

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 47331-2019
 Plaintiff-Appellant,)
) Ada County Case No.
 v.) CR01-18-55773
)
 DALE ALLEN SUTTERFIELD,)
)
 Defendant-Respondent.)
 _____)

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's orders suppressing evidence and dismissing a charge of possession of methamphetamine. The state challenges the district court's determination that the citizen's arrest in this case was an unconstitutional arrest by an officer for a misdemeanor committed outside the officer's presence.

Statement Of The Facts And Course Of The Proceedings

The state charged Sutterfield with possession of methamphetamine and petit theft. (R., pp. 31-32.) Sutterfield moved to suppress evidence, claiming he had been illegally arrested. (R., pp. 72-79.)

The district court found the following facts relevant to the motion: Sutterfield entered a restaurant and took a cell phone that the restaurant used to operate the credit card reader. (R., pp. 108-09.) Restaurant employees pursued and confronted Sutterfield in an adjacent laundromat about the phone, and Sutterfield returned the phone. (R., p. 109.) The employees then called police to report the theft. (R., p. 109.) The district court found the theft "was a completed misdemeanor" at the time police were called. (R., pp. 109-10.) An officer responded to the call and detained Sutterfield. (R., pp. 109-10.) While another officer watched Sutterfield, the original officer went to the restaurant and told the employees that he could issue a citation to Sutterfield, trespass him from the restaurant, or assist in a citizen's arrest. (R., p. 110.) The employees elected for the citizen's arrest and one of them filled out a statement and citizen's arrest form. (R., pp. 110-11.) The officer then returned to Sutterfield and informed him that he was under arrest for petit theft. (R.,

p. 111.) The officer found methamphetamine in Sutterfield's pocket in a search incident to arrest. (R., p. 111.)

The district court stated that the issue presented by the motion was “whether there was a valid citizen’s arrest that supported the officer’s search of Sutterfield’s person which led to the discovery of the methamphetamine.” (R., p. 113.) Citing citizen’s arrest statutes, the district court concluded there was no valid citizen’s arrest because the restaurant employees did not “inform Sutterfield” of the employees’ “intention to arrest him, the cause of the arrest, and the authority for the arrest.” (R., p. 114.) “Based upon all evidence presented at the hearing, the State has failed to show by a preponderance of the evidence that Sutterfield was provided adequate notice to effect a valid citizen’s arrest under the plain-language of Idaho Code § 19-606 [sic—19-608].” (R., p. 117.) Having found the arrest invalid under Clarke,¹ the district court suppressed the evidence found in Sutterfield’s pocket incident to the arrest. (R., p. 118.)

Sutterfield pled guilty to the petit theft and the district court dismissed the felony count. (R., pp. 120-23.) The state filed a notice of appeal timely from the district court’s order granting suppression. (R., pp. 124-26.)

¹ State v. Clarke, 165 Idaho 393, 446 P.3d 451 (2019).

ISSUE

Did the district court err in suppressing the evidence of methamphetamine possession found incident to arrest because the arrest and search incident thereto were constitutional?

ARGUMENT

Sutterfield's Arrest And Search Incident Thereto Were Constitutional

A. Introduction

In this case the officer arrested Sutterfield only after one of the employees of the restaurant where Sutterfield stole the phone requested a citizen's arrest and signed a citizen's arrest statement. (R., p. 110; State's Exhibit 3.) The district court concluded that because the Sutterfield was not *informed* that the arrest was a citizen's arrest "Sutterfield's arrest was an arrest by an officer." (R., p. 117.) Because the arrest was not a citizen's arrest, and was for a misdemeanor not committed in the officer's presence, it was an unconstitutional arrest under Clarke. (Id.) Because the arrest was unconstitutional, the search incident thereto was also unconstitutional. (R., p.118.) The district court's analysis is flawed. What Sutterfield was or was not informed of at the time of his arrest did not control whether the arrest was a citizen's arrest or an officer arrest. The district court erred in concluding that the officer was acting on his own authority rather than effectuating a citizen's arrest based on what information was provided to Sutterfield at the time.

B. Standard Of Review

When reviewing a district court's order granting a motion to suppress, the Court accepts the trial court's findings of fact "unless they are clearly erroneous" but will "freely review the trial court's application of constitutional principles in light of the facts found." State v. Gonzales, 165 Idaho 667, ___, 450 P.3d 315, 319 (2019) (internal quotations omitted).

C. The Information Provided To Sutterfield Was Irrelevant To Whether There Was A Citizen’s Arrest, Not Controlling

The touchstone of Article I, Section 17 of the Idaho Constitution, like its counterpart in the Fourth Amendment, is reasonableness. See State v. Rios, 160 Idaho 262, 264-65, 371 P.3d 316, 318-19 (2016). “Warrantless searches are presumptively unreasonable.” State v. Weaver, 127 Idaho 288, 290, 900 P.2d 196, 198 (1995). “Searches incident to arrest are one of the well-established exceptions to the warrant requirement.” State v. LaMay, 140 Idaho 835, 838, 103 P.3d 448, 451 (2004). “Pursuant to the search incident to arrest exception, law enforcement officers may search an arrestee incident to a lawful custodial arrest.” State v. Lee, 162 Idaho 642, 649, 402 P.3d 1095, 1102 (2017). “While evidence obtained during a search incident to a lawful arrest is generally admissible, evidence obtained during a search subsequent to an unlawful arrest is not.” State v. Bishop, 146 Idaho 804, 816, 203 P.3d 1203, 1215 (2009). This exception applies “under both state and federal law.” State v. Green, 158 Idaho 884, 887, 354 P.3d 446, 449 (2015), abrogated on other grounds by State v. Clarke, 165 Idaho 393, ___, 446 P.3d 451, 455 (2019) (“*Green* should stand for the principle that preexisting statutes and the common law may be used to help inform our interpretation of the Idaho Constitution, but they are not the embodiment of, nor are they incorporated within, the Constitution.”).

“In conformity with the rule at common law, a warrantless arrest by a law officer is reasonable [and lawful] under the Fourth Amendment where there is probable cause to believe that a criminal offense has been or is being committed.” Lee, 162 Idaho at 649, 402 P.3d at 1102 (brackets original, quoting Devenpeck v. Alford, 543 U.S. 146, 152 (2004)). Even with probable cause, however, a police officer violates

of the Idaho Constitution “by making an arrest for a misdemeanor offense that occurred outside his presence.” Clarke, 165 Idaho at ____, 446 P.3d at 454-57.

Sutterfield’s arrest was reasonable under the Fourth Amendment and Article I, Section 17 of the Idaho Constitution. The arrest was supported by probable cause. (See R., pp. 109-10.) Furthermore, the arrest complied with Clarke’s “in the presence” requirement because the theft occurred in the presence of the restaurant employee who requested the arrest and filled out the citizen’s arrest form. That the physical arrest was accomplished by an officer did not transform this citizen’s arrest into an unconstitutional arrest by an officer.

Under Idaho law, a private citizen may arrest “[f]or a public offense committed or attempted in his presence.” I.C. § 19-604. See also State v. Moore, 129 Idaho 776, 779-80, 932 P.2d 899, 902-03 (Ct. App. 1996) (“The term ‘in his presence’ is satisfied if the citizen detected the commission of the offense through the use of his senses.”). The citizen “may orally summon as many persons as he deems necessary to aid him therein.” I.C. § 19-606. When a citizen summons police to assist with a citizen’s arrest the responding officers “must be regarded as an agent of the person making the arrest.” State v. Sutherland, 130 Idaho 472, 474-75, 943 P.2d 62, 64-65 (Ct. App. 1997) (internal quotations omitted). The facts of this case show the arrest was accomplished upon the specific authority of a citizen by an officer who had been summoned by the citizen to assist in the arrest, and who was therefore the agent of the citizen. (R., pp. 108-11; State’s Exhibit 3.)

Because this arrest was (1) supported by probable cause and (2) a citizen’s arrest by an agent of a citizen in whose presence the crime was committed, it was a valid and constitutional arrest. The arrest was constitutionally reasonable under both the Fourth

Amendment and Article I, Section 17 of the Idaho Constitution, and therefore the search that revealed the methamphetamine fell into the well-established search incident to arrest exception.

In holding otherwise, the district court reasoned that because the citizen did not “inform[] Sutterfield of the intention to arrest, cause of the arrest, or authority for the arrest,” and the officer “never indicated in any way to Sutterfield that it was a citizen’s arrest made at the direction and request of [the citizen],” Sutterfield’s arrest was, as a matter of law, not a citizen’s arrest but rather was “an arrest by an officer” prohibited by Clarke. (R., p. 117.) This analysis does not withstand scrutiny. Whether Sutterfield was accurately told under whose authority the officer was acting did not determine under whose authority the officer was acting.

The district court based its decision on I.C. § 19-608 and the information conveyed to Sutterfield. Specifically, the district court concluded it was the officer’s and not the citizen’s arrest because the officer “did not provide the written notice of the citizen’s arrest or orally inform Sutterfield of the citizen’s arrest.” (R., p. 114.) The district court held that the arresting person was “required to provide notice of the authority of the arrest as a citizen’s arrest” under I.C. § 19-608 and because Sutterfield was not informed the arrest was a citizen’s arrest “Sutterfield’s arrest was an arrest by an officer” and not a citizen’s arrest. (R., p. 117.) This reasoning is flawed and the district court’s holding erroneous.

Idaho Code section 19-608 provides:

The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to commit, an offense, or is pursued immediately after its commission, or after an escape.

The district court erred by concluding that this statute was even relevant to the analysis of whether Sutterfield's arrest was a citizen's arrest. The statute does not differentiate between arrests by officers and citizens. Anyone making an arrest is required to provide information of intent to arrest, cause of arrest, and authority for arrest. If the citizen had personally put cuffs on Sutterfield and delivered him to a magistrate and no officer was involved, his failure to notify Sutterfield of the authority to make the arrest would not convert the citizen's arrest into an officer's arrest and therefore violate Clarke. Any failure to comply with the notice requirement of the statute did not transform the citizen's arrest into an officer's arrest.

The flaw in the district court's reasoning is demonstrated by a hypothetical. Suppose that the officer had responded to the citizen's call and immediately arrested Sutterfield. Suppose further that upon arresting Sutterfield the officer informed Sutterfield that he was performing a citizen's arrest based on the call to dispatch. Certainly the district court would not have accepted the argument that the officer's representations alone showed the arrest to be a citizen's arrest or transformed the officer's arrest into a citizen's arrest. It makes no more logical sense to conclude that the officer's *failure* to inform Sutterfield that the arrest was a citizen's arrest alone showed the arrest was not a citizen's arrest or transformed the citizen's arrest into an officer arrest. What information Sutterfield was told did not change the underlying facts nor the underlying authority for the arrest.

Moreover, compliance or non-compliance with the notice requirements of I.C. § 19-608 did not control the suppression issue raised here. "[T]he sufficiency of the procedures employed by the police are to be determined by their own legality and not on the basis of whether or not a better procedure could have been employed." State v. Pontier,

95 Idaho 707, 713, 518 P.2d 969, 975 (1974). Failure to adequately inform an arrestee as required by I.C. § 19-608 is not grounds for suppressing evidence. See State v. Cooper, 119 Idaho 654, 661, 809 P.2d 515, 522 (Ct. App. 1991) (refusing to apply “the exclusionary sanction where the asserted violation was of a state statute . . . rather than a violation of a constitutional right”). A violation of the notice requirement of I.C. § 19-608 renders an arrest unlawful only “when the person to be arrested requests such.” Anderson v. Foster, 73 Idaho 340, 345, 252 P.2d 199, 202 (1953).

There is no evidence that Sutterfield made any inquiries about the officer’s authority to make the arrest. The closest he came was asking, “So they are pressing charges?” (R., p. 111.) The officer answered this in the affirmative. (Id.) To the extent this was a question about authority, it shows that the authority was the citizen’s because “they” were pressing charges. If the question was not a question about authority it was insufficient to render the arrest unlawful under I.C. § 19-608. Anderson, 73 Idaho at 345, 252 P.2d at 202. Any failure to strictly comply with I.C. § 19-608 did not render Sutterfield’s arrest unlawful, and is not grounds for suppression.²

² The district court stated that “[e]ven if” this exchange met the notice of authority requirement it did not render the arrest lawful because the search of Sutterfield’s pockets preceded it. (R., p. 118 n.5.) The district court cites no legal authority for this conclusion. (Id.) Had the district court been aware of controlling authority it would certainly have reached the opposite result. “So long as the search and arrest are substantially contemporaneous, and the fruits of the search are not required to establish probable cause for the arrest, the search need not precisely follow the arrest in order to be incident to that arrest.” State v. Chapman, 146 Idaho 346, 351, 194 P.3d 550, 555 (Ct. App. 2008). Furthermore, the statute only “requires that, *at or near the time of an arrest*, the accused be advised of the arrest, the reason for it, and the authority to make it.” State v. Person, 140 Idaho 934, 940, 104 P.3d 976, 982 (Ct. App. 2004) (emphasis added). The district court’s determination that the timing of the advisory was controlling because it followed the search is contrary to law.

The facts show that the officer effectuated a citizen's arrest based on a citizen's oral and written request. The district court erroneously concluded that whether the officer was effectuating the arrest as an agent of a citizen or on his own authority was controlled by whether Sutterfield was informed that the arrest was a citizen's arrest. What Sutterfield was told does not control what authority was being exercised. The district court erred by concluding that Sutterfield's arrest violated the rule in Clarke.

CONCLUSION

The state respectfully requests this Court to reverse the district court's order suppressing evidence and its order dismissing the possession of methamphetamine charge and to remand for further proceedings.

DATED this 20th day of April, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of April, 2020, served a true and correct copy of the foregoing BRIEF OF APPELLANT to the attorney listed below by means of iCourt File and Serve:

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