1-16-2018

State v. Islas Appellant's Brief Dckt. 45174

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 45174**
Plaintiff-Respondent,	)	
	)	**KOOTENAI COUNTY**
	)	**NO. CR 2016-12786**
v.	)	
	)	
RONALDO DEAN ISLAS,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

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

HONORABLE RICH CHRISTENSEN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Based on evidence discovered during the unjustified extension of his detention following a completed DUI investigation, Ronaldo Dean Islas entered conditional pleas of guilty to possession of controlled substances and paraphernalia, reserving his right to appeal the district court's denial of his motion to suppress.

Mr. Islas was stopped by a police officer for a traffic violation and investigated for DUI. After the officer determined Mr. Islas was not under the influence, and lacking any particularized suspicion of crime, the officer continued the detention so that he could examine pieces of glass that had fallen from Mr. Islas's lap. When the officer recognized the pieces as potentially fragments of a methamphetamine pipe, he searched Mr. Islas pockets, and, finding marijuana, arrested him.

The district court denied the motion, based, in part, on its finding that there was "an extremely minimal amount of time" between the completion of the DUI investigation and the determination that there may be methamphetamine. And, although the State conceded that the subsequent search of Mr. Islas's pockets was not justified and required suppression, the district court declined to suppress, or to even address those issues.

On appeal, Mr. Islas asserts the district court erred in concluding that the unjustified extension of Mr. Islas's detention, even if extremely minimal, or "*de minimis*," violated his Fourth Amendment rights against unreasonable seizures. Additionally, he asserts the district court erred in failing to order suppression of all the evidence discovered as the direct or indirect result of the unlawful search of Mr. Islas's pockets.

Statement of the Facts and Course of Proceedings

The following facts were established at the suppression hearing.[1] On July 3, 2016, Kootenai County Sheriff's Officer Joshua Leyk observed Mr. Isalas's Dodge Stratus pulling out from a parking lot and onto the roadway, and then drive "for a moment or two" before turning on its headlamps. (Vol.1 Tr., p.6, Ls.11-19.)[2] It was 9:02 p.m., and Officer Leyk had previously confirmed with dispatch that official sunset time was 8:48 p.m. (Vol.1 Tr., p.6, Ls.11-19; Vol.2 Tr., p.5, Ls.13-20.) Officer Leyk decided to stop the vehicle for driving after sunset without headlights, in violation of I.C. § 49-903. (Vol.1 Tr., p.6, Ls.22-23; Vol.2 Tr., p.5, Ls.21-25.) As he approached the vehicle, Officer Leyk detected the odor of alcohol from the driver's window, and he noticed Mr. Islas's eyes appeared glassy and bloodshot, and that Mr. Islas's pants were unzipped. (Vol.1 Tr., p.18, Ls.5-6; Vol.2 Tr., p.5, Ls.8-10.) (Vol. 2 Tr., p.6, Ls.12-14.) Officer Leyk also observed small circular pieces of what appeared to be glass or plastic on Mr. Islas's lap (Vol.1 Tr., p.7, Ls.81-5; p.23, Ls.11-23; Vol.2 Tr., p.6, Ls.1-13), but he did not otherwise know what these pieces were (Vol.1 Tr., p.7, Ls.13-15). Officer Leyk ordered Mr. Islas to get out of the car, and as Mr. Islas did so, Officer Leyk saw the pieces of glass fall from Mr. Islas's lap onto the ground. (Vol.1 Tr., p.8, Ls.1-14; Vol.2 Tr., p.6, Ls.1-25.) There was no evidence offered at the hearing to indicate that at this time Officer Leyk actually suspected, or had a

[1] At the suppression hearing, Officer Leyk was asked to review his Report and the video of the encounter recorded on his body cam, in order to refresh his recollection. (*See* Vol.1 Tr., p.17, L.4 – p.18, L.7 (reviews report); p.19, L.13 – p.22, L.4 (reviews video); p.22, Ls.8-10 (reviews video)). However, neither the Report nor the video was offered as evidence (*see generally*, Vol.1 Tr., pp.4-47), and neither appears to have been considered as evidence by the district court in ruling on the suppression motion (Vol.2 Tr., pp.4-9). State's Exhibit A, the only exhibit offered, is a photo of one of the glass pieces. (*See* Exhibit A.)

[2] The transcripts are contained in three volumes, designated as "Vol.1 Tr.," etc. Volume 1 contains the transcript of the suppression hearing, held 1/12/17; Volume 2 contains the transcript of the district court's decision on the motion to suppress, on 1/24/17, and the change of plea hearing on 3/10/17. Volume 3 contains the transcript of the sentencing hearing, held 5/19/2017.

reason to suspect, that the pieces were connected to criminal activity. (*See generally*, Vol.1, Tr., pp.5-36.) Officer Leyk directed Mr. Islas to stand at the back of Mr. Islas's vehicle, on the rear passenger side, where the officer conducted his DUI investigation, including questioning and field testing; upon completing the testing, Officer Leyk determined Mr. Islas was not under the influence and ended his DUI investigation. (Vol.1 Tr., p.8, L.19 – p.20, L.2; Vol.2 Tr., p.7, Ls.1-6.)

However, although Officer Leyk had clearly ended his investigation, he did not indicate to Mr. Islas that he was free to go. (Vol.1, Tr., p.24, Ls.11-13.) On the contrary, the officer instructed Mr. Islas to, "Have a seat on the back of your vehicle." (Vol.1 Tr., p.24, Ls.8-19.) Officer Leyk then walked to the front driver's side of the vehicle so that he could examine the glass pieces that had fallen to the ground by the driver's door. (Vol.1 Tr., p.24, Ls.20-24; Vol.2 Tr., p.7, Ls.9-13.) He noticed a thick coating of white and brownish crystal substance that, based on his training and experience, was consistent with methamphetamine or methamphetamine residue. (Vol.1 Tr., p.10, Ls.5-22; Vol.2, p.7, Ls.9-11.) At that point, Officer Leyk handcuffed Mr. Islas and searched his person, finding marijuana inside of his pockets. (Vol.1 Tr., p.24, L.23 – p.25, L.7.) Officer Leyk told Mr. Islas he was under arrest for possession of marijuana. (Vol.1 Tr., p.25, Ls.5-9.) Officer Leyk then conducted a NIK test of the substance on the glass, and then he called for a drug dog; and after that, other contraband was found which tested presumptive positive for methamphetamine. (Vol.2 Tr., p.8, Ls.17-24.)

Based on the evidence discovered by the police during this encounter, the State charged Mr. Islas with possession of methamphetamine, possession of marijuana, and possession of paraphernalia. (R., pp.26-27, 55.)

Mr. Islas filed a motion to suppress the evidence on the ground that the search violated his rights against unreasonable searches and seizures secured by the Idaho and United States constitutions. (R., pp.56, 69-78.) He argued that the initial stop was unreasonable and therefore unlawful, and that the detention was unlawfully prolonged twice: first when the officer ordered him to step out of the car to conduct an investigation for DUI; and again when the officer ordered him to sit on the back of the car after having determined he was not under the influence and ending that investigation. (R., p.73.) He additionally challenged the lawfulness of the warrantless search of his pockets, and his subsequent arrest and continued detention based on the evidence found during that unlawful search. (R., pp.76-77; Vol.1 Tr., p.43, Ls.17 – p.44, L.6.)

In its brief in opposition to the motion to suppress, the State conceded the search of Mr. Islas's pockets was unlawful and that the evidence – marijuana – found in them must be suppressed. (R., p.82.) But the State made no argument regarding the unlawfulness of the resulting arrest for possession of marijuana, or the lawfulness of Mr. Islas's extended detention that flowed from the illegal search and arrest. (R., p.82; Vol.1 Tr., pp.37-40.)

The district court denied the motion to suppress. (R., p.94.) The district court held that the initial traffic stop was justified based on the officer's observation of Mr. Islas's driving for four to five seconds after sunset without his headlights on, in violation of I.C. § 49-903. (Vol.2 Tr., p.5, Ls.15-23.) The district court also held the officer was justified in extending the stop in order to investigate Mr. Islas for DUI, because the officer's observations of Mr. Islas's glassy and bloodshot eyes, and unzipped pants, along with his detection of an alcohol odor coming from the car, provided reasonable articulable suspicion that Mr. Islas may have been driving under the influence. (Vol.2 Tr., p.6, L.5 – p.7, L.6.)

Consistent with the undisputed testimony, the district court found that Officer Leyk's DUI investigation ended once he determined Mr. Islas was not under the influence. (Vol.2 Tr., p.7, Ls.4-6.)

Addressing the reasonableness of the extended detention, the court specifically found that Officer Leyk had no knowledge of any other facts linking Mr. Islas or his vehicle to drug activity. (Vol.2, Tr., p.8, Ls.12-15.) Additionally, there was no evidence indicating that Officer Leyk recognized any of the glass pieces as possible fragments of a meth pipe until *after* he had completed the DUI investigation, and *after* he walked back to the driver's side of the car to examine the pieces on the ground. (R., p.82; Vol.1 Tr., pp.37-40.) Evidently aware that the justification for Mr. Islas's detention had ended with the completion of the DUI investigation, the district court decided to deny the suppression based, in part, on the fact that there was an "extremely minimal amount of time" between the end of the DUI investigation and the time the officer walked to the glass and determined there may be methamphetamine. (Vol.2 Tr., p.8, Ls.12-24.)

Following the denial of his suppression motion, Mr. Islas entered conditional guilty pleas to possession of a methamphetamine, possession of marijuana, and possession of paraphernalia, reserving his right to appeal the district court's denial of his motion to suppress. (R., p.97; Vol.3 Tr., p.11, Ls.9-12.) The court sentenced Mr. Islas to a suspended four-year term, with two years fixed, and placed him on probation. (R., pp.104-109.) Mr. Islas timely appealed. (R., p.110.)

ISSUE

Did the district court err when it denied Mr. Islas's motion to suppress?

ARGUMENT

The District Court Erred When It Denied Mr. Islas's Motion To Suppress

A. Introduction

Officer Leyk violated Mr. Islas's Fourth Amendment rights when he extended his detention of Mr. Islas without justification for doing so. The district court recognized the basis for prolonging the detention ended once the investigation was completed, and no new justification had emerged until after the officer had examined the pieces of glass. The district court found this extension to be "extremely minimal"; however, the United States Supreme Court has made it clear that *de minimis* extensions are still Fourth Amendment Violations. *See State v. Linze*, 161 Idaho 605, 609, fn. 2 (2016) (citing *Rodriguez v. United States*, 575 U.S. _, 135 S.Ct. 1609, 1615-16 (2015). For this reason, the district court's decision denying Mr. Islas's suppression motion should be reversed.

Additionally, the district court's decision should be reversed because the court failed to conclude that the officer unlawfully searched Mr. Islas's pockets. Mr. Islas claimed the officer lacked probable cause to search his person; the State conceded the issue and agreed the marijuana should be suppressed. Mr. Islas asserts that all of the evidence discovered as the direct and indirect result of that personal search should have been suppressed. It was undisputed that the search, and the direct discovery of the marijuana in Mr. Islas's pockets, took place *before* the officer tested the glass pieces for methamphetamine and *before* the officer called the drug canine unit. Given this record, the district court should have ordered suppression of the direct and indirect fruits of that unlawful search; the court erred in failing to do so.

B. Standard Of Review

When reviewing a trial court's order granting or denying a defendant's motion to suppress, this Court defers to the trial court's findings of fact unless they are clearly erroneous. *State v. Bishop*, 146 Idaho 804, 810 (2009). Factual findings that are not supported by substantial and competent evidence are clearly erroneous. *State v. Henage*, 143 Idaho 655, 659 (2007). "Decisions regarding the credibility of witnesses, weight to be given to conflicting evidence, and factual inferences to be drawn are also within the discretion of the trial court." *Bishop*, 146 Idaho at 804. However, this Court maintains free review over whether the facts surrounding the search and seizure satisfy constitutional requirements. *Henage*, 143 Idaho at 658.

C. The District Court Erroneously Denied Mr. Islas's Motion To Suppress

The Fourth Amendment of the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. The stop of a vehicle by law enforcement constitutes a seizure of its occupants to which the Fourth Amendment applies. *State v. Linze*, 161 Idaho 605, 608 (2016); *Delaware v. Prouse*, 440 U.S. 648, 653 (1979). Evidence obtained in violation of Fourth Amendment protections is subject to the exclusionary rule, which requires the suppression of both primary evidence obtained as a direct result of an illegal search or seizure, and evidence later discovered and found to be derivative of an illegality, that is, "fruit of the poisonous tree." *See Wong Sun v. United States*, 371 U.S. 471, 484-85 (1963); *State v. Guzman*, 122 Idaho 981, 988-98 (1992).

An investigative detention is permissible if it is based upon specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in

criminal activity. *State v. Aberasturi*, 152 Idaho 517, 560 (Ct. App. 2017). An investigative detention must be temporary and last no longer than necessary to effectuate the purpose of the detention, *State v. Howell*, 159 Idaho 245, 248 (Ct. App. 2015); *Florida v. Royer*, 460 U. S. 491, 500 (1983). The authority for the seizure ends when tasks required to fulfill the purpose of the detention are completed. *Howell*, at 248; *Royer*, at 500. Police may not extend an otherwise-completed traffic stop to conduct a different investigation, even briefly, absent reasonable suspicion. *Royer*, 460 U. S. 491, 500 (1983).

The State has the burden to demonstrate that the seizure it seeks to justify on the basis of reasonable suspicion was sufficiently limited in scope and duration to satisfy the condition of an investigative detention. *State v. Parkinson*, 135 Idaho 357, 361-62 (Ct. App. 2000) (citing *Florida v. Royer*, 460 U.S. 491, 499-500 (1983)) (emphasis added). "The seizure remains lawful only 'so long as unrelated inquiries do not measurably extend the duration of the stop.'" *Rodriguez*, 575 U.S. __, 135 S.Ct. at 1615, (quoting *Arizona v. Johnson*, 555 U.S. 323, 333 (2009)) (brackets omitted). While a brief period of time may reasonably be considered *de minimis*, the United States Supreme Court has made it clear that *de minimis* Fourth Amendment violations are still unlawful. *See State v. Linze*, 161 Idaho 605, 609, fn. 2 (2016) (citing *Rodriguez v. United States*, 575 U.S. __, 135 S.Ct. 1609, 1615-16 (2015)).

1. The District Court Erred In Failing To Conclude That The Police's Unjustified Extension Of Mr. Islas's Detention, Even If *De Minimis*, Violated His Constitutional Rigths

The district court erred in failing to conclude that the unjustified extension of Mr. Islas's detention, even if *de minimis*, violated his Fourth Amendment rights against unreasonable seizures. Officer Leyk testified unequivocally that he had ended his DUI investigation and that he did not indicate to Mr. Islas that he was free to go. (Vol.1, Tr., p.24, Ls.11-13.) To the

contrary, Officer Leyk continued to detain Mr. Islas, instructing him, "Have a seat on the back of your vehicle." (Vol.1 Tr., p.24, Ls.8-19.) Officer Leyk did not testify that at that point he suspected Mr. Islas of any criminal activity, or that he had any idea of what the pieces of glass on the ground might be. (*See generally*, Vol.1 Tr., pp.5-36.) To the contrary, Officer Leyk testified that when he first noticed the pieces of what appeared to be plastic or glass, he did not know what they were. (Vol.1 Tr., p.7, Ls.13-15.) He testified that one of the glass pieces "drew special attention" but did not explain why that was, other than he hadn't initially noticed it on Mr. Islas's lap. (Vol.1 Tr., p.8, Ls.10-12.) No evidence was presented at the suppression hearing indicating that Officer Leyk suspected the glass pieces might be pieces of a meth pipe until *after* he examined them, which was *after* he had completed his DUI investigation, and *after* he told Mr. Islas to sit on the back of the car. Additionally, as expressly found by the district court, Officer Leyk "had no knowledge of any other facts linking Mr. Islas or his vehicle to drug activity." (Vol.2, Tr., p.8, Ls.12-15.)

The district court acknowledged there was no justification for extending Mr. Islas's detention once the DUI investigation ended. (Vol.2 Tr., p.8, Ls.12-14.) However, declining to find any violation of Mr. Islas's rights, the district court explained it was denying the motion to suppress based, in relevant part, on the fact that the unjustified extension of Mr. Islas's detention was "extremely minimal." (Vol.2 Tr., p.8, Ls.15-17.)

The district court's reasoning is erroneous and contradicts Fourth Amendment law: "While such a brief period of time [may] reasonably be considered *de minimis*, the United States Supreme Court was clear in *Rodriguez* that *de minimis* exceptions are no longer available." *State v. Linze*, 161 Idaho 605, 609, fn. 2 (2016) (citing *Rodriguez v. United States*, 575 U.S. _,

135 S.Ct. 1609, 1615-16 (2015)). In *Rodriguez*, the Court expressly rejected the *de minimis* rule advanced by the government in that case, and which several federal circuits had adopted. *Id.*

Once Officer Leyt had completed the DUI investigation having determined that Mr. Islas was not under the influence, the justification for the stop, along with the authority for the detention, ended. *See Rodriguez*, 575 U.S. __, 135 S.Ct. at 1616. Prolonging the detention beyond that point was unlawful, even if *de minimis*, and violated Mr. Islas's Fourth Amendment rights. *Id.* The district court's contrary conclusion is erroneous, and its denial of Mr. Islas's motion to suppress should be reversed.

2. The District Court Erred In Failing To Order Suppression Of All Evidence Discovered As The Direct Or Indirect Result Of The Unlawful Search Mr. Islas's Pockets

The district court also erred in failing to order suppression of all evidence discovered as the direct or indirect result of the unlawful warrantless search of Mr. Islas's pockets. "Searches conducted without a warrant are considered *per se* unreasonable unless they fall into one of the 'specifically established and well-delineated exceptions' to this general rule." *State v. Lee*, 162 Idaho 642, 647 (2017). Once a defendant has established that a warrantless search occurred, the State bears the burden of establishing that a valid exception applies. *State v. Armstrong*, 158 Idaho 364, 370 (Ct. App. 2015). "A search or seizure of a person must be supported by probable cause with respect to that person." *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979).

In his motion to suppress, Mr. Islas claimed the warrantless search of his pockets was unlawful because it lacked probable cause, and he sought suppression of all "fruits" of that unlawful search pursuant to *Wong Sun v. United States*, 371 U.S. 471, 484-85 (1963). (R., pp.56, 69-78.) In its brief opposing the motion, the State conceded the personal search of Mr. Islas was

unlawful and did not attempt to offer any justification for that search. (R., p.82.) The State also agreed that the marijuana and paper found in Mr. Islas's pockets must be suppressed. (R., p.82.)

However, and notwithstanding the State's concession or its failure to attempt to justify the search,[3] the district court declined to suppress that evidence. (*See generally*, Vol.2 Tr., pp.4-9.) The failure to suppress was error and the denial of the motion must be reversed. Additionally, Mr. Islas had argued that the unlawful search of his pockets and subsequent discovery of marijuana tainted Officer Leyk's subsequent actions and investigation, and requiring suppression not only of the marijuana found in his pocket, but of all of the evidence in this case, as the indirect "fruit" of the unlawful search. (R., pp.76-77; Vol.1 Tr., p.43, Ls.17 – p.44, L.6.) As noted above, Officer Leyk did not field test the glass pieces or call the canine drug unit until *after* he had searched Mr. Islas's pocket and found the marijuana. (Vol.1 Tr., p.25, Ls.5-9; Vol.2 Tr., p.8, Ls.17-24.) Thus, on remand, the district court should order suppression of all of the evidence found as the fruit of that search.

CONCLUSION

Mr. Islas respectfully requests that this Court reverse the district court's denial of his suppression motion, vacate his judgment of conviction, and remand the case to the district court for further proceedings.

DATED this 16th day of January, 2018.

_____/s/_____
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

[3] The State offered no argument that Officer Leyk's observation of the broken glass pieces, prior to field testing them, provided him with probable cause to arrest Mr. Islas. (*See generally* R., p.82; Vol.1 Tr., pp.37-40.)

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of January, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

KAC/eas