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## State v. Hernandez Appellant's Brief Dckt. 42225

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NOS. 42225 & 42261
Plaintiff-Respondent,	)	
	)	TWIN FALLS COUNTY NOS.
v.	)	CR 2013-14141 & CR 2013-14142
	)	
ODILON BANDA HERNANDEZ,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

HONORABLE G. RICHARD BEVAN  
District Judge

SARA B. THOMAS  
State Appellate Public Defender  
State of Idaho  
I.S.B. #5867

ERIK R. LEHTINEN  
Chief, Appellate Unit  
I.S.B. #6247

KIMBERLY E. SMITH  
Deputy State Appellate Public Defender  
I.S.B. #9150  
3050 N. Lake Harbor Lane, Suite 100  
Boise, ID 83703  
(208) 334-2712

ATTORNEYS FOR  
DEFENDANT-APPELLANT

KENNETH K. JORGENSEN  
Deputy Attorney General  
Criminal Law Division  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

ATTORNEY FOR  
PLAINTIFF-RESPONDENT

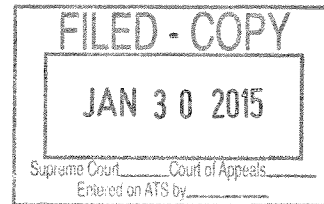


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## STATEMENT OF THE CASE

### Nature of the Case

Odilon Banda Hernandez entered a conditional plea of guilty to the charges of possession of methamphetamine and misdemeanor driving under the influence, preserving his right to challenge the district court's order denying his Motion to Suppress. (R., pp.128-141.) Mindful of the district court's factual finding that he crossed the fog line while driving, Mr. Hernandez nevertheless asserts that the district court erred when it denied his Motion to Suppress because he did not commit a traffic violation and, therefore, Officer Hassani did not have reasonable suspicion to pull him over.

### Statement of Facts and Course of Proceedings

Around 11:30 p.m. in Twin Falls County, Officer Hassani saw a man walk up to Mr. Hernandez's car and exchange something, and then the man gave Officer Hassani "a look." (Tr. 1/31/14, p.10, L.23 – p.11, L.3.) Mr. Hernandez drove away and then Officer Hassani pulled him over because he said that Mr. Hernandez committed a traffic violation when he crossed the fog line. (R., p.116.) Officer Hassani testified that Mr. Hernandez's eyes were bloodshot and glassy, and that he determined that Mr. Hernandez was driving without privileges. (R., p.116.) Officer Hassani arrested Mr. Hernandez for driving without privileges and for "possible" driving under the influence. (Tr. 1/31/14, p.10, Ls.5-16.) Additional officers conducted an inventory search of Mr. Hernandez's car and found a baggie of suspected methamphetamine. (R., pp.116-17.) Mr. Hernandez was charged with possession of methamphetamine and misdemeanor driving under the influence. (R., pp.55-56, 210-11.)

Mr. Hernandez filed a Motion to Suppress, wherein he argued that Officer Hassani did not have reasonable suspicion to detain him because he did not violate Idaho Code section 49-630(1). (R., pp.88-91.) Mr. Hernandez acknowledged that the Idaho Court of Appeals' decision in *State v. Slater*, 136 Idaho 293 (Ct. App. 2001), held that crossing the fog line was a violation of section 49-630(1), but he argued that he merely touched the line, which was not a violation under *Slater*.<sup>1</sup> (R., p.90.) Mr. Hernandez further argued that the video recording of the traffic stop did not show that he crossed the fog line. (R., p.89.) A hearing was held on the Motion to Suppress, and the district court took judicial notice of the preliminary hearing transcript. (R., p.117.) The district court found that the video recording showed that "after coming out of the curve, Hernandez crosses the fog line and then rides along the line for a significant period of time. Hernandez then appears to cross the fog line a second time just before initiating his right hand turn signal..." (R., p.122.) The district court also determined that, even if the video were inconclusive, it found credible Officer Hassani's testimony that Mr. Hernandez crossed the fog line. (R., p.122.) The district court determined that Mr. Hernandez's conduct violated section 49-630(1) and, therefore, constituted reasonable suspicion for detaining him. (R., p.123.)

Mr. Hernandez entered a conditional plea to possession of methamphetamine in case number CR 2013-14141 and misdemeanor driving under the influence in case number CR 2013-14142, preserving his right to appeal the denial of his Motion to

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<sup>1</sup> The Idaho Court of Appeals recently held that a driver violates Idaho Code section 49-637(1) by merely touching the fog line. *State v. Neal*, No. 42534, 2014 WL 5151426, at \*5 (Ct. App. Oct. 15, 2014). The Idaho Supreme Court granted review in *Neal* on January 19, 2015.

Suppress. (R., pp.128-140.) The district court consolidated the two cases at the time of the pleas. (Tr. 4/11/14, p.42, Ls.1-22; R., p.279.) Mr. Hernandez timely appealed from the order denying his Motion to Suppress. (R., pp.187-190.)

ISSUE

Did the district court err when it denied Mr. Hernandez's motion to suppress?



## ARGUMENT

### The District Court Erred When It Denied Mr. Hernandez's Motion To Suppress

#### A. Introduction

Mr. Hernandez asserts that the district court erred when it denied his Motion to Suppress because his Fourth Amendment rights were violated when Officer Hassani detained him without reasonable suspicion. Mindful of the district court's factual finding that he crossed the fog line, which is supported by substantial evidence, Mr. Hernandez nevertheless requests that the district court's order denying his Motion to Suppress be reversed.

#### B. Standard Of Review

In *State v. Cutler*, 143 Idaho 297 (Ct. App. 2006), the Court of Appeals articulated the following standard of review for an appeal from a motion to suppress:

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact which are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. 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.

*Id.* at 302 (citations omitted).

#### C. The District Court Erred When It Denied Mr. Hernandez's Motion To Suppress

The Fourth Amendment 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 purpose of this constitutional right is to "impose a standard of reasonableness upon the exercise of discretion by governmental agents and thereby

safeguard an individual's privacy and security against arbitrary invasions." *State v. Maddox*, 137 Idaho 821, 824 (Ct. App. 2002). An investigative detention is constitutionally permissible based upon reasonable suspicion, derived from specific articulable facts, that the person stopped has committed or is about to commit a crime. *Terry v. Ohio*, 392 U.S., 1, 21 (1968); *State v. Salato*, 137 Idaho 260, 264 (Ct. App. 2001).

Here, the district court found that the video recording of the stop showed that Mr. Hernandez crossed the fog line. (R., pp.115-123.) The district court also determined that, even if the video were inconclusive, Officer Hassani's testimony that Mr. Hernandez crossed the fog line was credible. (R., p.122.) The Court of Appeals in *State v. Slater*, 136 Idaho 293, 298 (Ct. App. 2001), held that a driver violates section 49-630(1) if he crosses the fog line. Here, Mr. Hernandez asserts the video is inconclusive as to whether Mr. Hernandez crossed the fog line. (Motion to Suppress, Defense Exhibit 1.) However, the district court found Officer Hassani credible in his testimony that he saw Mr. Hernandez cross the fog line. (R., p.122.) Mindful of the district court's factual finding, Mr. Hernandez nevertheless asserts that he did not cross the fog line and, therefore, Officer Hassani did not have reasonable suspicion to detain him for a violation of section 49-630(1).

D. All Evidence Collected Following The Police's Illegal Detention Of Mr. Hernandez Should Be Suppressed As It Is Fruit Of The Illegal Governmental Activity

The application of the exclusionary rule to suppress evidence is appropriate only to evidence that is fruit of the illegal governmental activity. *Wong Sun v. United States*, 371 U.S. 471 (1963); *State v. Bainbridge*, 117 Idaho 245, 249 (1990). The test is

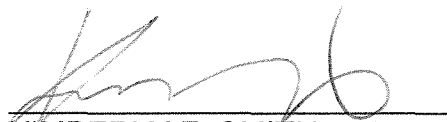
“whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.” *Wong Sun, supra*, 371 U.S. at 488. Suppression is required if “the evidence sought to be suppressed would not have come to light but for the government’s unconstitutional conduct.” *State v. Wigginton*, 142 Idaho 180, 184 (Ct. App. 2005).

Mr. Hernandez maintains that Officer Hassani did not have reasonable suspicion to detain him. If Officer Hassani had not illegally detained Mr. Hernandez, he would not have found the baggie of methamphetamine or investigated Mr. Hernandez for driving under the influence. Mr. Hernandez asserts that the State failed to meet its burden of showing that the evidence is untainted; therefore, all physical evidence and Officer Hassani’s observations that occurred after the illegal detention must be suppressed.

#### CONCLUSION

Mr. Hernandez respectfully requests that this Court vacate the district court’s order of judgment and commitment and reverse the order that denied his Motion to Suppress.

DATED this 30<sup>th</sup> day of January, 2015.



KIMBERLY E. SMITH  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30<sup>th</sup> day of January, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

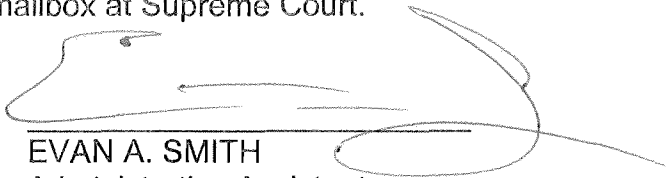
ODILON BANDA HERNANDEZ  
400 8TH AVENUE NORTH  
BUHL ID 83316

G RICHARD BEVAN  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

BENJAMIN P ANDERSEN  
TWIN FALLS COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
PO BOX 83720  
BOISE ID 83720-0010

Hand delivered to Attorney General's mailbox at Supreme Court.

A handwritten signature in black ink, appearing to read "Evan A. Smith", is written over a horizontal line. The signature is stylized and somewhat cursive.

EVAN A. SMITH  
Administrative Assistant

KES/eas