

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 42440

STATE OF IDAHO,) 2015 Unpublished Opinion No. 413
)
Plaintiff-Respondent,) Filed: March 16, 2015
)
v.) Stephen W. Kenyon, Clerk
)
ADAM JAMES BURDETT,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
Defendant-Appellant.) BE CITED AS AUTHORITY
)

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Lansing L. Haynes, District Judge. Hon. Penny E. Friedlander, Magistrate.

Order of the district court, on appeal from the magistrate, affirming judgment of conviction for driving under the influence, affirmed.

John M. Adams, Kootenai County Public Defender; Jay Logsdon, Deputy Public Defender, Coeur d' Alene, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Ted S. Tollefson, Deputy Attorney General, Boise, for respondent.

MELANSON, Chief Judge

Adam James Burdett appeals from the district court's order on intermediate appeal, affirming Burdett's judgment of conviction for driving under the influence. Specifically, Burdett asserts that the magistrate erred in denying his motion to suppress. For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

An officer responded to a call reporting an automobile striking a parked automobile near a public beach. At the scene, the officer checked the license plates and determined that Burdett was the registered owner of the vehicle identified by the person who reported the accident. The

officer inspected both vehicles, but observed no damage to either. The person who reported the accident identified Burdett as the driver, pointing to a man swimming in the lake. The officer approached the lake and called to Burdett, asking if the officer could speak with Burdett, and he walked out of the lake. In the course of the conversation, the officer observed that Burdett had slurred speech and “glassy and bloodshot” eyes, evidence that Burdett may have been under the influence of alcohol at the time he drove his vehicle.

Burdett was charged with driving under the influence of alcohol (DUI), I.C. §§ 18-8004(1)(a) and 18-8004C. Burdett filed a motion to suppress, arguing that he was illegally seized because the officer was not legally justified in stopping Burdett. The magistrate found that the officer’s actions in asking to speak with Burdett did not constitute a seizure of Burdett because the contact was consensual. Burdett entered a conditional plea of guilty to DUI, but reserved the right to appeal the denial of his motion to suppress. Burdett appealed to the district court, which affirmed, explaining that “Burdett was free to act as he did, but was equally free to decline the request and continue to wade/swim. Therefore, the magistrate was correct in its legal conclusion” that Burdett was not seized because the contact was consensual. Burdett again appeals.

For an appeal from the district court, sitting in its appellate capacity over a case from the magistrate division, this Court’s standard of review is the same as expressed by the Idaho Supreme Court. The Supreme Court reviews the magistrate record to determine whether there is substantial and competent evidence to support the magistrate’s findings of fact and whether the magistrate’s conclusions of law follow from those findings. *State v. Korn*, 148 Idaho 413, 415, 224 P.3d 480, 482 (2009). If those findings are so supported and the conclusions following therefrom, and if the district court affirmed the magistrate’s decision, we affirm the district court’s decision as a matter of procedure. *Id.* Thus, the appellate courts do not review the decision of the magistrate. *State v. Trusdall*, 155 Idaho 965, 968, 318 P.3d 955, 958 (Ct. App. 2014). Rather, we are procedurally bound to affirm or reverse the decisions of the district court. *Id.*

The Fourth Amendment to the United States Constitution, and its counterpart, Article I, Section 17 of the Idaho Constitution, guarantee the right of every citizen to be free from unreasonable searches and seizures. However, not all encounters between the police and citizens

involve the seizure of a person. *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968); *State v. Jordan*, 122 Idaho 771, 772, 839 P.2d 38, 39 (Ct. App. 1992). Only when an officer, by means of physical force or show of authority, restrains the liberty of a citizen may a court conclude that a seizure has occurred. *State v. Fry*, 122 Idaho 100, 102, 831 P.2d 942, 944 (Ct. App. 1991). A seizure does not occur simply because a police officer approaches an individual on the street or other public place, by asking if the individual is willing to answer some questions or by putting forth questions if the individual is willing to listen. *Florida v. Bostick*, 501 U.S. 429, 434 (1991); *Florida v. Royer*, 460 U.S. 491, 497 (1983). Unless and until there is a detention, there is no seizure within the meaning of the Fourth Amendment and no constitutional rights have been infringed. *Royer*, 460 U.S. at 498. Even when officers have no basis for suspecting a particular individual, they may generally ask the individual questions and ask to examine identification. *Fry*, 122 Idaho at 102, 831 P.2d at 944. So long as police do not convey a message that compliance with their requests is required, the encounter is deemed consensual and no reasonable suspicion is required. *Id.*

Burdett makes a number of arguments that an individual who is questioned by an officer at a public beach, or when the individual is in the water, should be treated differently than an individual who is questioned on the street. Essentially, Burdett argues that a swimming person is particularly vulnerable and, therefore, this Court should hold that a seizure has occurred when an officer asks to speak with the swimming person. We conclude that the well-established law stemming from *Terry* also applies to individuals swimming at a public beach.

When a defendant seeks to suppress evidence that is alleged to have been obtained as a result of an illegal seizure, the defendant bears the burden of proving that a seizure occurred. *State v. Willoughby*, 147 Idaho 482, 486, 211 P.3d 91, 95 (2009). Burdett has failed to provide any evidence that his encounter with the officer was not consensual. The record indicates that, upon a request from the officer, Burdett exited the water to speak with the officer. Burdett has not shown that the officer used physical force or a show of authority to persuade Burdett to exit the water and speak with the officer. Nor has Burdett shown that the officer communicated to Burdett that compliance with the officer's request to speak was required. Therefore, the magistrate did not err in denying Burdett's motion to suppress. Accordingly, the district court's

order on intermediate appeal, affirming the Burdett's judgment of conviction for driving under the influence, is affirmed.

Judge LANSING and Judge GRATTON, **CONCUR.**