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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 Case No.**
v.	)	**CR-2017-2016**
	)	
JACOB DAVID FARRELL,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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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STATEMENT OF THE CASE

Nature Of The Case

Jacob Farrell appeals from his conviction for trafficking in heroin. He challenges the district court's denial of his motion to suppress.

Statement Of The Facts And Course Of The Proceedings

The state charged Farrell with possession of methamphetamine. (R., p. 94.) Farrell moved to suppress "all evidence relating to the warrant-less [sic] seizure of the defendant" in a traffic stop because the "warrantless seizure of the defendant was without reasonable articulable suspicion." (R., p. 107.) Farrell argued that the officer lacked reasonable suspicion of a window tinting violation because he "never checked the window to see if the tinting was installed on the vehicle when new, by the manufacturer/dealer" which constitutes "an exception to a window tint violation." (R., p. 111.) Because, Farrell asserted, the window was "installed by the manufacturer" there was no violation of the window tinting statute. (Id.)

The state responded, arguing that because the window both appeared and was in fact darker than allowed by the statute, there was reasonable suspicion for the stop on that basis. (R., pp. 125-27.[1]) Moreover, even if the window were legal because it was original

[1] The prosecution also argued that the stop, in addition to being based on a suspected window tint violation, was "based on the reasonable suspicion that Farrell was transporting as large amount of narcotics." (R., pp. 122-24.) Specifically, a narcotics detective had reliable information that Farrell and his passenger and girlfriend, Katie Seubert, were driving back from picking up a large amount of heroin. (R., pp. 122-24, 127-29.) For reasons that do not appear in the record, the prosecution abandoned that argument at the hearing. (R., p. 117.)

equipment, such did not mean that the suspicion was unreasonable because that mistake of fact was a reasonable one. (R., p. 127.)

The district court found that the officer stopped Farrell because he believed the window tint was darker than allowed by law, an observation he confirmed by using a tint meter. (R., pp. 150-51.) During the course of the encounter, the two people in the car both claimed the tint was original to the car. (R, p. 151.) While one officer filled out the citation for the suspected tint violation, another officer deployed a drug dog, which alerted on the car. (R., p. 151.) A search then revealed methamphetamine and paraphernalia. (Id.) An affidavit submitted in relation to the motion "establish[ed] that the window tint on the vehicle was placed there at the factory, and [was] thus a feature of the vehicle when it was sold as new." (R., pp. 138-43, 154.)

The court concluded that the officer "had reasonable and articulable suspicion to stop the vehicle based on his observation that the back window tint appeared dark." (R., p. 154.) The officer then investigated his suspicions by using a tint meter, which confirmed that the window was tinted darker than allowed by statute. (R., p. 154.) Although "evidence … regarding the factory installation of the tint establishes that there was not a basis for the driver to be found guilty," that "evidence does not negate the officer's reasonable, articulable suspicion." (Id.)

The state amended the charge to trafficking in heroin and Farrell entered a conditional guilty plea. (R., pp. 161-69.) Farrell timely appealed from the entry of judgment. (R., pp. 174-80.)

ISSUE

Farrell states the issue on appeal as:

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

(Appellant's brief, p. 6.)

The state rephrases the issue as:

Has Farrell failed to show that the district court erred when it concluded that evidence that Farrell was not guilty of the window tint violation did not demonstrate a lack of reasonable suspicion?

ARGUMENT

The District Court Correctly Concluded That Evidence Tending To Show That Farrell Was Not Guilty Of The Window Tint Violation Did Not Show A Lack Of Reasonable Suspicion

A. Introduction

The district court concluded that, although evidence submitted at the hearing showed that the window tint was installed at the factory and therefore Farrell was ultimately not guilty of the window tint infraction, such did not "negate" the reasonable suspicion that the windows were darker than allowed by the Idaho Code. (R., p. 154.) On appeal Farrell contends the district court erred because the evidence showed the officer "did not complete the stop expeditiously." (Appellant's brief, p. 9.) Farrell has failed to show error because his request for the Court to second-guess the investigative method employed by the officer is contrary to law. Review of the record shows that the officer reasonably investigated whether the rear window violated I.C. § 49-944(1) and concluded it did. The record also shows that a further investigation, regarding whether I.C. § 49-944(5) applied and there was no tint violation because the window had been installed when the car was purchased new, would have only extended, not shortened, the traffic stop.

B. Standard Of Review

"When a decision on a motion to suppress is challenged, the Court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to the facts as found." State v. Mullins, 164 Idaho 493, 432 P.3d 42, 45 (2018) (internal citations omitted).

C. Farrell's Request For The Court To Second-Guess The Investigative Method Employed By The Officer Is Contrary To Law

"[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." Florida v. Royer, 460 U.S. 491, 500 (1983). "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 officer's diligence is not subject to a "*post hoc* evaluation" for "some alternative means by which the objectives of the police might have been accomplished." Id. at 686–87. "*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 (emphasis added). See also State v. Buti, 131 Idaho 793, 796-97, 964 P.3d 660, 663-64 (1998) (quoting Sharpe, 470 U.S. at 686-87).

Idaho code states that it is unlawful to operate a car with rear window tinting that does not have light transmission of 35% or more. I.C. § 49-944(1), (2). There is no dispute that the car in question had a rear window with tinting that had light transmission less than 35%. (R., p. 151.) However, Idaho code also provides that it is not a violation to operate a motor vehicle with an overly tinted window "with which the motor vehicle was sold when new." I.C. § 49-944(5).

The district court concluded that "the registered owner of the vehicle, Scott Farrell, submitted an affidavit which establishes that the window tint on the vehicle was placed there at the factory, and [was] thus a feature of the vehicle when it was sold as new." (R., p. 154 (citing *Affidavit of Scott Farrell*).) The Affidavit of Scott Farrell states he is the

owner of the car in question, that the window tinting "is factory," and that the VIN of the car and documentation from the Chevrolet dealership confirms this. (R., pp. 138-43.)

Initially, there was nothing unreasonable with the officer investigating whether the window complied with I.C. § 49-944(1). Using the light meter was a reasonable way to make this determination, and had the meter shown 35% or better light transmission, the investigation would have been complete. Moreover, nothing in this record (or the generally accepted concept of time) indicates that the officer *extended* the stop by *not* conducting a further investigation of whether the window complied with I.C. § 49-944(5). The record shows that compliance under I.C. § 49-944(5) was ultimately shown by documentation from the dealership. It is plain that undertaking an investigation to obtain such documentation would have *extended* the stop. The district court properly concluded that reasonable suspicion was not negated because Farrell was able to muster dealer documentation not readily available to the officer showing that the overly dark rear window was original equipment.

On appeal Farrell argues that evidence of a marking on a car window, submitted by his counsel, shows that the officer should have immediately, or with a quick inspection of the marking, recognized that the windows were installed at the factory. (Appellant's brief, pp. 9-10.[2]) However, no evidence in this record establishes that the marking on a window

[2] Farrell's appellate counsel repeatedly claims there was a marking "in the rear window" showing that the windows were factory installed. (Appellant's brief, pp. 3, 9-10.) This matches the *argument* made below (R., p. 112), but Farrell presented no *evidence* of the marking's location other than to say it was on "Defendant's car window" (R., p. 119). Nevertheless, for purposes of argument the state will assume that the marking was on the rear window.

actually demonstrates anything about whether the rear window was installed when the car was sold when new.

Below, Farrell argued the marking stated "Tempered G, DOT — 476 AS-3 M-AT 014, TRANS. 20%." (R., p. 111.) Nothing in this marking shows that the window was original equipment on the car. To the contrary, Farrell argued to the district court that the "*parts list and VIN* confirm the window was installed on all vehicles of this make and model by the factory." (Id.) The evidence thus does not indicate, much less establish, that the markings on the window were enough to know if the window was installed in the factory or later. To the contrary, the evidence shows that the markings alone are insufficient to make this determination; it was the VIN and parts list that yielded the result that the window falls within the scope of I.C. § 49-944(5). (R., p. 154 (district court's finding of compliance with I.C. § 49-944(5) based on the *Affidavit of Scott Farrell*, which did not include anything about window markings).) Farrell's argument on appeal that the officer should have been able to ascertain from the window markings that which was shown by the dealer documentation has no support in the record.

The officer had reasonable suspicion that the rear window did not comply with I.C. § 49-944(1), and therefore the car was being driven in violation of I.C. § 49-944(1), (2). Using the tint meter to confirm that the window did not comply with I.C. § 49-944(1) was a reasonable investigation. Upon confirming that the window did not comply with I.C. § 49-944(1) it was reasonable to continue the traffic mission by writing the citation. That Farrell was later able to show that the car fell within the exception provided by I.C. § 49-944(5) *by providing documentation from the dealership* did not demonstrate the officer delayed the stop by unreasonably failing to recognize or pursue an investigation into

whether the window was factory installed. To the contrary, even if Farrell were correct, and the officer should have investigated by obtaining documentation from the dealer, he has not shown that pursuing that course would have in any way shortened his investigative detention. To the contrary, pursuing such an investigation could only have *lengthened* the detention. Farrell has therefore failed to show error on the record.

CONCLUSION

The state respectfully requests this Court to affirm the district court's judgment of conviction.

DATED this 6th day of March, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 6th day of March, 2019, 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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