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Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 47829-2020**
Plaintiff-Respondent,	)	
	)	**Kootenai County Case No.**
v.	)	**CR28-19-9279**
	)	
KARL ADRIAN BEST,	)	
	)	
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 RICHARD S. CHRISTENSEN
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Karl Adrian Best appeals from his conviction for possession of a controlled substance, challenging the denial of his motion to suppress evidence.

Statement Of The Facts And Course Of The Proceedings

The state charged Best with possession of methamphetamine and possession of paraphernalia. (R., pp. 66-67.) Best moved to suppress evidence, asserting he was unlawfully seized and arrested, and that his *Miranda* rights were violated. (R., pp. 84-92.) With the exception of some of Best's statements, the district court denied the motion. (R., pp. 111-12; Tr., p. 83, L. 22 – p. 94, L. 6.) The district court concluded that the initial encounter between the officer and Best was consensual and occurred after Best parked his car, and that Best was not seized until the officer physically and verbally seized him by grabbing his arm and telling him he was not free to leave. (Tr., p. 86, L. 1 – p. 87, L. 9.) When the seizure occurred the officer had reasonable suspicion by dint of a drug dog having alerted on Best's car. (Tr., p. 87, L. 10 – p. 89, L. 2; p. 91, Ls. 20-25.)

Best pled guilty, preserving his right to appeal the ruling denying his motion to suppress. (R., pp. 113-17.) The district court entered a judgment of conviction and Best appealed. (R., pp. 124-34.)

ISSUE

Best states the issue on appeal as:

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

(Appellant's brief, p. 7.)

The state rephrases the issue as:

Has Best failed to show that the district court erred by concluding the encounter was consensual until the officer verbally and physically restrained Best?

ARGUMENT

The District Court Correctly Concluded The Encounter Was Consensual Until The Officer Verbally And Physically Restrained Best

A. Introduction

The district court concluded that Best was not seized until the officer informed him he was not free to leave and then physically restrained him. (Tr., p. 86, L. 1 – p. 87, L. 9.) At that time the officer had reasonable suspicion because a drug dog had alerted on the car Best had recently been driving. (Tr., p. 87, L. 10 – p. 89, L. 2; p. 91, Ls. 20-25.) Best contends that the district court erred because he was detained prior to the dog alert. (Appellant's brief, pp. 8-12.) Best's argument fails because he has shown neither clear error in the district court's factual findings nor any misapplication of the relevant law to those facts.

B. Standard Of Review

When reviewing an order granting or denying a motion to suppress the Court "will accept the trial court's findings of fact unless they are clearly erroneous" and will "freely review the trial court's application of constitutional principles in light of the facts found." State v. Gonzales, 165 Idaho 667, 671, 450 P.3d 315, 319 (2019) (quotation marks omitted)

C. The District Court Properly Concluded The Encounter Was Consensual Until The Officer Verbally And Physically Restrained Best's Freedom Of Movement

"An investigative detention is permissible if it is based upon specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity." State v. Farrell, 165 Idaho 839, 843, 453 P.3d 273, 277 (Ct. App. 2019). "However, not all encounters between the police and citizens involve the seizure of

a person." State v. Loosli, 167 Idaho 435, 470 P.3d 1244, 1246 (Ct. App. 2020) (citing Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968)). "The critical inquiry 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. Gottardi, 161 Idaho 21, 26, 383 P.3d 700, 705 (Ct. App. 2016). "Only when an officer, by means of physical force or show of authority, restrains the liberty of a citizen may a court conclude that a seizure has occurred." State v. Pieper, 163 Idaho 732, 734, 418 P.3d 1241, 1243 (Ct. App. 2018).

"A seizure does not occur simply because a police officer approaches an individual on the street or other public place, by asking if the individual is willing to answer some questions or by putting forth questions if the individual is willing to listen." State v. Wolfe, 160 Idaho 653, 655, 377 P.3d 1116, 1118 (Ct. App. 2016) (citing Florida v. Bostick, 501 U.S. 429, 434 (1991); Florida v. Royer, 460 U.S. 491, 497 (1983)). Here the district court found, and the record shows, that the officer did not communicate to Best that he was not free to leave but instead merely approached Best on the street and put forth questions that Best was willing to respond to.

Officer Mauri of the Coeur d'Alene police department testified that he was on routine patrol just after midnight when he saw a car make a sudden turn and then pull over and park. (Tr., p. 7, L. 1 – p. 9, L. 22.) The officer continued down the street, parked with his lights off, and observed the car. (Tr., p. 9, L. 23 – p. 10, L. 4.) He saw the driver get out of the car and wander around on the driver's side of the car. (Tr., p. 10, Ls. 5-15.) The officer drove back to where the car was parked, parking about 25 feet away with his headlights, but not his traffic lights, on. (Tr., p. 10, Ls. 16-25.) The officer lost sight of

the driver who had gotten out of the car. (Tr., p. 10, Ls. 24-25.) The officer got out of his car and approached the parked car, using his flashlight to see inside it. (Tr., p. 10, Ls. 21-25.) The officer saw a red butane torch in the car. (Tr., p. 11, Ls. 1-2; p. 34, Ls. 19-22.) At this point the driver, Best, approached and asked the officer what he was doing. (Tr., p. 11, Ls. 2-14.) The officer asked Best whether the car was his, if the house where the car was parked was his residence, "trying to figure out what he was doing in the area." (Tr., p. 11, Ls. 17-23.)

Best appeared to "not want to speak with" the officer, "became adamant that [police] did not have permission to sniff the vehicle" when the canine unit arrived, and "began to walk off, which [the officer] allowed." (Tr., p. 11, L. 21 – p. 12, L. 4; State's Exhibit 1 (00:03-01:33).) The encounter lasted about 90 seconds before the dog alerted on the parked car and the officer told Best he was not free to leave, and then had to grab Best and restrain him when Best did not immediately submit to the officer's commands. (Tr., p. 13, L. 17 – p. 14, L. 7; State's Exhibit 1 (00:03-01:50).) This record shows the first, and only, display of authority or use of force restricting Best's freedom of movement occurred when the officer told Best he was not free to leave and, shortly thereafter, grabbed his arm, after the dog alert established reasonable suspicion to justify the seizure. The district court correctly concluded that although there was a certain amount of authority present in the encounter, it was not authority that made Best reasonably believe he was not free to leave until the officer told Best he was not free to leave. (Tr., p. 86, L. 7 – p. 87, L. 9.) Because the seizure occurred only after the development of reasonable suspicion or probable cause, the district court properly concluded there was no violation of Best's Fourth Amendment rights.

Best argues that the officer seized him before the dog alerted, claiming that the officer's instruction that Best not reach for an object on his hip; the officer's statement that Best could challenge the dog sniff, which was at that time being performed on the car, "'in court'"; and the officer's actions in continuing to ask questions as Best walked away from him, cumulatively constituted a seizure. (Appellant's brief, pp. 10-12.[1]) Best's arguments are unpersuasive because they show no clear error nor unreasonable application of the law.

First, Best's arguments are contrary to the district court's factual findings. The district court was "not convinced at all that the initial contact that took place between Mr. Best and Officer Mauri was in any way a seizure" but found that it "was something quite to the contrary." (Tr., p. 86, Ls. 7-10.) Best "certainly" was "free to go despite the fact that a police officer was present." (Tr., p. 86, Ls. 11-14.) The court found that "there was certainly a presence of authority" but Best, although clearly "agitated," never demonstrated any submission to such authority. (Tr., p. 86, Ls. 14-18.) The court's factual determinations that Best was free to go and never submitted to police authority prior to being told he was not free to go and physically detained is supported by substantial and competent evidence.

The events Best claims were shows of authority show no error in the district court's analysis that such authority did not rise to creating a seizure. The first of those was the

[1] Best also claims that the officer followed Best when he tried to walk away (Appellant's brief, p. 12), but this claim is contrary to the district court's factual findings (Tr., p. 86, L. 1 – p. 87, L. 9) and the evidence presented (Tr., p. 11, L. 25 (officer testified he allowed Best to walk away); State's Exhibit 1 (00:31-00:58 (showing officer allowed Best to walk away, but then approached Best only after Best stopped walking))). Because Best has neither claimed nor shown clear error associated with this factual claim, and because it is contrary to the evidence presented, it should not be considered amongst the totality of the circumstances.

instruction that Best not touch the item on his hip. Shortly after Best initiated contact with the officer, the officer asked, "What's on your hip," and then said "Don't reach for it." (State's Exhibit 1 (00:00-00:20).) Best then told the officer that it was a tool for "tires" and such. (Id.) That the officer took the reasonable security precaution that Best not touch the object on his hip until the officer could ascertain what it was did not convey to Best that he was detained. Best did not need to touch the object in order to leave or go where he wanted. Indeed, after this exchange Best started walking away without challenge by the officer. (State's Exhibit 1 (00:20-00:50).) The instruction to not touch the object on his hip had no direct or obvious implications for Best's freedom of movement.

Best's contention that the officer's statement that Best could contest the dog sniff of his car in court conveyed that "compliance with the exterior sniff of the vehicle by the drug dog was mandatory" (Appellant's brief, pp. 11-12) fares no better. The officer's refusal to accede to Best's demand that the drug dog sniff of the exterior of his car cease, and the officer's statement that the legality of the dog sniff could be challenged in court, in no sense conveys a message that Best was seized. And again, Best's actions of walking away from the officer after this exchange (State's Exhibit 1 (00:25-00:50)) belies any claim that this exchange conveyed any message that Best was not free to leave.

Finally, Best's assertion that the officer's act of asking questions while he walked away conveyed a message that he was not free to leave is neither factually nor legally sound. The evidence shows that in the middle of the conversation with the officer (which consisted mostly of the officer asking questions) Best walked away, stopped to continue answering questions (at which point the officer re-approached Best), and then walked away again, without any restrictions until the officer explicitly said he was not free to leave.

(State's Exhibit 1 (00:33-1:38).) Merely asking questions does not create a seizure. Bostick, 501 U.S. at 434; Royer, 460 U.S. at 497; Wolfe, 160 Idaho at 655, 377 P.3d at 1118. Best has cited no authority suggesting that the direction the defendant is walking changes this analysis.

The district court specifically recognized that there was a certain amount of authority present in the officer's presence. It also found that this authority did not rise to the level of a seizure under applicable constitutional standards. Best has shown no clear error in the district court's factual findings nor in its application of the relevant law.

CONCLUSION

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

DATED this 18th day of November, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 18th day of November, 2020, 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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KKJ/dd