

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 38165

STATE OF IDAHO,)	2011 Unpublished Opinion No. 634
)	
Plaintiff-Respondent,)	Filed: September 26, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
JOSEPH EDWARD TINCKNELL,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge.

Order denying motion to suppress, affirmed.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

GRATTON, Chief Judge

Joseph Edward Tincknell appeals from the judgment of conviction entered upon his conditional guilty pleas to possession of cocaine, possession of drug paraphernalia, and possession of marijuana. We affirm.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Tincknell was stopped by Officers Andreoli and Cowling for failure to stop at a stop sign. Officer Andreoli was serving in his capacity as training officer; Officer Cowling was his trainee. The officers made contact with Tincknell, and during the contact Officer Andreoli observed a large, padlocked lockbox with a marijuana leaf sticker on it. He asked dispatch to send a canine unit to the scene; the unit arrived approximately twenty-one minutes into the stop. While Officer Cowling was issuing Tincknell’s traffic citation, the drug dog alerted on Tincknell’s car. A search of the vehicle and Tincknell’s person revealed cocaine, marijuana, drug paraphernalia,

and a folding knife. Tincknell was charged with possession of cocaine, possession of drug paraphernalia, misdemeanor possession of marijuana, and possession of a concealed weapon. He filed a motion to suppress, claiming the evidence was obtained in violation of the Fourth Amendment of the United States Constitution and Article I, § 17 of the Idaho Constitution. The district court denied the motion, finding that the length of the detention was reasonable.

Tincknell conditionally pled guilty to the drug possession charges, reserving his right to appeal the denial of his motion to suppress. Tincknell timely appealed.

II.

ANALYSIS

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).

The Fourth Amendment to the United States Constitution guarantees every citizen the right to be free from unreasonable searches and seizures. *State v. Salois*, 144 Idaho 344, 347, 160 P.3d 1279, 1282 (Ct. App. 2007); *State v. Cerino*, 141 Idaho 736, 737, 117 P.3d 876, 877 (Ct. App. 2005). Its purpose is “to impose a standard of ‘reasonableness’ upon the exercise of discretion by government officials, including law enforcement agents, in order to ‘safeguard the privacy and security of individuals against arbitrary invasions.’” *Delaware v. Prouse*, 440 U.S. 648, 653-54 (1979) (quoting *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312 (1978)). The stop of a vehicle constitutes a seizure of its occupants and is therefore subject to Fourth Amendment restraints. *Prouse*, 440 U.S. at 653; *State v. Roark*, 140 Idaho 868, 870, 103 P.3d 481, 483 (Ct. App. 2004); *State v. Robertson*, 134 Idaho 180, 184, 997 P.2d 641, 645 (Ct. App. 2000); *State v. Flowers*, 131 Idaho 205, 208, 953 P.2d 645, 648 (Ct. App. 1998); *State v. Sevy*, 129 Idaho 613, 614-15, 930 P.2d 1358, 1359-60 (Ct. App. 1997); *Atkinson*, 128 Idaho at 561, 916 P.2d at 1286. Although a vehicle stop is limited in magnitude compared to other types of seizures, it is nonetheless a “constitutionally cognizable” intrusion and therefore may not be conducted “at the

unbridled discretion of law enforcement officials.” *Prouse*, 440 U.S. at 661. Because a traffic stop is limited in scope and duration, it is analogous to an investigative detention and is analyzed under the principles set forth in *Terry v. Ohio*, 392 U.S. 1 (1968). *Prouse*, 440 U.S. at 653; *State v. Stewart*, 145 Idaho 641, 644, 181 P.3d 1249, 1253 (Ct. App. 2008).

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). Tincknell does not dispute that Officers Andreoli and Cowling had reasonable suspicion to stop his vehicle for failure to stop at a stop sign.

The determination of whether an investigative detention is reasonable requires a dual inquiry as to 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). An investigative 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). There is no rigid time-limit for determining when a detention has lasted longer than necessary; rather, a court must consider the scope of the detention and the law enforcement purposes to be served, as well as the duration of the stop. *United States v. Sharpe*, 470 U.S. 675, 685-86 (1985); *State v. Soukharith*, 570 N.W.2d 344, 355 (Neb. 1997). 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.

Tincknell contends that the district court erred in denying his motion to suppress because Officer Cowling impermissibly extended the investigatory detention longer than necessary to effectuate the stop in violation of the Fourth Amendment of the United States Constitution and Article I, § 17 of the Idaho Constitution.¹ He asserts that Officer Cowling impermissibly extended the detention by receiving training from his training officer, Officer Andreoli, who chose to instruct Officer Cowling on proper investigation techniques during the stop. The total duration of the stop from initial contact to the arrival of the drug dog was twenty-one minutes. Tincknell contends that twenty-one minutes is beyond what is necessary to conduct a traffic stop. Tincknell asserts that he was detained longer than necessary to effectuate the stop, violating his constitutional rights. Therefore, Tincknell claims the district court erred in denying his motion to suppress.

Upon review of the record and the district court's findings, however, we cannot say that the duration of the stop was unreasonable. While twenty-one minutes might, in some cases, extend past the time necessary to conduct a traffic stop, there were additional facts in this instance that made the stop reasonable. First, the officers ran a check of Tincknell's out-of-state driver's license. This process requires the officers to submit a request with officials in the issuing state and essentially "get in line" along with any other out-of-state law enforcement agencies requesting driver's license information. Consequently, the process inevitably takes more time than a check of an in-state driver's license. Second, at the time of the stop Officer Cowling was a trainee and Officer Andreoli was serving as his training officer. The nature of this relationship, and the fact that Officer Cowling was still in training, means that the stop would almost necessarily take more time than if an experienced officer conducted it. Indeed, Officer Andreoli testified: "[J]ust being that they're trainees and fairly new to the entire experience, everything seems to take a little bit longer." This variability in the speed in which individual officers process the traffic stop does not, by itself, render the length of the detention

¹ Although Tincknell contends that both constitutions were violated, he provides no cogent reason why Article I, § 17 of the Idaho Constitution should be applied differently than the Fourth Amendment to the United States Constitution in this case. Therefore, this Court will rely on judicial interpretation of the Fourth Amendment in its analysis of Tincknell's claims. *See State v. Schaffer*, 133 Idaho 126, 130, 982 P.2d 961, 965 (Ct. App. 1999).

unreasonable. Third, Officer Andreoli took only a very brief time during the stop to point out and explain a mistake Officer Cowling had made during his contact with Tincknell. Officer Andreoli explained at the suppression hearing that trainee's mistakes often need to be pointed out and corrected as soon as possible, before the details of the mistake fade from the training officer's and trainee's memories. Even if Officer Cowling was not a trainee, two officers on the scene briefly discussing an issue arising during the interaction, does not necessarily extend the scope of the stop and is not unreasonable.

Finally, as the district court found, the record reveals no indication that there was any attempt by the officers to delay the conclusion of the stop with the intent to allow time for the drug dog to arrive. Officer Cowling was writing the citation when the drug dog arrived. Considering these facts and circumstances, the duration of the detention was reasonable.

III.

CONCLUSION

The officers did not extend Tincknell's detention beyond the time necessary to effectuate the purpose of the stop. The district court did not err in denying Tincknell's motion to suppress. Therefore, Tincknell's judgment of conviction is affirmed.

Judge LANSING and Judge MELANSON **CONCUR.**