12-29-2017

State v. Daily Appellant's Brief Dckt. 45252

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45252**
Plaintiff-Appellant,	)	
	)	**Nez Perce County Case No.**
v.	)	**CR-2016-6655**
	)	
JORDAN DAVID DAILY,	)	
	)	
Defendant-Respondent.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

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District Judge

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STATEMENT OF THE CASE

Nature of the Case

The state appeals from the district court's order granting Daily's motion to suppress evidence recovered during a traffic stop, and from the district court's denial of the state's motion for reconsideration.

Statement of the Facts and Course of the Proceedings

In May 2016 Nez Perce County Deputy Sheriff Lucas Martin observed a pickup truck fail to stop at a stop sign and fail to signal when turning at an intersection. (Tr., p.8, Ls.6-13; p.12, L.12 – p.13, L.8.) Deputy Martin effectuated a traffic stop, approached the pickup truck, and identified the driver as Jordan Daily. (Tr., p.13, L.16 – p.15, L.5.) Deputy Martin observed Daily look for his relevant vehicle documents in the glove box. (Tr., p.16, Ls.15-19.)

As he was talking to Daily at the truck, Deputy Martin observed what appeared to be an open can of an alcoholic beverage in the front seat console cup holder of the vehicle. (Tr., p.15, L.14 – p.16, L.10.) Deputy Martin returned to his patrol vehicle to run a license and warrants check on Daily. (Tr., p.17, Ls.7-22.) Dispatch informed Deputy Martin that Daily had a confirmed arrest warrant for failing to appear, and that his driver's license was suspended. (Tr., p.17, L.23 – p.18, L.13.) While these checks were being conducted, Deputy Martin observed Daily moving inside the truck, reaching over towards the passenger side of the front seat, and putting something in the back seat. (Tr., p.18, L.14 – p.19, L.4; p.20, L.17 – p.21, L.5.) Deputy Martin requested that another officer be called to the scene. (Tr., p.19, L.12 – p.20, L.3.)

When the other officer arrived, Deputy Martin arrested Daily on the warrant and secured him in his patrol vehicle. (Tr., p.21, Ls.6-22.) Deputy Martin returned to Daily's truck, took the can from the center console, and observed that it was open, smelled like alcohol, and was cold to the touch. (Tr., p.21, L.23 – p.23, L.8; p.24, Ls.10-12.) Deputy Martin then began a search of the truck for any other open containers of alcohol, and found several empty or near-empty alcohol containers in the back seat area. (Tr., p.23, L.9 – p.24, L.22.)

Because he had previously found open containers of alcohol in glove boxes, Deputy Martin searched Daily's truck's glove box. (Tr., p.25, Ls.2-12.) Even though Deputy Martin had, earlier in the traffic stop, observed Daily search for documents in the glove box, the glove box was now locked. (Tr., p.25, Ls.13-15.) Deputy Martin unlocked the glove box with Daily's keys and discovered a needle syringe containing a "cloudy clear" substance that Deputy Martin believed to be methamphetamine. (Tr., p.25, L.16 – p.26, L.6.) Deputy Martin also recovered, from the glove box, several small baggies of a powdery substance that Deputy Martin believed to be methamphetamine, a digital scale, and other drug paraphernalia. (Tr., p.26, L.15 – p.28, L.18.) Deputy Martin advised Daily of his *Miranda* rights, and Daily told him that he was a drug addict and that everything in the vehicle was his. (Tr., p.28, L.25 – p.29, L.8.) The state charged Daily with felony possession of a controlled substance (methamphetamine), and misdemeanor possession of drug paraphernalia. (R., pp.58-59.)

Daily filed a motion to suppress the evidence seized from the vehicle and all statements made following the search. (R., pp.65-72.) Daily argued that while the officers had lawful authority to search the passenger compartment of the vehicle after

discovering the open alcohol container in plain view, the search of the locked glove box was unreasonable and violated the Fourth Amendment. (Id.)

At the hearing on the motion to suppress, the state presented testimony from Deputy Martin and the dash cam video from the traffic stop. (Tr., p.7, Ls.14-20; p.7, L.23 – p.42, L.14; p.57, Ls.5-13; State's Exhibit 1.) At the conclusion of the hearing, the state argued that the search of the glove box was justified by the automobile exception and search incident to arrest exception to the warrant requirement. (Tr., p.43, L.1 – p.47, L.10.)

In a written order, the district court granted Daily's motion to suppress. (R., pp.86-91.) The court concluded: (1) that Deputy Martin lacked probable cause to search the glove box and that the search was therefore not justified by the automobile exception to the warrant requirement; and (2) the search incident to arrest exception was inapplicable to the case pursuant to Arizona v. Gant, 556 U.S. 332 (2009), because Daily was secured in the back of the patrol car and was no longer able to access his vehicle when the search took place. (R., pp.88-90.) The court also denied the state's subsequent motion for reconsideration. (R., pp.94-101, 122-125.) While the district court's order on the motion for reconsideration was pending, the state filed a notice of appeal that was timely from the district court's order granting Daily's motion to suppress.[1] (R., pp.107-110.)

[1] The state's motion for reconsideration did not extend the time to file an appeal because it was not filed within 14 days of the order granting Daily's motion to suppress. I.A.R. 14(a). However, the notice of appeal was timely filed within 42 days of the district court's order granting Daily's motion to suppress. Id.

ISSUE

Did the district court err by granting Daily's motion to suppress and by denying the state's motion for reconsideration?

ARGUMENT

The District Court Erred By Granting Daily's Motion To Suppress And By Denying The State's Motion For Reconsideration

A. Introduction

The district court granted Daily's motion to suppress evidence obtained during a traffic stop. (R., pp.86-91.) Specifically, the court concluded that the automobile exception to the warrant requirement did not justify the officers' search of the glove box in Daily's vehicle.[2] (R., pp.88-89.) A review of the record and applicable law reveals that the district court erred by applying an erroneous legal standard. Specifically, the district court erred in concluding that the state was required to demonstrate separate probable cause to search the glove box even after Deputy Martin already located contraband in plain view during the traffic stop. Pursuant to the correct legal standard, Deputy Martin's lawful discovery of the open container permitted the officers to search any portion of the vehicle where additional contraband may reasonably be found, including the glove box.

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).

[2] The state does not challenge the district court's conclusion regarding the inapplicability, in this case, of the search incident to arrest exception to the warrant requirement.

C. The District Court Erred By Granting Daily's Motion To Suppress

The Fourth Amendment prohibits unreasonable searches and seizures. "A warrantless search is presumptively unreasonable unless it falls within certain special and well-delineated exceptions to the warrant requirement." State v. Kerley, 134 Idaho 870, 873, 11 P.3d 489, 492 (Ct. App. 2000) (citing Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971); see also State v. Ferreira, 133 Idaho 474, 479, 988 P.2d 700, 705 (Ct. App. 1999)). One such exception is the "automobile exception," which authorizes a warrantless search of a vehicle and the containers therein when there is probable cause to believe the vehicle contains contraband or evidence of criminal activity. California v. Acevedo, 500 U.S. 565, 572 (1991); United States v. Ross, 456 U.S. 798, 824-25 (1982); State v. Tucker, 132 Idaho 841, 842, 979 P.2d 1199, 1200 (1999); State v. Yeoumans, 144 Idaho 871, 873, 172 P.3d 1146, 1148 (Ct. App. 2007); State v. Gibson, 141 Idaho 277, 281, 108 P.3d 424, 428 (Ct. App. 2005). "Probable cause is established if the facts available to the officer at the time of the search would warrant a person of reasonable caution in the belief that the area or items to be searched contained contraband or evidence of a crime." Yeoumans, 144 Idaho at 873, 172 P.3d at 1148 (citing Ross, 456 U.S. at 823).

When an officer observes contraband in plain view inside a vehicle, the officer is justified under the automobile exception in searching the vehicle for additional contraband, as long as the scope of the search is limited to "only those places where such contraband might reasonably be found." State v. Anderson, No. 41730, 2015 WL 7204541, at *2 (Idaho Ct. App. November 17, 2015); see also State v. Gallegos, 120 Idaho 894, 895, 821 P.2d 949, 950 (1991) (rejecting Gallegos' proposition that there is a

distinction between probable cause to believe that contraband is somewhere in a vehicle and probable cause to believe that contraband is located in a particular container in the vehicle, and holding that the officer lawfully searched a container found underneath the spare tire after a drug dog alerted on the vehicle); Gibson, 141 Idaho at 281, 108 P.3d at 428 ("If probable cause justifies the search of a lawfully-stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.") (citation omitted); United States v. Ross, 456 U.S. 798, 823-825 (1982) ("[w]hen a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between ... glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand."). Therefore, an officer is not required, under the Fourth Amendment,[3] to establish separate *probable cause* to search any particular portion of a vehicle after contraband has already been lawfully located in the same vehicle. Instead, once it is established that a vehicle contains contraband, an officer may search any portion of the vehicle, including the containers within, where "such contraband might reasonably be found" or which "may conceal the object of the search."

In Anderson, an officer stopped a vehicle for a driving infraction. Anderson, 2015 WL 7204541 at *1. The officer observed a brown paper bag located near the center console, and Anderson admitted to the officer that the bag contained an open container of alcohol. Id. The officer then searched the vehicle and found controlled substances near

[3] Daily did not argue, and the district court did not conclude, that the Idaho Constitution provides greater protection than the Fourth Amendment in contexts applicable to this case. (See R., pp.65-72, 86-91, 102-105, 122-125.)

the center console and on the floor between the door and the seat on the driver's side. Id. The Idaho Court of Appeals held that the search was lawful under the automobile exception to the warrant requirement, holding the officer "was not obligated to forego or stop a search because he had already found some evidence of wrongdoing," and that "seeing the contraband in plain view is sufficient to create probable cause to search for additional contraband." Id. at *2-3.

While the United States Supreme Court has cautioned about the limits of the automobile exception and that, for example, "probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase," Ross, 456 U.S. at 824, numerous jurisdictions have held that, where officers observe or lawfully seize an open container in a vehicle, the automobile exception permits a search of the rest of the passenger compartment of the vehicle. See, e.g. United States v. McGuire, 957 F.2d 310, 314 (7th Cir. 1992) (after discovering that motorist was transporting open container of alcohol in violation of Illinois law, officer was authorized under the automobile exception in "search[ing] every part of the vehicle and its contents that could conceal additional contraband, including the area beneath the passenger seat and the trunk"); United States v. Smith, 2014 WL 116368, *5 (M.D. Ala. 2014) (search of vehicle justified under automobile exception where officer observed an open beer container in plain view in center console); People v. Hill, 929 P.2d 735, 739-740 (Colo. 1996) (search of vehicle justified under automobile exception where observation of "open beer bottles in the vehicle's center console and a partially open twelve-pack of beer in the vehicle's back seat …. gave the officers probable cause to believe that the open alcohol container law had been violated"); State v. Collard, 414

N.W.2d 733, 735-736 (Minn. App. 1988) (officer justified in searching remainder of passenger compartment after observing open bottle of beer in plain view on floor of car in front of driver's seat).

In this case, the district court concluded that the automobile exception did not justify the officer's search of the glove box. (R., pp.88-89.) It appears that the court's conclusion was based on a determination that the state failed to demonstrate that the officer had probable cause to search the glove box specifically. The court found that the state lacked "probable cause to search the glove box," that "no reasonable person, based on these facts, would conclude that an open container would be present in the glove box," and that "no magistrate, presented with these facts, would have found probable cause to support issuing a search warrant." (Id.) The district court thus applied an incorrect legal standard, because, as noted above, once an officer has lawfully discovered that a vehicle contains contraband, he may search any portion of the vehicle where "such contraband might reasonably be found" or which "may conceal the object of the search." Anderson, 2015 WL 7204541 at *2.

In its order denying the state's motion for reconsideration, the district court first lamented that "[t]his case takes a place in the long line of cases that begin with a law enforcement traffic stop for minor or innocuous reasons, but then culminates in a warrantless roadside search of an entire motor vehicle." (R., p.123 (footnote omitted).) However, regardless of whether a misdemeanor open container violation is, in the district court's view, "minor or innocuous," an open container of alcohol in a vehicle *is*, under

Idaho law, contraband,[4] and *does*, for the reasons set forth above, justify a warrantless search of the vehicle. The district court then concluded again that the state failed to provide a "factual basis" that the "mere presence" of the open container gave rise to an "objectively reasonable belief that the vehicle contain[ed] additional bottles of opened alcohol." (Id.) Finally, the court appeared to analyze the officers' *subjective* motives for the search, and concluded that "[l]ike most warrantless roadside searches of motor vehicles, this was one in search of whatever law enforcement could find, not something specific they had reasonable expectation of finding." (R., p.124.) The court thus ultimately failed to determine the specific relevant issue of this case utilizing the correct legal standard, i.e., whether the glove box was a part of the vehicle where an open container, objectively, "might reasonably be found" or which "may conceal" an open container. Anderson, 2015 WL 7204541 at *2; State v. Julian, 129 Idaho 133, 136, 922 P.2d 1059, 1062 (1996) ("When reviewing an officer's actions the court must judge the facts against an objective standard.").

Application of the correct legal standards, as set forth in Anderson, Gallegos, Gibson, and Ross, demonstrate that the officers had lawful authority under the automobile exception to the warrant requirement to search the glove box. Upon finding an open container in plain view, and other empty alcohol containers in the back seat, the glove box (which is easily accessible to the driver of a vehicle), became an area of the car where "such contraband might reasonably be found" or which "may conceal the object of the search." This is especially true in this case where Deputy Martin testified that he had

[4] Subject to certain exceptions not applicable in this case, it is a misdemeanor for a person in actual physical control of a motor vehicle to "possess any open beverage containing alcoholic liquor, … beer …, or wine." I.C. § 23-505(2).

found open containers of alcohol in glove boxes in the past, that he observed Daily reaching over towards the passenger side of the truck while Deputy Martin was in his patrol vehicle, and the circumstantial evidence indicating that Daily locked the glove box during the traffic stop. (Tr., p.16, Ls.15-19; p.18, L.14 – p.19, L.4; p.20, L.17 – p.21, L.5; p.25, Ls.5-15.)

The district court erred by applying an incorrect legal standard and by granting Daily's motion to suppress. This Court should therefore vacate the district court's orders granting Daily's motion to suppress and denying the state's motion for reconsideration.

CONCLUSION

The state respectfully requests this Court to vacate the district court's order granting Daily's motion to suppress and the district court's order denying the state's motion for reconsideration, and to remand for further proceedings.

DATED this 29th day of December, 2017.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29th day of December, 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/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

MWO/dd