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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 45317
 Plaintiff-Appellant,)
) Kootenai County Case No.
 v.) CR-2016-18157
)
 CORA LEE BURGESS,)
)
 Defendant-Respondent.)
 _____)

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**

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's order suppressing evidence. The state challenges the district court's determination that ascertaining probation status is not a valid component of a traffic stop.

Statement Of The Facts And Course Of The Proceedings

The state charged Cora Lee Burgess with possession of methamphetamine. (R., pp. 60-61.) She filed a motion to suppress, asserting that "the warrantless extension of the stop by the officers was unlawful and without legal justification." (R., pp. 62-63.) After a hearing (R., p. 94), the district court found the following facts:

Officers stopped Burgess for a traffic infraction. (R., pp. 94-95.) Joshua Craig was the passenger in the pickup. (R., p. 95.) Officers gathered the relevant information from Burgess and Craig. (R., p. 95.) Both were nervous, and "Craig appeared as if he was under the influence of something." (R., p. 95.) During the next seven and one-half minutes officers checked Burgess's and Craig's information using the computer in the police car. (R., p. 95.) About five and one-half minutes into that process Burgess's check was completed and Craig's check was completed except for determining his probation status. (R., pp. 95-96.) Thus, the final two minutes of checking the vehicle occupants' information were dedicated to an inquiry into Craig's probation status. (R., pp. 96, 100.¹)

¹ The district court found that Craig was not on probation (R., pp. 95-96), but that finding is clearly erroneous. The testimony was that Craig was on unsupervised probation (Tr., p. 21, L. 22 – p. 22, L. 1) and the exhibit corroborates that testimony when dispatch informs the officers that Craig was a drug court participant (State's Exhibit 1, at 11:25-11:29). If this fact becomes significant for the analysis, the state requests this Court to apply the clear error standard and reverse the district court's factual finding.

After completing the check of the occupants' information, including the inquiry into Craig's probation status, one officer issued Burgess a citation while another officer interacted with Craig. (R., pp. 96-97.) When Craig admitted having syringes, officers detained both Burgess and Craig. (R., pp. 96-97; see also Tr., p. 13, Ls. 7-9; p. 30, Ls. 1-6.) Burgess later gave consent to search. (R., p. 97.)

The district court characterized the issue presented 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 declared that the "dispositive fact" was that "there was some time ('a minute or two') between the time [the officer] finished checking Burgess's information and the commencement of issuing her a citation." (R., p. 100.) The district court concluded that the officers' action of confirming Craig's probation status was not "a permissible task tied to the traffic infraction." (R., p. 101 (internal quotation omitted).) Thus, the act of "waiting a minute or two for dispatch to verify a passenger's probation status before proceeding with issuing the driver a traffic citation" unlawfully prolonged the stop. (R., pp. 94, 98-102.) The district court therefore granted the motion to suppress. (R., p. 102.)

The state filed a notice of appeal timely from the district court's order. (R., pp. 107-10.)

ISSUE

Did the district court err when it concluded that inquiries into probation status are beyond the scope of a routine records check allowed during a traffic stop?

ARGUMENT

Inquiries Into Probation Status Are Not Beyond The Scope Of A Routine Records Check Conducted Pursuant To A Traffic Stop

A. Introduction

The district court concluded that a check of Craig’s probation status through a records check by dispatch was a separate investigation beyond the scope of a traffic stop. Review of the applicable law shows that although inquiries into potential unrelated criminal activities are beyond the scope of a traffic stop, inquiries into non-criminal matters such as outstanding warrants and probation and parole status are within the scope of a routine records check conducted pursuant to a traffic stop. The district court erred by holding otherwise.

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 [the court] freely reviews the application of constitutional principles to the facts as found.” State v. Faith, 141 Idaho 728, 730, 117 P.3d 142, 144 (Ct. App. 2005).

C. The District Court Erred When It Concluded That An Inquiry Into Craig’s Probation Status Was Beyond The Scope Of A Routine Records Check

“Like a *Terry* stop, the 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, ___ U.S. ___, 135 S. Ct. 1609, 1614 (2015) (internal citations omitted). In the course of

investigating the traffic violation and attending to related safety concerns an officer conducting a traffic stop may make “ordinary inquiries incident to such a stop.” Illinois v. Caballes, 543 U.S. 405, 408 (2005). “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.” Rodriguez, ___ U.S. at ___, 135 S. Ct. at 1615; see also State v. Neal, 159 Idaho 919, 367 P.3d 1231, 1235 (Ct. App. 2016) (“Brief inquiries not otherwise related to the initial purpose of the stop do not necessarily violate a detainee’s Fourth Amendment rights.”). In addition, “inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop.” Arizona v. Johnson, 555 U.S. 323, 333 (2009). Application of these legal standards shows that the district court erred when it concluded that the Fourth Amendment prohibited the officers’ inquiry into Craig’s probation status.

Neither the Supreme Court of the United States nor the Idaho appellate courts have weighed in on the permissible scope of the “ordinary inquiries incident to [a traffic] stop,” Caballes, 543 U.S. at 408, other than that they “typically” include the existence and validity of the driver’s license, registration, and insurance, and also include whether there are outstanding warrants, Rodriguez, ___ U.S. at ___, 135 S. Ct. at 1615. Courts that have specifically considered whether probation status is within the scope of permissible inquiries incident to a traffic stop have held that it is. United States v. Hendrix, 143 F.Supp.3d 724 (M.D. Tenn. 2015); United States v. Rodriguez, 100 F.Supp.3d 905, 924 (C.D. Cal. 2015) (“that such questioning [regarding probation or parole status] related to officer safety and

sought information that would be revealed by a routine records check militate against a finding of unreasonableness”); United States v. Singleton, 608 F.Supp.2d 397, 404 (W.D.N.Y. 2009) (officer justified in asking stopped defendant “whether he was then on probation or parole”); Miller v. State, 922 A.2d 1158, 1163 (Del. 2007) (“it was permissible for Officer Kelly to ask Miller if he was on probation, while Miller was lawfully detained initially to enforce the loitering statute”). Because, like the inquiry into the existence of outstanding warrants, inquiry into the probation or parole status of a stopped person is part of the ordinary inquiries incident to a traffic stop, the district court erred.

In making its ruling, the district court relied on two cases out of the Ninth Circuit Court of Appeals. (R., p. 101.) Neither of these cases support the district court’s holding.

In United States v. Evans, 786 F.3d 779, 788 (9th Cir. 2015), a Nevada officer conducting a traffic stop, after running routine checks which returned negative, “requested an ex-felon registration check.” Id. at 782-83. Under Nevada law a person convicted of certain felonies has to register with the county sheriff, and failure to do so is a misdemeanor. Id. at 783 n.5. The court held that the “additional” check on whether Evans was an unregistered felon, conducted after completion of the ordinary inquiries attendant to a traffic stop, was “wholly unrelated” to the purposes of the stop and was instead “aimed at detecting evidence of ordinary criminal wrongdoing.” Id. at 786 (internal brackets and quotes omitted).

In United States v. Gorman, 859 F.3d 706 (9th Cir. 2017), Gorman contested the forfeiture of alleged drug proceeds. The facts included that he was stopped for a traffic violation by a police officer in Nevada who, suspecting Gorman was transporting drug money, “unsuccessfully attempted to summon a drug-sniffing dog and then prolonged

Gorman’s roadside detention, which lasted nearly half an hour, as he conducted a non-routine records check.” Id. at 709. The “non-routine records check” used to extend the encounter was a contact with the “El Paso Intelligence Center” (EPIC) to

compare Gorman’s home address with its database of information related to drug and weapons smuggling, money laundering, and human trafficking. EPIC returned a notification that there was a Drug Enforcement Agency “hit” on Gorman involving the transfer of \$11,000 in 2006. EPIC also indicated that Gorman had entered or exited the United States four times, on one occasion flying from Madrid, Spain to John F. Kennedy Airport in New York. [The officer] told the EPIC operator that he did not “have a dog on [him]” and that he was “going to try to gain consent” and would “call and let [EPIC] know” whether he succeeded in gaining Gorman’s consent to search the vehicle. [The officer] also asked EPIC to run a search on a different address associated with Gorman, which returned the same results.

Id. at 711 (text “[The officer]” added, other bracketed text original). The Ninth Circuit panel, citing Evans, 786 F.3d at 788, concluded the EPIC inquiry was also “aimed at detecting evidence of ordinary criminal wrongdoing” and was therefore not an inquiry incident to the traffic stop. Gorman, 859 F.3d at 715.

Neither the holdings nor the analyses in Evans and Gorman support the district court’s reasoning in this case. In Evans the inquiry was into whether Evans committed the unrelated misdemeanor of failing to register as a felon and in Gorman the inquiry was into whether Gorman was transporting drug proceeds. Inquiry into Craig’s probation status, like inquiry into whether there were any outstanding arrest warrants, was not an investigation of some separate crime. Just like having an outstanding arrest warrant is not a crime, being on probation is not a crime. Rather, the inquiry into probation or parole status, like the inquiry into outstanding warrants, is related to the mission of traffic law enforcement and officer safety and is not “a measure aimed at detecting evidence of ordinary criminal wrongdoing.” Rodriguez, ___ U.S. at ___ 135 S. Ct. at 1615 (internal

quote and brackets omitted). Unlike stopping the traffic inquiries to use a drug dog to detect evidence of ordinary criminal wrongdoing, which “abandon[ed] the purpose of the stop,” the probation inquiry in this case did not “deviate from the original purpose of the stop.” State v. Linze, 161 Idaho 605, 609, 389 P.3d 150, 154 (2016).

The officers in this case did not deviate from the purposes of the stop when they made the inquiry about Craig’s probation status. Unlike the cases relied on by the district court, an inquiry into a driver’s or passenger’s probation status does not initiate a criminal investigation unrelated to the purpose of the stop. Rather, like the warrant check, it addresses the traffic violation that warranted the stop and the related safety concerns. The district court therefore erred in concluding that the probation inquiry violated Burgess’s constitutional rights.

CONCLUSION

The state respectfully requests this Court to reverse the district court’s order suppressing evidence obtained during the traffic stop.

DATED this 20th day of November, 2017.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of November, 2017, served a true and correct copy of the foregoing BRIEF OF APPELLANT by emailing an electronic copy to:

ERIC D. FREDERICKSEN
STATE APPELLATE PUBLIC DEFENDER

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

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd