Electronically Filed
8/25/2020 12:28 PM
Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
By: Brad Thies, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 47372-2019**
Plaintiff-Appellant,	)	
	)	**Ada County Case No.**
v.	)	**CR01-19-1763**
	)	
SUNNY DAWN RILEY,	)	
	)	
Defendant-Respondent.	)	
	)	

REPLY 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

HONORABLE JONATHAN M. MEDEMA
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

COLLEEN D. ZAHN
Deputy Attorney General
Chief, Criminal Law Division

KALE D. GANS
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

ATTORNEYS FOR PLAINTIFF-APPELLANT

ANDREA W. REYNOLDS
Deputy State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712
E-mail: documents@sapd.state.id.us

ATTORNEY FOR DEFENDANT-RESPONDENT

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **PAGE**

ARGUMENT

The District Court Erred By Granting Riley's Motion To Suppress

A. Introduction

The district court erroneously granted Riley's motion to suppress evidence for two reasons: it clearly erred when it found it could "only guess" the length of the conversation between Officers Kingland and Miles (R., p.82); and it incorrectly determined that, under applicable precedent, the traffic stop was unlawfully extended by that conversation and by Officer Kingland's questions to Riley about potential drug use (R., pp.83-84). This reply is necessary to respond to a few arguments in Riley's Respondent's brief.[1]

B. The District Court's Factual Finding Regarding The Length Of The Officer Conversation Is Clearly Erroneous And Riley Fails To Show Otherwise

The district court concluded it could "only guess" how long the conversation between Officers Kingland and Miles lasted. (R., p.82.) This was clear error. By watching Kingland's on-body video, and Miles's on-body video, one can plainly see that conversation lasted no more than 20 seconds. This Court simply needs to watch those videos to see that.

Riley disagrees, arguing that "The conversation between Officer Kingland and Officers Miles and Ellison can be neither seen nor heard on any of the recordings." (Respondent's brief, p.7.) This is only half-correct, insofar as the state admitted (and nobody disputes) that the conversation cannot be heard on the muted recordings.

[1] The state does not concede any issues addressed in the Respondent's brief but not addressed herein.

However, the officer conversation can be *seen* on Officer Kingland's and Officer Miles's on-body video, as explained in detail in the state's opening briefing. Riley's arguments otherwise depend on her own description of the officers' videos, and what she says they show. (Respondent's brief, pp.7-8.) But her play-by-play of the videos omits vital facts or otherwise misstates their contents. In particular, Riley's conclusion that there was no evidence showing the length of the officer conversation depends on her incorrect depiction of the Kingland and Miles videos. Her arguments, and those two videos, will be addressed in turn.

Before that, a bit of housekeeping. Riley twice claims that "the State refers to the conversation as one between Officer Kingland and Officer Miles, but the district court referred to it repeatedly as a conversation between Officer Kingland and 'the responding officers'"—that is, a conversation "between Officer Kingland and Officer Miles and Ellison." (Respondent's brief, p.5, n.1; p.8.)

As a factual matter, this is incorrect. The state and the district court both referred to the officer conversation in varying ways. Sometimes the district court referred to it as a conversation between the three officers (see id.); sometimes the district court referred to it as Officer Kingland "[having] this brief conversation with Officer Miles" (Tr., p.37, Ls.20-22). Likewise, the state sometimes referred to the "conversation between Officers Kingland and Miles," and sometimes referred to "the conversation between [Kingland] and Officers Miles and Ellison." (Appellant's brief, pp.8, 10.)

In any event, this a distinction without a difference. To be clear, the district court and the state are both talking about the exact same conversation here: "when [Officers Miles and Ellison] arrived," and Officer Kingland "had a brief conversation with them." (R., p.104.) And whether it is labeled as a conversation between two officers (with Officer Ellison standing nearby), or as a

conversation between all three officers, simply makes no difference. The crucial issue is the *length* of that conversation, not what we call it.

Turning to Officer Kingland's video, Riley describes it as follows:

> Officer Kingland's on-body video recording reflects that he questioned Ms. Riley, then returned to his patrol car, and turned his audio off. (State's Ex. 4 at 05:36.) He remained in his patrol car until the recording ends. (State's Ex. 4 at 05:36-16:08.) During the period of time that Officer Kingland was in his patrol car, the video shows the officer's computer screen, the steering wheel, the officer's hand, his pen, his citation book, and his cell phone. (*Id.*) There is no indication when Officer Kingland conversed with Officers Miles and Ellison, and thus no indication how long that conversation lasted. (*See id.*)

(Respondent's brief, p.7.)

This summary of Kingland's video is incorrect. First, the video does not simply show "the steering wheel, the officer's hand, his pen, his citation book, and his cell phone." (Id.) This ultra-dry, nouns-only accounting omits the most important part: what the officer was *doing*. It thus leaves out the critical sequence where Kingland was writing the citation (Kingland OBV, 05:50-6:50); but then stopped writing for approximately 20 seconds (Kingland OBV, 06:50-07:10); then began writing again (Kingland OBV, 07:11-16:07).

Why does this matter? Because Officer Kingland testified that he "stopped writing" the citation during the conversation with Officer Miles. (Tr., p.25, L.22 – p.26, L.1.) And if you synchronize the videos by UTC timestamp, the 20-second interval where Kingland stops writing corresponds exactly with Miles's video showing their conversation. (Kingland OBV, 06:50-07:10; Miles OBV, 00:10-00:30.) Beyond that, Officer Miles's and Ellison's videos show no other pre-alert conversations with Officer Kingland. (Miles OBV, 00:31-09:24; Ellison OBV, 00:01-05:32.)

Thus, far from giving "no indication when Officer Kingland conversed with Officers Miles and Ellison" (Respondent's brief, p.7), Officer Kingland's video gives every indication of the only point in time where the officer conversation *could have* occurred. More importantly, Kingland's video shows it lasted approximately 20 seconds. As such, the district court clearly erred in finding otherwise.

Riley's summary of Officer Miles's video also misses the mark. She states that,

> Officer Miles's on-body video recording begins with Officer Miles in his patrol car, approximately 15 seconds before arriving on scene. (State's Ex. 1, at 00:00-00:17.) Officer Miles arrives on scene, exits his patrol car, shuts the door, and approaches a parked patrol car. (State's Ex. 1 at 00:17-00:19.) The video shows the ground—neither Officer Kingland nor anyone else can be seen, and there is no audio initially. (State's Ex. 1 at 00:19-00:32.) The audio commences at the 30-second mark, but the conversation between Officer Kingland and Officer Miles and Ellison can be neither seen nor heard. (See id.) Officer Miles walks away from the patrol car, approaches Ms. Riley's car, identifies himself, and begins questioning Ms. Riley approximately 32 seconds into the recording. (State's Ex. 1 at 00:32.)

(Respondent's brief, p.8.)

This is rife with errors. Riley claims that "[t]he video shows the ground—neither Officer Kingland nor anyone else can be seen." (Id.) Not so. Cue up the 16-second mark of Officer Miles's video and you will see Officer Kingland in the flesh, sitting in his car. (Miles OBV, 00:16.) Riley claims that "the conversation between Officer Kingland and Officer Miles" cannot be "*seen* nor heard." (Respondent's brief, p.8 (emphasis added).) Wrong again. To see the conversation between Officer Miles and Kingland begin, look again at the 16-second mark. No audio (or lip reader) is necessary; you can see when Officer Kingland looks directly at Officer Miles and starts talking to him. (Miles OBV, 00:16.) Finally, Riley ignores the significance of this fact: "Officer Miles walks away from the patrol car … approximately 32 seconds into the recording." (Respondent's brief, p.8.) If the conversation begins around the 16-second mark,

and Officer Miles walks away approximately 32 seconds later, the conversation necessarily lasted no more than 20 seconds. And because the videos are all synchronized by timestamp, we can verify that during those 20 seconds Officer Kingland stopped writing the citation—exactly as he said. (Kingland OBV, 06:50-07:10; Miles OBV, 00:10-00:30.)

Thus, Riley's conclusion—that the officer conversation cannot be seen on the recordings—is incorrect. A careful review of the videos shows exactly where the conversation took place, shows it lasted no longer than 20 seconds, and shows the district court clearly erred in concluding otherwise. This Court simply needs to watch the videos to see that this is so.

C. The District Court Erred When It Found Officer Kingland Impermissibly Extended The Stop Prior To The K-9 Sniff

The district court found two pre-alert points at which Officer Kingland "measurably extended the duration of Ms. Riley's seizure" by engaging in conversations "not related to the purpose of the traffic stop." (R., p.84.) The first point was when Officer Kingland asked Riley "questions about items in her car." (R., p.84.) As explained in the opening briefing, the questions to Riley did not extend the stop because "brief, general questioning" "unrelated to the subject matter" of a traffic stop does not extend the stop. State v. Parkinson, 135 Idaho 357, 363, 17 P.3d 301, 307 (Ct. App. 2000). Moreover, it is settled law that even if an officer's actions exceed the scope of the stop, such actions are proper if they occur *concurrently* with legitimate traffic stop activity. Rodriguez v. United States, 575 U.S. 348, 357 (2015); State v. Renteria, 163 Idaho 545, 549, 415 P.3d 954, 958 (Ct. App. 2018); State v. Linze, 161 Idaho 605, 609, 389 P.3d 150, 154, n.1 (2016). That's what happened here. Even if the officer's questions were outside the scope of the stop, they occurred while the officer simultaneously completed an action related

to the stop—he asked the questions as he put his notepad away. (R., p.76; Kingland OBV, 04:03- 04:11.)

Riley's brief makes no serious effort to respond to the state's argument regarding the questions posed to Riley. (See Respondent's brief, pp.9-10.) Notably, Riley does not contest that 1) officers may take scope-exceeding actions so long as they are concurrent with traffic stop duties; and 2) it is within the scope of an officer's traffic stop duties to take several seconds to put a notebook away. (See id.) Unsurprisingly, Riley does not attempt to argue that the district court correctly found that the traffic stop here was unlawfully extended because the officer *could have* walked back to his car with his notebook instead of putting it away. (R., p.78 (finding "was no evidence that it was necessary for the officer to put his pad away before he walked back to the car").) Because the questions to Riley did not exceed the scope of the stop—and even if they did, they were concurrent with legitimate traffic stop duties—the stop was not unlawfully extended at that time.

The second point at which the court found an unlawful extension was when Officer Kingland talked to Officers Miles and Ellison "about his suspicions that [Riley] had used illegal drugs recently and about [the officers] getting consent to search her car." (R., p.84.) The state's prior briefing explained how, under Renteria, State v. McGraw, and State v. Still, this was an error. 163 Idaho 545, 415 P.3d 954; 163 Idaho 736, 740-41, 418 P.3d 1245, 1249-50 (Ct. App. 2018) (finding "no principled basis for holding that the Fourth Amendment precludes one officer from pursuing the purpose of a stop while providing cover to another officer on-scene or for holding that the Fourth Amendment requires an officer to 'continuously' write a citation without ever pausing for any reason"); 166 Idaho 351, 458 P.3d 220, 225 (Ct. App. 2019), petition for review denied (Mar. 9, 2020) (rejecting "that any pause during a traffic stop requires a conclusion

under *Rodriguez* and [*State v. Linze*, 161 Idaho 605, 389 P.3d 150 (2016)] that the officers abandoned the purpose of the traffic stop," and holding "such a conclusion is inimical to the Fourth Amendment's reasonableness requirement and is contrary to United States Supreme Court precedent").

The Respondent's brief, which sticks almost entirely to Rodriguez, mostly ignores the rationales and results in those cases. (See Respondent's brief, pp.9-10.) Thus, Riley has nearly nothing to say about whether, under controlling Idaho precedent, the court erred. This speaks for itself.

Riley briefly mentions Still, citing only its conclusion that "an abandonment occurs when officers deviate from the purpose of the traffic mission in order to investigate, or engage in safety measures aimed at investigating crimes unrelated to roadway safety for which the officers lack reasonable suspicion." (Respondent's brief, p.10.) But she fails to show that rule applies under the unique facts here. Here, the officer conversation was not a "safety precaution[] taken *in order to facilitate*" an investigative "detour[]," such as a K-9 sniff, which would have added time to the stop. Rodriguez, 575 U.S. at 356 (emphasis added). It simply informed the arriving officers what they were about to walk into, which is a sensible "precaution[] to ensure officer safety," regardless of the nature of the stop. Id.

The state acknowledges that the Court of Appeals recently held that an officer conversation, also "for officer safety," aimed at preventing an officer from "walking into a blind situation," constituted an abandonment of a traffic stop. State v. Jacobsen, 166 Idaho 832, ___, 464 P.3d 318, 321 (Ct. App. 2020). But the conversation in Jacobsen is distinguishable for two reasons. In that case, the officer conducting the traffic stop "had all the information necessary to complete his citation and was not waiting to hear back from dispatch when he … engaged in a

seventeen-second conversation." Id. Here, Officer Kingland had not yet finished writing the citation at the time the officer conversation occurred. (See Kingland OBV, 07:11-16:07.) Moreover, the Jacobsen Court found that conversation in that case "was aimed at taking safety precautions to facilitate *the drug-dog sniff* and it added time to Jacobsen's stop." 166 Idaho at ___, 464 P.3d at 321 (emphasis added). Here, the officer conversation did not include the K-9 officer, and it had nothing to do with facilitating a K-9 sniff. (R., p.78-79 (explaining that the "brief conversation" took place before the K-9 officer even arrived).)

And to the extent Kingland asked the other officers "to try to get" Riley's "consent to search" her vehicle (Tr. p.25, L.22 - p.26, L.1), this was either not an extension of the stop, State v. Ramirez, 145 Idaho 886, 891, 187 P.3d 1261, 1266 (Ct. App. 2008), or, at worst, this was a "precursor to an alternate investigation"—which the Still Court held is proper. 166 Idaho at ___, 458 P.3d at 225. But it was not a "deviation … aimed at taking safety precautions *to facilitate [a] dog sniff*," and is thus distinguishable from the other impermissible deviation in Jacobsen. 166 Idaho at ___, 464 P.3d at 321 (emphasis added) (finding a separate unlawful extension of the stop where the officer abandoned the traffic mission when he took time to separately move" the defendant "to the curb in order to facilitate the dog sniff").

The Idaho Supreme Court recently affirmed, in State v. Pylican, two important final points. The first is that "the holding in *Rodriguez* was limited to the facts of that case, the most salient being that the officer had *completed* the traffic stop by issuing Rodriguez a warning *and then ordered* Rodriguez out of his vehicle for a dog sniff to be performed without any reasonable suspicion of criminal activity related to drugs." State v. Pylican, No. 47308, 2020 WL 4280191, at *8 (Idaho July 27, 2020) (emphasis in original, petition for rehearing pending). The Pylican Court noted that, "*Rodriguez* was not a wide-spread repudiation of [*Pennsylvania v. Mimms*, 434

U.S. 106 (1977)]"; instead, "it was about the timing of the officer's actions." Id. Second, the Idaho Supreme Court's "concern in *Linze*—as was the concern of the U.S. Supreme Court in *Rodriguez*—centered around the *additional time* an extension of the stop by the officer would take, even if it was 'de minimis.'" Id. at *9 (emphasis in original). It is therefore the "extra time required to complete the dog sniff that offended the Fourth Amendment in *Rodriguez*"—"neither *Rodriguez* nor *Linze* apply to dog sniffs that do not extend the duration of the stop." Id. This is why Pylican was readily distinguishable from Rodriguez and Linze: because a "clearly lawful" exit order, though an "extension to the duration of the stop," nevertheless "was not a result of the dog sniff itself," but caused by the defendant "who extended the duration of the stop." Id.

This case is just as distinguishable from Rodriguez and Linze. Officer Kingland had not completed the traffic stop at the time the K-9 alerted. And if we focus on the timing of Officer Kingland's actions, we see that none of them impermissibly delayed the stop in order to facilitate a K-9 sniff. When viewed under the Fourth Amendment's "ultimate touchstone" of reasonableness, Pylican, 2020 WL 4280191 at *11, Officer Kingland's reasonable actions did not add time to the K-9 sniff, any more than the deputy's exit order did in Pylican.

The district court therefore erred in granting the motion to suppress. Riley fails to show otherwise.

CONCLUSION

The state respectfully requests this Court reverse the district court's order granting Riley's suppression motion and remand this case for further proceedings.

DATED this 25th day of August, 2020.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of August, 2020, served a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT to the attorney listed below by means of iCourt File and Serve:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

KDG/dd