4-11-2018

State v. Islas Respondent's Brief Dckt. 45174

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45174**
Plaintiff-Respondent,	)	
	)	**Kootenai Co. Case No.**
vs.	)	**CR-2016-12786**
	)	
RONALDO DEAN ISLAS,	)	
	)	
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

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Nature Of The Case

Ronaldo Dean Islas appeals from his judgment of conviction for possession of methamphetamine, possession of marijuana, and possession of paraphernalia, entered upon his conditional guilty plea. On appeal, he asserts that the district court erred when it denied his suppression motion.

Statement Of The Facts And Course Of The Proceedings

While on patrol on July 3, 2016, Deputy Leyk observed a vehicle driving on a public roadway after sunset without illuminated headlights. (1/12/2017 Tr., p.6, Ls.1-23; 1/24/2017 Tr., p.5, Ls.12-23.) Deputy Leyk pulled over the vehicle. (Id.) Islas was the driver. (1/12/2017 Tr., p.6, L.24 – p.7, L.5.) Upon contact, the officer observed that Islas had bloodshot eyes, unzipped pants, and was emitting a strong odor of alcohol. (1/12/2017 Tr., p.7, Ls.8-22; 1/24/2017 Tr., p.6, Ls.5-15.) The officer asked Islas to exit the vehicle and move to the back of the car to perform an HGN test. (1/12/2017 Tr., p.7, L.23 – p.8, L.21; 1/24/2017 Tr., p.6, L.21 – p.7, L.4.) As Islas got out of the car, some round pieces of glass fell out of his lap and into the street. (1/12/2017 Tr., p.8, Ls.2-14; 1/24/2017 Tr., p.6, Ls.21-25.)

Deputy Leyk administered the HGN test, which Islas passed. (1/12/2017 Tr., p.23, L.23 – p.24, L.7.) The officer then asked Islas to remain at the back of the car while he examined the dropped pieces of glass. (1/12/2017 Tr., p.24, Ls.14-24.) The officer recognized the residue of methamphetamine on the glass pieces. (1/12/2017 Tr., p.9, L.20 – p.10, L.22.) He then returned to Islas and, turning out his pockets, found marijuana. (R., p.15.) Islas was placed under arrest. (Id.) The officer later performed an NIK test on the residue, which returned a presumptive positive for methamphetamine. (1/12/2017 Tr., p.10, L.23 – p.11, L.1.) A drug detection dog

was summoned and alerted to the presence of additional drugs inside of Islas's vehicle. (1/12/2017 Tr., p.11, Ls.2-10.) A subsequent search uncovered more methamphetamine. (R., p.15.)

The state charged Islas with possession of methamphetamine, possession of marijuana, and possession of paraphernalia. (R., pp.55-56.) Islas filed a motion to suppress the evidence, arguing that his rights under both the Fourth Amendment of the United States Constitution and Article I, § 17 of the Idaho Constitution were violated. (R., pp.62-63, 69-77.) After a hearing on the suppression motion (see 1/12/2017 Tr.), the district court denied Islas's motion (1/24/2017 Tr., p.5, L.7 – p.9, L.5; R., p.94).

Islas entered conditional guilty pleas to all of the charges, reserving his right to challenge the denial of his suppression motion. (See 3/10/2017 Tr., p.11, Ls.5-10; p.12, L.2 – p.14, L.22.) Pursuant to those guilty pleas, the district court entered judgment against Islas and sentenced him to a unified term of three years with one and a half years fixed, suspended that sentence, and placed him on probation for a period of two years. (R., pp.104-09.) Islas filed a timely notice of appeal. (R., pp.110-13.)

ISSUE

Islas states the issue on appeal as:

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

(Appellant's brief, p.6.)

The state rephrases the issue as:

Has Islas failed to show error in the district court's denial of his suppression motion?

ARGUMENT

Islas Has Failed To Show That The District Court Erred When It Denied His Motion To Suppress Evidence

A. Introduction

During a traffic stop, to facilitate a DUI investigation, Deputy Leyk asked Islas to exit his vehicle. (1/12/2017 Tr., p.7, Ls.8-24; p.23, L.23 – p.24, L.3.) As he exited the vehicle, Islas dropped some round pieces of glass from his lap into the street. (Id., p.8, Ls.2-14.) Later examining those pieces of glass, the officer discovered methamphetamine residue. (Id., p.9, L.11 – p.11, L.1.) Subsequent investigation led to the discovery of additional contraband. (R., pp.14-15.) Islas sought suppression of all of this evidence arguing, *inter alia*, that the traffic stop was unlawfully extended. (R., pp.62-63, 69-77.) The district court denied Islas's suppression motion on the grounds "that the glass pieces fell out as the deputy was conducting the DUI investigation, and that the deputy went over immediately after conducting that DUI investigation and believed what he had was methamphetamine." (1/24/2017 Tr., p.8, L.25 – p.9, L.5.) On appeal, Islas claims that the district court erred when it denied his suppression motion. (Appellant's brief, pp.7-12.) Application of the correct legal standards to the facts developed below, however, shows no error in the ultimate denial of the motion. The district court should be affirmed.

B. Standard Of Review

On review of a ruling on a motion to suppress, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence and exercises free review of the trial court's determination as to whether constitutional standards have been satisfied in light of the facts found. State v. Willoughby, 147 Idaho 482, 485-86, 211 P.3d 91, 94-95 (2009). At a suppression hearing, 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).

C. Application Of The Correct Legal Standards Supports The District Court's Conclusion That Islas's Detention Was Not Unlawfully Extended

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. While routine traffic stops by police officers implicate the Fourth Amendment's prohibition against unreasonable searches and seizures, the reasonableness of a traffic stop is analyzed under Terry v. Ohio, 392 U.S. 1 (1968), because a traffic stop is more similar to an investigative detention than a custodial arrest. Delaware v. Prouse, 440 U.S. 648, 653 (1979); State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). "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." Sheldon, 139 Idaho at 983, 88 P.3d at 1223 (citing Terry, 392 U.S. at 21; United States v. Cortez, 449 U.S. 411, 417 (1981)).

An investigative detention must not only be justified at its beginning, but must also be conducted in a manner that is reasonably related in scope and duration to the circumstances which justified the interference in the first place. Florida v. Royer, 460 U.S. 491, 499-500 (1983); State v. Roe, 140 Idaho 176, 181, 90 P.3d 926, 931 (Ct. App. 2004). "The purpose of a stop is not permanently fixed, however, at the moment the stop is initiated, for during the course of the detention there may evolve suspicion of criminality different from that which initially prompted the stop." Sheldon, 139 Idaho at 984, 88 P.3d at 1224. Routine traffic stops may turn up suspicious circumstances which could justify an officer asking questions unrelated to the stop.

State v. Myers, 118 Idaho 608, 613, 798 P.2d 453, 458 (Ct. App. 1990). "The officer's observations, general inquiries, and events succeeding the stop may—and often do—give rise to legitimate reasons for particular lines of inquiry and further investigation by an officer." Id.

"[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop and attend to related safety concerns." Rodriguez v. United States, 575 U.S. ___, 135 S.Ct. 1609, 1614 (2015) (internal citation omitted). Asking a driver questions about drugs and weapons is part of a reasonable investigation, even if that was not the purpose of the initial stop. Rodriguez, 135 S.Ct. at 1614-15; see also State v. Parkinson, 135 Idaho 357, 362-63, 17 P.3d 301, 306-07 (Ct. App. 2000). "The stop remains a reasonable seizure while the officer diligently pursues the purpose of the stop, to which that reasonable suspicion is related. However, should the officer abandon the purpose of the stop, the officer no longer has that original reasonable suspicion supporting his actions." State v. Linze, 161 Idaho 605, 609, 389 P.3d 150, 154 (2016). Officers may not prolong a traffic stop beyond the time reasonably necessary to complete their investigation, "absent the reasonable suspicion ordinarily demanded to justify detaining an individual." Rodriguez, 135 S.Ct. at 1614-15; see also State v. Brumfield, 136 Idaho 913, 916-17, 42 P.3d 706, 709-10 (Ct. App. 2001).

Islas asserts that the officer unlawfully extended his detention. (Appellant's brief, pp.9-11.) Review of the record, however, shows that there was no unlawful extension of the traffic stop. Deputy Leyk initially pulled over Islas for a traffic infraction: driving without illuminated headlights after sunset in violation of Idaho Code § 49-903. (1/12/2017 Tr., p.6, Ls.2-15.) Initiating a traffic stop based on the officer's actual observations of a traffic infraction is reasonable. Whren v. United States, 517 U.S. 806, 810 (1996).

Contacting Islas, the officer observed that Islas had bloodshot glassy eyes, smelled strongly of alcohol, and his pants' zipper was down, evidencing some lack of attention to detail. (1/12/2017 Tr., p.7, Ls.8-22; p.16, Ls.3-9.) These observations, as the district court found, gave the officer reasonable suspicion that Islas could be under the influence of alcohol. (1/24/2017 Tr., p.6, Ls.5-20.) Based on that reasonable suspicion of a separate criminal offense, the officer lawfully expanded his investigation to the potential DUI. See Rodriguez, 135 S.Ct. at 1614-15.

Deputy Leyk ordered Islas to exit his vehicle in order to investigate the possible DUI. (1/24/2017 Tr., p.6, L.21 – p.7, L.6.) As Islas exited his vehicle, some round pieces of glass that had been in his lap when the officer contacted him fell to the ground. (1/12/2017 Tr., p.8, Ls.2-14; 1/24/2017 Tr., p.6, Ls.21-25.) Although it was not immediately apparent that the glass contained *methamphetamine* residue while it sat in Islas's lap, after it fell into the street the glass drew the officer's special attention. (See 1/12/2017 Tr., p.7, Ls.8-15; p.8, Ls.2-6.) Possession of paraphernalia is a criminal offense. I.C. § 37-2734A. Objectively, considering the surrounding circumstances of the traffic stop, Islas's appearance, the position of the round glass on his lap, and so forth, the officer had reasonable suspicion to investigate the potential paraphernalia.[1] The officer, therefore, could expand his investigation to that potential crime as well. See Rodriguez, 135 S.Ct. at 1614-15.

But the officer did not immediately examine the glass pieces. Instead, he continued with the DUI investigation, requiring Islas to perform an HGN test at the back of his car. (1/12/2017 Tr., p.8, Ls.15-21; p.24, Ls.1-3.) Islas passed the HGN test, and the officer no longer suspected that he was under the influence of alcohol. (Id., p.24, Ls.4-7.) The officer then had Islas remain

[1] Moreover, as the state explained below (1/12/2017 Tr., p.38, L.20 – p.39, L.13), Islas's dropping the glass into the street—even inadvertently—is also a littering infraction in violation of Idaho Code § 18-7031. And an officer may detain an individual upon observing an infraction.

at his patrol car and returned to examine the potential paraphernalia. (Id., p.9, Ls.11-14; p.24, Ls.14-24.) Upon examining one of the pieces of glass, the officer discovered residue consistent with methamphetamine. (Id., p.9, L.20 – p.10, L.22.) This gave the officer probable cause to arrest Islas for possession of paraphernalia, in addition to sufficient reasonable suspicion to investigate the potential possession of drugs.

On appeal, Islas claims that the officer unlawfully extended his traffic stop when he examined the paraphernalia Islas dropped in the street *after* concluding that Islas was not under the influence of alcohol. (Appellant's brief, pp.9-11.) Islas argues that the officer could not have reasonable suspicion that the object was paraphernalia because he "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." (Id., p.10.) This argument fails. First, in context of his report of the incident, the officer's testimony appears to indicate that, after the glass pieces fell into the street, he may have had some idea of what they were. (Compare R., p.14 with 1/12/2017 Tr., p.8, Ls.2-6; see also 1/12/2017 Tr., p.34, L.24 – p.35, L.9 (officer describing the broken bowl shaped pieces of glass to the court).) Second, whether the officer subjectively believed the round, orb-shaped glass pieces to be paraphernalia is not the correct legal standard. Reasonable suspicion does not depend on the subjective beliefs of the officer; it is an objective standard. State v. Willoughby, 147 Idaho 482, 489, 211 P.3d 91, 98 (2009) (citation omitted). Under the objective facts contained in the record, there was sufficient reasonable suspicion to examine the pieces of paraphernalia Islas dropped in the road as he exited his vehicle. Because it was supported by reasonable suspicion, the examination of the paraphernalia did not unlawfully extend Islas's detention and there is no basis upon which to suppress the evidence.

Moreover, even if the officer had unlawfully extended the traffic detention to examine the paraphernalia, suppression would still be inappropriate under the facts of this case. The United States Supreme Court has explained that, while the exclusionary rule applies to evidence acquired as a result of a Fourth Amendment violation, "exclusion may not be premised on the mere fact that a constitutional violation was a 'but-for' cause of obtaining evidence." Hudson v. Michigan, 547 U.S. 586, 592 (2006). Evidence is not "fruit of the poisonous tree simply because it would not have come to light but for the illegal actions of police." Wong Sun v. United States, 371 U.S. 471, 487-88 (1963). Rather, the question is whether police obtained the evidence "by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." Id. at 488 (quotation omitted). The Idaho Supreme Court has recognized at least three exceptions to the exclusionary rule, including the independent source, inevitable discovery, and attenuated basis doctrines. State v. Stuart, 136 Idaho 490, 496-98, 36 P.3d 1278, 1284-86 (2001). The purpose of these exceptions, the United States Supreme Court has explained, is to balance society's interest in deterring unlawful police conduct with the public interest of having all probative evidence of a crime produced by "putting the police in the same, not a worse, position than they would have been in if no police error or misconduct had occurred." See Nix v. Williams, 467 U.S. 431, 443 (1984).

Even assuming Islas's detention was unlawfully extended, application of the correct legal standards to the facts of this case still demonstrates that the detention was not exploited to obtain the evidence Islas sought to suppress. As noted above, when Islas exited his vehicle, he dropped his paraphernalia onto the side of the road. First, there can be no reasonable expectation of privacy in what a person knowingly exposes to the public. Katz v. United States, 389 U.S. 347, 351 (1967). Second, during a traffic investigation, an officer may lawfully request that a suspect

exit his vehicle. Pennsylvania v. Mimms, 434 U.S. 106, 111 (1977). Under the plain view doctrine, incriminating objects brought within an officer's plain view during the course of lawful police contact may legitimately be seized. Coolidge v. New Hampshire, 403 U.S. 443, 465-66 (1971). Because Islas's paraphernalia was brought into the officer's plain view during the course of lawful police contact, it could legitimately be seized and examined.

It was not the officer's investigation of Islas for a potential DUI that directly led to the discovery of the evidence Islas sought to suppress. Rather, it was the examination of Islas's paraphernalia, dropped into plain view, which created probable cause to arrest Islas and ultimately resulted in the discovery of the evidence he sought to suppress. Because seizing and examining the paraphernalia was justified under the plain view doctrine, and because that independent source of evidence resulted in the discovery of all of the other evidence Islas sought to suppress, there is no basis for suppression, even assuming that Islas's detention was extended. The district court was ultimately correct to deny Islas's motion to suppress the evidence, and should be affirmed.

D. The Marijuana Discovered During The Subsequent Search Of Islas's Person Was Not Subject To Suppression

Islas also argues that the district court erred when it failed to suppress the marijuana discovered during a search of Islas's person. (Appellant's brief, pp.11-12.) Warrantless searches are "*per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." Katz, 389 U.S. at 357. One such exception to the warrant requirement is a search incident to lawful arrest. Chimel v. California, 395 U.S. 752, 762-63 (1969). Warrantless arrests based on probable cause are lawful under the Fourth Amendment. Virginia v. Moore, 553 U.S. 164, 171 (2008); see also Maryland v. Pringle, 540

U.S. 366, 370 (2003); I.C. § 19-603. Probable cause is "the possession of information that would lead a person of ordinary care and prudence to believe or entertain an honest and strong presumption that such person is guilty." State v. Julian, 129 Idaho 133, 136, 922 P.2d 1059, 1062 (1996) (citation omitted). In determining whether the State has met the standard of probable cause, the Court considers the totality of the circumstances. Pringle, 540 U.S. at 371.

The challenged search of Islas's person occurred after the officer discovered the residue consistent with methamphetamine on the fragmented pieces of Islas's meth pipe. (1/12/2017 Tr., p.24, L.25 – p.25, L.6; see also R., pp.14-15.) As explained above, this discovery gave the officer probable cause to arrest Islas for possession of paraphernalia. The search of Islas's pockets, therefore, was justified by the search incident to arrest exception to the warrant requirement. See Rawlings v. Kentucky, 448 U.S. 98, 111 (1980) ("Where the formal arrest followed quickly on the heels of the challenged search of petitioner's person, we do not believe it particularly important that the search preceded the arrest rather than vice versa."). Though the state below conceded (erroneously) that the officer's search was unlawful and the marijuana, therefore, subject to suppression (R., p.82), the district court (correctly) denied Islas's motion to suppress (R., p.94). The district court should be affirmed.

Moreover, even had the officer prematurely searched Islas's pockets, and so violated his rights, such violation would still not require suppression. As set forth above, "exclusion may not be premised on the mere fact that a constitutional violation was a 'but-for' cause of obtaining evidence." Hudson, 547 U.S. at 592. To be subject to suppression, the evidence must have been obtained "by exploitation of [the] illegality" and not obtainable through other "means sufficiently distinguishable to be purged of the primary taint." Wong Sun, 371 U.S. at 488 (quotation omitted). The doctrine of inevitable discovery is an exception to the exclusionary rule. See

Stuart, 136 Idaho at 497-98, 36 P.3d at 1285-86. Under this doctrine, where "the tainted evidence would be admissible if in fact discovered through an independent source, it should be admissible if it inevitably would have been discovered." Id. (quoting Murray v. United States, 487 U.S. 533, 539 (1988)).

The examination of the glass, in plain view, which Islas dropped on the side of the street when he exited his vehicle ultimately resulted in the confirmation of paraphernalia and the discovery of methamphetamine. Islas, therefore, would have been arrested and his person subject to search, during which search the marijuana would inevitably have been discovered. Even if it was unlawful for Deputy Leyk to search Islas's person prior to confirming the methamphetamine residue on Islas's meth pipe or discovering the additional drugs following the positive alert by the drug detection dog, discovery of the marijuana was inevitable, and the marijuana, therefore, should not be suppressed.

Because the officer objectively had reasonable suspicion to investigate the potential paraphernalia (or litter) dropped by Islas as he exited his vehicle, there was no unlawful extension of Islas's detention. Even if the officer had lacked reasonable suspicion, because the pieces of glass were in plain view, the officer's examination of the glass was lawful and did not violate Islas's rights. All evidence acquired during the traffic stop was ultimately discovered as a result of examining the pieces of glass. The district court was correct to deny Islas's suppression motion and should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Islas's suppression motion.

DATED this 11th day of April, 2018.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of April, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

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/s/ Russell J. Spencer
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RJS/vr