3-29-2018

State v. Cook Appellant's Reply Brief Dckt. 45273

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	**NO. 45273**
	)	
v.	)	**KOOTENAI COUNTY NO. CR-2016-20853**
	)	
SAMANTHA NICOLE COOK,	)	
	)	**REPLY BRIEF**
Defendant-Appellant.	)	
	)	

REPLY 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

HONORABLE RICH CHRISTENSEN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Samantha Cook appealed the district court's order denying her motion to suppress and motion to reconsider. She argued that the district court erred by denying her motions because (1) the officer did not have reasonable suspicion for the traffic stop and (2) traffic law at issue was void for vagueness. The State responded, and this Reply Brief responds to some, but not all, of the State's arguments.

Statement of Facts and Course of Proceedings

The statement of facts and course of proceedings were articulated in Mr. Cook's Appellant's Brief. (App. Br., pp.1–5.) They are not repeated here, but are incorporated by reference.

ISSUE

Did the district court err when it denied Ms. Cook's motion to suppress and motion to reconsider?

ARGUMENT

The District Court Erred When It Denied Ms. Cook's Motion To Suppress And Motion To Reconsider

Ms. Cook set forth multiple arguments challenging the district court's denial of her motion to suppress and motion to reconsider. First, she argued that the police officer, Deputy Jacobsen, did not have reasonable suspicion for the traffic stop once he saw a properly displayed temporary permit in Ms. Cook's rear windshield. (App. Br., pp.8–10.) To this end, she submitted that the Court of Appeals' interpretation in *State v. Kinch*, 159 Idaho 96 (Ct. App. 2015), of the traffic law at issue, I.C. § 49-432(4), was inconsistent with the statute's plain language. (App. Br., pp.10–15.) Applying the plain language, Ms. Cook contended that she complied with the statute. (App. Br., p.15.) If this Court was not inclined to overrule or reject *Kinch*, Ms. Cook maintained, in the alternative, that she still complied with I.C. § 49-432(4). (App. Br., pp.15–17.) Either way, Ms. Cook asserted that Deputy Jacobsen no longer had authority for the seizure once he saw the properly displayed permit, so the evidence obtained during the traffic stop must be suppressed. (App. Br., pp.17–19.) Finally, Ms. Cook argued, again in the alternative, that I.C. § 49-432(4) was unconstitutionally vague as applied to her conduct. (App. Br., pp.19–22.)

In response to Ms. Cook's statutory interpretation argument, the State contends that Ms. Cook ignored the plain language of I.C. § 49-432(4) as a whole. (Resp. Br., pp.11–12.) The State points to the phrase "shall be displayed at all times" to assert that the temporary permit must be "readily legible" from the vantage point of another vehicle on the highway because "it would be impossible to read the permit from a closer vantage point while the vehicle is in motion on the highway." (Resp. Br., pp.11–12.) Impossibility and absurdity, however, have no bearing on the plain language interpretation of a statute. *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 896 (2011) (holding that the appellate courts lack the authority to revise or void an

unambiguous statute that is "patently absurd" or would "produce absurd results"). The plain language of I.C. § 49-432(4) says nothing about another driver's ability to read a temporary permit on another vehicle while driving on the highway. It states that the temporary permit "*shall* be displayed at all times while the vehicle is being operated on the highways by posting the permit upon the windshield of each vehicle or in another prominent place, where it *may* be readily legible." I.C. § 49-432(4) (emphasis added). The "display" requirement means just that—the driver must display (*e.g.*, exhibit, present, show) his permit on the windshield or other acceptable location. Put another way, the driver cannot leave his temporary permit in the glovebox while driving on the highway. The State's plain language argument, similar to the Court of Appeals' holding in *Kinch*, reads additional language into I.C. § 49-432(4). If the Idaho legislature intended to require more than "display," such as visibility from a certain distance, the legislature must add that language to the statute.

The State also contends that Ms. Cook did not preserve her argument that the traffic stop was unlawful once Deputy Jacobsen saw the properly displayed permit. (Resp. Br., p.14.) This is not accurate. In her motion to suppress, Ms. Cook argued that she was "illegally seized by law enforcement . . . , which led to an unreasonable, warrantless search of [her] and her property." (R., p.54.) She argued in her memorandum in support:

> In Ms. Cook's case, the temporary registration can be clearly seen in the rear window of Ms. Cook's vehicle; in fact, the deputy appears to shine his flashlight almost directly on it at the time of the stop. The presumption of validity, not of invalidity exists in this case, and the mere existence of Ms. Cook's properly placed temporary permit *does not serve as the basis for reasonable suspicion to allow Deputy Jacobson to stop her vehicle to inspect that permit* unless the invalidity of the permit, such as by improper alteration, was obvious and discernible by the deputy prior to the stop of Ms. Cook. If the Court were to allow this to exist as a proper reason for a stop, it would be contrary to the holding in *Salois* that specifically articulates *police should not have unfettered discretion to stop each and every vehicle being operated with a temporary registration simply to investigate its validity*. Further, *Salois* held that *an officer must have a*

> *reasonable suspicion of criminal activity before a traffic stop is initiated, not after*—this is goes back to the first argument in Ms. Cook's case that the deputy did not have a reasonable and articulable suspicion to stop her for her tires crossing the fog line.

(R., pp.79–80 (emphasis added).) At the suppression hearing, she argued:

> *As soon as [Deputy Jacobsen] saw the permit with the spotlight, that issue should have been done*. . . . . And so with that, I believe that any evidence seized *after this, with the contact of the deputy with my client*, are the fruits of an unlawful search and an – excuse me, unlawful seizure and unlawful search and it should be suppressed.

(Tr. Vol. I,[1] p.46, L.17–p.47, L.6 (emphasis added).) Ms. Cook's briefing and oral argument clearly assert that, once Deputy Jacobsen saw the properly displayed permit, he no longer had any lawful basis for the traffic stop, and any subsequent seizure or search premised upon that basis was a Fourth Amendment violation. Ms. Cook made the same argument in her Appellant's Brief:

> 3. Once Deputy Jacobsen Saw Ms. Cook's Properly Displayed Permit, He No Longer Had Authority For The Seizure Because His Reasonable Suspicion Was Dispelled
>
> . . . Because *Kinch* does not control and Ms. Cook complied with the statute, Deputy Jacobsen no longer had a lawful basis to continue the traffic stop once he saw the properly displayed permit in Ms. Cook's rear window.
>
> This outcome is dictated by *State v. Salois*, 144 Idaho 344 (Ct. App. 2007). . . .
>
> Here, the presence of Ms. Cook's properly displayed temporary permit dispelled Deputy Jacobsen's reasonable suspicion for an invalid or absent registration. . . . Once Deputy Jacobsen shined his flashlight on Ms. Cook's rear window just prior to initiating contact with her, Deputy Jacobsen no longer had authority for the seizure.

[1] There are four transcripts on appeal. The first, cited as Volume I, contains the motion to suppress hearing and the district court's oral ruling. The second, cited as Volume II, contains the hearing on Ms. Cook's motion for reconsideration. The third, cited as Volume III, contains the entry of plea hearing. Finally, the fourth transcript, cited as Volume IV, contains the sentencing hearing.

(App. Br., pp.17, 18.) In support of this appellate argument, Ms. Cook relied on *Salois*, as relied on by trial counsel below, (R., pp.79, 80; Tr. Vol. I, p.45, Ls.4–18, p.45, L.25–p.46, L.8), but she also referenced *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), and *State v. Linze*, 161 Idaho 605 (2016). These references to *Rodriguez* and *Linze* are not an attempt to submit a new argument on appeal. They are simply recent citations of well-established precedent: an officer cannot pursue traffic stop once he lacks reasonable suspicion; the seizure must end. These principles are not in dispute, and Ms. Cook submitted no new argument by relying on them. She merely referred to these cases, along with *Salois*, for the proposition that Deputy Jacobsen lacked reasonable suspicion once he saw the temporary permit. The prolonged seizure of Ms. Cook and the subsequent search of her vehicle were both unlawful because Deputy Jacobsen had no reasonable suspicion to continue the seizure. By continuing to detain and question Ms. Cook without any grounds to do so, Deputy Jacobsen unlawfully extended the traffic stop without reasonable suspicion. The fruits of the unlawful seizure therefore must be suppressed.

Finally, the State argues that Deputy Jacobsen could lawfully continue the traffic stop once he saw the properly displayed permit. (Resp. Br., pp.15–17.) In other words, the State asserts that Deputy Jacobsen could make contact with Ms. Cook and conduct ordinary inquires, such as requesting her license and registration. (Resp. Br., pp.15–17.) This conduct, however, was expressly prohibited by this Court in *Linze* and the U.S. Supreme Court in *Rodriguez*. Certainly, an officer can conduct inquires incident to a traffic stop, such as "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*, 135 S. Ct. at 1615, but these related checks must be done *during* the traffic stop.

> Like a *Terry*[2] 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. Because addressing the infraction is the purpose of the stop, it may "last no longer than is necessary to effectuate th[at] purpose." *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion). Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.

Id. at 1614 (citations omitted). Likewise, this Court wrote in *Linze*:

> [T]he United States Supreme Court did not restrict its analysis to cases in which the underlying purpose of the traffic stop was completed prior to a drug dog sweep. Instead, the United States Supreme Court reached a much broader holding: "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." *Rodriguez*, 135 S. Ct. at 1614. This rule is both broad and inflexible. It applies to all extensions of traffic stops including those that could reasonably be considered *de minimis.*

161 Idaho at 608. As established by this case law, once an officer has fulfilled the traffic stop's purpose, he cannot go on a fishing expedition for unrelated traffic infractions or other crimes. The officer has lost authority for the seizure when tasks tied to that particular traffic infraction are completed. As such, Deputy Jacobsen could not conduct these ordinary traffic stop inquiries once he saw the properly displayed permit. His authority for the seizure was terminated. Deputy Jacobsen should have informed Ms. Cook that he initially stopped her for driving without a temporary permit, but now he has seen the permit, so she is free to go.[3] This would not cause any

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[2] *Terry v. Ohio*, 392 U.S. 1 (1968).

[3] To note, the State recites in its facts that, after Deputy Jacobsen contacted Ms. Cook, he (1) observed her to be unusually nervous and (2) detected the odor of marijuana. (Resp. Br., p.1 (citing R., pp.10–12).) These facts come from Deputy Jacobsen's probable cause affidavit. (R., pp.10–12.) The suppression hearing, however, contains no evidence on Deputy Jacobsen's marijuana odor detection. Deputy Jacobsen's testimony described only his observations leading up to his contact with Ms. Cook. (*See* Tr. Vol. I, p.6, L.16–p.24, L.15.) He did not testify regarding his interaction with her or his subsequent search. (*See* Tr. Vol. I, p.6, L.16–p.24, L.15.) Thus, there is no testimony on precisely when Deputy Jacobsen detected the marijuana odor. (About minute 13:45 on Deputy Jacobsen's dash cam video, he asks Ms. Cook about marijuana use due to his purported detection of a marijuana odor when he was at her passenger window. But, again, there is nothing in the dash cam video to show if Deputy Jacobsen detected the odor right away or a couple of minutes into the seizure.) Similarly, the district court made no factual

"bizarre and confusing" interactions with the police, as suggested by the State. (Resp. Br., p.17.) It would cause lawful, constitutional ones. And Ms. Cook would submit that the State's position would actually cause the bizarre and confusing interactions. A driver would likely believe she is "being needlessly harassed by the police," (Resp. Br., p.17), if a police officer continued to seize and investigate her without any grounds to do so. For example, if a police officer thought a driver committed a traffic infraction, but realized his mistake upon approaching the vehicle, the driver would certainly be left "confused and bewildered" if the officer questioned the driver about her license, registration, and insurance, her ownership of the vehicle, whether she consumed any alcohol, her phone number, where she was coming from, where she was going, her address, whether she was a student or employed, if she had any weapons or drugs in the car, and if she was on probation. (*See* State's Ex. 1, 1:26–3:57.) These fishing expeditions are impermissible. Deputy Jacobsen exceeded his lawful authority of the traffic stop by seizing Ms. Cook after he saw the properly displayed permit. All evidence obtained from the unlawful seizure must be suppressed.

For all other issues, Ms. Cook respectfully refers this Court to her Appellant's Brief.

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findings on when Deputy Jacobsen detected the marijuana odor. (*See* Tr. Vol. I, p.51, L.14–p.60, L.6.) As such, if the marijuana odor is new, separate basis to continue Ms. Cook's seizure, the State failed to present any evidence at the suppression hearing to support this basis and therefore did not meet its burden. *See State v. Case*, 159 Idaho 546, 552 (Ct. App. 2015) (refusing to affirm the district court's order denying the defendant's motion to suppress on the State's alternative theory because the factual record for that theory was not developed below). At best, if this Court determines that Deputy Jacobsen lacked reasonable suspicion once he saw the temporary permit, but regained reasonable suspicion once he detected the odor of marijuana, this case should be remanded to the district court for further factual findings on the timing of the marijuana odor detection and, specifically, if Deputy Jacobsen detected the marijuana odor before or after he no longer had authority for the traffic stop.

CONCLUSION

Ms. Cook respectfully requests that this Court reverse or vacate the district court's order denying her motion to suppress or its order denying her motion to reconsider, vacate the order withholding judgment, and remand her case for further proceedings.

DATED this 29th day of March, 2018.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 29th day of March, 2018, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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_____/s/_____
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JCS/eas