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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 45482
Plaintiff-Respondent,)	
)	Kootenai County Case No.
v.)	CR-2017-2036
)	
JOSETTE MARIE HORTON,)	
)	
Defendant-Appellant.)	
)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

**HONORABLE CYNTHIA K.C. MEYER
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

Josette Marie Horton appeals from the judgment of the district court entered upon Horton's conditional guilty pleas to possession of major contraband and possession of a controlled substance. On appeal Horton alleges the district court erred when it denied her motion to suppress because she claims an expired Washington state registration tag does not provide reasonable articulable suspicion for a traffic stop.

Statement of Facts and Course of Proceedings

Shortly before midnight Trooper Green observed a blue Oldsmobile without a front license plate. (4/7/17 Tr., p. 10, L. 4 – p. 13, L. 24; R., p. 8¹.) As Trooper Green turned on his rear red and blue lights and made a U-turn to investigate, the vehicle accelerated and took a quick left turn. (4/7/17 Tr., p. 10, L. 4 – p. 13, L. 24, p. 15, Ls. 8-11.) The Oldsmobile sped up to approximately 45 miles per hour. (4/7/17 Tr., p. 34, Ls. 13-19; R., p. 8.) The speed limit was 25 miles per hour. (Id.)

Trooper Green sped up and caught up to the Oldsmobile. (4/7/17 Tr., p. 10, L. 4 – p. 13, L. 24.) The Oldsmobile was parked. (Id.) Trooper Green observed the Oldsmobile had a rear Washington license plate, but the registration was expired. (Id.) Trooper Green activated his overhead lights. (Id.)

¹ The scope of the suppression hearing was limited to whether Horton's expired registration provided reasonable suspicion for the stop. (See 4/7/17 Tr., p. 18, Ls. 15-22, p. 58, Ls. 13-22.) Other facts and basis for the traffic stop were excluded from the hearing. (See id.) Therefore, in order to provide a factual context, this brief will necessarily include citations to the Probable Cause affidavit to explain facts excluded from the narrow suppression hearing. (See R., pp. 7-10.)

Trooper Green made contact with the two occupants of the Oldsmobile. (4/7/17 Tr., p. 13, L. 25 – p. 15, L. 1.) The driver identified herself as Horton through her Washington state driver's license. (Id.; R., p. 8.) Horton had white foam around her mouth, was speaking quickly, appeared unable to keep still and was rapidly licking her lips. (R., p. 8.) Based upon his training and experience Trooper Green believed Horton to be under the influence of drugs. (Id.) Horton admitted there was a marijuana pipe behind her seat. (Id.) Trooper Green detained Horton in handcuffs. (Id.) Horton admitted that she was trying to elude Trooper Green because her passenger was on felony probation. (4/7/17 Tr., p. 17, Ls. 6-15; R., p. 8.) After a drug detection dog alerted on the Oldsmobile, Trooper Green searched it and found a small bag containing 1.4 grams of methamphetamine, a glass pipe, and a scale with drug residue. (R., p. 8.)

Trooper Green transported Horton to the Kootenai County jail. (Id.) Horton admitted she was high on methamphetamine. (Id.) Trooper Green asked Horton if she had any additional drugs on her person because, if she did, it would be an additional felony to bring them into the jail. (Id.) Horton said there was nothing on her person. (Id.) At the jail Trooper Green performed field sobriety tests on Horton, and she failed. (Id.) During Horton's intake into jail she was thoroughly searched and the jail deputy found 2.9 grams of methamphetamine in Horton's pants. (R., p. 9.)

The state charged Horton with the felonies of introduction of major contraband into a correction facility, and possession of methamphetamine, and with misdemeanor driving under the influence, attempted eluding, and possession of paraphernalia. (R., pp. 29-31.)

Horton filed a motion to suppress. (R., pp. 32-33, 37-40.) Horton argued that her expired Washington registration did not provide reasonable articulable suspicion for the traffic stop. (Id.) Horton did not challenge any other basis for the stop. (Id.; see also 4/7/17 Tr. p. 18, Ls. 15-20, p. 58, Ls. 13-22.) The district court held a hearing. (R., pp. 41-47.) Trooper Green testified. (Id.) The district court denied the motion. (Id.)

Pursuant to a pretrial settlement offer, Horton pled guilty to the introduction of major contraband and possession of a controlled substance charges. (R., pp. 51-53, 57-59.) Horton reserved her right to appeal the denial of her motion to suppress. (9/21/17 Tr., p. 6, L. 3 – p. 14, L. 18; R., pp. 553, 57-59.) The district court entered judgment and sentenced her to three years fixed plus three years indeterminate for possession of a controlled substance and three years fixed plus two years indeterminate for introduction of major contraband. (9/21/17 Tr., p. 18, L. 9 – p. 20, L. 1; R., pp. 54-56.) The district court ordered the sentences to be served concurrently. (Id.) The district court retained jurisdiction. (Id.) Horton timely appealed. (R., pp. 60-63.)

ISSUE

Horton states the issue on appeal as:

Did the district court err when it denied Ms. Horton's motion to suppress, because the traffic stop violated her constitutional right to be free from unreasonable searches and seizures?

(Appellant's brief, p. 6.)

The state rephrases the issue as:

Has Horton failed to show the district court erred when it denied her motion to suppress, because an expired Washington registration provides reasonable articulable suspicion for a traffic stop?

ARGUMENT

The District Court Did Not Err When It Denied Horton's Motion To Suppress

A. Introduction

The district court ruled that Trooper Green had reasonable articulable suspicion to stop Horton because Horton had an expired Washington registration. (4/7/17 Tr., p. 56, L. 8 – p. 58, L. 22.) The district court did not err. As an initial matter, the motion to suppress was limited to only the expired registration as a basis for the stop and did not challenge any other basis for the stop. (See R., pp. 32-33, 37-40; 4/7/17 Tr., p. 18, Ls. 15-22, p. 58, Ls. 13-22.) The other potential basis for stop (including speeding and attempted elude) were not challenged below. (See R., p. 8.) Thus, the scope of this appeal is limited to whether an expired Washington registration provides reasonable articulable suspicion for the stop. In the event the order denying Horton's motion to suppress is reversed, Horton can determine, on remand, whether to challenge the other basis for the stop in front of the district court.

However, the district court correctly determined that an expired Washington registration provides reasonable articulable suspicion for the stop. (4/7/17 Tr., p. 56, L. 8 – p. 58, L. 22.) Contrary to Horton's argument on appeal, Idaho traffic laws apply to all drivers in Idaho including nonresidents. See I.C. §§ 49-1408(1), 49-2420. It is unlawful for even nonresidents to drive in Idaho without current registration. See, e.g. I.C. §§ 49-428, 49-430, 49-456, 49-122(4). The district court did not err.

B. Standard Of Review

“The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court accepts the trial court’s findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts.” State v. Diaz, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007). The power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. State v. Valdez-Molina, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); State v. Fleenor, 133 Idaho 552, 555, 989 P.2d 784, 787 (Ct. App. 1999). The appellate court also gives deference to any implicit findings of the trial court supported by substantial evidence. State v. Brauch, 133 Idaho 215, 218, 984 P.2d 703, 706 (1999).

The meaning and effect of a statute is a question of law over which the appellate courts exercise free review. State v. Hart, 135 Idaho 827, 829, 25 P.3d 850, 852 (2001).

C. The District Court Correctly Denied Horton’s Motion To Suppress

“A traffic stop by an officer constitutes a seizure of the vehicle’s occupants and implicates the Fourth Amendment’s prohibition against unreasonable searches and seizures.” State v. Young, 144 Idaho 646, 648, 167 P.3d 783, 785 (Ct. App. 2006) (citing Delaware v. Prouse, 440 U.S. 648, 653 (1979)). Ordinarily, a warrantless seizure must be based on probable cause to be reasonable. Florida v. Royer, 460 U.S. 491, 499-500 (1983); State v. Bishop, 146 Idaho 804, 811, 203 P.3d 1203, 1210 (2009).

However, limited investigatory detentions, based on less than probable cause, are permissible when justified by an officer’s reasonable, articulable suspicion that a person

has committed, or is about to commit, a crime. Royer, 460 U.S. at 498; Bishop, 146 Idaho at 811, 203 P.3d at 1210. “An officer may also stop a vehicle to investigate possible criminal behavior if there is reasonable articulable suspicion that the vehicle is being driven contrary to traffic laws.” Young, 144 Idaho at 648, 167 P.3d at 785 (citing United States v. Cortez, 449 U.S. 411 (1981)). Whether an officer possessed reasonable suspicion is evaluated based on the totality of the circumstances known to the officer at or before the time of the stop. Bishop, 146 Idaho at 811, 203 P.3d at 1210; State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003).

1. Horton Only Challenged One Basis For The Traffic Stop

According to Trooper Green’s Probable Cause Affidavit, Trooper Green observed Horton’s vehicle speed up to approximately 45 miles per hour in a 25 mile per hour zone when he activated his rear red and blue lights. (See R., p. 8; see also 4/7/17 Tr., p. 10, L. 18 – p. 13, L. 17.) Horton’s vehicle had no front plate and an expired Washington registration. (Id.)

In her motion to suppress, Horton only argued that the expired Washington registration and lack of a front plate did not constitute reasonable articulable suspicion for the stop because, she claimed, an Idaho police officer has no authority to enforce the laws of Washington. (R., pp. 37-40.) Horton did not challenge any other potential basis for the stop, including the attempted eluding or the violation of the speed limit. (See id.) During the suppression hearing, Horton attempted to question the trooper regarding the attempted eluding, but the district court sustained the state’s objection that the questioning was “beyond the scope of what’s been raised in defense’s brief” and found

that the motion to suppress “was very clearly limited to the one issue.” (4/7/17 Tr., p. 17, L. 6 – p. 18, L. 20.)

THE COURT: I understand your position on that, and I don’t even necessarily disagree with it, but the scope of the memorandum that [other defense counsel²] filed last night was very clearly limited to the one issue. This is beyond that issue and it’s beyond the scope of direct, and so I am going to sustain the objection.

[DEFENSE COUNSEL] I will stick to that, Your Honor.

(4/7/17 Tr., p. 18, Ls. 15-22.) The district court recognized that while the “eluding” issue was raised and discussed during the hearing “[i]t was not made part of the motion to suppress” so the district court would not “deal” with it. (4/7/17 Tr., p. 58, Ls. 13-22.)

The other potential reasons for stop (including speeding and attempted elude) were not challenged below. Thus, the scope of this appeal is limited to whether an expired Washington registration provides reasonable articulable suspicion for the stop. In the event the order denying Horton’s motion to suppress is reversed, Horton can determine, on remand, whether to challenge the other basis for the stop in front of the district court. However, remand is unnecessary because the district court correctly ruled that an expired Washington registration provided reasonable articulable suspicion for the traffic stop.

² Defense counsel who filed the Memorandum in Support of Motion to Suppress was a different deputy public defender than the counsel who appeared for the suppression hearing.

2. The Expired Washington Registration Provided Reasonable Articulate Suspicion For The Stop In Idaho Because Horton Was Required To Follow All Idaho Laws While Driving In Idaho

On the sole issue raised in the suppression hearing, whether the expired Washington registration provided reasonable articulable suspicion of a traffic violation, the district court did not err. The district court properly interpreted the applicable statutes and case law and found that the lack of a current registration, regardless of the state of origin, provided reasonable articulable suspicion that Horton was in violation of Idaho traffic laws, including Idaho Code sections 49-430 and/or 49-456. (4/7/17 Tr., p. 56, L. 8 – p. 58, L. 22.)

Horton argues that her expired Washington registration did not violate Idaho Code §§ 49-430 or 49-456 because she claims these code sections do not apply to vehicles registered outside of Idaho. (See Appellant’s brief, pp. 9-13.³) Horton argues, “because the Idaho Legislature specifically defined ‘registration’ to mean ‘the registration certificate or certificates and license plate or plates issued under the laws of this state pertaining to the registration of vehicles,’ I.C. § 49-119(9), sections 49-430 and 49-456 only apply to vehicles registered under the laws of this state.” (Appellant’s brief, p. 11 (citing Mayer v. TPC Holdings, Inc., 160 Idaho 223, 226, 370 P.3d 738, 741 (2016).) The plain language of the applicable statutes refute Horton’s argument that an expired Washington registration exempted her from Idaho’s registration laws.

³ Horton divides her argument into two sections, denial of the suppression motion and statutory interpretation. (See Appellant’s brief, pp. 9-13.) However, since the interpretation of Idaho statutes controls the outcome of the issue, the respondent has combined the two arguments into one section.

It is axiomatic and long-established that a statute will be interpreted according to its plain language and that where the language is plain the court will not resort to principles of statutory construction. State v. Schwartz, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003); State v. McCoy, 128 Idaho 362, 365, 913 P.2d 578, 581 (1996). “When a statute is unambiguous, it must be interpreted in accordance with its language, courts must follow it as enacted, and a reviewing court may not apply rules of construction.” State v. Wiedmeier, 121 Idaho 189, 191, 824 P.2d 120, 122 (1992) (citations omitted). In Verska v. Saint Alphonsus Regional Medical Center, 151 Idaho 889, 894-896, 265 P.3d 502, 507-509 (2011), the Idaho Supreme Court held that Idaho appellate courts do not have the authority to modify unambiguous statutes even if they conclude that construing the statute as written would produce “absurd results.” Application of these rules to the applicable statutes show that Trooper Green had reasonable articulable suspicion that Horton’s expired Washington registration violated Idaho law.

Idaho Code § 49-430 requires registration of vehicles to be renewed annually.

I.C. § 49-430.

§ 49-430. Registration to be renewed.

(1) Reregistration of vehicles shall be accomplished annually or by registration period in the same manner as the original registration and upon the payment of the required fee. The director may extend this date as to individuals, counties or the state for not to exceed forty-five (45) days for good cause shown.

(2) A violation of the provisions of this section shall be an infraction.

I.C. § 49-430.

Idaho Code § 49-456 makes it unlawful to operate on a highway any motor vehicle which is “not registered and which does not have attached and displayed the license plates assigned to it for the current registration year[.]” I.C. § 49-456.

§ 49-456. Violations of registration provisions.

It shall be unlawful for any person:

(1) To operate or for the owner to permit the operation upon a highway of any motor vehicle, trailer or semitrailer which is not registered and which does not have attached and displayed the license plates assigned to it for the current registration year, subject to the exemptions allowed in sections 49-426, 49-431 and 49-432, Idaho Code.

...

(3) To display or cause or permit to be displayed, or to have in possession any registration card or license plate knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.

...

I.C. § 49-456. The term “Registration” is defined by I.C. § 49-119(9):

(9) “Registration” means the registration certificate or certificates and license plate or plates issued under the laws of this state pertaining to the registration of vehicles.

I.C. § 49-119(9). In addition, the legislature has defined an “unregistered vehicle” as a vehicle without current registration from Idaho or another state:

(4) “Unregistered vehicle” means a vehicle without current registration on file with the department or with the appropriate agency of another state, unless exempt from registration.

I.C. § 49-122(4).

Idaho Code § 49-456 and 49-430, and the entire Motor Vehicle Code, apply to all drivers in Idaho, including non-residents. See I.C. §§ 49-1408(1), 49-2420. Idaho Code § 49-1408(1) states:

(1) All of the provisions of this title apply both to residents and nonresidents of Idaho, except the special provisions in this section which shall govern misdemeanor violations in respect to nonresidents under the circumstances stated.

I.C. § 49-1408(1). Idaho Code § 49-2420 also grants nonresident operators of motor vehicles the privilege of using Idaho highways, provided they comply with Idaho's motor vehicle laws.

Subject to compliance with the motor vehicle laws of Idaho, nonresident owners, operators of, and persons riding in motor vehicles hereby are granted the privilege of using the highways of Idaho.

I.C. § 49-2420.

Thus, Horton, like all operators of vehicles in Idaho was required to comply with § 49-456 and § 49-430, both of which requires current registration. Horton did not have current registration and thus violated Idaho traffic law.

Contrary to Horton's argument, there is nothing in the Idaho code that exempts cars previously registered outside of Idaho from complying with Idaho statutes regarding current registration when driven in Idaho. In fact, I.C. §§ 49-122(4) and 49-1408(1) state the opposite. Horton interprets the definition of "registration" to require Idaho registration. (See Appellant's brief, pp. 11-12 (citing I.C. § 49-119(9).) Thus, under Horton's interpretation, all drivers, including nonresidents, would have to have an Idaho registration before they could legally drive in Idaho. As a result, even if Horton's

interpretation is accepted, she would have still violated Idaho law because she failed to have a current Idaho registration when she was driving on Idaho's roads.

In support of her argument, Horton cites State v. Morgan, 154 Idaho 109, 112, 294 P.3d 1121, 1124 (2013). Horton's reliance on Morgan is misplaced because the holding in Morgan only applied to a front license plate requirement and did not extend to any other statutes or registration requirements. See id. In Morgan, a Boise police officer initiated a traffic stop, in part, after he saw that Morgan's vehicle did not have a front license plate. See id. at 111, 294 P.3d at 1123. However, Morgan's vehicle was not registered in the state of Idaho. See id. The State conceded and the Supreme Court agreed that Idaho Code § 49-428, which requires a front license plate, did not extend to vehicles registered outside the state of Idaho. See id. at 112, 294 P.3d at 1124. The Idaho Supreme Court noted that the police officer testified that the front license plate requirement did not extend to other states. Id. The Supreme Court held, "Idaho Code § 49-428 requires that a vehicle registered in Idaho display both front and rear license plates. This requirement does not extend to vehicles registered in other states." Id. The Supreme Court's holding did not utilize any reference or analysis to other statutes, nor did the holding extend to any other part of the motor vehicle code.

The district court recognized the limited holding in Morgan:

THE COURT: Well, and I read Morgan. I'm going to go ahead and issue my ruling right now.

I stayed late last night working on this, doing some research, and like [the prosecutor], I had a very hard time finding anything dealing with out-of-state registration.

However, Morgan I think is limited to its facts for the very reasons that [the prosecutor] discussed. It dealt with the lack of front plates. And whether it was a Washington vehicle, whether it was a Louisiana vehicle,

or some other state, the reason the police officer pulled that vehicle over was the lack of front plates, citing to Idaho Code Section 49-428, and the Court – well, and there was other reasons, but the only thing that we’re dealing with here is that statute, and the Court said that statute, that provision of that statute dealing with front and back plates only applies to Idaho vehicles.

I don’t think we can logically extend the Court’s ruling in Morgan to every aspect of Title 49, and the Court doesn’t say that that’s what we are to do. The Court does not intimate that that’s what we are to do.

I think it is absurd to believe or to accept the notion that law enforcement officers in Idaho cannot stop an out-of-state vehicle with expired registration. That would indicate a violation of the – of Idaho law, whether it’s found in Idaho Code Section 49-430 or 49-456 or some other code section that we haven’t discussed.

It is required that vehicles operating in Idaho have current registration, and I think that any law enforcement officer would have reasonable, articulable suspicion for conducting a traffic stop when they perceive a vehicle with expired registration tabs.

And Trooper Green’s testimony was that as he made the turn, he perceived that the license plate was from Washington, he could see that the tabs were expired, that they were from December of 2016. He saw the passenger exit the vehicle, and he turned on his lights.

[Defense counsel] argues that that’s an awful lot to happen in three seconds, but human brains can work very, very quickly, and law enforcement officers are trained and practiced in perceiving the very things that Trooper Green talked about. Three seconds is a longer period of time than I think we realize if we were to sit here and count out the three seconds or watch the clock move. It’s a fair period of time, and the ability of the human brain to see and read and perceive something as short as “December 2016,” I mean it can perceive that instantly.

So I don’t find anything incredible or lacking credibility in Trooper Green’s testimony here.

I’m not going to deal with the eluding issue, even though it was raised and it was discussed, it was not made part of the motion to suppress. The only thing that was part of the motion to suppress was reasonable, articulable suspicion for the traffic stop itself, and the Court finds that Trooper Green had reasonable, articulable suspicion in perceiving the expired tabs and conducting the stop, turning on his lights after that. And so the motion to suppress is denied.

(4/7/17 Tr., p. 56, L. 8 – p. 58, L. 22.) The district court did not err. The district court properly interpreted the statutes and applicable law.

CONCLUSION

The state respectfully requests this Court affirm the judgment of the district court.

DATED this 14th day of May, 2018.

/s/ Ted S. Tollefson
TED S. TOLLEFSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of May, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

BEN P. MCGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/ Ted S. Tollefson
TED S. TOLLEFSON
Deputy Attorney General

TST/dd