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## State v. Rhall Respondent's Brief Dckt. 39950

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	No. 39950
Plaintiff-Respondent,	)	
	)	Jerome Co. Case No.
vs.	)	CR-2011-2411
	)	
ROBERT WAGNER RHALL, III,	)	
	)	
Defendant-Appellant.	)	

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**BRIEF OF RESPONDENT**

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**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF JEROME**

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**HONORABLE JOHN K. BUTLER  
District Judge**

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Attorney General  
State of Idaho**

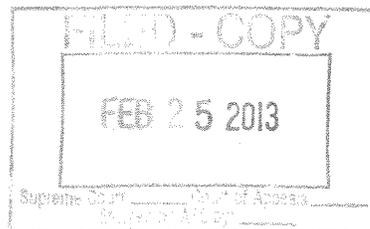
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## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
Nature Of The Case .....	1
Statement Of The Facts And Course Of The Proceedings .....	1
ISSUE .....	3
ARGUMENT .....	4
Rhall Has Failed To Show Error In The District Court's Denial Of His Motion To Suppress Evidence .....	4
A.    Introduction .....	4
B.    Standard Of Review .....	4
C.    The Search Of Rhall's Truck Was Reasonable And Based On Probable Cause .....	5
CONCLUSION .....	9
CERTIFICATE OF MAILING .....	9

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>California v. Acevedo</u> , 500 U.S. 565 (1991) .....	5
<u>Florida v. Jimeno</u> , 500 U.S. 248 (1991).....	5
<u>Katz v. United States</u> , 389 U.S. 347 (1967).....	5
<u>State v. Anderson</u> , Docket No. 39187, 2012 Opinion No. 123 (September 14, 2012).....	8
<u>State v. Atkinson</u> , 128 Idaho 559, 916 P.2d 1284 (Ct. App. 1996) .....	4
<u>State v. Gonzalez</u> , 117 Idaho 518, 789 P.2d 206 (Ct. App. 1990).....	5, 6, 8
<u>State v. Schevers</u> , 132 Idaho 786, 979 P.2d 659 (Ct. App. 1999).....	5
<u>State v. Tucker</u> , 132 Idaho 841, 979 P.2d 1199 (1999).....	5
<u>State v. Valdez-Molina</u> , 127 Idaho 102, 897 P.2d 993 (1995) .....	5
<u>State v. Willoughby</u> , 147 Idaho 482, 211 P.3d 91 (2009) .....	4
<u>State v. Yeoumans</u> , 144 Idaho 871, 172 P.3d 1146 (Ct. App. 2007).....	5
<u>United States v. Ross</u> , 456 U.S. 798 (1982).....	5, 6
<u>Wyoming v. Houghton</u> , 526 U.S. 295 (1999).....	6

## STATEMENT OF THE CASE

### Nature Of The Case

Robert Wagner Rhall, III, appeals from his judgment of conviction for felony possession of marijuana, entered upon his conditional guilty plea. On appeal, he argues that the district court erred by denying his suppression motion.

### Statement Of The Facts And Course Of The Proceedings

The factual background, as related by the district court,<sup>1</sup> is as follows:

At around noon on April 19, 2011, ISP Officer Garcia stopped the defendant, Robert Rhall for speeding on I-84. Officer Garcia used his radar to determine that the defendant was traveling at 83 m.p.h. Officer Garcia stopped the defendant's vehicle and asked for the driver's license and registration. At this time Officer Garcia smelled marijuana from within the vehicle. The defendant told Officer Garcia that he did not have marijuana in the vehicle, but had had marijuana in the vehicle several months prior in California, where he has a medical marijuana permit. Officer Garcia asked the defendant to exit the vehicle and notified him that he would be performing a search of the vehicle. During the search of the cab of the vehicle, Officer Garcia found large sums of money and what appeared to be marijuana residue. Officer Garcia could still smell marijuana and asked for the key to search the truck bed, under the locked camper shell. The defendant told Officer Garcia that he did not have a key to unlock the shell. Officer Garcia called for a canine unit and Officer Gonzalez notified Officer Garcia that the canine alerted to the area behind the driver's side door and the bed of the truck.

At this time, Officer Garcia notified the defendant that while he was not under arrest, his vehicle would be taken to the office to be searched.

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<sup>1</sup> Rhall, in his "Statement of the Facts," argues several "facts" which were offered into evidence below, but were never accepted as facts by the district court. These include Rhall's dogs having, allegedly, "recently been sprayed by a skunk and continu[ing] to emit the aroma" (Appellant's brief, p.2); the certified drug dog, Kenzo, displaying "a lack of keen interest in Defendant's truck that [he] should have shown in the presence of a significant odor of drugs" (Id., pp.2-3); and that Kenzo's handler cued him to the presence of drugs (Id., p.4).

The defendant notified Officer Garcia that he would like to be present for the search. He also requested Officer Garcia to obtain a jacket from the vehicle and call a relative regarding his pet dogs. Officer Garcia retrieved the jacket and in it located the keys for the camper shell. Officer Garcia then commenced with a search of the bed of the truck, in which he found a large quantity of marijuana, scales, and baggies. The defendant was then arrested and charged with possession of a controlled substance with intent to deliver and possession of a controlled substance.

(R., pp.111-12.)

The state charged Rhall with possession of marijuana with the intent to deliver, possession of psilocybin mushrooms, possession of drug paraphernalia, and felony possession of marijuana. (R., pp.63-64.) Rhall filed a motion to suppress all of the evidence seized during the search of his vehicle. (R., pp.78-81.)

The district court held a two day hearing on Rhall's suppression motion. (Tr.) After the hearing, finding that Sergeant Garcia's smelling of the raw marijuana gave him probable cause to search the whole vehicle, the district court denied Rhall's motion to suppress. (R., pp.111-33.) Rhall entered a conditional guilty plea, reserving his right to challenge the district court's denial of his suppression motion. (R., pp.154-58.) Pursuant to the plea agreement, Rhall pleaded guilty to felony possession of marijuana (R., pp.157, 167) and the state dismissed Counts I-III (R., pp.157, 181). The district court entered judgment against Rhall, imposed a suspended sentence of five years with two years fixed, and placed him on probation for a period of three years. (R., pp.166-71.) Rhall filed a timely notice of appeal. (R., pp.183-85.)

## ISSUE

Rhall does not offer a statement of the issues on appeal. (See Appellant's brief.)

The issue before this Court is:

Has Rhall failed to show error in the district court's denial of his motion to suppress evidence?

## ARGUMENT

### Rhall Has Failed To Show Error In The District Court's Denial Of His Motion To Suppress Evidence

#### A. Introduction

While contacting Rhall during a traffic stop, Sergeant Garcia detected the odor of raw marijuana. (R., pp.111, 129.) During the ensuing search of Rhall's truck, Sergeant Garcia discovered a large quantity of marijuana, large sums of money, scales, and baggies. (R., p.112.) Rhall moved the district court for an order suppressing the evidence obtained as a result of the search. (R., pp.78-81.) The district court, finding that Sergeant Garcia's search of Rhall's truck was based on probable cause, denied the suppression motion. (R., pp.111-33.) On appeal, Rhall argues that the district court erred in its determination that Sergeant Garcia had probable cause to conduct the search. (Appellant's brief, pp.6-17.) Application of the correct legal standards to the facts found by the district court, however, shows no error.

#### B. Standard Of Review

On review of a ruling on a motion to suppress, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence and exercises free review of the trial court's determination as to whether constitutional standards have been satisfied in light of the facts found. State v. Willoughby, 147 Idaho 482, 485-86, 211 P.3d 91, 94-95 (2009); State v. Atkinson, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). 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. Valdez-Molina, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); State v. Schevers, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

C. The Search Of Rhall's Truck Was Reasonable And Based On Probable Cause

The Fourth Amendment of the United States Constitution provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Const. amend. IV. “[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” Katz v. United States, 389 U.S. 347, 357 (1967). One such exception to the warrant requirement is the “automobile exception,” which allows warrantless searches of vehicles when there is probable cause to believe that the vehicle contains contraband or evidence of criminal activity. See California v. Acevedo, 500 U.S. 565, 572 (1991); United States v. Ross, 456 U.S. 798, 823 (1982); State v. Tucker, 132 Idaho 841, 842, 979 P.2d 1199, 1200 (1999). “Probable cause is established if the facts available to the officer at the time of the search would warrant a person of reasonable caution in the belief that the area or items to be searched contained contraband or evidence of a crime.” State v. Yeoumans, 144 Idaho 871, 873, 172 P.3d 1146, 1148 (Ct. App. 2007) (citing Ross, 456 U.S. at 823). “The smell of marijuana *alone* can satisfy the probable cause requirement for a warrantless search.” State v. Gonzalez, 117 Idaho 518, 519, 789 P.2d 206, 207 (Ct. App. 1990) (emphasis original, citation omitted).

Under the Fourth Amendment, “[t]he scope of a search is generally defined by its expressed object.” Florida v. Jimeno, 500 U.S. 248, 251 (1991) (citation omitted).

“When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between ... glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.” Ross, 456 U.S. at 821. “If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.” Wyoming v. Houghton, 526 U.S. 295, 300 (1999) (quoting Ross, 456 U.S. at 825).

The search of Rhall’s truck was reasonable and supported by probable cause. In this case, Sergeant Garcia pulled-over Rhall for speeding. (R., p.111; see also Tr., p.12, L.19 – p.14, L.14.) Upon contacting Rhall and asking for his license and registration, Sergeant Garcia smelled raw marijuana in the vehicle. (R., pp.111, 129; see also Tr., p.15, Ls.16-25; p.68, Ls.19-23.) This gave Sergeant Garcia probable cause to search every part of Rhall’s vehicle that could conceal raw marijuana. See Gonzalez, 117 Idaho at 519, 789 P.2d at 207; Houghton, 526 U.S. at 300.

Sergeant Garcia informed Rhall that he would be performing a search of the vehicle. (R., pp.112, 129-31; see also Tr., p.17, Ls.13-18.) Sergeant Garcia began by searching the truck’s cab, wherein he found residue from smoked marijuana, a wallet containing \$250, and \$1,400 in small bills in a separate baggie. (R., p.112; see also Tr., p.18, L.23 – p.19, L.23.) Sergeant Garcia explained that the separated money was significant because it indicated, based on his experience, that Rhall was likely involved with selling drugs. (R., p.131; see also Tr., p.20, L.9 – p.21, L.4.) Though Sergeant Garcia did not locate raw marijuana in the truck’s cab, he could still smell it. (R., p.112; see also Tr., p.21, Ls.5-8; p.68, L.19 – p.69, L.1.) All of these circumstances reinforced

Sergeant Garcia's probable cause and gave him greater reason to search the rest of the truck. (R., p.131.)

Because Sergeant Garcia could not find the raw marijuana in the truck's cab, he believed it was located in the truck's bed. (Tr., p.68, L.19 – p.69, L.1.) Sergeant Garcia could see that there were bags locked beneath a camper shell in the truck's bed. (Tr., p.21, Ls.9-20.) Sergeant Garcia asked Rhall for keys to open and search the bed. (R., p.112; see also Tr., p.21, Ls.23-25.) Rhall lied to Sergeant Garcia, claiming to have left the keys at home. (R., p.112; see also p.21, L.25 – p.22, L.1.) Sergeant Garcia, before impounding the truck and damaging Rhall's personal property by breaking the lock or a window, requested a drug dog to corroborate his well-founded belief that marijuana would be found in the truck's bed. (R., p.112; see also Tr., p.22, Ls.21-24; p.67, Ls.15-25.) A drug dog was deployed and, though it originally experienced difficulties (Tr., p.91, Ls.2-24), ultimately alerted to the presence of drugs (R., p.112; see also Tr., p.95, L.18 – p.96, L.19).

Sergeant Garcia informed Rhall that he would be impounding Rhall's truck. (R., p.112.) Rhall requested a jacket from inside the truck, which police retrieved. (Id.; see also Tr., p.23, Ls.4-9.) Inside the jacket's pocket, police found the keys to the truck's camper shell. (R., p.112; see also Tr., p.23, Ls.9-12; p.76, L.22 – p.77, L.8.) Sergeant Garcia opened the camper shell and continued his search of the truck, finding large quantities of marijuana, scales, and baggies. (R., p.112; see also Tr., p.23, L.13 – p.26, L.9.)

On appeal, Rhall argues that the drug dog's alert could not be the basis for Sergeant Garcia's probable cause to search Rhall's truck on the theory that the drug

dog's alert was "cued" or otherwise not scientifically reliable. (Appellant's brief, pp.9-16.) Rhall's arguments are irrelevant. The district court acknowledged that "if the use of the canine was the sole basis of the probable cause analysis this court would have to conclude that the State had failed to meet its burden to establish probable cause." (R., p.129.) Rather, the probable cause in this case was based on Sergeant Garcia's smelling the raw marijuana inside Rhall's vehicle. Therefore, "even if the alert were unreliable, Officer Garcia had reason to believe, based on his smell of raw marijuana in the defendant's vehicle, that there was probable cause to search the entire vehicle for marijuana." (R., p.132.)

Rhall also seems to argue that the drug dog's delayed alert should negate Sergeant Garcia's probable cause to search. (Appellant's brief, pp.14-17.) This argument is meritless. In State v. Anderson, Docket No. 39187, 2012 Opinion No. 123 (September 14, 2012), the Idaho Supreme Court held that a drug dog's *failure* to alert did not negate an officer's probable cause to search, but was merely one factor to consider under the totality of the circumstances. Id. at 7.

As discussed above, when an officer smells marijuana, he has probable cause to search for marijuana. Gonzalez, 117 Idaho at 519, 789 P.2d at 207. The district court found that Sergeant Garcia smelled raw marijuana. (R., pp.111, 129.) That finding is supported by substantial evidence. (See Tr., p.15, Ls.16-25; p.21, Ls.5-8; p.68, Ls.19-23.) Sergeant Garcia began searching the vehicle before he summoned the drug dog. (See Tr., p.17, L.13 – p.22, L.24.) The drug dog arrived and, after a delay, ultimately corroborated Sergeant Garcia's probable cause. (Tr., p.95, L.18 – p.96, L.19.) If a drug

dog's *failure* to alert does not negate an officer's probable cause, then certainly a drug dog's *positive* alert, even if delayed, does not negate an officer's probable cause.

Sergeant Garcia's search was reasonable and based on probable cause that Rhall had marijuana in his truck. Rhall has failed to show error in the district court's legal conclusion that Sergeant Garcia had probable cause to search. The district court's order denying Rhall's suppression motion should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Rhall's suppression motion.

DATED this 25th day of February, 2013.

  
\_\_\_\_\_  
RUSSELL J. SPENCER  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 25th day of February, 2013, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

MICHAEL J. WOOD  
Attorney at Law  
184 Gooding St. West  
Twin Falls, Idaho 83301

  
\_\_\_\_\_  
RUSSELL J. SPENCER  
Deputy Attorney General

RJS/pm