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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47829-2020
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO. CR28-19-9279
v.)	
)	
KARL ADRIAN BEST,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

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**

**ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555**

**JACOB L. WESTERFIELD
Deputy State Appellate Public Defender
I.S.B. #9841
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us**

**ATTORNEYS FOR
DEFENDANT-APPELLANT**

**KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534**

**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

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STATEMENT OF THE CASE

Nature of the Case

Karl Best appeals from the district court's judgment of conviction for possession of a controlled substance. He challenges the district court's denial of his motion to suppress methamphetamine found in his car. He argues the district court erred by denying his motion because he was subject to a warrantless seizure, without reasonable suspicion, in violation of his Fourth Amendment rights. Therefore, he respectfully requests this Court vacate his judgment of conviction, reverse the district court's order denying his motion to suppress, and remand this case for further proceedings.

Statement of Facts and Course of Proceedings

Shortly after midnight on June 4, 2019, Officer Alexander Mauri observed a white vehicle legally pass him and then lawfully park on the street in a residential neighborhood. (R., p.14; Tr.,¹ p.8, Ls.3-12.) Officer Mauri subsequently parked his patrol car in a parking lot down the road so that he could observe the driver of the white vehicle. (Tr., p.9, L.23—p.10, L.4.) The officer spotted a male exit the driver's side of the vehicle, wander around the driver's side of the vehicle, and then walk away from the vehicle. (Tr., p.10, Ls.11-20.)

After the driver exited the vehicle and walked away, the officer parked his vehicle approximately twenty-five feet from the white vehicle "to make contact with the male." (R., p.14; Tr., p.10, Ls.16-25.) While the officer was driving from the parking lot to park near the

¹ The transcripts of four hearings are contained in one document. The first transcript contains the preliminary hearing, held on July 5, 2019. It is twenty pages. After this transcript, the internal pagination of the document (in the center of each page) starts over at page one and continues for the next three transcripts: the motion to suppress hearing, held on October 9, 2019, the change of plea hearing, held on October 11, 2019, and the sentencing hearing, held on January 8, 2020. Citations to these three transcripts will use its internal pagination, and line numbers, with the designation "Tr." The preliminary hearing transcript is not cited herein.

white vehicle, he called dispatch to report that he was investigating a “suspicious” vehicle. (Tr., p.36, L.9—p.37, L.23.) After parking near the vehicle, the officer left his patrol car, approached the white vehicle, and shined a flashlight into the white vehicle. (Tr., p.10, L.25—p.11, L.2.) The officer observed a butane torch in the driver’s seat. (Tr., p.10, L.25—p.11, L.2.)

A few seconds later, the driver of the vehicle, later identified as Karl Best, returned to the area. (R., p.14.) Mr. Best approached the officer and asked what he was doing. (Tr., p.10, L.25—p.11, L.4.) Officer Mauri then walked towards Mr. Best, and he stopped about two to four feet from Mr. Best. (Tr., p.35, L.24—p.36, L.3.) While approaching Mr. Best, Officer Mauri sternly ordered Mr. Best to “not reach for” an item on his hip.² (Plaintiff’s Exhibit 1,³ 00:32:32—00:33:02.) The officer began asking Mr. Best questions about the vehicle and his behavior.⁴ (R., p.14.) Throughout this encounter, Officer Mauri was wearing a police uniform with the word “police” on the back, driving in a marked patrol car, displaying a police badge, and armed with a side arm, Taser, and pepper spray. (Tr., p.42, Ls.4-25.) According to Officer Mauri, “it was very apparent that Mr. Best did not want to speak with [him]” and Mr. Best was “extremely agitated at [his] presence.” (Tr., p.11, L.21—p.12, L.1.) When Mr. Best started to walk away from Officer Mauri, the officer continued to ask Mr. Best questions “in the hope that he would continue to answer questions.” (Tr., p.41, Ls.1-14, p.41, L.25—p.42, L.3.)

² During this initial line of questioning, Officer Mauri had a flashlight in his hand that was pointed directly at Mr. Best. (Plaintiff’s Exhibit 1, 00:32:40.)

³ The exhibit introduced at the motion to suppress hearing as “Plaintiff’s Exhibit 1” contains two separate video files, labeled as “Mauri Back Seat Cam” and “Mauri Body Cam.” Citations to this exhibit will reference the time listed in the upper-left corner on Officer Mauri’s body worn camera footage in the video labeled “Mauri Body Cam.” The video labeled “Mauri Back Seat Cam” is not cited herein.

⁴ The officer began asking Mr. Best, “what he was doing in the area, or if that was his residence, if that was his car, trying to figure out what he was doing in the area.” (Tr., p.11, Ls.17-21.) Officer Mauri asked Mr. Best further asked Mr. Best, what was on his hip and commanded him to “not reach for” the item on his hip. (Plaintiff’s Exhibit 1, 00:32:32—00:33:02.) Both Officer Mauri and Mr. Best were in the street during this initial encounter. (Tr., p.35, L.16—p.36, L.3.)

Within a few seconds after this line of questioning, a second officer arrived onto the scene in a canine patrol vehicle. (Tr., p.11, Ls.1-4., p.13, Ls.2-3, p.36, Ls.4-7.) Officer Mauri asked Officer Amy Knisley to conduct an exterior sniff of the vehicle with her drug dog. (Tr., p.38, L.14—p.39, L.11, p.57, Ls.6-10.) Mr. Best, realizing what was going on, informed Officer Mauri that he did not give law enforcement permission to run a drug dog around his vehicle. (Tr. p.11, Ls.1-4.) After Mr. Best demanded the officer not run the drug dog around the vehicle, Officer Mauri told him that he could “explain that in court.” (Plaintiff’s Exhibit 1, 00:33:03.)

When Mr. Best started to walk away, Officer Mauri continued to ask him questions because he “would have liked for him to stay there.” (Tr., p.41, Ls.1-11.) When Mr. Best stopped a few feet away from where he had his initial encounter with Officer Mauri to answer Officer Mauri’s new line of questioning, the officer once again stepped towards Mr. Best and stopped a few feet away from him. (Plaintiff’s Exhibit 1, 00:33:08.) When Mr. Best tried to step away from Officer Mauri again, the officer asked him “where are you going now?” (Plaintiff’s Exhibit 1, 00:33:50.) A few seconds later, the drug dog alerted on Mr. Best’s car, and Officer Mauri immediately grabbed and handcuffed Mr. Best. (Plaintiff’s Exhibit 1, 00:34:05.) At the time of the drug dog sniff, and throughout the encounter, Officer Mauri stood between Mr. Best and his vehicle.⁵ (Tr., p.67, Ls.3-8; *see* Plaintiff’s Exhibit 1.) The officers searched the vehicle and ultimately found a scale with a white powdery substance on it, and two small plastic baggies containing methamphetamine. (R., p.15; Tr., p.26, L.11—p.27, L.15.) Mr. Best allegedly told

⁵ During the drug dog sniff, Officer Mauri and Mr. Best were both just beyond Officer Mauri’s parked police car, which was approximately twenty to twenty-five feet from Mr. Best’s car. (Tr., p.65, L.17—p.67, L.8.)

the first officer that there would be methamphetamine in the vehicle and the location of the baggies containing it. (R., p.15.)

Consequently, the State filed a criminal complaint alleging Mr. Best committed the crime of possession of methamphetamine and a citation alleging possession of drug paraphernalia. (R., pp.10–12, 46.) After a preliminary hearing, the magistrate bound him over to the district court. (R., p.65.) The State filed an Information charging Mr. Best with these two offenses. (R., pp.66–67.)

Mr. Best moved to suppress the evidence found in the vehicle. (R., pp.84-92.) He argued: (1) the first officer lacked reasoned, articulable suspicion of criminal activity prior to seizing him, (2) the first officer's contact with Mr. Best was not consensual, and (3) all statements made by Mr. Best after being seized and before being informed of his *Miranda*⁶ rights should be suppressed. (R., pp.84-92.) The State filed a brief in opposition to Mr. Best's motion to suppress. (R., pp.95-104.) The State argued that: (1) the first officer's contact with Mr. Best was consensual, (2) the first officer did not detain Mr. Best until that officer had reasonable suspicion of criminal activity,⁷ and (3) the statements made by Mr. Best prior to his arrest and after being informed of his *Miranda* rights were obtained in compliance with the Fifth Amendment and should not be excluded. (R., pp.95-104.)

The district court held a hearing on the motion to suppress, and the two police officers testified. (Tr., p.6, L.19–p.71, L.18.) The State argued that the contact between Officer Mauri and Mr. Best was a consensual encounter until the officer detained Mr. Best following an alert on the white vehicle and that none of the statements made by Mr. Best should be excluded under

⁶ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁷ The State argued in its brief that the officer had reasonable suspicion even without the drug dog alert on the vehicle on the theory that there was “sufficient evidence to detain Mr. Best on a reasonable suspicion of illicit drug use.” (R., p.101.)

Miranda. (Tr., p.72, L.13—p.76, L.11.) Mr. Best argued that: his encounter with law enforcement was not consensual; he was unlawfully detained prior to the officers having reasonable suspicion of criminal activity, requiring suppression of the physical evidence; and all statements made by Mr. Best to law enforcement should be suppressed since they were the result of coercion. (Tr., p.76, L.14—p.83, L.21.)

The district court ruled on the motion at the end of the hearing, and it found the following in reaching its decision:

1. The search of the Mr. Best's vehicle was conducted without a warrant.
2. This was not a case involving a traffic stop, and there was nothing unlawful or suspicious about Mr. Best's driving or parking.
3. Officer Mauri did not have reasonable suspicion of criminal activity prior to having contact with Mr. Best.
4. Mr. Best was free to leave the area during his initial encounter with Officer Mauri.
5. Mr. Best was not seized until the officer grabbed him, handcuffed him, and told him that he was no longer free to leave.
6. Mr. Best was not seized until after Officer Knisley had run her drug dog around the white vehicle and the dog alerted.
7. None of the searches of the vehicle or Mr. Best's person were unconstitutional.
8. Mr. Best was taken into custody upon being grabbed and handcuffed, and all statements made after that seizure but before *Miranda* warnings were given should be suppressed.
9. The statements made by Mr. Best after *Miranda* warnings were given were not unlawfully coerced and therefore not suppressible.

(Tr., p.83, L.22—p.94, L.6.) In light of these findings, the district court denied Mr. Best's motion to suppress, except for the statements made after his arrest and before he was informed of his rights under *Miranda*.

Pursuant to a plea agreement, Mr. Best entered a conditional guilty plea to possession of a controlled substance (methamphetamine) while reserving his right to appeal the district court's denial of his motion to suppress.⁸ (R., p.115; Tr., p.97, L.1—p.108, L.15.) The district court sentenced Mr. Best to four years, with two years fixed, suspended for probation. (R., pp.124-29; Tr., p.117, Ls.18-20.) Mr. Best timely appealed from the district court's judgment of conviction.⁹ (R., pp.130-34.)

⁸ The possession of drug paraphernalia charge was dismissed pursuant to this agreement. (Tr., p.107, Ls.14-19.)

⁹ Mr. Best does not challenge on appeal the district court's decision to grant his motion to suppress for the statements made by Mr. Best after his arrest but before *Miranda* warnings were administered. Mr. Best also does not challenge the district court's denial of his request to suppress the statements he made after *Miranda* warnings were given.

ISSUE

Did the district court err by denying Mr. Best's motion to suppress evidence obtained from his warrantless seizure?

ARGUMENT

The District Court Erred By Denying Mr. Best's Motion To Suppress Evidence Obtained From His Warrantless Seizure

A. Introduction

Mr. Best argues the district court erred by denying his suppression motion because Officer Mauri seized him without a warrant or reasonable suspicion prior to the drug dog alerting on his vehicle. This seizure violated Mr. Best's Fourth Amendment rights, and all evidence obtained from the unlawful seizure, including the contraband in the vehicle, must be suppressed as the fruit of the illegality.

B. Standard Of Review

The Court "defer[s] to the trial court's factual findings unless clearly erroneous. However, free review is exercised over a trial court's determination as to whether constitutional requirements have been satisfied in light of the facts found." *State v. Henage*, 143 Idaho 655, 658 (2007) (citations omitted).

C. The District Court Should Have Granted Mr. Best's Motion To Suppress Because Officer Mauri Unlawfully Seized Him And Obtained Evidence From That Illegal Seizure

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. "The Fourth Amendment of the United States Constitution protects citizens from unreasonable search and seizure." *State v. Hansen*, 138 Idaho 791, 796 (2003).

A warrantless seizure is presumptively unreasonable, unless the State shows the seizure fits within a well-established exception to the warrant requirement. *State v. Green*, 158 Idaho 884, 886–87 (2015); *see also Halen v. State*, 136 Idaho 829, 833 (2002) (“When a warrantless search or seizure is challenged by the defendant, the State bears the burden to show that a recognized exception to the warrant requirement is applicable.”); *State v. Hunter*, 156 Idaho 568, 570 (Ct. App. 2014) (same). The defense, however, has the burden to prove a seizure occurred. *State v. Page*, 140 Idaho 841, 843 (2004).

“The test to determine if an individual is seized for Fourth Amendment purposes is an objective one, evaluating whether under the totality of the circumstances ‘a reasonable person would feel free to decline the officers’ requests or otherwise terminate the encounter.’” *Henage*, 143 Idaho at 658 (quoting *Florida v. Bostick*, 501 U.S. 429, 436 (1991)). “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.” *State v. Fry*, 122 Idaho 100, 102 (Ct. App. 1991) (citing *Bostick*, 501 U.S. 429; *Florida v. Royer*, 460 U.S. 491, 497 (1983)). “So long as police do not convey a message that compliance with their requests is required, the encounter is deemed ‘consensual’ and no reasonable suspicion is required.” *Id.*

On the other hand, a seizure occurs “when an officer, by means of physical force or show of authority, restrains the liberty of a citizen.” *State v. Liechty*, 152 Idaho 163, 167 (Ct. App. 2011).

Examples of circumstances that might indicate seizure, even where the person did not attempt to leave, would be 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.

Id. at 168 (quoting *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)). “The critical question is whether, taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he or she was not at liberty to ignore the police presence and go about his or her business.” *State v. Robertson*, 134 Idaho 180, 184 (Ct. App. 2000) (citing *State v. Ferreira*, 133 Idaho 474, 479 (Ct. App. 1999)).

Here, a reasonable person would not have felt free to ignore the presence of Officers Mauri and Knisley and go about his business. Mr. Best was unlawfully seized by Officer Mauri prior to Officer Knisley’s drug dog alerting on his vehicle.

Officer Mauri’s investigation took place shortly after midnight, so it was dark outside. (Tr., p.7, Ls.8-23, p.28, Ls.19-21.) When Officer Mauri approached Mr. Best’s vehicle, the headlights to his patrol car were on. (Tr., p.10, Ls.18-20; Plaintiff’s Exhibit 1, 00:32:32.) After the officer shined a flashlight into Mr. Best’s unoccupied car, Mr. Best approached the officer and asked the officer what he was doing. (Tr., p.10, L.25—p.11, L.4.) Officer Mauri then walked towards Mr. Best and stopped about two to four feet from Mr. Best. (Tr., p.35, L.24—p.36, L.3.) While approaching Mr. Best, Officer Mauri commanded Mr. Best to “not reach for” the item on his hip. (Plaintiff’s Exhibit 1, 00:32:32—00:33:02.) This command would have conveyed to a reasonable person that he or she was not at liberty to ignore the officer.

After Mr. Best demanded that the officer not run the drug dog around the vehicle, Officer Mauri told him that he could “explain that in court.” (Plaintiff’s Exhibit 1, 00:33:03.) When Mr. Best started to walk away the first time, Officer Mauri continued to ask him questions, stepped towards him, and stopped a few feet away from him. (Tr., p.41, Ls.1-11; Plaintiff’s Exhibit 1, 00:33:08.) When Mr. Best started to step away a second time, Officer Mauri asked

him “where are you going now?” (Plaintiff’s Exhibit 1, 00:33:50.) Officer Mauri stood between Mr. Best and his vehicle throughout this encounter. (Tr., p.67, Ls.3-8; *see* Plaintiff’s Exhibit 1.)

In light of these circumstances, Mr. Best asserts that he was subject to a warrantless seizure, without reasonable suspicion, prior to the drug dog alerting on the parked vehicle. Mr. Best was not at liberty to ignore the officers’ actions in this case, and the officers unreasonably interfered with his access to his vehicle without reasonable suspicion of criminal activity. When Mr. Best tried to return to his vehicle within a few minutes of exiting from it in the middle of the night, he observed that a police car was parked about twenty-five feet from his vehicle with its headlights on pointed at his vehicle and that a police officer was standing outside of his vehicle. When Mr. Best tried to approach his vehicle, the police officer began walking towards him with a flashlight pointed directly at him and forcefully commanded him to not reach for an item on his hip. Such orders are not part of normal, consensual encounters in our society. Moreover, when such orders are issued by a uniformed, armed police officer, they are neither ignorable nor debatable; compliance is obligatory. That Officer Mauri issued such a command, and that Mr. Best immediately obeyed it, demonstrates that the officer had authority and control over Mr. Best. Under such circumstances, the average person would not feel free to disregard Officer Mauri, shove past him, and drive away.

Additionally, when Mr. Best told the officer that he did not consent to a drug dog sniff on his vehicle, the officer told him that he “could explain that in court.” A reasonable person would have interpreted Officer Mauri’s statement as meaning that compliance with the exterior sniff of the vehicle by the drug dog was mandatory. First, that statement suggested Mr. Best was already a suspect, legal proceedings were imminent if not underway already, and Mr. Best was under, or would soon be under, arrest. Second, that statement was another show of authority by Officer

Mauri. It conveyed to Mr. Best that the officer was in charge and was going to do whatever he wanted to do, regardless of what Mr. Best wanted, said, or did.

When Mr. Best tried to leave, Officer Mauri continued to follow after him while asking him questions. When Mr. Best tried to leave a second time, the officer asked him “where are you going now?” A reasonable person would not feel free to decline an officers’ requests or otherwise terminate an encounter when that officer follows after them and continues to ask them questions when they attempt to walk away. Furthermore, Officer Mauri stood between Mr. Best and his vehicle throughout this encounter. A reasonable person would not have felt at liberty to walk past an officer, enter his or her vehicle, and drive away when that officer has given commands to that person, asked multiple questions, and ignored a request not to run a drug dog around his or her vehicle.

Under the totality of these circumstances, a reasonable person would not have felt free to ignore the officer’s presence and go about his business. Mr. Best was seized by law enforcement prior to the officers obtaining reasonable suspicion of criminal activity from the alert on the vehicle by the drug dog. This illegal seizure violated Mr. Best’s Fourth Amendment rights. Due to this Fourth Amendment violation, the district court should have granted Mr. Best’s motion to suppress. The evidence obtained, such as the contraband in the vehicle, would not have been found but for the illegal seizure. The evidence was “come by at exploitation of that illegality.” *Wong Sun v. United States*, 371 U.S. 471, 488 (1963) (evidence obtained through unconstitutional police conduct subject to exclusion); *see also State v. Bishop*, 146 Idaho 804, 810–11 (2008) (same). Therefore, the district court erred by denying Mr. Best’s motion to suppress the evidence following his illegal seizure.

CONCLUSION

Mr. Best respectfully requests this Court reverse or vacate the district court's order denying his motion to suppress, vacate his judgment of conviction, and remand this case for further proceedings.

DATED this 23rd day of October, 2020.

/s/ Jacob L. Westerfield

JACOB L. WESTERFIELD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of October, 2020, I caused a true and correct copy of the foregoing APPELLANTS BRIEF, to be served as follows:

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

/s/ Teal M. Vosburgh

TEAL M. VOSBURGH
Administrative Assistant

JLW/tmv