

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.)
 _____)

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**

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ARGUMENT

Sutterfield's Arrest And Search Incident Thereto Were Constitutional

A. Introduction

In this case it is undisputed that, after detaining Sutterfield, Officer Barghoorn consulted with the citizen reporting Sutterfield's petit theft, that the citizen made the choice to arrest (as opposed to cite) Sutterfield, and that the citizen signed a citizen's arrest form and provided it to the officer. (R., pp. 108-11; Exhibits, pp. 2-3.) These facts show that Sutterfield was subjected to a citizen's arrest for petit theft, not an officer's arrest for a misdemeanor committed outside his presence as found constitutionally unreasonable in State v. Clarke, 165 Idaho 393, 446 P.3d 451 (2019). (Appellant's brief, pp. 4-10.)

Sutterfield argues the district court properly concluded there was no citizen's arrest because statutes governing arrest establish "requisite actions" the citizen must take to conduct a citizen's arrest. (Respondent's brief, pp. 11-12.) To be a citizen's arrest *the citizen* must "take [the arrestee] into custody"; *the citizen* must "provide [the arrestee] with notice" he is under arrest, what he is under arrest for, and under what authority he is being arrested; and only after doing these things *the citizen* must "orally summon" police aid or "deliver [the arrestee] to a police officer or magistrate." (Appellant's brief, pp. 12-16.) Sutterfield concludes that because it was an officer who took him into physical custody, because he was not told by what authority he was arrested, and because the citizen did not decide to arrest Sutterfield until after he had summoned officers, no citizen's arrest was accomplished and therefore his arrest must be considered an arrest by officers. (Appellant's brief, pp. 16-21.) Sutterfield's argument is not supported by the statutes he relies on, elevates form over substance, fails to demonstrate how his proposed legal

standards would protect his constitutional rights, and in no way shows that the officer in this case, who acted on a written citizen's statement of arrest, made a police arrest prohibited by Clarke.

B. Standard Of Review

“When a decision on a motion to suppress is challenged, the Court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to the facts as found.” State v. Mullins, 164 Idaho 493, 496, 432 P.3d 42, 45 (2018) (internal quotation marks omitted). “Statutory interpretation begins with the literal language of the statute. ... When the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and the Court need not consider rules of statutory construction.” State v. Schulz, 151 Idaho 863, 866, 264 P.3d 970, 973 (2011) (quotation marks omitted).

C. Sutterfield's Argument Fails Because The Arrest Statutes Do Not Establish "Requisite Actions" The Citizen Must Take Before His Arrest Can Be Deemed A Citizen's Arrest

Under Idaho's constitution, a police officer is “not authorized to make an arrest without a warrant, for a mere misdemeanor not committed in his presence.” State v. Clarke, 165 Idaho 393, 399, 446 P.3d 451, 457 (2019) (internal quotation marks omitted). Thus, if the officer had arrested Sutterfield for the completed petit theft, such would have been unreasonable under Idaho's constitution. However, the facts in this case show that it was not the officer, but a citizen, who chose to arrest Sutterfield. (R., pp. 108-11; Exhibits, p. 3.) Specifically, the citizen whose employer's phone was stolen by Sutterfield confronted Sutterfield and retrieved the stolen property, summoned the police, elected to arrest

Sutterfield instead of having him cited, and provided a citizen's arrest form to the officer stating that "as a private person" the citizen was arresting Sutterfield and "demand[ing] that Police Officer Barghoorn transport" him to jail. (R., pp. 108-11; Exhibits, pp. 2-3.) Because the citizen (and not the officer) decided to make the arrest, declared that he was making the arrest, and then demanded that the officer transport Sutterfield to jail, this was a citizen's arrest for purposes of Clarke.

In arguing to the contrary, Sutterfield contends that Idaho's arrest statutes "shed light on the framer's understanding of the requisite actions for a party to make an arrest." (Appellant's brief, pp. 11-12.) The "requisite actions" he identifies for a citizen's arrest are "the citizen must express an intent to arrest, take some action to arrest, act without delay, and provide notice." (Respondent's brief, p. 15.) Sutterfield's argument that that any arrest that does not meet certain statutory factors is *ipso facto* a police arrest does not withstand analysis.

The primary flaw with Sutterfield's argument is that the statutes he cites do not articulate a standard to determine whether a particular arrest was made by a citizen or an officer. The statutes he cites to provide as follows:

ARREST DEFINED. An arrest is taking a person into custody in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person.

I.C. § 19-601 (cited Respondent's brief, pp. 11, 13, 16, 18).

WHEN PRIVATE PERSON MAY ARREST. A private person may arrest another:

1. For a public offense committed or attempted in his presence.
2. When the person arrested has committed a felony, although not in his presence.
3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

I.C. § 19-604 (cited Respondent’s brief, pp. 11-13).

PERSON ARRESTING MAY SUMMON ASSISTANCE. Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

I.C. § 19-606 (cited Respondent’s brief, *passim*).

INFORMATION TO PERSON ARRESTED. 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.

I.C. § 19-608 (cited Respondent’s brief, *passim*).

DUTY OF PRIVATE PERSON MAKING ARREST. A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him to a peace officer.

I.C. § 19-614 (cited Respondent’s brief, pp. 12, 16, 19). Nothing in the language of these statutes evinces legislative intent to create a standard that deems any arrest a police arrest unless “the citizen [expresses] an intent to arrest, take[s] some action to arrest, act[s] without delay, and provide[s] notice.” (Respondent’s brief, p. 15.)

At best, the matters Sutterfield argues are “requisite actions” are factors that might be part of the totality of the circumstances. Whether the citizen expressed an intent to arrest, took some action to arrest, acted without delay, and provided notice to the arrestee are relevant to whether the arrest was a citizen’s or instead an officer’s arrest. However, if the citizen did not take every single one of these actions that does not mean the arrest was necessarily performed by a peace officer, especially if the peace officer does not undertake those actions in lieu of the citizen.

In this case the citizen *did* express an intent to arrest when he elected arrest over citation and then signed a citizen's arrest form stating that he was arresting Sutterfield. (R., pp. 110-11; Exhibits, p. 3.) The citizen *did* take some action to arrest when he summoned officers, elected a citizen's arrest over a citation, and signed a citizen's arrest form. (R., pp. 109-11; Exhibits, p. 3.) The citizen *did* act without delay when he called for the assistance of police immediately after recovering the cell phone and while Sutterfield was still in the area. (R., pp. 109-10.) The citizen did not provide notice to Sutterfield of the arrest or the grounds and authority therefore, but neither did the officer except to answer in the affirmative Sutterfield's question whether "they" were pressing charges. (R., p. 111.) As part of a totality of the circumstances, the factors Sutterfield suggests should apply weigh in favor of Sutterfield's arrest being a citizen's arrest. Indeed, but for the citizen's decision to arrest there would have been no arrest but instead a citation. (R., p. 110; Tr., p. 29, Ls. 19-22; p. 41, L. 17 – p. 42, L. 2; p. 44, Ls. 13-18; p. 50, L. 10 – p. 52, L. 12.) The totality of the circumstances in this case shows a citizen's arrest.

According to the district court, failure to notify Sutterfield that Officer Barghoorn was taking him to jail as a result of the citizen's arrest resulted in a Clarke violation. (R., pp. 113-18.) According to Sutterfield, failure of the citizen to take all "requisite actions" for a citizen's arrest results in a Clarke violation. (Respondent's brief, pp. 11-21.) These standards are not based in the statutory or the constitutional framework, and elevate every possible statutory violation or omission into a Clarke violation.

At best Sutterfield's argument elevates form over substance. Here the citizen provided a signed statement that he had arrested Sutterfield for a petit theft committed in his presence, demanded the police take Sutterfield to jail, and assumed full legal

responsibility for Sutterfield's arrest. (Exhibits, p. 3.) The district court's and Sutterfield's proposed legal standards would simply ignore all the evidence showing that this was, in fact, a citizen's arrest. Requiring that citizens do more, such as taking physical custody before involving the police or personally providing notice of the basis and authority for arrest, or even requiring the officer to specifically inform the arrestee that he was subject to a citizen's arrest, at best elevates form over substance. It protects no substantive right of Sutterfield's.

At worst, adoption of Sutterfield's argument would require that citizens wishing to execute citizen's arrests increase the risk to themselves and their property. If as a matter of law no citizen's arrest is valid unless the police are only minimally involved and the citizen's involvement with the arrestee maximized, the number of citizens willing to take such steps would be very reduced, and those encouraged to take such steps would face greatly increased risks, without any corresponding gain in constitutional reasonableness of the arrest itself. It was hardly unreasonable for the citizen in this case to secure police involvement and to minimize his direct interaction with Sutterfield.

The district court erred, and Sutterfield has failed to show otherwise. The arrest statutes do not set forth some checklist requiring that all the boxes be marked before an arrest can be considered to comply with Clarke. A requirement that the citizen physically restrain a criminal, or that the citizen announce to the criminal that it is upon his authority that the officer is acting, does not advance Sutterfield's constitutional rights under Clarke one iota. Because Sutterfield was in fact arrested based on a citizen's choice to arrest rather than cite and his written statement of citizen's arrest, Sutterfield's arrest did not violate the requirements of 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 14th day of September, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of September, 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:

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KKJ/dd