

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37223

STATE OF IDAHO,)	2011 Unpublished Opinion No. 419
)	
Plaintiff-Respondent,)	Filed: March 30, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
JOSHUA TYLER CLINK,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Cassia County. Hon. Michael R. Crabtree, District Judge.

Judgment of conviction for trafficking in marijuana, affirmed.

Greg S. Silvey, Kuna, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jennifer E. Birken, Deputy Attorney General, Boise, for respondent.

GUTIERREZ, Judge

Joshua Tyler Clink appeals from the judgment of conviction entered upon his conditional guilty plea to trafficking in marijuana. Specifically, Clink challenges the denial of his motion to suppress. For the reasons set forth below, we affirm.

I.

BACKGROUND

Idaho State Police Trooper Barrett stopped a vehicle on I-84 for driving without fender flares, a violation of Idaho Code § 49-949. Barrett observed three passengers in the vehicle, one of which was Clink who was lying down on the back seat.¹ Barrett asked the driver to exit the truck and speak with him at the rear of the vehicle. Barrett noticed that the driver’s eyes were bloodshot and asked if he had anything to drink that day. The driver responded that his eyes get irritated in the cold weather because he had previously been shot in the left eye. When Barrett

¹ It was later determined that Clink is a co-owner of the truck with his father.

asked the driver where they were coming from, the driver could not give him an exact location, but told him “somewhere near the school” in Phoenix.

At this point in the stop approximately two minutes had elapsed, and Barrett decided to talk with the passengers inside the truck while the driver waited in front of the police car. Barrett approached the passenger side of the vehicle and opened the door to speak with the passengers, one of which was Clink. When Barrett asked the passengers where they were coming from, they told Barrett that they were coming from Tucson. While speaking with the passengers, Barrett informed them that he detected a strong odor of marijuana and asked them to give it to him. After one of the passengers indicated that it was in a compartment on the passenger-side door, Barrett found the marijuana and drug paraphernalia. These items were in Barrett’s plain view when he seized them. Barrett asked the passengers if there was more marijuana in the vehicle, but did not get a response. Barrett arrested the passenger who directed him to the marijuana and paraphernalia and instructed the other two, the driver and Clink, to wait. At this point, approximately four minutes had elapsed and Barrett called in another officer and a drug dog to search the vehicle. Approximately seven minutes into the stop, the drug dog arrived and alerted on the back seat area of the truck. It was at this point that Barrett informed the driver that he had stopped him because of the fender violation. The officers subsequently found and seized almost two pounds of marijuana under the rear bench seat in a built-in utility compartment. Clink and the driver were then also arrested and advised of their *Miranda*² rights. The total time elapsed from the initiation of the traffic stop to the seizure of the marijuana under the back seat was approximately thirteen minutes.

The state charged Clink with trafficking in marijuana. Clink filed a motion to suppress, asserting a violation of his Fourth Amendment rights due to an illegal search. The district court held a joint hearing on the matter for all three defendants and issued a written order denying Clink’s motion to suppress. Clink entered a conditional guilty plea to trafficking in marijuana, but reserved his right to appeal the denial of his motion to suppress.

² See *Miranda v. Arizona*, 384 U.S. 436 (1966).

II.

STANDARD OF REVIEW

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact which are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

III.

DISCUSSION

Clink asserts that the district court erred in denying his motion to suppress. Clink argues that Barrett unlawfully extended the duration of the traffic stop "to investigate matters unrelated to the stop and unsupported by reasonable suspicion." The state counters that Barrett learned of specific, articulable facts constituting reasonable suspicion to justify extending the detention to wait for the drug dog.

A traffic stop by an officer constitutes a seizure of the vehicle's occupants and implicates the Fourth Amendment's prohibition against unreasonable searches and seizures. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979); *Atkinson*, 128 Idaho at 561, 916 P.2d at 1286. Under the Fourth Amendment, an officer may stop a vehicle to investigate possible criminal behavior if there is a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws. *United States v. Cortez*, 449 U.S. 411, 417 (1981); *State v. Flowers*, 131 Idaho 205, 208, 953 P.2d 645, 648 (Ct. App. 1998). The reasonableness of the suspicion must be evaluated upon the totality of the circumstances at the time of the stop. *State v. Ferreira*, 133 Idaho 474, 483, 988 P.2d 700, 709 (Ct. App. 1999). The reasonable suspicion standard requires less than probable cause, but more than mere speculation or instinct on the part of the officer. *Id.* An officer may draw reasonable inferences from the facts in his or her possession, and those inferences may be drawn from the officer's experience and law enforcement training. *State v. Montague*, 114 Idaho 319, 321, 756 P.2d 1083, 1085 (Ct. App. 1988). Clink concedes that Barrett had reasonable suspicion to stop his vehicle for the fender violation.

The determination of whether an investigative detention is reasonable requires a dual inquiry--whether the officer's action was justified at its inception and whether it was reasonably related in scope to the circumstances which justified the interference in the first place. *State v. Roe*, 140 Idaho 176, 181, 90 P.3d 926, 931 (Ct. App. 2004); *State v. Parkinson*, 135 Idaho 357, 361, 17 P.3d 301, 305 (Ct. App. 2000). 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. Sheldon*, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). Such a detention must be temporary and last no longer than necessary to effectuate the purpose of the stop. *Roe*, 140 Idaho at 181, 90 P.3d at 931; *State v. Gutierrez*, 137 Idaho 647, 651, 51 P.3d 461, 465 (Ct. App. 2002). Where a person is detained, the scope of detention must be carefully tailored to its underlying justification. *Roe*, 140 Idaho at 181, 90 P.3d at 931; *Parkinson*, 135 Idaho at 361, 17 P.3d at 305. The scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of each case. *Roe*, 140 Idaho at 181, 90 P.3d at 931; *Parkinson*, 135 Idaho at 361, 17 P.3d at 305.

The detention becomes unreasonable if an officer significantly extends the duration of the stop to investigate other criminal conduct for which there is no reasonable suspicion. *Sheldon*, 139 Idaho at 984, 88 P.3d at 1224. The United States Supreme Court has stated that a suspect "may not be detained even momentarily without reasonable, objective grounds for doing so." *Florida v. Royer*, 460 U.S. 491, 498 (1983). In *Gutierrez*, a vehicle was stopped for speeding. The officer gave the driver a warning for speeding and returned the license and registration. Then, without letting the driver know he could leave, the officer questioned the driver about drugs or alcohol in the car, and explained the delay (which amounted to sixty to ninety seconds) was due to the fact that one of the passengers appeared nervous. The officer obtained consent to search the vehicle from the driver and then asked the passengers if they objected to the driver's consent, which they did not. The officer found marijuana that belonged to the passengers. This Court held that because the officer had not informed the driver he was free to leave, among other factors, the stop had not evolved into a consensual encounter. *Gutierrez*, at 651, 51 P.3d at 465. This Court then held that the officer impermissibly extended the detention, beyond what was necessary to deliver the traffic warning, when he questioned the driver about drugs and alcohol and requested consent to search the car. *Id.* at 652, 51 P.3d at 466.

Similarly, in *State v. Aguirre*, 141 Idaho 560, 561-562, 112 P.3d 848, 849-850 (Ct. App. 2005), Aguirre was stopped for failing to yield as he exited a parking lot. After collecting the license, registration, and insurance, the officer asked Aguirre if there was anything illegal in his vehicle, asked for permission to search the vehicle, and finally ran a drug dog around the vehicle. There, “[t]he purpose that justified the stop--the issuance of a traffic citation--was immediately abandoned,” and because the officers expanded the scope of the stop without reasonable suspicion, this Court held the use of the drug dog impermissibly extended the duration of the detention. *Id.* at 564, 112 P.3d at 852.

The Idaho Supreme Court has stated “a police officer’s brief detention of a driver to run a status check on the driver’s license, after making a valid, lawful contact with the driver, is reasonable for purposes of the fourth amendment.” *State v. Godwin*, 121 Idaho 491, 495, 826 P.2d 452, 456 (1992). An officer conducting a legal traffic stop may permissibly ask for consent to search the vehicle while the driver is still detained, when that request only momentarily extends the stop. *State v. Silva*, 134 Idaho 848, 852-53, 11 P.3d 44, 48-49 (Ct. App. 2000). Brief inquiries or other investigation techniques unrelated to the initial purpose of the stop do not necessarily violate a detainee’s Fourth Amendment rights if they do not extend the duration of the stop. *Roe*, 140 Idaho at 181-82, 90 P.3d at 931-32. In *Parkinson*, 135 Idaho at 362-63, 17 P.3d at 306-07, this Court held that it was permissible for one officer to question a vehicle’s driver about drugs and weapons and to take a drug dog around the vehicle while another officer was busy checking with dispatch on the driver’s status and writing out a traffic citation. It is also within an officer’s discretion to instruct the driver to exit or remain in the vehicle during a lawful stop. *Id.* at 363, 17 P.3d at 307.

Even though detentions must ordinarily be temporary and last no longer than necessary to effectuate the purpose of the stop, when the investigative detention discloses evidence of other possible crimes, the officer may expand the duration and focus of the detention. *State v. Brumfield*, 136 Idaho 913, 916-17, 42 P.3d 706, 709-10 (Ct. App. 2001) (holding that a stop to investigate the operation of an unregistered automobile justifiably developed into an investigation for drug activity and the sixteen-minute delay in waiting for the canine unit was reasonable). The length and scope of an investigatory detention may be expanded if objective and specific articulable facts exist to justify the suspicion that a detained person is engaged in criminal activity. *State v. Grantham*, 146 Idaho 490, 496, 198 P.3d 128, 134 (Ct. App. 2008). In

Grantham, a deputy stopped a vehicle that had swerved on suspicion that the driver was under the influence. During the course of the stop, the deputy observed that both the driver and Grantham had characteristics of extended methamphetamine use--“appeared disheveled and unkempt, had pock-marked skin, were gaunt or underweight, and had missing or rotted-out teeth.” *Id.* at 497, 198 P.3d at 135. The deputy learned that neither the driver nor Grantham owned the vehicle, the driver did not know the owner’s name, and Grantham only knew the owner’s first name. Consistent with methamphetamine use, the driver was unable to stand still. The driver’s demeanor also changed visibly when asked if there was methamphetamine in the vehicle. This Court held that the deputy’s “observations considered together, and including his training and experience, give rise to reasonable suspicion sufficient to expand the scope of the traffic stop.” Further, the deputy’s request for background information on the suspects and requesting a drug dog to search the vehicle were held to be reasonable methods of investigating this suspicion. *Id.*

Clink asserts that the stop was unlawfully extended at the point Barrett continued to question the driver regarding their exact location in Arizona because at that point “there is clearly no reasonable suspicion for anything which is being investigated.” Clink argues that it was during that unlawful extension that Barrett contacted the passengers and smelled the marijuana. The state argues that even if the two minutes between pulling the truck over, talking with the driver, and then talking with the passengers extended the stop, it was not unlawful because Barrett had reasonable suspicion to believe that the driver may have been under the influence of alcohol or drugs or was involved in criminal activity.

Clink relies primarily on *Aguirre*, 141 Idaho at 564, 112 P.3d at 852. As discussed above, in that case this Court held that the use of a drug dog impermissibly extended the duration of the detention where the officer immediately abandoned the purpose that justified the stop and did not possess the requisite reasonable suspicion to expand the scope of the stop. *Id.* However, Clink’s reliance on *Aguirre* is misplaced. Unlike the trooper in *Aguirre*, Barrett possessed reasonable suspicion that drug activity may have been occurring when he requested the canine unit. While Barrett was speaking with the driver, he noticed that his eyes were bloodshot. Although the driver told Barrett that the reason for this was because he had been shot in the eye and it caused them to water in cold weather, Barrett was under no obligation to believe the driver’s explanation. Bloodshot eyes alone are not enough to establish reasonable suspicion that

a crime is being committed. *See State v. Grigg*, 149 Idaho 361, 364, 233 P.3d 1283, 1286 (Ct. App. 2010). However, bloodshot eyes, coupled with other evidence, may be enough to establish reasonable suspicion. *See State v. Pick*, 124 Idaho 601, 605, 861 P.2d 1266, 1270 (Ct. App. 1993) (holding that reasonable suspicion existed to detain defendant when defendant had bloodshot eyes, admitted to consuming alcohol, and slurred her speech). When Barrett questioned the driver about where they were coming from, the driver responded that they were coming from Arizona. Barrett then questioned further about where they had been and the driver stated that they were in Phoenix, near the university, but was unsure of the exact location. Moreover, at the initiation of the stop, Barrett noticed that one of the occupants was smoking a cigarette, which he knew from his training and experience was sometimes done to mask the odor of alcohol or drugs. *See Brumfield*, 136 Idaho at 916-17, 42 P.3d at 709-10 (recognizing the significance of suspects using masking odors, such as a cigar, in attempting to cover drug odors). The driver's bloodshot eyes, coupled with the fact that the driver was unable to answer Barrett's questions with certainty about where they were coming from, and the burning cigarette at the initiation of the stop are specific, articulable facts that constituted reasonable suspicion and justified extending the detention to wait for the drug dog.

Once Barrett possessed reasonable suspicion of drug activity, he was allowed to expand the stop to pursue an investigation into drug activity and he approached the passengers of the truck to question them. Prior to the arrival of the canine unit, Barrett detected the odor of marijuana in the truck while talking to the passengers. Additionally, after Barrett informed the passengers that he smelled marijuana and asked them to give it to him, the passengers handed him marijuana and a pipe. Moreover, the length of the entire traffic stop was only thirteen minutes, and the drug dog arrived on the scene approximately seven minutes into the stop. This Court has previously upheld a delay to wait over one-half hour until the canine unit could arrive where the officer pursued the investigation into drug activity diligently and with reasonable speed. *Brumfield*, 136 Idaho at 917, 42 P.3d at 710. Clink has failed to demonstrate that the district court erred in determining that the extension of the detention was not unlawful or unreasonable under the circumstances. Accordingly, the district court did not err in denying Clink's motion to suppress the marijuana or any statements made by Clink.

IV.
CONCLUSION

Clink failed to demonstrate that the district court erred in denying his motion to suppress. Therefore, the judgment of conviction is affirmed.

Chief Judge GRATTON **CONCURS**.

Judge LANSING **CONCURS IN THE RESULT**.