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State v. Farrell Appellant's Brief Dckt. 46095

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

STATE OF IDAHO,	)	
	)	**NO. 46095**
Plaintiff-Respondent,	)	
	)	**NEZ PERCE COUNTY NO. CR-2017-2016**
v.	)	
	)	
JACOB FARRELL,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

HONORABLE JAY P. GASKILL
District Judge

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

STATEMENT OF THE CASE

Nature of the Case

Jacob Farrell appeals from the district court's denial of his motion to suppress evidence. In the district court, Mr. Farrell asserted that law enforcement lacked reasonable suspicion to conduct a traffic stop of the car in which he was a passenger. He also asserted that, even if there was reasonable suspicion for the stop, law enforcement illegally prolonged the stop to measure the window tinting on the car, and issue a citation for that tinting, instead of first checking whether the tinting in question fell under the exception in the statute. The district court denied the motion, and Mr. Farrell entered a conditional plea of guilty, which preserved his right to appeal the denial of his motion to suppress.

Statement of the Facts and Course of Proceedings

In March of 2017, Lewiston Police Officer Reese stopped a car in which Mr. Farrell was a passenger, and his friend was the driver.[1] (R., pp.150-51.) When Officer Reese approached the car, he first asked who the car belonged to, and the driver said it belonged to Mr. Farrell's mother. (Exhibit B at 1:50 – 2:00.) After inquiring as to whether the driver had her license, Officer Reese asked whether Mr. Farrell had ever had the window tint on the car checked; he then said he had his window tint meter with him and explained that a certain percentage of window tinting was allowed on the windows. (Exhibit B at 2:00 – 2:45; R., p.151.) The driver mentioned that she had never heard of a window tinting problem and asked Officer Reese whether the seller of the car typically would tell the purchaser about the tinting. (Exhibit B at 5:00 – 5:25.) At that point, Mr. Farrell explained the window tinting was "factory tint." (Exhibit

[1] The district court stated that it relied on the dash cam video of the traffic stop to determine the facts of the case. (R., p.150.) That video was attached to the State's Response to Defendant's Motion to Suppress as "Exhibit B." (R., p.122.)

B at 5:25 – 5:30.) Regarding that statement, the district court found that Mr. Farrell informed Officer Reese "that the vehicle was purchased with the tint that was in place." (R., p.151) In response to Mr. Farrell's statement, Officer Reese said, "Okay, well let me go back and get my window tint meter." (Exhibit B at 5:30 – 5:35.)

Officer Reese then looked at the rear window briefly, returned to his vehicle, and then, prior to checking the "driver's status and vehicle registration," asked another officer to come to the scene. (Exhibit B at 5:35 – 6:10; R., p.151.) When the other officer arrived, Officer Reese started using his tint meter to test the glass. (Exhibit at 6:40 – 7:30; R., p.151.) He first asked the driver if she could roll down her rear windows, so he could check the tint; she complied and Officer Reese checked the tinting on both of the rear passenger windows. (Exhibit B at 7:25 – 8:15; R., p.151.) He then told the driver and Mr. Farrell that he had to check the rear window also because that was "the one [he] was concerned about." (Exhibit B at 8:15 – 8:25.) Mr. Farrell then got out of the car to open the hatchback. (Exhibit B at 8:25 – 8:50.) As Officer Reese was using the tint meter on the rear window, Mr. Farrell said, "I've never heard of this before, stock tint being too dark." (Exhibit B at 8:50 – 8:55.)

After checking the rear window, Officer Reese said the rear window was "at 23%," light transmission, and rear windows had to be at least 30%. (Exhibit B at 9:00 – 9:20.) At that point, Mr. Farrell asked the officers why stock tint would be too dark. (Exhibit B at 9:24 – 9:28.) The second officer then asked, "Oh, that's stock?" (Exhibit B at 9:28 – 9:30.) Mr. Farrell replied, "Oh, a hundred percent, it's my mom's car . . . ." (Exhibit B at 9:28 - 9:35; R., p.151.) Officer Reese then checked the tint on the rear window again and said it was "at 25%." (Exhibit B at 9:35 – 9:45; R., p.151.) Mr. Farrell then asked if the result might be wrong because the window was dirty, and Officer Reese said he had cleaned it off. (Exhibit B at 9:45 – 9:55.)

At that point, Officer Reese told Mr. Farrell to take a seat back in the car and asked the second officer to write a citation for the window tint. (Exhibit B at 10:00 – 10:30; R., p.151.) While the second officer was doing so, Officer Reese deployed his drug dog. (R., p.151.) The dog alerted, and, in a subsequent search of the car, Officer Reese discovered "drug paraphernalia and what appeared to be a white crystalline substance." (R., p.151.) Mr. Farrell was arrested and subsequently charged with possession of methamphetamine. (R., p.94.)

Thereafter, Mr. Farrell filed a motion to suppress the evidence in which he argued Officer Reese lacked reasonable suspicion to stop the car because the statute contains an original equipment exception to the requirement that rear windows have at least 35% light transmission. (R., pp.107-13; *See* I.C. § 49-944(5).) In that motion, he argued, "Clearly visible, properly affixed by the manufacturer GM, are markings on the rear window installed by the manufacturer GM[2] showing the rear window is Tempered G, DOT – 476 As-3 M-AT 014, TRANS. 20%." (R., p.111.) And he stated that the "parts list and VIN confirm the window installed on all vehicles of this make and model by the factory. Therefore, the operation of this vehicle is not a violation of I.C. 49-944 and as such can not form the basis for a detention." (R., p.111.)

Additionally, he asserted that, even if there was reasonable suspicion for the traffic stop, Officer Reese "unreasonably extended the duration of the stop by performing a tint test and issuing a citation for a charge unsupported by the law." (R., pp.112-13.) He argued, "[T]he rear window prominently displayed markings verifying the window was in compliance with the statute." (R., p.112.) He also submitted an affidavit with an attached photo of the window marking on the car, which showed the original factory tint was 20%.[3] (R., pp.119-21.)

[2] The car was a Chevrolet HHR. (R., p.151.)
[3] Because the photos in the Clerk's Record (R., pp.121, 140-43) are not high quality, undersigned counsel contacted the district court to ask whether the photos submitted originally were better

Additionally, he argued, "The officer walked by the rear window, ignored the factory marking and performed a tint test. The performance of the test was unreasonable since the markings verified the window was legal. The officer delayed the stop further by asking a second officer to write an improper citation while he performed a canine search." (R., pp.112-13.)

In response, the State argued Officer Reese had reasonable suspicion to make the stop,[4] but it did not respond to Mr. Farrell's argument that the stop was illegally prolonged or challenge Mr. Farrell's assertions about the window. (R., pp.122-30.) Subsequently, Scott Farrell, Mr. Farrell's father, filed an affidavit stating he had purchased the car, and "the window tint on that vehicle is factory . . . ." (R., pp.138-39.) He attached additional photos of the car, the VIN number, and a document showing the original equipment on the car. (R., pp.140-43.)

The district court denied the motion to suppress. (R., pp.150-55.) It held, "Officer Reese had reasonable and articulable suspicion to stop the vehicle based upon his observation that the back window tint appeared dark, in violation of I.C. § 49-944."[5] (R., p.154.) However, it did not

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quality. The clerk stated that the photos in the Clerk's Record were the same quality as the originals filed with the district court.

[4] The State also asserted Officer Reese possessed independent reasonable suspicion to make the stop based on information he received from another officer that Mr. Farrell and the driver had heroin the car. (R., pp.127-29.) However, the district court held, "these facts were not supported by the video that was entered into evidence by stipulation. No preliminary hearing was held in this case and the State did not present any officer testimony to support the facts in the brief." (R., p.152, n.1.) As such, the court stated it would "only consider the issue of whether Officer Reese had a reasonable and articulable basis to stop the car based upon his observations of the dark window tint." (R., p.152, n.1.)

[5] The relevant portion of the statute—I.C. § 49-944(1)(b)—reads as follows:

> It is unlawful for any person to place, install, affix or apply any window tinting film or sunscreening device to the windows of any motor vehicle, except as follows:
>
> Nonreflective window tinting film or sunscreening devices that have a light transmission of not less than thirty-five percent (35%) with a tolerance limit of plus or minus three percent (3%) and a luminous reflectance of no more than thirty-five percent (35%) with a tolerance limit of plus or minus three percent

consider Mr. Farrell's argument that the stop was unlawfully prolonged because Officer Reese neglected to check the marking on the window, which would have showed there was no violation of the statute. Instead, it stated, "The evidence before this Court regarding the factory installation of the tint establishes that there was not a basis for the driver to be found guilty of the equipment violation infraction. However, that evidence does not negate the officer's reasonable, articulable suspicion that the tint was darker than permitted by I.C. § 49-944, and thus, the basis for the traffic stop." (R., p.154.) And it held, "The drug dog deployment occurred before the citation was issued in this matter—the deployment of the dog in no way expanded the duration of the stop." (R., p.154.)

Subsequently, pursuant to a conditional Idaho Criminal Rule 11 plea agreement, Mr. Farrell pleaded guilty to one count of trafficking in heroin. (R., pp.161-69.) The district court imposed a sentence of five years, with three years fixed, and a $10,000 fine, but held the sentence in abeyance pending resolution of this appeal. (R., p.175) Mr. Farrell then filed a notice of appeal timely from the district court's judgment of conviction. (R., pp.178-79.)

(3%) may be applied to the front side vents, front side windows to the immediate right and left of the driver, and the rear window.

ISSUE

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

ARGUMENT

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

A. Introduction

The district court erred when it denied Mr. Farrell's motion to suppress because Officer Reese unlawfully prolonged his detention beyond the purpose of the traffic stop after Mr. Farrell explicitly stated, several times, that the rear window tinting of the car was original equipment, which came with the car when it was purchased. This could have been quickly and easily confirmed by looking at the marking on the window. However, the district court did not consider this argument. Instead, it focused exclusively on whether the rear window tinting provided reasonable suspicion for Officer Reese to make the traffic stop. It did not analyze whether Officer Reese, once he made the stop, used the least intrusive investigative methods to verify or dispel his suspicion that the car was being driven contrary to traffic laws. The rear window tinting was legal because it was original equipment. The marking in the window proved that. Therefore, there was no need for Officer Reese to use more intrusive methods or to issue a citation, and doing so unlawfully prolonged the traffic stop. As such, the district court erred by denying the motion to suppress.

B. Standard Of Review

This Court uses a bifurcated standard to review a district court's order on a motion to suppress. *State v. Wulff*, 157 Idaho 416, 418 (2014). The Court will accept "the trial court's findings of fact unless they are clearly erroneous, but may freely review the trial court's application of constitutional principles in light of those facts." *Id.* Determinations of reasonable

suspicion are reviewed de novo. *State v. Morgan*, 154 Idaho 109, 111 (2013). Constitutional questions are also reviewed de novo. *State v. Dunlap*, 155 Idaho 345, 377 (2013).

C. The District Court Erred When It Denied Mr. Farrell's Motion To Suppress Because Officer Reese Unlawfully Prolonged The Traffic Stop

Searches or detentions conducted without a warrant are presumptively unreasonable. *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971); *State v. Butcher*, 137 Idaho 125, 129 (Ct. App. 2002). The Fourth Amendment to the United States Constitution, and Article 1 Section 17 of the Idaho Constitution protect "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; Idaho Const. art. 1, § 17. The purpose of this constitutional right is to "impose a standard of reasonableness upon the exercise of discretion by governmental agents and thereby safeguard the individual's privacy and security against arbitrary invasions." *State v. Maddox*, 137 Idaho 821, 824 (Ct. App. 2002) (citing *Delaware v. Prouse*, 440 U.S. 648, 653-54 (1979)). An Idaho traffic stop "constitutes a seizure of the motorist and is therefore subject to Fourth Amendment strictures, but because it is limited in scope and duration, it is analogous to an investigative detention . . . ." *State v. Stewart*, 145 Idaho 641, 644 (Ct. App. 2008) (citing *Prouse*, 440 U.S. at 653).

The United States Supreme Court has held that "an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the *least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time*." *Florida v. Royer*, 460 U.S. 491, 500 (1983) (emphasis added). To implement this standard, the Court has explained, "In assessing whether a detention is too long in duration to be justified as an investigative stop, we

consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant." *United States v. Sharpe*, 470 U.S. 675, 686 (1985). The *Sharpe* Court further clarified the relevant inquiry as follows: "The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it." *Id.* at 687. The law is explicit: "If an officer can complete traffic-based inquiries expeditiously, then that is the amount of 'time reasonably required to complete [the stop's] mission.'" *Rodriguez v. United States*, 135 S. Ct. 1609, 1616 (2015) (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)).

In this case, Officer Reese did not complete the stop expeditiously. He did not employ the least intrusive investigative means that were reasonably available to him to verify or dispel his suspicion that the window tinting on the car was in violation of I.C. § 49-944. He also acted unreasonably when he ignored Mr. Farrell's explanation that the tinting was original equipment and failed to simply look at the look at the marking in the window, which showed the tinting was legal. Using his tint meter and issuing a citation took much longer than necessary and unlawfully prolonged the stop.

The statute at issue contains an exception that reads as follows:

> Nothing in this section shall be construed to make illegal the operation or sale of any motor vehicle, the windshield or windows of which are composed of, covered by, or treated with, any material, substance, system, or component with which the motor vehicle was sold when new or could have been equipped for sale when new as standard or optional equipment from the manufacturer or authorized dealer under any United States government statute or regulation governing such sale at the time of manufacture.

I.C. § 49-944(5).

Thus, even if Officer Reese had not been told by Mr. Farrell at least twice that the car was purchased with the window tinting, he should have looked at the marking in the rear window

before using his tint meter. This would have been the least intrusive investigative method to verify or dispel his suspicion that the tinting was illegal, as it would have taken virtually no time at all. And, if he had done so, he would have discovered the car was sold with the window, and thus there was no infraction.

Instead, Officer Reese ignored Mr. Farrell's readily verifiable statements about the car having "factory tint." The first time Mr. Farrell made this statement was approximately four minutes after the stop began. (Exhibit B at 5:25 – 5:30)[6] Officer Reese should have looked at the marking in the rear window at that point, or as he initially approached the car, and let Mr. Farrell go. Instead, he unlawfully prolonged the stop when he conducted an investigation with his tint meter, instructed the other officer to write a citation, and then deployed his drug dog. This was of course far more intrusive than looking at the marking on the window would have been, and it was completely unnecessary. The marking was clearly visible and showed the window tinting was not a violation of the statute at all but in fact was exactly what was described in the statute's exception. (R., pp.111-12, 121.) Officer Reese made no attempt whatsoever to determine whether the tinting was covered under the exception, and he ultimately erroneously issued a citation. The vehicle's window tinting was allowed by Idaho law, and Officer Reese simply ignored that.

An investigation conducted in this manner renders the exception in the statute meaningless. If law enforcement has no obligation to quickly verify that the tint is, in fact, legal under the statute, then the only mechanism for enforcing the legislature's explicit exception is challenging a citation in court. This would be inefficient and a waste of resources. There is also an exception in the statute allowing higher window tinting levels for people "who must be

protected from exposure to sunlight or heat for medical reasons . . . ." I.C. § 49-944(4). That provision requires written verification of the medical condition "be carried in the vehicle." Officer Reese's investigation here is tantamount to an officer refusing to look at such verification—after being told by a driver that she has a medical exemption—and instead issuing a citation. Further, the statute contains no presumption of illegality; rather, it contains clear exceptions that can be easily and quickly verified at the scene. In failing to do that, Officer Reese acted unreasonably and unlawfully prolonged Mr. Farrell's detention. As such, the district court erred when it denied Mr. Farrell's motion to suppress.

CONCLUSION

Mr. Farrell respectfully requests that this Court vacate the district court's judgment of conviction and reverse the order denying his motion to suppress.

DATED this 28th day of January, 2019.

/s/ Reed P. Anderson
REED P. ANDERSON
Deputy State Appellate Public Defender

[6] The car was not stopped until approximately one-and-a-half minutes into the video. (Exhibit B at 1:25 – 1:40.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of January, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

RPA/eas