 and the merits arguments on appeal).[2]

The record in this case makes it clear that, like in *Northcutt*, the specifics of the *Miranda* issue were actually argued to, and ruled on by, the district court. Defense counsel explained that his client had just brought an issue regarding a violation of *Miranda*'s protections during the roadside detention to his attention – that "there was no rights given at that stage. I do know that he was in police custody at the time of the questioning" – and defense counsel "submit[ted] to the judge" regarding what to do in regard to the statements elicited from Mr. Vaughn during that

[2] Though *Dice* discussed the implications of I.C.R. 12's timing rules in a case similar to Mr. Vaughn's, the State does not cite *Dice* nor does it make any argument along the lines of the *Dice* Court's discussion of that issue. (*See generally* Resp. Br.) "A party waives an issue cited on appeal if either authority or argument is lacking." *Murray v. State*, 156 Idaho 159, 168 (2014) (internal quotation omitted).

For context, *Dice* explained that the district court can only consider the merits of late-raised motions under I.C.R. 12 if the party raising the motion shows good cause or excusable neglect for the delay. *Dice*, 126 Idaho at 597 (adding that the district court cannot excuse I.C.R. 12's timing requirements simply because the district court believes the motion is meritorious). Since the district court in Mr. Vaughn's case ruled on the merits of the *Miranda* issue (Tr., p.98, Ls.5-22), it necessarily implicitly concluded that trial counsel's explanation – that his client had just made him aware of the *Miranda* issue and he had not had a chance to review the issue in more detail – was sufficient to amount to good cause or excusable neglect, and therefore, the lateness of the motion was not a reason to deny the motion outright. *See, e.g.*, *State v. Kirkwood*, 111 Idaho 623, 625-27 (1986) (considering the district court's implicit findings in regard to its analysis under I.C.R. 12); *Middleton*, 114 Idaho at 380 (Ct. App. 1988) (same); *see also State v. Wolfe*, 158 Idaho 55, 61 (2015) (reaffirming that there is a presumption of regularity in the district court's actions and judgments – that they are made consistent with the applicable standards absent a showing to the contrary).

Since the State has made no argument that the district court's implicit decision to reject the prosecutor's argument under I.C.R. 12 was incorrect, nor has it argued that this Court should affirm the district court's decision on the basis of I.C.R. 12, it has waived those issues on appeal. *See Murray*, 156 Idaho at 168. As a result, this Court need not consider those issues.

time. (Tr., p.90, L.17 - p.91, L.10.) Alongside its arguments under I.C.R. 12, the prosecutor addressed the merits of the *Miranda* issue, arguing that the facts showed that the defendant was not handcuffed, that he was allowed to discuss various topics of his own choice, and so he had volunteered the incriminating statements in that context. (*See* Tr., p.95, L.23 - p.97, L.6.) The district court considered those arguments and expressly ruled on the merits of Mr. Vaughn's motion:

> [B]ased upon what I've heard this morning, it appears to the court that there was not a violation of *Miranda* regarding the information on the tapes at the scene. From what I've heard, the defendant voluntarily disclosed those things when he was not in custody or otherwise. The facts and circumstances there do not disclose a *Miranda* violation. . . . The evidence, again, I think is admissible as relevant as otherwise explained by the State. So it the exercise of discretion, the court is not going to grant any Motion to Suppress or exclude that evidence.

(Tr., p.98, Ls.5-22.)

Since the specifics of the *Miranda* question were actually argued to the district court by the parties, and the district court ruled on that issue, the propriety of that decision is properly considered by this Court on appeal. *Northcutt*, 117 Idaho at 357; *Dice*, 126 Idaho at 598. In other words, this issue is not, as the State believes, being raised "for the first time" on appeal. Therefore, this Court should reject the State's argument under *Garcia-Rodriguez*.

B. A Reasonable Person In Mr. Vaughn's Situation Would Not Have Felt Free To Leave During The Roadside Detention, Which Means Mr. Vaughn Was "In Custody" For *Miranda* Purposes At That Time

The State makes several arguments in relation to the merits of the *Miranda* issue, none of which are persuasive. First, it contends that there was not a sufficient factual record upon which to assess the legal question of custody under *Miranda*. (*See* Resp. Br., p.13.) That assertion ignores the fact that both attorneys and the district court referred to the specific facts, which were already established in the record and were not in dispute in regard to the *Miranda* issue.

(*See generally* Tr., p.90, L.12 - p.99, L.20.) Specifically, those facts were set forth in the testimony taken during the hearing on the prior motion to suppress and in the grand jury proceedings, the transcript of which had been provided as an exhibit, and of which the district court had taken judicial notice, at the hearing on the prior motion to suppress. (R., pp.55-70; Tr., p.23, L.10 - p.24, L.17.) In fact, the prosecutor demonstrated this was the case, as she provided a detailed recitation of the facts surrounding the roadside encounter while seeking to demonstrate Mr. Vaughn's disclosures at that time were voluntary. (Tr., p.95, L.23 - p.97, L.6.)

Most importantly, however, is the fact that the district court made factual determinations based on what it heard during those arguments and from "the information on the tapes at the scene," of which it was also apparently taking judicial notice.[3] (Tr., p.98, Ls.6-8.) As the Court of Appeals has made clear, "'[a]ll presumptions favor the [trial court's] exercise of [the power to weigh the evidence and to draw factual inferences] . . . . [T]he trial court's findings on such matters, *whether express or implied*, must be upheld if they are supported by substantial evidence.'" *Middleton*, 114 Idaho at 380 (quoting *Kirkwood*, 111 Idaho at 625) (all alterations from *Middleton*). Therefore, the parties' and district court's discussion of the *Miranda* issue reveals that there is, in fact, a sufficient factual record on which to resolve the legal question of whether Mr. Vaughn was "in custody" during the roadside detention.

The State's related assertion – that the "empirical questions" raised on appeal might have been resolved in the district court had the motion been brought earlier (Resp. Br., p.16) – is also mistaken. All those so-called "empirical questions" explain why the district court's legal conclusion about whether Mr. Vaughn was in custody based on the facts of his case (which are

[3] The district court appears to be referring to the videos from the officers' body cameras during the roadside detention, which were ultimately admitted as exhibits during the trial. (*See* State's Exhibits 25, 26, 27.)

still not in dispute) was mistaken. The question of custody is a question which the appellate courts review *de novo*. *See Thompson v. Keohane*, 516 U.S. 99, 115 (1995) (holding the question of custody under *Miranda* is one of law); *State v. Frank*, 133 Idaho 364, 369 (Ct. App. 1999) (reiterating the standard of review for this issue). Thus, while the specific arguments in support of a position may evolve on appeal, as they have here, that is not a reason for the appellate courts to not consider the issue raised on appeal. *Ada County Highway Dist. v. Brooke View, Inc.*, 162 Idaho 138, ___, 395 P.3d 357, 361 n.2 (2017) ("There is no question that ACHD clearly raised the relevant issue before the district court. ACHD's specific arguments in support of its position may have evolved since the trial, but the issues on appeal and ACHD's position with respect to them remain the same," and so, could be considered on appeal). Rather, just like the Supreme Court in *Northcutt*, this Court has a sufficient factual record and sufficient briefing about the associated legal question, and so, it can and should review the propriety of the district court's answer to that question of law. *See Northcutt*, 117 Idaho at 357.

Second, the State contends that, by not specifically reciting the *Berkemer* standard[4] while discussing the question of custody, Mr. Vaughn failed to present a *prima facie* claim under *Miranda*. (Resp. Br., pp.13-14.) The Idaho Supreme Court has rejected similar arguments as being "hollow" representations based on "selective and tortured" readings of the record. *Pocatello Hosp., LLC v. Quail Ridge Med. Investor, LLC*, 157 Idaho 732, 740 (2014). In that case, the Supreme Court rejected Quail Ridge's argument that the district court erred in dismissing a breach of contract claim because it did not use certain "magic words" in regard to whether the dismissal was with prejudice and whether the claim was unripe when the record was ultimately revealed the answer in both respects. *Id*. The State in this case would, like Quail

[4] *Berkemer v. McCarty*, 468 U.S. 420, 439-40 (1984).

Ridge, require certain "magic words" be used when arguing under *Miranda* even though the pertinent part of the record reveals exactly what defense counsel was asking the district court to conclude – that Mr. Vaughn "was in custody at the time of questioning." (Tr., p.91, Ls.1-3.) Therefore, the record is clear that trial counsel identified and argued the relevant legal question – whether Mr. Vaughn was in custody given the facts of this case. As a result, this Court should, like the Supreme Court in *Pocatello Hosp.*, reject the State's overly-formalistic argument regarding how a party should argue a *Miranda* claim.

Third, even if the State's argument – that the presence of the two police officers in the car stopped a short distance from the stop and the presence of another undercover officer in the area should not be considered in the totality of the circumstances – is correct, it does not change the conclusion that Mr. Vaughn was "in custody" for *Miranda* purposes. (*See* Resp. Br., p.15.) As an initial matter, however, the State's argument fails to appreciate that a reasonable person in Mr. Vaughn's situation could have been aware of those other officers, which means their presence is properly considered in the totality of the circumstances.

For example, the two officers who were overseeing the stop had parked their car on a rise a short distance back from the stop specifically so that they could see the stop. (Grand Jury Tr., p.22, Ls.3-5, p.24, L.18 - p.25, L.3; Tr., p.51, Ls.22-23.) If they could see the stop, a reasonable person in Mr. Vaugh's position could see them, especially since they had stopped close enough to see what was going on without the aid of binoculars. (Grand Jury Tr., p.26, Ls.2-4.) The fact that they were just sitting on the side of a busy interstate highway, where the normal motoring public does not usually stop and sit idly, reinforces the fact that a reasonable person in Mr. Vaughn's position could have recognized the officers in that car for what they were – part of a larger police force working to arrest him.

Regardless, even if the State is correct and a reasonable person in Mr. Vaughn's situation would not have recognized the presence of the other nearby officers, the totality of the relevant circumstances still includes the presence of the three uniformed officers who arrived almost simultaneously in three different marked patrol cars to an alleged speeding stop, one of whom brought and quickly deployed his drug dog before searching Mr. Vaughn's car, all while one of the other officers stood guard over Mr. Vaughn on the side of a busy freeway. A reasonable person would still believe that, based on the totality of those circumstances, he was not free to leave. *Compare State v. Myers*, 118 Idaho 608, 610-11 (Ct. App. 1990).

The State's suggestion that every traffic stop on a freeway will involve these same factors (Resp. Br., p.16) is also mistaken. A good many traffic stops on a freeway will not involve multiple officers, which means not every traffic stop on a freeway will result in the situation here, where one officer stands guard over the driver while another searches the car. That is why the number of officers involved in a stop, their behavior during that stop, and the location of the stop are all relevant factors the courts should consider in such cases – they are all factors which will vary from case to case. *See Myers*, 118 Idaho at 610-11. As a result, it is the presence of those specific factors which results in *Miranda* applying in cases like this and *Myers* and not in traditional traffic stops.

Ultimately though, whether custody exists in a particular case must be assessed based on the specific facts of that case, not a different hypothetical case. *See, e.g.*, *State v. Young*, 136 Idaho 711, 719 (Ct. App. 2002). To that point, if, as the State argument seems to suggest, each of the factors involved in that determination is not sufficient to show custody on its own, they still do when considered in totality. *Compare State v. Kelley*, 159 Idaho 417, 424 (Ct. App.

2015) (explaining that, under a similar standard, factors which are not illegal on their own can still give rise to a reasonable suspicion of criminal activity when they are considered together).

As a result, however viewed, the totality of the circumstances in this case reveals that a reasonable person in Mr. Vaughn's situation would have not felt free to leave during the roadside detention, and thus, Mr. Vaughn was "in custody" for *Miranda* purposes at that time. Therefore, the district court erred by allowing the unwarned statements elicited from him during that time to be admitted during his trial.

CONCLUSION

Mr. Vaughn respectfully requests this Court reverse the order admitting his un-*Mirandized* statements, vacate his conviction, and remand this case for further proceedings.

DATED this 3rd day of April, 2018.

_____/s/_____
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3rd day of April, 2018, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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