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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45593**
Plaintiff-Respondent,	)	
	)	**Kootenai County Case No.**
v.	)	**CR-2017-5239**
	)	
MIRANDA RIANNA REEDER,	)	
	)	
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 JOHN P. LUSTER
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Miranda Rianna Reeder appeals from her conviction for possession of heroin and possession of marijuana, entered upon her conditional guilty plea. On appeal, she challenges the district court's order denying her motion to suppress evidence.

Statement Of The Facts And Course Of The Proceedings

In relation to Reeder's suppression motion, the district court made the following factual findings below:

> On April 3rd, 2017, Officer Calderwood finds a vehicle parked alongside the road. This is at approximately 1:30 in the morning. The vehicle was—the engine was running, the lights are off, and the officer walks up to the car and notices two individuals in the vehicle slumped over to the side, the driver towards the middle and the passenger, presumably [Reeder], towards the passenger door.
>
> The officer waits for backup, which certainly was reasonable under the circumstances at the hour of night, and that comes by the form of Officer Finnan. Testimony is that Officer Finnan then taps on the glass and Officer Calderwood announces, quote, "Post Falls police. Can you roll your window down, please?" end quote.
>
> The driver responds to the extent it's—that I could hear it—"It's broken, sir," to which Officer Calderwood responds, "Can you open the door?" The inflection in his voice suggests this was more of a question and less than a command.
>
> Upon the opening of the door, Officer Calderwood testifies, almost immediately, within seconds, he smells marijuana.

(Tr., p.29, L.23 – p.30, L.20.) The district court credited Officer Calderwood's testimony that he smelt marijuana upon the driver's opening the door. (See Tr., p.32, Ls.22-25.)

The state charged Reeder with possession of heroin, possession of marijuana, and possession of paraphernalia. (R., pp.50-51.) Reeder moved to suppress the evidence against her, claiming that she was subject to an unlawful seizure when the officer asked the driver if he could open the door. (R., pp.53-54, 70-81.) The state opposed the suppression motion on the ground that the initial contact was consensual. (R., pp.93-97.) After a hearing on the motion (Tr., pp.5-33), the district court denied the suppression motion (R., p.102).

Pursuant to a conditional plea agreement reserving her right to appeal the decision on her motion to suppress, Reeder pleaded guilty to the possession of heroin and possession of marijuana charges, and the state dismissed the possession of paraphernalia charge. (R., pp.106, 108-10; Tr., p.35, L.3-22; p.37, L.18 – p.39, L.21.) The district court entered judgment against Reeder and sentenced her to a unified term of five years with two years fixed, suspended that sentence, and placed her on probation for a period of two years. (R., pp.121-23.) Reeder filed a notice of appeal timely from the judgment. (R., pp.141-43.)

ISSUE

Reeder states the issue on appeal as:

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

(Appellant's brief, p.4.)

The state rephrases the issue as:

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

ARGUMENT

Reeder Has Failed To Show Error In The District Court's Denial Of Her Suppression Motion

A. Introduction

Reeder challenges the district court's order denying her motion to suppress evidence. (Appellant's brief, pp.5-17.) Application of the correct legal standards to the facts of this case shows no error in the district court's conclusion that Reeder's constitutional rights under the Fourth Amendment were not infringed. The district court should be affirmed.

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. Page, 140 Idaho 841, 843, 103 P.3d 454, 456 (2004).

C. Prior To The Officers Smelling The Marijuana, Neither Reeder Nor The Driver Was Ever Seized Such That The Fourth Amendment Was Implicated In This Case

At 1:30 in the morning, officers approached a running vehicle, legally parked off the side of the road, with two occupants who appeared to be either asleep or otherwise unconscious. (Tr., p.6, L.20 – p.8, L.12; p.29, L.23 – p.30, L.5.) As one officer tapped on the passenger-side window, waking the occupants, the other officer identified themselves as officers from the Post Falls Police and asked, "Can you roll your window down for me please?" (State's Ex. 1 at 1:05 – 1:20; see also Tr., p.9, Ls.1-21; p.30, Ls.9-12.) The driver responded, "It's broken, sir." (Id.; see also Tr., p.9, Ls.13-15; p.30, Ls.13-14.) The officer then asked, "Can you open the door?" (Id.; see also Tr., p.9, Ls.13-24; p.30, Ls.14-15.) Whereupon, the driver opened the door.

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 issue in this case, as the district court crystalized below, was whether a seizure occurred prior to, or at, the time when the driver opened the door. (Tr., p.31, Ls.1-3.)

"An encounter between a law enforcement officer and a citizen does not trigger Fourth Amendment scrutiny unless it is nonconsensual." State v. Willoughby, 147 Idaho 482, 486, 211 P.3d 91, 95 (2009) (citations omitted). To constitute a seizure, the officer must, "by means of physical force or show of authority," in some way restrain an individual's liberty. Id. This "requires words or actions, or both, by a law enforcement officer that would convey to a reasonable person that the officer was ordering him or her to restrict his or her movement." Id. (citations omitted). "When a defendant seeks to suppress evidence that is alleged to have been obtained as a result of an illegal seizure, the defendant bears the burden of proving that a seizure occurred." Id. (citations omitted). The relevant inquiry is whether, under the totality of the circumstances, "a reasonable person would feel free to disregard the law enforcement officer"; if so, "then the encounter is consensual." Id.

Idaho appellate courts have found that officers, approaching a parked vehicle, may seize the occupants by physically impeding that vehicle's ability to drive away, State v. Fry, 122 Idaho 100, 103, 831 P.2d 942 (Ct. App. 1991); by withholding the driver's license or other valuable paperwork, Page, 140 Idaho at 844, 103 P.3d at 457; by some other show of authority such as activating the patrol car's overhead lights and sirens, Willoughby, 147 Idaho at 487-88, 211 P.3d at 96-97; or by

> the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.

State v. Liechty, 152 Idaho 163, 168, 267 P.3d 1278, 1283 (Ct. App. 2011) (quoting United States v. Mendenhall, 446 U.S. 544, 554 (1980)).

However, and contrary to Reeder's argument below, not every encounter between a citizen and a uniformed officer constitutes a seizure. For instance, a seizure does not occur simply because a police officer approaches an individual on the street or other public place and asks a few questions. Florida v. Bostick, 510 U.S. 429 (1991); Florida v. Royer, 460 U.S. 491, 497 (1983). "[A] request for identification or mere questioning is not enough, by itself[,] to constitute a seizure." State v. Landreth, 139 Idaho 986, 990, 88 P.3d 1226, 1230 (2004) (citations omitted). "This is so because the person approached need not answer any question put to him and may decline to listen to the questions at all and go about his business." State v. Osborne, 121 Idaho 520, 523-524, 826 P.2d 481, 484-485 (Ct. App. 1991) (citing Florida v. Royer, 460 U.S. 491, 497-498 (1983)). On this basis, "[a] majority of jurisdictions have held that 'the mere approach and questioning of [persons in parked vehicles] does not constitute a seizure.'" State v. Zubizareta, 122 Idaho 823, 827, 839 P.2d 1237, 1241 (Ct. App. 1992) (citations omitted). "Thus, where an officer merely approaches a person who is … seated in a non-moving vehicle located in a public place, and poses a few questions, no seizure has occurred." Osborne, 121 Idaho at 523, 826 P.2d 481 at 484 (citation omitted).

The district court, after reviewing the evidence and relevant case law, determined that Reeder's and the driver's initial contact with police was consensual and not a seizure. (Tr., p.29, L.15 – p.33, L.1.) The district court's ruling is supported by all of the evidence in this case. Officer Calderwood did not impede the driver's ability to leave: First, he parked his patrol

vehicle 20 feet behind the car, leaving plenty of room for it to reverse, and there is no indication in the record (which shows that the car was pulled off to the side of a roadway) that anything impeded its ability to travel forward. (See Tr., p.7, Ls.8-10; p.13, Ls.6-10, 15-19.) Second (and necessarily), the officer did not withhold the driver's license or other paperwork prior to the driver opening the car door. Officer Calderwood also did not, by any show of authority, attempt to detain the driver: He never activated his overhead lights or his sirens (Tr., p.13, Ls.11-14); prior to smelling marijuana, he never issued any commands to the driver or Reeder (see Tr., p.30, Ls.9-17; State's Ex. 1 at 0:00 – 1:20), nor did he require them to exit the vehicle prior to smelling the marijuana. There were only two officers present at the scene, not several; the officers (necessarily) had no physical contact with the driver or Reeder prior to the driver opening the door; and there is no indication that either officer ever displayed a weapon. At no time prior to smelling the marijuana were the driver or Reeder seized. The district court therefore correctly denied Reeder's suppression motion, and should be affirmed.

On appeal, Reeder challenges the district court's finding that, when asking whether the driver could open the vehicle door, the officer's tone "was more of a question and less than a command." (Tr., p.30, Ls.14-17; p.32, Ls.19-23.) Reeder's counsel asserts, based on her personal review of the video, that the officer's tone of voice "expressed an order." (Appellant's brief, p.8.) This assertion is belied by the video recording of the incident: The officer clearly asks whether the driver can open the door; he does not order the driver to open the door. (State's Ex. 1 at 1:05 – 1:20.) Reeder has failed to show clear error in the district court's factual finding. The district court's order denying Reeder's suppression motion should be affirmed.

Reeder also argues that, even if Officer Calderwood's questions were not commands and the driver was, therefore, not seized, she was still detained because, she asserts, the backup

officer's mere presence, generally, on her side of the car prevented her leaving the scene. (Appellant's brief, pp.10-12.) This is pure conjecture. Reeder presented no evidence below that the backup officer in any way prevented her egress from the vehicle, and no findings of fact from the district court support Reeder's naked assertions. Reeder has again failed to show any error in the district court's denial of her suppression motion. The district court's order denying Reeder's motion should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Reeder's motion to suppress evidence.

DATED this 12th day of September, 2018.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th day of September, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Russell J. Spencer
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RJS/dd