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IN THE SUPREME COURT OF THE STATE OF IDAHO

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| STATE OF IDAHO, |) | |
| |) | NO. 47372-2019 |
| Plaintiff-Appellant, |) | |
| |) | ADA COUNTY NO. CR01-19-1763 |
| v. |) | |
| |) | |
| SUNNY DAWN RILEY, |) | APPELLANT’S BRIEF |
| |) | IN SUPPORT OF |
| Defendant-Respondent. |) | PETITION FOR REVIEW |
| _____ |) | |

STATEMENT OF THE CASE

Nature of the Case

Sunny Riley asks this Court to review her case, in which the Court of Appeals reversed the district court’s order granting her motion to suppress. *See State v. Riley*, No. 47372 (Ct. App. Feb. 9. 2021) (unpublished) (“Opinion”). The Court of Appeals concluded the district court clearly erred in finding the length of the conversations between Officer Kingland and the two backup officers “could not be determined,” and in finding the State “failed to meet its burden of proof to establish the length of the conversations.” (Opinion, pp.5-7.) The district court did not err considering the evidence in the record, which consists of Officer Kingland’s testimony at the suppression hearing that the conversation was “brief,” *see* Tr., p.28, Ls.20-21, and four silent

video recordings of the incident, *see* State’s Exs.1-4. Significantly, the prosecutor did not argue at the suppression hearing anything specific about the length of the conversation as reflected in the videos. (*See generally* Tr., p.36, Ls.16-23.) The State argued on appeal that the videos “plainly show” the conversation was 20 seconds, and the appellate court “simply needs to review the video to see . . . the district court clearly erred.” (Appellant’s Br., pp.10-11.) The Court of Appeals accepted the State’s invitation to review the videos, and found they “plainly show” there were two conversations between Officer Kingland and the backup officers, lasting approximately 38 seconds. (Opinion, p.7.) Where there is such an obvious disagreement as to what the evidence “plainly shows,” the appellate court cannot find the district court clearly erred. The district court was correct to conclude the State failed to meet its burden, and was correct to grant Ms. Riley’s motion to suppress. This Court should grant Ms. Riley’s Petition for Review as the Court of Appeals seriously departed from the standard of review applicable to appellate review of factual findings at suppression hearings.

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 had previously been arrested for failing to pay a traffic citation. (R., pp.75-76.) Ms. Riley provided a dental insurance card with her name on it 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 Kingland 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 then 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. (R., p.78.) When Officers Miles and Ellison arrived, 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 backup officers cannot be heard on any of the video recordings (which are all without audio). (*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 the 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 possession of a controlled substance and 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. (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 anything illegal in her vehicle; and second, by having a conversation with the backup officers regarding his suspicion that Ms. Riley had been using drugs, and asking if they could 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.*) The district court explained its reasoning 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 considered 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.)

The State raised two issues on appeal. First, it argued the district court clearly erred in finding it could “only guess” at how long Officer Kingland conversed with the backup officers. (Appellant’s Br., p.8.) The State asserted “that conversation can be seen on the officers’ on-body video and [lasts] no longer than 20 seconds.” (*Id.*) The State asserted the appellate court “simply

needs to review the video to see the conversation in question and see the district court clearly erred.”¹ (*Id.*, p.10.) Second, the State argued the district court erred in concluding Officer Kingland unlawfully prolonged the stop because his questioning of Ms. Riley about matters unrelated to the stop “did not add time to [the stop],” and his conversation with the backup officers concerned officer safety. (*Id.*, pp.11-23.)

In her Respondent’s Brief, Ms. Riley discussed the four videos in detail, and argued the length of the conversation between Officer Kingland and the backup officers could not be determined. (Respondent’s Br., pp.7-8). Ms. Riley also argued the district court correctly concluded Officer Kingland’s two deviations from the purpose of the stop measurably extended her seizure, violating her rights under the Fourth Amendment under a straightforward application of *Rodriguez v. United States*, 575 U.S. 348, 356 (2015), and *State v. Linze*, 161 Idaho 605, 609, n.2 (2016). (Respondent’s Br., pp.9-10.)

The Court of Appeals affirmed. (Opinion, pp.3-9.) The Court “disagree[d] with the State’s assertion that the conversation at issue is an approximately 20-second conversation,” yet found the videos “plainly show” Officer Kingland had two conversations with his backup officers which it presumed were not related to the purpose of the stop, totaling “approximately 38 seconds.” (*Id.*, pp.5-7.) The Court thus held the district court clearly erred in finding the length of the conversations could not be determined, and “erred by concluding the State failed to meet its burden of proof to establish the length of these conversations.” (*Id.*, p.7.) The Court then held the district court erred in concluding Officer Kingland unlawfully prolonged the traffic stop because his conversation with his backup officers “only spanned 38 seconds,” rather than 40

¹ In its Reply Brief, the State again asserts that “[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.” (Reply Br., p.4.)

seconds. (*Id.* p.8.) The Court went on to hold Officer Kingland's 8-second questioning of Ms. Riley about illegal items did not unlawfully prolong the stop because he was using his notepad simultaneously with this questioning. (*Id.* at 9.)

Ms. Riley filed a timely Petition for Review.

ISSUE

Should this Court grant Ms. Riley's Petition for Review?

ARGUMENT

This Court Should Grant Ms. Riley's Petition For Review

A. Introduction

This Court should exercise its discretion to grant Ms. Riley's Petition for Review because the Court of Appeals decided a substantive question probably not in accord with applicable decisions of the Idaho Supreme Court regarding the standard of review of factual findings at suppression hearings. *See* I.A.R. 118(b)(2) (identifying, as one of the factors to be considered in the exercise of the Court's discretion to grant a petition for review, "[w]hether the Court of Appeals has decided a question of substance probably not in accord with applicable decisions of the Idaho Supreme Court").

B. The District Court Did Not Clearly Err In Its Factual Findings

It is well established that, "[i]n 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 not set aside factual findings unless they are clearly erroneous." *State v. Henage*, 143 Idaho 655, 659 (2007) (citation omitted). "To be found clearly erroneous, factual findings must be unsupported by substantial and competent evidence." *Id.* (citation omitted). The standard of review does not differ based on which party (the defendant or the State) is appealing from the district court's decision on a motion to suppress.

The evidence regarding the length of the conversation at issue comes from two places— Officer Kingland's testimony at the suppression hearing, and the four video recordings admitted at that hearing. Officer Kingland was asked on cross-examination, "But isn't it true that when Officer Ellison and Officer Miles got there, you took time to explain to them the reason for the stop and what your concerns were with respect to drug use?" (Tr., p.21, Ls.17-20.) Officer

Kingland answered, “I did stop what I was doing to explain it to them; yes.” (Tr., p.22, Ls.16-19.) Counsel followed up, “And because we don’t have any audio sound [on the recordings], I can’t hear how long you took to do that; isn’t that true?” (Tr., p.26, Ls.2-4.) Officer Kingland answered, “Sure.” (Tr., p.26, L.5.) On redirect, the prosecutor asked Officer Kingland specifically about his conversation with one of the backup officers, “Did that conversation last longer than a minute-and-a-half or two minutes?” (Tr., p.28, Ls.18-19.) Officer Kingland answered, “I’m not sure. I just know it was brief, and I just told him what was going on.” (Tr., p.28, Ls.20-21.) The prosecutor argued to the district court that “[the] conversation was brief, it was not an extended conversation.” (Tr., p.38, Ls.13-14.)

In addition to Officer Kingland’s testimony, the district court had four video recordings of the stop, which were admitted by stipulation. (State’s Ex. 1 (Officer Miles); State’s Ex. 2 (Officer Lane); State’s Ex. 3 (Officer Ellison); State’s Ex. 4 (Officer Kingland); *see* Tr., p.8, L.6 – p.10, L.17.) The prosecutor told the district court “when reviewing the on-body video, there are statements that you can show correlate the different timestamps, and I included a few of those statements in my briefing, that you can tell between the two.”² (Tr., p.36, Ls.16-23.) Counsel for Ms. Riley pointed out to the court that “you have the videos,” but “[t]he problem with watching his video is . . . it’s silent, so we can’t hear how long that conversation lasts and what he’s actually doing.” (Tr., p.39, L.19 – p.40, L.8.)

In its order granting Ms. Riley’s motion to suppress, the district court recognized “[t]he testimony regarding the initial officer’s conversation with the two responding assist officers was conflicting.” (R., p.79.) The district court “resolve[d] the conflict against the State,” finding the

² The prosecutor did not argue in his briefing anything specific regarding the length of the time Officer Kingland conversed with his backup officers. (R., pp.55-67.) The prosecutor said only that “[b]etween 04:05:45 – 04:09:00, Officer Miles, Ellison and Riley spoke about different subjects.” (R., p.57.)

State did not meet its burden of proving the conversation was related to the stop. (R., pp.80-81.) The district court then framed the critical question as whether the conversation took longer than 40 seconds, and stated it “can only guess” at the answer, notwithstanding the video evidence. (R., pp.81-82.) The district court noted Officer Kingland testified only that the conversation was brief. (R., p.81.) The district court thus held the State failed to meet its burden of proving the conversation did not measurably extend Ms. Riley’s seizure. (R., p.82.)

The district court did not clearly err in finding it could not determine from the evidence whether the conversation between Officer Kingland and his backup officers took longer than 40 seconds, and in finding the State failed to meet its burden in this respect. (R., pp.81-82.) Notably, no one involved in this case can seem to agree on what the videos show:

- The prosecutor did not argue either in his brief in opposition to Ms. Riley’s motion to suppress or at the suppression hearing, anything regarding the length of the conversation between Officer Kingland and the backup officers. (R., pp.55-67; Tr., p.36, Ls.16-23.)
- Counsel for Ms. Riley argued at the suppression that the length of the conversation could not be determined from the video evidence. (Tr., p.39, L.19 – p.40, L.8.)
- The prosecutor argued in his motion to reconsider that “the only conversation between the two officers took approximately 22 seconds.” (R., p.92.)
- The State argued on appeal that “[t]he officers’ videos plainly show that the officer conversation at issue could only be . . . the approximately 20-second conversation that is seen on Officer Miles’s on-body video.” (Appellant’s Br., p.11 (citation omitted).)
- The Court of Appeals found “a review of Officer Kingland’s and Officer Miles’s videos plainly show Officer Kingland had an approximate 12-second conversation with Officer Miles and another approximately 26-second conversation with someone else—totaling approximately 38 seconds.” (Opinion, p.7.)

On the record presented, the district court did not clearly err in finding it could not determine the length of the conversation at issue. Factual findings must be supported by

“substantial and competent evidence.” *Henage*, 143 Idaho at 659. Neither the testimony of Officer Kingland nor the video evidence provide substantial and competent evidence regarding the length of the conversation between Officer Kingland and his backup officers. Indeed, the parties are not even in agreement as to whether there was one or two conversations, and whether they involved Officer Kingland and one backup officer, or Officer Kingland and both backup officers. (*See* Opinion, p.5, n.2, p.7, n.2.) In overturning the district court’s factual findings, the Court of Appeals failed to apply the deferential standard of review applicable to factual findings made by the district court in granting or denying a motion to suppress.

C. The District Court’s Factual Findings Must Be Affirmed, And Those Findings Require That The Court’s Order Granting Ms. Riley’s Motion To Suppress Be Affirmed

The Court of Appeals found the district court erred in its factual findings, and that the conversations that Officer Kingland had with his backup officers lasted “approximately 38 seconds.” (Opinion, p.7.) The Court of Appeals assumed, without deciding, that these conversations were unrelated to and deviated from the purpose of the traffic stop. (Opinion, p.7.) Based on its own—new—factual findings, the Court of Appeals held the district court erred in concluding these conversations extended the stop beyond 48 seconds, which is the time Officer Kingland needed to complete the citations following the drug dog alert, because, even considered with the 8-second detour that the district court found Officer Kingland engaged in to question Ms. Riley about illegal items, Officer Kingland delayed the stop for only 46 seconds, which is less than 48 seconds.³ (*See* Opinion, p.8.)

³ The Court of Appeals also rejected the district court’s conclusion that Officer Kingland’s 8-second questioning of Ms. Riley about illegal items represented a detour from the purpose of the stop, *see* Opinion, p.9, but this is of no consequence if this Court affirms the district court’s finding that it cannot determine the length of the conversation between Officer Kingland and his backup officers.

If this Court upholds the district court's finding that the length of the conversation between Officer Kingland and his backup officers cannot be determined, as it must under a proper application of the standard of review, then it must also conclude that this conversation delayed the stop for more than 48 seconds, violating Ms. Riley's Fourth Amendment rights. The district court's legal conclusion is premised on its factual findings, and both ought to be affirmed by on appeal.

CONCLUSION

Ms. Riley respectfully requests that the Court grant her Petition for Review. Assuming it does so, she requests that, for the reasons stated in the Respondent's Brief, the Court affirm the district court's order granting her motion to suppress.

DATED this 26th day of April, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of April, 2021, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF IN SUPPORT OF PETITION FOR REVIEW to be served as follows:

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