2-13-2018

State v. Burgess Respondent's Brief Dckt. 45317

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 45317**
Plaintiff-Appellant,	)	
	)	**KOOTENAI COUNTY**
	)	**NO. CR 2016-18157**
v.	)	
	)	
CORA LEE BURGESS,	)	**REPONDENT'S BRIEF**
	)	
Defendant-Respondent.	)	
_____	)	

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 RICH CHRISTENSEN
District Judge

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

KIMBERLY A. COSTER
Deputy State Appellate Public Defender
I.S.B. #4115
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

ATTORNEYS FOR
DEFENDANT-RESPONDENT

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEY FOR
PLAINTIFF-APPELLANT

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Cases

Constitutional Authorities

Additional Authorities

STATEMENT OF THE CASE

Nature of the Case

The State appeals from the district court's order granting Cora Lee Burgess's motion to suppress. This Court should affirm because the district court correctly concluded that the police violated Ms. Burgess's Fourth Amendment rights when they extended the duration of the traffic stop to conduct a probationary status check of her passenger. The State failed to show that the probation records check was a task tied to the mission of the traffic stop, and therefore, failed in its burden to demonstrate that prolonging Ms. Burgess's detention in order to complete that task was constitutionally reasonable.

As stated by the United States Supreme Court, "The tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission' [which is] to address the traffic violation that warranted the stop and attend to related safety concerns." *Rodriguez v. United States*, 135 S.Ct. 1609, 1614 (2015). As correctly concluded by the district court in this case, the State failed to show that verifying the passenger's probation status through a dispatch records check was a task "tied to the mission of the traffic stop." Verifying the passenger's probationary status was unrelated to the road safety objectives of the stop, and the State offered no evidence or argument that conducting such a verification was reasonable as an officer safety measure, since the police had already determined there were no outstanding warrants, and already possessed knowledge of the passenger's criminal record. The district court correctly concluded that the police violated Ms. Burgess's constitutional rights by prolonging the traffic stop to conduct the unrelated task and that suppression of the evidence was warranted.

Statement of the Facts and Course of Proceedings

The following facts were established at the suppression hearing.[1]

On July 7, 2016, Kootenai County sheriff's officers Ryan Jacobson and Travis Fanciullo were out on patrol; in the words of Deputy Fanciullo,

> [W]e're out making traffic stops, patrolling like we're supposed to, looking for drugs, DUI's et cetera. Whatever may be out there. That's a part of why we run traffic.

(Tr., p.32, Ls.5-8.)

Shortly before midnight, they stopped Ms. Burgess's Nissan pickup for a traffic violation. (R., pp.95-96; Ex.1, 23:51:40.) Ms. Burgess was driving and Joshua Craig was in the passenger seat. (R., p.95.) The officers approached the pickup, one on each side, and for about three minutes talked with the occupants and gathered their information: identifications, driver's licenses, vehicle registration, and insurance. (R., p.95; Tr., p.9, Ls.7-11; Ex.1, 23:52:00.) Ms. Burgess was unable to provide proof of current insurance, and Deputy Jacobson told her to get that insurance before driving the vehicle again. (Tr., p.9, Ls.12-14; Ex.1, 23:55:03.) The officers then walked back to their patrol car, joining a third officer from Post Falls who had arrived at the scene. (Ex.1, 23:55:25.) The officers did not return to Ms. Burgess's vehicle for approximately seven and one-half minutes. (R., p.95.)

[1] The State called Kootenai County sheriff's deputies Ryan Jacobson and Travis Fanciullo as witnesses, and also offered Exhibit 1, which contains the video recording of the stop taken from the patrol car's dash camera and the audio from the officers' microphones. (Ex.1; Tr., p.7, Ls.3-7.) Citations to the recordings refer to the real-time displayed in the caption displayed when the recordings are accessed using the Watch Guard Video Player ("wgvplayer"), which is included as a file within the Exhibit. All citations are to camera 0, video-1, which runs from 23:53:00 on July 7th through 00:48:05 on July 8th. The separate audio sources can be distinguished and amplified by using the "audio sources" feature and sliding the bar between "cabin" and "wireless."

While back at their patrol vehicle, the officers checked Ms. Burgess's and Mr. Craig's information using the in-car computer. (R., p.95.) In less than a minute, the computer announced a separate "return" for each of the occupants. (R., p.95; Ex.1, 23:55:43.) During this period, Deputy Fanciullo told the Post Falls officer that they were "out doing traffic and looking for dope." (R., p.95; Ex.1, 23:55:50.) Right after the computer announced the second "return," Deputy Fanciullo stated to the other officers that Mr. Craig "was lying about being on state probation, I'm suspecting." (R., p.95; Ex.1, 23:57:06, 23:57:36.) Deputy Jacobson noted that Mr. Craig had a state conviction for stalking, and asked dispatch to look up his probation status (R., p.95; Ex.1, 23:57:30, 23:57:50); he asked Deputy Fanciullo, "Once they confirm that,[2] would you mind writing her while I chat with [Craig]?" (R., p.95; Ex.1, 23:59:25.) Deputy Fanciullo agreed, "Absolutely," and confirmed that the citation was for having no insurance. (Ex.1, 23:59:35.)[3]

By this point, the officers had verified Ms. Burgess's license information, and had determined that neither she nor Mr. Craig had outstanding warrants (R., p.100); the officers had also received information regarding Mr. Craig's criminal history (Ex.1, 23:57:30). However, the officers remained in their patrol car for several more minutes, waiting for dispatch to verify Mr. Craig's probationary status. (R., p.101.)

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[2] The officers were also inquiring about a drug dog in Post Falls, and the district court said it was unclear whether Deputy Jacobson was waiting for confirmation about a drug dog (which would plainly violate the Fourth Amendment under the Idaho Supreme Court's decision in *State v. Linze*, 161 Idaho 605, 608 (2016)), or for confirmation about Mr. Craig's probation status. (R., p.96, n.2.)

[3] While waiting in the patrol car, the police officers remarked upon Mr. Craig's backpack and thought he "was trying to hide something." (Ex.1, 23:57:05; 00:00:24.) They discussed whether a probation officer might issue an agent's warrant, or might request their assistance with a search; they also discussed the probation consequences to the probationer who refuses to cooperate with a police officer's request for consent to search. (Ex. 1, 00:01:25.)

Five minutes after Deputy Jacobson made his request, dispatch answered, "negative on probation; PSI drug court," (R., p.96; Ex.1, 00:02:20 – 00:02:22); the deputy's audible disappointment in response to that news was "bummer." (Ex.1, 00:02:23.)

After receiving dispatch's response, Deputy Fanciullo walked back to Ms. Burgess's vehicle, had her step out and began writing the citation; meanwhile, Deputy Jacobson questioned Mr. Craig. (Ex.1, 00:02:50.) Five minutes later, after Mr. Craig disclosed that he had drugs and paraphernalia with him, Deputy Jacobson opened the passenger door and handcuffed Mr. Craig, and Deputy Fanciullo simultaneously presented the citation to Ms. Burgess. (R., p.96; (Tr., p.13, Ls.8-19.) Officer Fanciullo instructed Ms. Burgess to "hang back" and did not permit her to leave. (R., p.97.) After repeated police questioning, Ms. Burgess acquiesced to a request to search her pickup. (R. p.97.) As a result of the search, the police discovered contraband inside a Coach clutch within the pickup. (R., p.97.) Based on that evidence, the State charged Ms. Burgess with possession of methamphetamine. (R., pp.60-61.)

Ms. Burgess moved to suppress all evidence, arguing that her detention was unreasonably prolonged by the police, in violation of her rights under the United States and Idaho constitutions. (R., pp.62, 75.) She claimed that before she consented to the search, the police unlawfully prolonged her detention, twice: first, when the police abandoned the proper purpose of traffic stop and shifted the focus of the investigation to her passenger (R., p.75); and again when, after completing the citation, Deputy Fanciullo stopped her from leaving the scene while the other officer searched Mr. Craig and his backpack. (R., pp.62, 75.)

The district court granted Ms. Burgess's motion to suppress. (R., p.101.) In its written decision and order, the district court concluded that the traffic stop was unlawfully prolonged when the officers abandoned the purpose of the stop to wait for dispatch to verify Mr. Craig's

probation status; other than issuing Ms. Burgess her citation, all traffic-related tasks had been completed by that time. (R., p.101.) Narrowing the issue presented by this case, the district court explained,

> "[T]he dispositive fact is that Deputy Jacobson testified (and the video corresponds with the testimony) that there was some time ("a minute or two") between the time he finished checking Burgess's information and the commencement of issuing her a citation. … Deputy Jacobson had already checked the license status of Burgess, verified Burgess and Craig did not have outstanding warrants, and checked the insurance and registration of the vehicle. Therefore, that "minute or two" must be constitutionally justified. *See Linze*, 161 Idaho at, 389 P.3d at 154.
>
> To justify that "minute or two" prolonging, the State must show that verifying Craig's probation status is a permissible "task tied to the traffic infraction." *Linze*, 161 Idaho at _, 389 P.3d at 152, or it must show that at that time, Deputy Jacobson had articulable reasonable suspicion of criminal activity. The State has not met its burden in either respect.

(R., p.101.)

The district court held that Mr. Craig's probation status did not supply the officers with reasonable suspicion to justify the minute or two prolonging of the detention; the district court further held that the police's reasonable suspicion of drugs arose only *after* Mr. Craig had admitted to Deputy Jacobson that he possessed paraphernalia and methamphetamine, which occurred *after* the stop was delayed for the "minute or two" to check on his probationary status. (R., p.101; Tr., p.19, L.25.)

The district court identified the dispositive issue as "whether delaying moving forward with a traffic stop is lawful in order to verify a passenger's probation status." (R., p.101.) The district court concluded that the State had not met its burden to show that prolonging the traffic

stop for that purpose was lawful and granted Ms. Burgess's motion to suppress.[4] (R., p.101.) The State appealed. (R., p.107.)

[4] Because the district court granted suppression on the basis of the unlawful-prolonging of the detention that occurred *before* the police issued Ms. Burgess her traffic citation, the district court did not address whether suppression was also required on the basis of Deputy Fanciullo's explicit instructions to "hang back" and wait after the citation was issued.

ISSUE

Did the district court correctly grant Ms. Burgess's motion to suppress?

ARGUMENT

The District Court Correctly Granted Ms. Burgess's Motion To Suppress

A. Introduction

This Court should affirm the district court's order granting Ms. Burgess's motion to suppress because the district court correctly held that the police unlawfully prolonged the duration of the traffic stop, in violation of Ms. Burgess's Fourth Amendment rights. The district court found that the stop was extended "by a minute or two" while the officers waited for dispatch to verify the probation status of Ms. Burgess's passenger, Mr. Craig. As correctly concluded by the district court, the State had failed to show that conducting the probationary status check was a permissible task tied to the traffic infraction. As the vehicle's passenger, Mr. Craig's probationary status was not related to the roadway safety purposes of the stop. And, given that the officers had already determined there were no outstanding warrants, and already obtained information about Mr. Craig's prior conviction, the State failed to show that verifying Mr. Craig's probationary status was justified as an officer safety measure.

By prolonging the stop, if only by a minute or two, the police violated the Fourth Amendment. The district court's decision to suppress the evidence should be affirmed.

B. Standard Of Review

"In reviewing a district court order granting or denying a motion to suppress evidence, the standard of review is bifurcated." *State v. Purdum*, 147 Idaho 206, 207 (2009) (citation omitted). "This Court will accept the trial court's findings of fact unless they are clearly erroneous. However, this Court may freely review the trial court's application of constitutional principles in light of the facts found." *Id.* (citations omitted). "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. Aguirre*, 141 Idaho 560, 562 (Ct. App. 2005) (citations omitted).

C. The District Court Correctly Concluded That The Police Unlawfully Prolonged The Traffic Stop, And Correctly Granted Ms. Burgess'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). 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).

"The seizure of a vehicle's occupants in order to investigate a traffic violation is a 'reasonable seizure' under the Fourth Amendment so long as the seizing officer had reasonable suspicion that a violation had occurred." *Linze*, 161 Idaho at 608 (citing *Rodriguez*, 135 S.Ct. at 1614). However, "[b]ecause addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose." *Rodriguez*, 135 S.Ct. at 1614 (internal quotation marks and brackets omitted). "Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Id.* A "police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." *Id.*, at 1612. Additional tasks that extend the duration of the seizure, even if deemed "*de minimus*," violate the Fourth Amendment. *Id.*

The burden is on the State to demonstrate that the seizure it seeks to justify was sufficiently limited both in scope, *and duration*. *State v. Parkinson*, 135 Idaho 357, 361-62 (Ct. App. 2000) (citing *Florida v. Royer*, 460 U.S. 491, 499-500 (1983).

1. Verifying Mr. Craig's Probationary Status Was Not A Task Tied To The Mission Of The Traffic Stop, And Therefore Did Not Justify Prolonging The Duration Of The Traffic Stop

The district court expressly found that the traffic stop was prolonged by a "minute or two" while the police waited for dispatch to verify Mr. Craig's probation status. (R., pp.100-101)[5] The district court then concluded that the State failed to justify that prolonging as a permissible "task tied to the traffic infraction." (R., p.101.) The district court was correct.

In *Rodriguez*, the United States Supreme Court observed that a police officer's traffic mission includes "ordinary inquiries incident to the traffic stop," and that "typically such inquiries involve checking the *driver's* license, determining whether there are outstanding warrants *against the driver*, and inspecting the automobile's registration and proof of insurance." 135 S.Ct. at 1516. "These checks serve the same objectives as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly." *Id*. The Court explained that "a warrant check makes it possible to determine whether the *apparent traffic violator* is wanted for one or more previous traffic offenses." *Id*. (quoting LaFave, Search and Seizure § 9.3(c), p.516 (5th ed. 2012)).

Because Mr. Craig was a passenger, and not the driver or owner of the vehicle, or the apparent traffic violator, conducting tasks related to him did not serve the traffic safety or vehicle responsibility objectives of the traffic-stop "mission."

[5] The State has not challenged that finding on appeal. (*See generally* Appellant's Brief, pp.1-8.)

2. The State Failed To Show That Verifying Mr. Craig's Probationary Status Was Justified As An Officer Safety Precaution

The State has also failed to demonstrate that verifying Mr. Craig's probationary status was justified as an officer safety measure. Although an officer is justified in taking certain, "negligibly burdensome precautions in order to complete his [traffic stop] mission safely," *Rodriguez*, 135 S.Ct. at 151, the State failed to show that verifying Mr. Craig's probationary status was justified as officer safety measure in this case. Courts have held that criminal records checks and outstanding warrant checks may be justified by officer safety concerns. *See Rodriguez*, 135 S.Ct. at 151 (citing *United States v. Holt*, 264 F.3d 1215, 1221-1222 (10th Cir. 2001) (en banc) (recognizing officer safety justification for criminal record and outstanding warrant checks), abrogated on other grounds in *United States v. Stewart*, 473 F.3d 1265, 1269 (10th Cir. 2007).) In the *Holt* case cited by the Supreme Court, the Tenth Circuit explained that measures to protect officer safety during the stop, when not too intrusive, outweigh a motorist's privacy interests, and that "the almost simultaneous computer check of a person's criminal record . . . is reasonable and hardly intrusive." 264 F.3d at 1222. The *Holt* Court noted that the "results of a criminal history check could indicate whether further back-up or other safety precautions were necessary" and that "[b]y determining whether a detained motorist has a criminal record or outstanding warrants, an officer will be better apprized of whether the detained motorist might engage in violent activity during the stop." *Id.*

In Ms. Burgess's case, however, the officers had already conducted an in-car computer check, and had already determined there were no outstanding warrants; they had also received information on their computer about Mr. Craig's prior conviction.[6] (Tr., p.21, L. 22 – p.22, L.1;

[6] Deputy Fanciullo testified he had read about Mr. Craig's prior conviction on the in-car computer. (Tr., p.21, L. 22 – p.22, L.1; Tr., p.25, Ls.4-10.) On the audio tape, he is heard

Tr., p.25, Ls.4-10.) And a backup officer, Officer Thompson from Post Falls, was already at the scene. (Ex.1, 1:25.) Thus, the officer safety objectives of the records checks approved in *Rodriguez* were complete. (R., p.101.) The State failed to establish, in the district court, how the added records check to verify Mr. Craig's probationary status would further officer safety.

To the contrary, it appears clearly from the record that the officers had hoped to verify that Mr. Craig was on supervised probation, which would in turn confirm his obligation to cooperate with their requests for consent to search. (*See* Ex.1, 10:50.) Additionally, in light of Deputy Fanciullo's remark, "he is lying about being on state probation, I am suspecting," and his expression of disappointment – "bummer" – when dispatch told him "negative on probation," (*see* 23:56:06 – 00:02:23), it is plain that the objective of the probationary status check was *not* officer safety.

Additionally, the probationary status check in this case took over five minutes (R., p.95); it certainly was *not* "the almost simultaneous computer check" described in *Holt* and approved as "reasonable and hardly intrusive." 264 F.3d at 1222. The State offered no evidence or argument in the district court that would permit that court, or this Court on appeal, to evaluate what a "probationary status check" might typically entail. (*See generally* R., pp.78-85; Tr., pp.6-68.) Given the lack of such pertinent information in the record, it is impossible to engage in a balancing of any plausible gain in officer safety against the intrusiveness of the delay. In the absence of such evidence or argument, the district court was correct when it concluded the State had failed to justify the probationary status check as reasonably tied to the traffic violation. (R., p.101.)

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reading that Mr. Craig has a conviction for first degree stalking; it appears to be on that conviction that the officer suspected Mr. Craig was on probation. (Ex. 1, 23:57:50.)

3. The Decisions Cited In Appellant's Brief Do Not Support the State's Position That A Probation Status Records Check May Lawfully Prolong A Traffic Stop

The State cites four published decisions as supporting its position on appeal. (Appellant's Brief, p.5.) However, none of those decisions involved the prolonging of a traffic stop to conduct a probation status check through dispatch, and none hold that a probation records checks is a routine task related to a traffic stop.

In *United States v. Hendrix*, 143 F.Supp.3d 724 (M.D. Tenn. 2015), the officer conducting the traffic stop asked the driver if he was on probation; the driver answered in the affirmative and consented to a search of his person. The court explicitly found that the officer's actions before receiving a valid consent to search did *not* "add time" to the stop. *Id.*, at 731.

The California federal district court decision in *United States v. [Jose Luis] Rodriguez*, 100 F.Supp.3d 905, 924 (C.D. Cal. 2015), also involved officers questioning a defendant about probation during a traffic stop. That case, however, was decided six days *before*, and therefore without the instruction or benefit of, the United States Supreme Court's decision in *[Dennys] Rodriguez v. United States*.[7] In *United States v. Jose Luis Rodriguez*, the court held that questioning the defendant about his parole status did not make the continued stop improper, since "police questioning does not constitute a seizure unless it prolongs the detention." *Id.*, at 923. Significantly, there was no finding that the duration of stop was prolonged by the officer's questioning. *Id*. The court did note that the questioning related to officer safety because it sought information that would be revealed by a routine records check. *Id.*, at 924. However, the court's officer-safety justification there would not apply in Ms. Burgess's case, since in her case,

[7] The California trial court issued its decision on April 15, and the United States Supreme Court issued its decision on April 21st.

the officers had already obtained information from the routine traffic check conducted on the in-car computer. (*See* R., p.100.)

Likewise, the courts in *United States v. Singleton*, 608 F.Supp.2d 397 (W.D.N.Y. 2009), and *Miller v. State*, 922 A.2d 1158 (Del. 2007), both held that the officers were not precluded from asking the defendant whether he was on probation or parole. In neither case was there a finding that the questioning measurably prolonged the detention. *See Singleton*, at 404; *Miller*, at 1163.

Unlike the situations presented in the cases cited in Appellant's Brief, the officers in Ms. Burgess's case conducted a probationary status check through dispatch, and unlike those cases, the additional task was expressly found to have measurably prolonged the detention.

Because the task of verifying Mr. Craig's probationary status through dispatch was not a task tied to the mission of the traffic stop, prolonging Ms. Burgess's detention in order to conduct that task violated her Fourth Amendment rights. The district court's order granting suppression should be affirmed.

CONCLUSION

Ms. Burgess respectfully requests that this Court affirm the district court's order granting her motion to suppress.

DATED this 13th day of February, 2018.

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of February, 2018, I served a true and correct copy of the foregoing RESPONDENT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

CORA LEE BURGESS
2280 OLD PULLMAN RD
UNIT #18
MOSCOW ID 83843

RICH CHRISTENSEN
DISTRICT COURT JUDGE
E-MAILED BRIEF

BENJAMIN M ONOSKO
KOOTENAI COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

KAC/eas