

BOISE, THURSDAY, MAY 18, 2017, AT 09:00 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 44003-04

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
v.)
)
BENJAMIN J. DAHL,)
aka BENJAMIN JOHN DAHL,)
)
Defendant-Appellant.)
)

Appeal from the District Court of the Third Judicial District, State of Idaho,
Canyon County. Hon. Thomas J. Ryan, District Judge.

Eric D. Fredericksen, State Appellate Public Defender; Andrea W. Reynolds,
Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney
General, Boise, for respondent.

Two officers arrived at a home to serve a felony arrest warrant upon an individual. One officer entered the home with the permission of a child. The officer stood in the entryway while the child went to get one of her parents. Dahl's mother came to speak with the officer and escorted the officer to Dahl's bedroom. The mother knocked on Dahl's bedroom door and said: "[Dahl], the police would like to see your room please."

Dahl opened his bedroom door and the officer asked if he could search Dahl's bedroom for the subject of the arrest warrant. The officer testified Dahl motioned for the officer to walk into his bedroom. When searching Dahl's bedroom for the subject of the arrest warrant, the officer observed in plain view a glass pipe and a white crystal substance. The State charged Dahl with possession of methamphetamine with intent to deliver and possession of heroin.

Dahl filed a motion to suppress, arguing the evidence must be suppressed because the State cannot meet its burden to show that consent by a minor to enter the home was valid and there were no exigent circumstances to justify a warrantless entry into the home. The district court denied the motion to suppress, holding that although the initial entry into the home based on the consent of the child was illegal, the consent by Dahl and his mother independently justified the warrantless search. On appeal, Dahl argues the district court erred in denying his motion to suppress because: (1) the consent to search was not sufficiently attenuated from the illegal entry; and (2) the consent to search from both Dahl and his mother was invalid.

BOISE, THURSDAY, MAY 18, 2017, AT 10:30 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 44124

JAMES LOGAN BARTELL,)
)
Petitioner-Appellant,)
)
v.)
)
STATE OF IDAHO,)
)
Respondent.)

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bingham County. Hon. Darren B. Simpson, District Judge.

Nevin, Benjamin, McKay & Bartlett, LLP; Deborah A. Whipple, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kale D. Gans, Deputy Attorney General, Boise, for respondent.

A jury found James Logan Bartell guilty of two counts of lewd conduct with a child under sixteen. Bartell filed a petition for post-conviction relief asserting claims of ineffective assistance of counsel against various attorneys who represented him throughout the case. The district court granted Bartell's petition, in part, and summarily dismissed the remaining claims.

Bartell appeals from the district court's judgment summarily dismissing, in part, his petition for post-conviction relief. Bartell argues the district court erred by not providing him with sufficient notice of the grounds on which it intended to dismiss his petition. Bartell also contends the district court applied an incorrect standard and relied on evidence not contained within the record in making its determination.

BOISE, THURSDAY, MAY 25, 2017, AT 9:00 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 44247

STATE OF IDAHO,)
)
Plaintiff-Appellant,)
)
v.)
)
GABBRIELLE RAMONA)
ABERASTURI, aka POWELL,)
)
Defendant-Respondent.)
)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Richard D. Greenwood, District Judge.

Hon. Lawrence G. Wasden, Attorney General; Kale D. Gans, Deputy Attorney General, Boise, for appellant.

Eric D. Fredericksen, State Appellate Public Defender; Jenny C. Swinford, Deputy Appellate Public Defender, Boise, for respondent.

The State appeals from the district court's order granting a motion to suppress filed by Gabbrielle Ramona Aberasturi, aka Powell. An officer found Aberasturi searching through a dumpster in an alley late at night and stopped her to investigate possible disorderly conduct. A second officer stayed with Aberasturi while the responding officer obtained a police dispatch report. A third officer with a canine arrived and conducted a search of Aberasturi's vehicle. Prior to the search, the responding officer issued a warning about disorderly conduct to Aberasturi and she thanked the responding officer. The responding officer then told Aberasturi to wait and the canine officer continued searching Aberasturi's vehicle. The search revealed methamphetamine and the State charged Aberasturi with possession of a controlled substance.

Aberasturi filed a motion to suppress evidence, arguing that the canine officer unreasonably extended the scope of the detention to search Aberasturi's vehicle. The responding officer testified that, before he concluded his warning to Aberasturi, the canine alerted on her vehicle. The canine officer also testified that the canine alerted on Aberasturi's vehicle before the responding officer told Aberasturi to wait. The district court found that only the second officer recorded the interaction with Aberasturi and that the responding and canine officers' testimonies were inconsistent. The district court further found that the purpose of the detention was effectuated when Aberasturi thanked the responding officer for his warning. The district

court concluded that the State failed to meet its burden of establishing that the officers reasonably suspected drugs were in the car before the purpose of the initial detention was effectuated. The district court granted Aberasturi's motion to suppress and the State appeals.

BOISE, THURSDAY, MAY 25, 2017, AT 10:30 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 44295

TERRY LEE ASH,)
)
Petitioner-Appellant,)
)
v.)
)
STATE OF IDAHO,)
)
Respondent.)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Patrick H. Owen, District Judge.

Nevin, Benjamin, McKay & Bartlett, LLP; Deborah A. Whipple, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

At Ash's trial for driving under the influence, the prosecutor asked the arresting officer, "Now, after he performed those FSTs and you arrested him, did he say anything about drinking any more alcohol besides the one beer?" The officer responded, "He decided not to say anything more after that." Trial counsel moved for a mistrial. The district court held the prosecutor's question and officer's answer violated Ash's privilege against self-incrimination and granted the motion for mistrial. The jury in Ash's second trial convicted him. Ash filed a petition for post-conviction relief and then amended his petition. In the amended petition, Ash asserted his trial counsel was ineffective for failing to object to his second prosecution on double jeopardy grounds and the second prosecution violated his right to be free from double jeopardy. The district court summarily dismissed the petition.

On appeal from the summary dismissal of his petition, Ash asserts he raised a genuine issue of material fact about whether his trial counsel was ineffective for failing to object to the second prosecution on double jeopardy grounds and whether the second prosecution violated his right to be free from double jeopardy.

BOISE, THURSDAY, MAY 25, 2017, AT 1:30 P.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 44775

In the Interest of: JANE DOE,)
A Child Under Eighteen (18) Years of)
Age.)
_____)
IDAHO DEPARTMENT OF HEALTH)
AND WELFARE,)
)
Petitioner-Respondent,)
)
v.)
)
JANE DOE I (2017-5),)
)
Respondent-Appellant.)
_____)

Appeal from the Magistrate Division of the District Court of the First Judicial District, State of Idaho, Bonner County. Hon. A. Lynne Krogh, Magistrate.

Janet K. Whitney, Bonner County Public Defender; Catherine E. Enright, Deputy Public Defender, Sandpoint, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Denise L. Rosen, Deputy Attorney General, Coeur d'Alene, for respondent.

In 2014, while in custody awaiting sentencing on a criminal drug charge, Jane Doe gave birth to a child. The child was placed in state custody, a child protection case was opened, and a case plan was adopted. In June 2016, the Idaho Department of Health and Welfare filed a petition to terminate Jane Doe's parental rights with respect to the child. The Department alleged that Doe neglected the child, failed to comply with her case plan, and reunification had not occurred. The Department further alleged Doe was unable to discharge parental responsibilities and such inability would continue for a prolonged, indeterminate period and would be injurious to the health, morals, or well-being of the child. After trial, the magistrate found that Doe had neglected the child and that termination of Doe's parental rights was in the best interest of the child. Doe appeals.