

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36728

STATE OF IDAHO,)	2011 Unpublished Opinion No. 519
)	
Plaintiff-Respondent,)	Filed: June 16, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
WYLIE GAIL HUNTER,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Lansing L. Haynes, District Judge.

Order partially denying motion to suppress, affirmed; order denying Rule 35 motion, affirmed; judgment of conviction and sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Sara B. Thomas, Chief Appellate Unit, Boise, for appellant.

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

GRATTON, Chief Judge

Wylie Gail Hunter appeals from the judgment of conviction entered upon his conditional guilty plea for trafficking in marijuana, Idaho Code §§ 37-2732B(a)(1)(C) and 18-204. Hunter contends that the district court erred when it denied, in part, his motion to suppress. Hunter also asserts that the district court abused its discretion by imposing an excessive sentence and denying his Idaho Criminal Rule 35 motion for reduction of sentence. We affirm.

I.

FACTS AND PROCEDURAL BACKGROUND

In 2007, Idaho State Police Detective Terry Morgan began investigating Hunter for drug smuggling. Detective Morgan had received information that Hunter would obtain a rental car, drive to the Canadian border, pick up marijuana, and return to Coeur d'Alene. Based upon this and other information, ISP began tracking Hunter's car rentals through the rental company and notified the rental company that it should contact ISP when Hunter rented a vehicle. On

September 2, 2007, an employee of the rental company contacted ISP to inform them that Hunter had rented a vehicle that morning. Detective Morgan obtained the make, model, and license plate number of the car and waited on Highway 95 at Athol for the car to drive past. At approximately 2:22 p.m., Detective Morgan saw Hunter drive by in the vehicle. Detective Morgan testified that he observed Hunter exceed the speed limit and commit two illegal lane changes. Because he was in an unmarked vehicle, Detective Morgan notified Trooper Ronald Sutton regarding the traffic infractions and advised Trooper Sutton to pull the vehicle over.

At approximately 2:38 p.m., Trooper Sutton stopped the vehicle and, after obtaining Hunter's license and registration, went around to the passenger side of the vehicle to collect the passenger's identification. While speaking with the passenger, Chase Storlie, Trooper Sutton detected a faint odor of raw marijuana coming from the vehicle, which he relayed to Detective Morgan, who had stopped behind the patrol car shortly after the stop. Hunter was removed from the vehicle and asked to sit on the front bumper of the patrol car. Detective Morgan then contacted Hunter and asked him where he was coming from and where he was going. Hunter told Detective Morgan that he had driven an old pickup from Arizona to have some service work done, that he rented a vehicle in Coeur d'Alene, picked up Storlie, and drove to Sandpoint for breakfast. Detective Morgan then approached the rental vehicle to speak with Storlie and detected an odor of marijuana. Storlie told Detective Morgan that he met Hunter at the rental car agency, and they then went to Sandpoint for breakfast. At that time, Detective Morgan noticed three boxes of heat-seal plastic bags behind the driver's seat. Detective Morgan testified that based upon his training and experience, it is common for those types of bags to be used to package marijuana. Hunter informed Detective Morgan that the heat-seal bags were in the vehicle at the time he rented the vehicle. Storlie told Detective Morgan that he and Hunter had purchased the bags that morning for Storlie's wife because she used them for canning and freezing food. Detective Morgan testified that, based upon his previous investigation, he knew that Storlie was not married. Thereafter, Trooper Sutton placed Hunter in handcuffs for "officer safety" reasons.

After observing the traffic violations, Detective Morgan also called Officer Richard Reinking in order to have a drug detection dog at the scene. At the time of the stop, Officer Reinking was involved in another criminal matter and, as such, responded to the scene approximately thirty minutes after the stop. The drug dog alerted on the trunk of the vehicle, and

the officers located two large hockey bags with approximately seventy-five pounds of marijuana inside.

Hunter was charged with trafficking in more than twenty-five pounds of marijuana. He filed a motion to suppress, claiming that the officers lacked reasonable suspicion to stop the vehicle and probable cause to search it. The district court held a hearing where it granted in part, and denied in part, Hunter's motion to suppress. Hunter pled guilty to trafficking in marijuana, and subsequently moved to withdraw his plea. The district court held a hearing on the motion to withdraw his guilty plea, granted it, and allowed Hunter to renew his motion to suppress. At a subsequent hearing held on the motion to suppress, the court ultimately concluded that it would make "no change" to its prior ruling. Hunter entered a conditional guilty plea, pleading guilty to trafficking in marijuana in an amount over twenty-five pounds, reserving his right to appeal the denial of his motion to suppress.

The district court entered a judgment of conviction and imposed a unified sentence of fifteen years, with ten years determinate. Hunter filed a Rule 35 motion for reduction of sentence, which was denied. Hunter appeals.

II.

ANALYSIS

A. Motion to Suppress

At the initial hearing on Hunter's motion to suppress, the district court found that there was reasonable and articulable suspicion to stop the vehicle, based upon several months of investigation prior to the stop, as well as due to the traffic violations observed by Detective Morgan. The court further found that when Trooper Sutton smelled the odor of marijuana coming from the vehicle, probable cause to search the vehicle was established, which was enhanced when Detective Morgan also smelled a somewhat stronger odor of marijuana coming from the vehicle. The court found that in considering whether to suppress the evidence discovered as a result of the search, the length of the detention, and the fact that Hunter was handcuffed were irrelevant. The court concluded:

This court is finding that the marijuana that was found in the trunk of this vehicle is not the fruit of the detention. It's not the fruit of the handcuffing. It's the fruit of the probable cause that existed to search at the time that that marijuana odor was detected.

The court also determined that, for purposes of *Miranda*,¹ Hunter had been de facto arrested at the time that handcuffs were placed on him. As such, the court concluded that it would suppress Hunter's explanation to Detective Morgan regarding the mileage of the vehicle as it was given after Hunter had been handcuffed.

At the subsequent suppression hearing, Hunter challenged a search of his hotel room that Detective Morgan conducted as part of his investigation prior to the stop in this case. The district court found that Hunter had failed to establish an expectation of privacy in the hotel room at the time of the search. The court determined that the evidence gathered in the hotel search was not of particular relevance to the stop, and that the traffic violations provided an independent basis for the stop of the vehicle. The court also found the testimony of the officers to be more credible than the testimony of Hunter. The court stated that it would make no change to its prior ruling, and subsequently entered a written order stating that its previous decision on Hunter's motion to suppress "remains in effect."

On appeal, Hunter contends that the district court erred in denying his motion to suppress because the officers lacked reasonable suspicion to stop his vehicle, the officers did not have probable cause to search the vehicle to determine the amount of miles driven, and he was de facto arrested when he was placed in handcuffs and, therefore, all of the evidence obtained after that point was a fruit of that illegal arrest. 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 that 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).

1. Reasonable and articulable suspicion

Hunter acknowledges that the district court found that the officers had reasonable suspicion to stop his vehicle based upon their prior criminal investigation, as well as by

¹ See *Miranda v. Arizona*, 384 U.S. 436 (1966).

observing traffic violations. He contends, however, that because he did not commit any traffic violations, there was no reasonable suspicion to detain him.²

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); *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). 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). Suspicion will not be found to be justified if the conduct observed by the officer fell within the broad range of what can be described as normal driving behavior. *Atkinson*, 128 Idaho at 561, 916 P.2d at 1286.

At the hearing on Hunter's motion to withdraw his guilty plea, he testified that prior to being stopped he was driving on Highway 95 on Sunday of Labor Day weekend in "bumper to bumper" traffic the entire drive. He also testified he was driving in the slow lane approximately five miles per hour under the speed limit, because he knew what was in the trunk. He did not recall having changed lanes without signaling. The district court considered this evidence at the second hearing on the motion to suppress. The court found that the traffic violations provided a basis for the stop of Hunter's vehicle, concluding that it "continue[d] to find that there was a

² Hunter does not challenge the district court's finding that the officer's prior investigation provided reasonable and articulable suspicion to stop the vehicle. As such, the Court could affirm on that basis. However, at the second hearing on the motion to suppress, the district court relied principally on the traffic violations as providing a basis for the stop. We conclude that the officers had reasonable and articulable suspicion to stop the vehicle based upon both the prior investigation, as well as the traffic violations. As the traffic violations issue was the only issue briefed, we address that issue specifically.

reasonable and articulable suspicion based upon the totality of the evidence that the Court heard to detain and stop the vehicle that Mr. Hunter was in.” Indeed, Detective Morgan testified at the initial suppression hearing to having observed three traffic violations -- speeding and making two lane changes without signaling. There is substantial evidence in the record to support the district court’s findings. As such, the traffic violations provided the officers with reasonable and articulable suspicion to stop Hunter’s vehicle. Hunter has failed to demonstrate that the district court erred.

2. Probable cause to search the vehicle

Hunter acknowledges that the district court found that the officers could smell an odor of marijuana coming from the vehicle. Nevertheless, he maintains that the officers lacked probable cause to search his vehicle to determine the amount of miles he had driven. He contends that by reaching into the vehicle and turning the ignition key, Detective Morgan performed an illegal search and that all subsequent evidence obtained must be suppressed.

Hunter recognizes this Court’s opinion in *State v. Gonzales*, 117 Idaho 518, 789 P.2d 206 (Ct. App. 1990), and characterizes it as holding that the “smell of raw marijuana could provide probable cause for officers to search a vehicle.” In fact, what we held in *Gonzales* is that “[t]he smell of marijuana *alone* can satisfy the probable cause requirement for a warrantless search.” *Gonzales*, 117 Idaho at 519, 789 P.2d at 207 (quoting *State v. Capps*, 641 P.2d 484, 487 (N.M. 1982) (emphasis in original)).³ Here, Trooper Sutton and Detective Morgan both smelled the odor of raw marijuana coming from the vehicle, and that alone provided probable cause to conduct a search.

We also note that this was not the sum total of information available to the officers at the time. Detective Morgan had also been conducting an investigation of Hunter for drug smuggling for several months. He testified that he had information, which came from Storlie’s ex-girlfriend, that Storlie and Hunter were smuggling marijuana across the border. She observed camouflage clothing, hiking boots, and large duffel bags. She told officers that Storlie and Hunter would rent vehicles and smuggle marijuana across the Canadian border. She also stated

³ *But see State v. Schmadeka*, 136 Idaho 595, 599-600, 38 P.3d 633, 637-38 (Ct. App. 2001) (recognizing a distinction between the odor of burnt marijuana and raw marijuana and holding that the odor of burnt marijuana is only sufficient to “establish probable cause for a warrantless search of the portion of the automobile associated with that odor”).

that they would frequently stay at the Sandman Hotel in Canada. Detective Morgan obtained copies of receipts from the Sandman Hotel indicating that Hunter had stayed there several times. Detective Morgan also obtained several rental car receipts of vehicles rented by Hunter, and several of them indicated that the mileage put on the vehicles was approximately the distance to the Canadian border and back. Detective Morgan was also aware that Hunter was on felony probation for smuggling a large amount of cash across the border. A search of the vehicle for that offense yielded night-vision goggles, camouflage clothing, hiking boots, and a GPS unit-- items which Detective Morgan referred to as a smuggler's kit. Detective Morgan also conducted a search of Hunter's hotel room, the legality of which was challenged at the second suppression hearing, and officers discovered a drug ledger.

Once the vehicle was stopped, both Trooper Sutton and Detective Morgan smelled the odor of raw marijuana. Detective Morgan also questioned Hunter and Storlie about where they were coming from and where they were going, and their stories were inconsistent. Detective Morgan also saw three boxes of heat-seal plastic bags in the vehicle, which he testified are commonly used to package marijuana. Hunter has failed to demonstrate that the district court erred in concluding that the officers had probable cause to conduct a search of the vehicle.

3. Suppression of the evidence

Hunter acknowledges that the district court found that whether he was handcuffed was irrelevant as to the suppression inquiry because the search of the trunk was a result of the probable cause established by the officers smelling raw marijuana, not a result of the handcuffing. Nevertheless, Hunter asserts that because he was de facto arrested when he was placed in handcuffs, all of the evidence obtained after that point was a fruit of an illegal arrest. We addressed a similar issue in *State v. Keene*, 144 Idaho 915, 174 P.3d 885 (Ct. App. 2007).

In *Keene*, police were dispatched to an R.V. park in response to a call from the park's host. When the officer arrived, he noticed a brown Mercury Grand Marquis with two occupants leaving the park. The park host reported that he suspected that the occupants of the car might have been selling drugs in or near the R.V. park restrooms. The following night, the same officer was dispatched to a location in response to a report of a car parked in front of an unoccupied house. When the officer arrived, he saw that it was the same car he had seen in the R.V. park the night before. The officer waited down the street and called narcotics officers for assistance. Prior to their arrival, the officer pulled his police car to the rear of the suspect

vehicle. He did not turn on his emergency lights or his flashers. A male exited the vehicle from the passenger side and told the officer that he had come to visit a relative who lived in the unoccupied house. He admitted to the officer that he had been at the R.V. park the night before. The defendant then exited the car from the driver's side and walked towards the officer. Upon questioning, the defendant gave the officer her name and date of birth. She then walked back to the car, locked the doors, and left the scene on foot. At about this time, the narcotics officers arrived and asked the investigating officer if he was "done" with the defendant, and he said that he was not. The narcotics officers ran after the defendant who resisted. The officers ultimately placed handcuffs on the defendant and took her back to the scene of the initial encounter. The officers called for a drug-detection dog, which arrived about ten minutes after the defendant had been handcuffed. The dog indicated on the car and a search revealed methamphetamine and paraphernalia. *Keene*, 144 Idaho at 917, 174 P.3d at 887.

The defendant argued on appeal that her detention became a de facto arrest when she was handcuffed, and was not supported by probable cause or reasonable suspicion that she was involved in criminal activity. *Id.* at 918, 174 P.3d at 888. We noted that there was no detention until the narcotics officers ran after the defendant and stopped her. *Id.* We then concluded:

Assuming *arguendo* that the detention that then occurred amounted to an arrest without probable cause, this illegality would require suppression of the drugs found in the car only if there was a causal connection between the unlawful arrest and the discovery of the drugs. In *State v. McBaine*, 144 Idaho 130, 157 P.3d 1101 (Ct. App. 2007), we noted that the United States Supreme Court has instructed that suppression of evidence under the exclusionary rule is appropriate only where the challenged evidence is *in some sense*, whether direct or indirect, the product of illegal governmental activity. See *Segura v. United States*, 468 U.S. 796, 804, 815 (1984). Thus, where a defendant moves to suppress evidence allegedly gained through unconstitutional police conduct, the defendant bears an initial burden of going forward with evidence to show a factual nexus between the illegality and the state's acquisition of the evidence. *Alderman v. United States*, 394 U.S. 165, 183 (1969). "[T]he defendant need only show that, on the events that did take place, the discovery of the evidence was a product or result of the unlawful police conduct." *McBaine*, 144 Idaho at 134, 157 P.3d at 1105. Subsequently, the state bears the ultimate burden of persuasion to prove that the challenged evidence is untainted. *Id.* at 133, 157 P.3d at 1104.

Here, Keene has not met her initial burden of showing a factual nexus between her detention and the discovery of drugs in her vehicle. The police did not gain any information from arresting Keene that caused them to search the vehicle, and because Keene had already walked away from the vehicle before she

was seized, we see no way that the canine sniff and ensuing search resulted from an exploitation of the allegedly illegal arrest.

Keene, 144 Idaho at 918-19, 174 P.3d at 888-89 (emphasis in original).

In this case, as in *Keene*, Hunter has not met his initial burden of showing a factual nexus between his detention and the discovery of drugs in the vehicle. In fact, the district court specifically found that “the marijuana that was found in the trunk of this vehicle is not the fruit of the detention. It’s not the fruit of the handcuffing. It’s the fruit of the probable cause that existed to search at the time that that marijuana odor was detected.” Hunter acknowledges the district court’s findings but maintains that he was de facto arrested at the time that he was handcuffed. However, as the district court determined, whether Hunter was under de facto arrest is irrelevant to the suppression inquiry unless there is a factual nexus between the illegality and the State’s acquisition of the evidence. *See Keene*, 144 Idaho at 918, 174 P.3d at 889. Hunter does not even attempt to demonstrate that there is such a factual nexus. As such, Hunter has failed to show that the district court erred, and suppression is not warranted in this case.

B. Excessive Sentence

Hunter contends that his sentence was excessive. He acknowledges that his sentence is within the statutory limits. However, he contends that it is excessive under any view of the facts. An appellate review of a sentence is based on an abuse of discretion standard. *State v. Burdett*, 134 Idaho 271, 276, 1 P.3d 299, 304 (Ct. App. 2000). Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable, and thus a clear abuse of discretion. *State v. Brown*, 121 Idaho 385, 393, 825 P.2d 482, 490 (1992). A sentence may represent such an abuse of discretion if it is shown to be unreasonable upon the facts of the case. *State v. Nice*, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary “to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case.” *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). Where an appellant contends that the sentencing court imposed an excessively harsh sentence, we conduct an independent review of the record, having regard for the nature of the offense, the character of the offender, and the protection of the public interest. *State v. Reinke*, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (Ct. App. 1982). When

reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

Hunter asserts that the district court abused its discretion when it failed to properly consider the mitigating factors in his case, specifically his health problems and his remorse. The court did not abuse its discretion. The court specifically noted that it must consider the four goals of sentencing and that it had considered them in this case.

With regard to Hunter's health problems, Hunter's counsel argued that while incarcerated on the charges in this case, Hunter contracted a MRSA infection at the county jail. Hunter's counsel asserted that it was "well-documented" that Hunter had suffered from MRSA for approximately sixteen months of his incarceration, which had resulted in scars on his arms, chest, and neck, and that he had ground his teeth down due to the pain. Hunter's counsel represented that he spent eight months in "the hole" in order to isolate him from other prisoners. Hunter's counsel argued that, in considering what an appropriate sentence would be, the court should consider that he be "given some credit time not just for time served but for the hard time that he served." Essentially, Hunter's counsel argued that his health problems were a mitigating factor.

In considering counsel's arguments at sentencing, the district court concluded that it was "not in a position to determine whether one person's time in the county jail is harder than another person's time." The court accepted Hunter's counsel's representations that he had a "particularly miserable time in the county jail." Nevertheless, the court proceeded to impose sentence, noting that "this was a significant drug smuggling scheme that you were involved in; seventy-five pounds of marijuana in a hockey bag. There's indications that this was not the first smuggling venture at all, that it [had] been going on for some time." The court also considered Hunter's criminal history, specifically noting that he was on federal probation for the bulk smuggling of cash and that Hunter "perform[ed] on that probation by engaging in . . . drug smuggling activities."

While Hunter also argued that he was remorseful at sentencing, the court stated:

Your indication is that you take the marijuana to Arizona. In the PSI you say you're selling it to help people, and you're selling it for medical marijuana use. It's strange credibility to think that you are disposing of hundreds of pounds of marijuana out of the benevolence of your heart to assist people with aches and pains. The Court rejects that as incredible and unbelievable. The Court rather makes the reasonable inference that you were a drug smuggler for the profit of it.

The court further found:

When counsel for the State describes you as thinking with clarity, I don't think they're referring to your ability to drive a car or to negotiate your route. I think they're referring to the fact that this was a well-planned out scheme. This was certainly you were caught in the long run. This is not a mistake. This is not clouded thinking at all. This was the cognizant decision to profit from illegal smuggling of a controlled substance into our country. And whether it was being distributed in Arizona or Idaho makes no difference to the Court. What you were doing was bringing product into the country that may or may not be able to help certain individuals but without doubt destroyed many, many, many more lives than it at all helps at all.

The court was clearly aware of Hunter's arguments. Nevertheless, the court rejected those arguments in an exercise of its discretion. The court found Hunter's explanation for his activities unbelievable and, while not explicitly referencing Hunter's expression of remorse, determined that he was a "drug smuggler for the profit of it." The district court appropriately considered the goals of sentencing, and we conclude, having reviewed the record in this case, that Hunter has failed to demonstrate that the court abused its discretion.

C. Rule 35

Hunter also argues that the district court abused its discretion in denying his Rule 35 motion. A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information. *Id.*

Hunter argues that the district court abused its discretion in denying his Rule 35 motion because his sentence is excessive in light of the "new or additional" information regarding his health problems. This contention, however, is belied by the record. None of the information presented in the Rule 35 motion was new or additional information. All of the information regarding Hunter's MRSA infection that was submitted on the Rule 35 motion was previously

submitted at sentencing. While the arguments varied slightly, the information before the district court was the same.

Hunter also argues that the district court abused its discretion in denying his Rule 35 motion because it failed to consider his corrections and clarifications made at sentencing regarding one of his prior charges, and then referred to that prior charge in denying his Rule 35 motion. At the hearing on the Rule 35 motion, the district court simply stated that “Mr. Hunter admitted that he seriously defrauded an insurance company.” The presentence investigation report indicated that Hunter self-reported a charge in Washington for conspiracy to collect insurance. The PSI stated that Hunter stated that he was working at a used car dealership and when “business went bad” he billed his insurance to obtain money. At sentencing, Hunter’s counsel referred to this charge stating:

On Page 3--um--there’s this prior record that’s self-reported. . . . But from what I understand my client actually owned a new Chrysler dealership. And at the time had some involvement with someone when the business was going badly was trying to or asking him if they wanted him to burn the place down. I don’t know whatever happened to that. It’s kind of interesting that that was self-reported. And there’s nothing on the reports or from what I can see in the NCIC or whatever the presentence people ran. I guess from my perspective that doesn’t really reflect much on this particular situation. The reporting itself was interesting because my client did own the dealership. And it was a new car dealership instead of being working at a used car dealership as was mentioned in the presentence investigation report.

Based upon the record, while there may have been some discrepancies, the court was concerned about the fact that Hunter defrauded an insurance company, a charge which he self-reported. The court’s reference to this charge does not indicate that it failed to consider any corrections to the PSI.

At the hearing on the Rule 35 motion, the district court reiterated its reasoning for imposing the sentence:

Because I considered the factor that Mr. Hunter had 75 pounds of marijuana smuggled back into this country in a hockey bag after what appeared to have been evidence of some repeated trips to Canada and back for the same purposes. I also took into consideration the fact that Mr. Hunter had a 1987 or a 1988 incident that was a conspiracy to maliciously injure property. Mr. Hunter admitted that he seriously defrauded an insurance company in 1988. It appeared Mr. Hunter did a nine-month federal prison sentence in ’87 or ’88. There was a 1993 misdemeanor malicious injury to property. And a 2004 felony of a full cash

smuggling that had a four-month prison sentence in which Mr. Hunter was on probation at the time of the commission of this offense.

So when the Court looks at the mandatory minimum, the fixed minimum of five years and the maximum in the matter of 15 years, the Court determined that to give Mr. Hunter the relief that he requests would be simply to diminish the seriousness of *this crime*. Mr. Hunter would essentially be getting the same sentence that the gentleman that came before the Court with no prior criminal history would get, that being the five-year fixed minimum as opposed to getting it adjusted.

(Emphasis added.) While the court did consider the fact that Hunter had a prior criminal history, the record demonstrates that the court was particularly concerned about Hunter's actions in the instant case. Based upon the nature of the offense and Hunter's prior criminal history, the court concluded that a unified sentence of fifteen years, with ten years determinate, was the most appropriate. We conclude that Hunter has failed to demonstrate that the district court abused its discretion in denying his Rule 35 motion.

III.

CONCLUSION

The district court did not err in partially denying Hunter's motion to suppress. The district court did not abuse its discretion in sentencing Hunter or in denying his I.C.R. 35 motion for reduction of sentence. Accordingly, Hunter's judgment of conviction and sentence are affirmed.

Judge LANSING and Judge MELANSON **CONCUR.**