

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47372-2019
Plaintiff-Appellant,)	
)	ADA COUNTY
v.)	NO. CR01-19-1763
)	
SUNNY DAWN RILEY,)	
)	
Defendant-Respondent.)	

BRIEF OF RESPONDENT

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

**HONORABLE JONATHAN MEDEMA
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

The State appeals from the district court's order granting Sunny Riley's motion to suppress. The district court correctly concluded the State did not meet its burden of showing Officer Kingland did not deviate from the purpose of a traffic stop of Ms. Riley by asking her questions that were unrelated to the purpose of the stop (driving with expired registration tags), and by having a conversation with two backup officers that was unrelated to the purpose of the stop. The district court correctly concluded these two deviations measurably extended the duration of Ms. Riley's seizure, violating her rights under the Fourth Amendment of the United States Constitution.

Statement of Facts and Course of Proceedings

Officer Kingland stopped Ms. Riley for driving with expired registration tags. (R., p.75.) Ms. Riley told the officer she did not have a valid driver's license or proof of insurance, and said she had previously been arrested for failing to pay a traffic citation. (R., pp.75-76.) While Ms. Riley was looking for something to prove her identity, Officer Kingland asked her if she was on probation, and asked about any prior arrests. (R., p.76.) Ms. Riley found a dental insurance card with her name on it, and provided it to the officer as proof of her identity. (R., p.76.)

The officer took a pen and notepad from his pocket and wrote down Ms. Riley's name and date of birth. (R., p.76.) After he put the pen and notepad back in his pocket, he asked, "All right, nothing illegal in the car I need to worry about?" (R., p.76.) Ms. Riley answered, "No." (R., p.76.) He then asked, "No marijuana, drug pipes, anything crazy like that?" (R., p.76.) Ms. Riley answered, "No." (R., p.76.) The district court found it took approximately eight

seconds for the officer to ask and receive answers to these questions. (R., pp.77-78.) Officer Kingsland then told Ms. Riley he would issue her a couple citations and let her go. (State's Ex. 4 at 05:10-05:15.)

Officer Kingland returned to his patrol car and called for backup. (R., p.78.) He testified at the suppression hearing that he believed Ms. Riley had been using drugs, or had some drugs hidden in her car, because her voice was trembling and she was speaking quickly. (R., p.78.) When the two backup officers arrived, Officers Miles and Ellison, Officer Kingland stopped writing the citations, had a conversation with them about his suspicion that Ms. Riley had been using drugs, and asked if they could try to obtain Ms. Riley's consent to a search of her vehicle. (R., p.78; Tr., p.22, Ls.8-23.) The conversation between Officer Kingland and the two backup officers cannot be seen or heard on any of the video recordings. (See State's Exs. 1-4.) Officer Kingland was asked at the suppression hearing whether the conversation lasted "longer than a minute-and-a-half or two minutes" and he answered he was "not sure" but knew "it was brief." (Tr., p.28, Ls.15-21.)

After conversing with Officer Kingland, the two backup officers began a drug investigation while Officer Kingland resumed writing the citations. (R., p.78.) Ultimately, another officer, Officer Lane, arrived with a drug detection dog, and the dog alerted on Ms. Riley's vehicle. (R., p.79.) Officer Kingland completed writing his two citations 48 seconds after the dog alerted. (R., p.79.)

Officers found methamphetamine and drug paraphernalia in Ms. Riley's vehicle, and the State charged Ms. Riley with one count of possession of a controlled substance, and one count of possession of drug paraphernalia. (R., pp.26-27.) Ms. Riley filed a motion to suppress, arguing the stop of her vehicle was unlawfully extended. (R., pp.36, 42-52.) The State filed an objection

to Ms. Riley’s motion. (R., pp.55-67.) The district court held a hearing, and heard testimony from Officers Kingland and Lane. (See Tr., p.6.) The parties stipulated to the admission of the on-body video recordings from Officer Miles (State’s Ex. 1); Officer Lane (State’s Ex. 2); Officer Ellison (State’s Ex. 3); and Officer Kingland (State’s Ex. 4). (Tr., p.8, L.16 – p.10, L.17.)

The district court granted Ms. Riley’s motion to suppress. (R., pp.75-86.) The district court found Officer Kingland deviated twice from the purpose of the stop—first, by asking Ms. Riley if she had any illegal items in her vehicle, and second, by having a conversation with Officers Miles and Ellison regarding his suspicion that Ms. Riley had been using drugs, and asking if they could try to obtain Ms. Riley’s consent to a search of her vehicle. (*Id.*) The district court found these deviations delayed the stop by more than 48 seconds, which was the time it took Officer Kingland to complete the citations following the drug dog alert. (*Id.*) Because the deviations delayed the stop by more than 48 seconds, they prolonged Ms. Riley’s detention. (*Id.*)

The district court explained its conclusion as follows:

Here the officer asked Ms. Riley questions about items in her car that were unrelated to the purpose of the traffic stop; a *de minimus* delay certainly, but a measurable one. He also delayed his traffic investigation to engage in a conversation with other officers about his suspicions that she had used illegal drugs recently and about them getting consent to search her car. That conversation was not related to the purpose of the traffic stop. The State bears the burden of persuading this court that those deviations from the purpose of the stop did not measurably extend the duration of Ms. Riley’s seizure; the State has failed to do so here.

(R., p.84.) The State filed a motion to reconsider, arguing the two deviations found by the district court “only took 30 seconds” and thus did not extend the duration of the stop. (R., pp.91-92.)

Before the district court could consider or rule on the State’s motion, the State filed a notice of appeal, and the district court vacated the hearing on the State’s motion. (R., pp.97-112.)

ISSUE

Did the district court correctly grant Ms. Riley's motion to suppress?

ARGUMENT

The District Court Correctly Granted Ms. Riley's Motion To Suppress

A. Introduction

The State makes two arguments on appeal. (Appellant's Br., p.8.) First, the State contends the district court clearly erred in finding the conversation between Officer Kingland and Officer Miles lasted more than 40 seconds. (Appellant's Br., p.8.) The State asserts this conversation "can be seen" on Officer Miles's on-body video recording, and lasted "no longer than 20 seconds." (Appellant's Br., p.8.) The State is incorrect. As an initial matter, the district court found Officer Kingland engaged in a conversation with Officer Miles *and* Officer Ellison. Thus, Officer Miles's on-body video recording cannot, in and of itself, resolve the question of how long the conversation between Officer Kingland and Officers Miles and Ellison lasted. Moreover, the district court correctly found that the duration of the conversation cannot be determined based on the evidence presented at the suppression hearing.

Second, the State contends the district court erred in concluding Officer Kingland unlawfully prolonged the stop by asking Ms. Riley if she had anything illegal in her vehicle and by having a conversation with Officer Miles which was unrelated to the purpose of the stop.¹ (Appellant's Br., p.8.) The State asserts these actions did not extend the duration of the stop, but the State is incorrect. The district court correctly concluded these two deviations measurably extended the duration of Ms. Riley's seizure, thus violating her rights under the Fourth Amendment.

¹ Again, 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." (*Compare* Appellant's Br., p.8, *with* R., pp.75-85.)

B. Standard Of Review

“In reviewing a district court order granting or denying a motion to suppress evidence, the standard of review is bifurcated.” *State v. Purdum*, 147 Idaho 206, 207 (2009) (citation omitted). “This Court will accept the trial court’s findings of fact unless they are clearly erroneous. However, this Court may freely review the trial court’s application of constitutional principles in light of the facts found.” *Id.* (citations omitted). “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. Aguirre*, 141 Idaho 560, 562 (Ct. App. 2005) (citations omitted).

C. The District Court Did Not Clearly Err In Finding The Conversation Between Officer Kingland And The Backup Officers, Which Was Unrelated To the Purpose Of The Stop, Took Longer Than 40 Seconds

A critical question in this case was whether the conversation between Officer Kingland and Officers Miles and Ellison, which was unrelated to the purpose of the stop, lasted more than 40 seconds. If the conversation lasted more than 40 seconds, then it extended the duration of Ms. Riley’s seizure, because, combined with the 8-second delay attributable to Officer Kingland’s earlier unrelated questioning of Ms. Riley, it exceeded the time it took for Officer Kingland to complete writing the citations following the drug dog alert. (*See R.*, p.81.)

In resolving this critical factual question, the district court said “[t]he evidence regarding the length of that conversation between the officers is sparse. As stated earlier, it is not contained on any of the videos. The only testimony given about how long that conversation took is the testimony described above: [Officer Kingland] could not estimate the time but said it was ‘brief.’” (*R.*, p.81.) The court stated in its written order that it could “only guess” at how long the conversation lasted. (*R.*, p.82.) Because it could “only guess” at the length of the conversation

based on the evidence presented, the court resolved the factual dispute in Ms. Riley's favor, and found the conversation took longer than 40 seconds. (R., p.82.) The district court did not err.

There were four video recordings admitted into evidence at the suppression hearing. (Tr., p.8, L.16 – p.10, L.17.) The State asserts in the Appellant's Brief that the conversation between Officer Kingland and Officer Miles "can be seen" on Officer Miles's video recording, and lasted "no longer than 20 seconds." (Appellant's Br., p.8.) The State is wrong. The conversation between Officer Kingland and Officers Miles and Ellison can be neither seen nor heard on any of the recordings. (*See generally* State's Exs.1-4.)

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.*)

Officer Ellison's on-body video recording begins with an image of Ms. Riley in her vehicle, being questioned by another officer. (State's Ex. 3 at 00:00-00:20.) This video does not include any audio or visual of the conversation between Officer Kingland and Officers Miles and Ellison.

Officer Lane's on-body video recording begins with Officer Lane driving in his patrol car approximately one minute before arriving on scene. (State's Ex. 2 at 00:00-00:50.) When Officer Lane arrives on scene, many other patrol cars and officers are visible. (*See* State's Ex. 2 at 00:50-

00:55.) This video does not include any audio or visual of the conversation between Officer Kingland and Officers Miles and Ellison.

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.)

The district court said these videos “speak for themselves.” (R., p.75.) Indeed they do. And what these videos say is that the length of the conversation between Officer Kingland and the backup officers cannot be determined, as the conversations “were not captured in any of the videos admitted.” (R., p.79.) Officer Kingland testified the conversation was “brief,” but could not say more specifically how long it lasted. (Tr., p.28, Ls.15-21.) In light of the evidence presented at the suppression hearing, the district court did not clearly err in finding the conversation lasted longer than 40 seconds.

D. The District Court Correctly Concluded Officer Kingland Unlawfully Extended The Duration Of Ms. Riley’s Seizure By Asking Her If She Had Any Illegal Items In Her Vehicle And By Having A Conversation With The Backup Officers Which Was Unrelated To The Purpose Of The Stop

The Fourth Amendment of the United States Constitution protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” U.S. Const. amend. IV. “The seizure of a vehicle’s occupants in order to investigate a traffic violation is a ‘reasonable seizure’ under the Fourth Amendment so long as the seizing officer had reasonable suspicion that a violation had occurred.” *State v. Linze*, 161 Idaho 605, 608 (2016) (citing *Rodriguez v. United States*, 575 U.S. 348, 354 (2015)). However, “[b]ecause addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose.” *Rodriguez*, 575 U.S. at 354 (quotation marks and brackets omitted). “Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.*

In *Rodriguez*, the United States Supreme Court held that “a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution’s shield against unreasonable seizures.” 575 U.S. at 350. The Court explained, “[t]he critical question . . . is . . . whether conducting the sniff prolongs—*i.e.*, adds time to—the stop.” *Id.* at 355 (quotation marks omitted). Here, the district court found Officer Kingland made two detours from the mission of the traffic stop which prolonged, or added time, to the stop. (R., p.84.) The district court recognized the resulting delay was *de minimus*, but nonetheless concluded it violated Ms. Riley’s Fourth Amendment rights under the standard set forth in *Rodriguez*. (*Id.*) The district court did not err.

The district court correctly found Officer Kingland “deviated from the mission of the traffic stop when he asked [Ms. Riley] questions about illegal items in her vehicle and when he

explained to other officers his desire that the officers find some way to search her car for drugs and why he wanted them to do that.” (R., p.82.) These deviations were aimed at investigating a possible drug crime for which Officer Kingland lacked reasonable suspicion. They thus constituted a temporary abandonment of the stop. *See State v. Still*, 166 Idaho 351, 356 (Ct. App. 2019) (explaining that, pursuant to *Rodriguez*, “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”).

The district court also correctly found that these two deviations prolonged, or added time, to the stop, as the State did not meet its burden of proving to the contrary. (R., p.82.) The United States Supreme Court made clear in *Rodriguez* that even a *de minimus* delay violates the protections of the Fourth Amendment. *See Rodriguez*, 575 U.S. at 356; *see also Linze*, 161 Idaho at 609, note 2 (“While [a two and a half minute delay] could reasonably be considered *de minimus*, the United States Supreme Court was clear in *Rodriguez* that *de minimus* exceptions are no longer available.”). Thus, Officer Kingland’s delay here bears constitutional significance, and the district court correctly granted Ms. Riley’s motion to suppress.

CONCLUSION

Ms. Riley respectfully requests that this Court affirm the district court’s order granting her motion to suppress.

DATED this 23rd day of June, 2020.

/s/ Andrea W. Reynolds
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of June, 2020, I caused a true and correct copy of the foregoing RESPONDENT'S BRIEF, to be served as follows:

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AWR/eas