12-30-2015

Hamilton v. State of Idaho, Department of Transportation Appellant's Brief Dckt. 43510

IN THE SUPREME COURT OF THE STATE OF IDAHO

PATRICK GLEN HAMILTON,	)	
	)	
Appellant/Petitioner,	)	Docket Number No. 43510
	)	
vs.	)	
	)	
State of Idaho,	)	
Department of Transportation,	)	
	)	
Respondent.	)	

APPELLANT'S BRIEF

Appeal from the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce regarding a judicial review of an ALS hearing officer decision.

The Honorable Chief Justice and Associate Justices of the Idaho Supreme Court

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III.
STATEMENT OF THE CASE

Nature of the Case: Mr. Hamilton was given a driver's license suspension as a result of his failure of a breath test on September 7, 2014, pursuant to Idaho Code §18-8002A. There was a judicial review of the Idaho Transportation Department's hearing officer's decision upholding the license suspension of Mr. Hamilton. The license suspension began on October 7, 2015.

Party Reference: The Idaho Transportation Department is referred to as "ITD" or "Department" for the purposes of this argument. Mr. Hamilton is referred to by name. Idaho State Police Forensic Services is referred to as "ISP" or "ISPFS."

Standard of Review: In *Druffell v. State Department of Transportation*, 136 Id. 853, 41 P.3d 739 (2002), the Supreme Court set out the standard of review in matters dealing with the judicial reviews of administrative proceedings, the Court stated:

> "Under the IDAPA, the ITD's decision may be overturned only where its findings: a) violate statutory or constitutional provisions; b) exceed the agency's statutory authority; c) or made upon unlawful procedures; d) are not supported by substantial evidence in the record; or e) are arbitrary, capricious, or an abuse of discretion. I.C. Section 67-5279(3).

At p. 855. See also *Atwood v. State of Idaho, Department of Transportation*, 155 Idaho 884, 318 P.3d 653 (Ct. App. 2014) and *Elias-Cruz v. Idaho Department of Transportation*, 153 Id. 200, 280 P.3d 703 (2012).

Idaho Code §18-8002A(7) sets out the burden of the driver to demonstrate to the Hearing Officer that license suspension should be vacated.[1] The review of disputed issues of fact must be confined to the agency record for judicial review. I.C. §67-5277. I.C. §67-5279(1) sets out the scope of review. *Bennett v. State of Idaho, Department of Transportation*, 147 Id. 141, 206 P.3d 505 (Ct. App. 2009). The Court shall not substitute its judgment for that of the agency as to the weight of the evidence presented. Upon judicial review of an administrative hearing officer's order a Court may not set aside findings unless those findings are "not supported by substantial evidence on the Record as a whole" I.C. §67-5279(3)(d). *Mahurin v. State of Idaho, Department of Transportation,* 140 Id. 65, 99 P.3d 125, (2004). See also *Gibbar v. State of Idaho, Department of Transportation*, 143 Id. 937, 155 P.3d 1176, (Ct. App. 2006). The appropriate remedy pursuant to the Idaho Administrative Procedures Act is: "... if the agency is not affirmed, it shall be set aside, in whole or in part and remanded for further proceedings as necessary." I.C. §67-5279(3). See *Gibbar* at p. 1181. The Idaho Supreme Court has held that the decision of the Transportation Department must be affirmed,

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[1] (7) Administrative hearing on suspension. ... The burden of proof shall be on the person requesting the hearing. The hearing officer shall not vacate the suspension unless he finds, by a preponderance of the evidence, that:
(a) The peace officer did not have legal cause to stop the person; or
(b) The officer did not have legal cause to believe the person had been driving or was in actual physical control of a vehicle while under the influence of alconol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
(c) The test results did not show an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
(d) The tests for alcohol concentration, drugs or other intoxicating substances administered at the direction of the peace officer were not conducted in accordance with the requirements of section 18-8004(4), Idaho Code, or the testing equipment was not functioning properly when the test was administered; or
(e) The person was not informed of the consequences of submitting to evidentiary testing as required in subsection (2) of this section.
If the hearing officer finds that the person has not met his burden of proof, he shall sustain the suspension. The hearing officer shall make findings of fact and conclusions of law on each issue and shall enter an order vacating or sustaining the suspension. The findings of fact, conclusions of law and order entered by the hearing officer shall be considered a final order pursuant to the provisions of chapter 52, title 67, Idaho Code, except that motions for reconsideration of such order shall be allowed and new evidence can be submitted. ...

unless the order violates statutory or constitutional provisions, exceeds the agency's authority, is made upon unlawful procedure, is not supported by substantial evidence, or is arbitrary, capricious or an abuse of discretion. *Marshall v. Idaho Transportation Department,* 137 Id. 337, 48 P.3d 666 (2002). The party challenging the agency decision must demonstrate that the agency erred in a manner specified in I.C. §67-5279(3) and that a substantial right of that party has been prejudiced. *Gibbar v. State of Idaho, Department of Transportation*, 143 Id. 937, 155 P.3d 1176, (Id. App. 2006).

A hearing pursuant to I.C. §18-8002A results in an agency action and is therefor governed by the Idaho Administrative Procedure Act. The constitutionality of a statute or administrative regulation is a question of law over which this court exercises free review. *Wanner v. State*, 151 Id. 164, 244 P.3d 1250 (2011) at p. 1253. The Idaho Administrative Procedure Act governs the review of Department decisions to deny, cancel, suspend, disqualify, revoke or restrict a persons driver's license. See I.C. §§49-330, 67-5270, 49-201, 67-5201(2). *Bell v. Idaho Department of Transportation*, 151 Idaho 659, 262 P.3d. 1030 (2011).

IV.
STATEMENT OF FACTS AND COURSE OF PROCEEDING

Mr. Hamilton was stopped on September 6, 2014, in Lewiston, Idaho because of the following: ". . . for improper registration sticker (obstructive white color in lower right corner and red color sticker near the bottom edge near the middle, I.C. 49-443(4) ...". . Exhibit to Clerk's Record at p. 6.

Mr. Hamilton submitted pictures to the hearing officer, one being the picture of his license plate as it existed at the time of the stop. Exhibit to Clerk's Record at p. 332. See also color pictures submitted as a result of the Objection to the Record. Pictures of another license plate were provided as evidence. Exhibits to Clerk's Record at pp. 329-331. These are picture of Mr. Ed Litteneker's license plates. Tr. at p. 14. Mr. Hamilton was stopped and was requested to take field sobriety tests. He was detained and asked to take a breath test. His breath test was noted as a .108 and .111. . Exhibit to Clerk's Record at pp. 3-4.

The hearing officer found: "Senior Trooper Talbott stopped the vehicle driven by Hamilton for having an improper registration sticker, a violation of Idaho Code §49-443(4)."[2] Exhibit to Clerk's Record at p. 361. The hearing officer noted: "Even if Idaho Code §49-443(4) is not an infraction traffic violation, Exhibit O shows Hamilton was still driving a motor vehicle in violation of this statute." Exhibit to Clerk's Record. at p. 362. The hearing officer also stated: "Idaho Code §49-428(2) clearly notes a vehicle is not properly registered if the registration sticker is not located

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[2] 49-443. LICENSE PLATES TO BE FURNISHED BY DEPARTMENT -- FORM AND CONTENTS...(4) License plates issued for vehicles required to be registered in accordance with the provisions of sections 49-402 and 49-402A, Idaho Code, shall be issued color coded red, white or blue registration validation stickers showing the year of registration. Each registration validation sticker shall bear a number from 1 through 12, which number shall correspond to the month of the calendar year in which the registration of the vehicle expires and shall be affixed to the lower right-hand corner of the plates within the outlined rectangular area.

on the license plate as set forth in Idaho Code §49-443(4)."[3] Exhibit to Clerk's Record at p. 361. He also stated: "Hamilton was not only in violation of Idaho Code §49-443(4), he was also in violation of Idaho Code §49-428(2) when he placed the registration sticker in the incorrect area on the license plate." . Exhibit to Clerk's Record at p. 361.

Mr. Hamilton was called as a witness to testify about his license plate. He was asked: "Q: Okay. So your license was properly registered for 2014? A: And 2015. Q: Right. And 2015. A: Correct." Exhibit to Clerk's Record, Tr. at p. 10, ll 12-16. The arresting officer did not testify as he avoided service of process regarding his subpoena. Exhibit to Clerk's Record at p. 333. The hearing was held on October 1, 2014. The hearing officer sustained a suspension. Exhibit to Clerk's Record at p. 358. A timely request for judicial review was requested. Exhibit to Clerk's Record at p. 382. The District Court heard the matter on May 18, 2015 and issued its decision on July 31, 2015, . Exhibit to Clerk's Record at p. 102. A timely appeal was filed to the Supreme Court regarding issues of first impression about the interpretation of Idaho statutes I.C. §§49-428(2), 49-443(4) and 49-456(1). Is it a law violation to place a registration sticker near the small rectangle on the license plate instead of in the rectangle and whether this statutory scheme is vague.

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[3] 49-428. DISPLAY OF PLATE AND STICKERS. (1) License plates assigned to a motor vehicle shall be attached, one (1) in the front and the other in the rear, . . . License plates shall be displayed during the current registration year. The annual registration sticker for the current registration year shall be displayed on each license plate, except for trailers and semitrailers on extended registration under the provisions of section 49-434, Idaho Code. For the purposes of this title, the license plates together with the registration stickers shall be considered as license plates for the year designated on the registration sticker.
(2) Every license plate shall at all times be securely fastened to the vehicle to which it is assigned to prevent the plate from swinging, be at a height not less than twelve (12) inches from the ground, measuring from the bottom of the plate, be in a place and position to be clearly visible, and shall be maintained free from foreign materials and in a condition to be clearly legible, and all registration stickers shall be securely attached to the license plates and shall be displayed as provided in section 49-443(4), Idaho Code.

V.
ISSUES PRESENTED ON APPEAL

A. There Was No Legal Cause to Stop Hamilton Pursuant to Idaho Code §18-8002A(7)(a)

B. The Statutes Are Vague: Idaho Code §§49-428(2). 49-443(4) and 49-456(1); Idaho Code Is Unconstitutionally Vague with Regard to the Application of Chapter 4, Title 49

C. The Requirement for Rulemaking with Regard to the Standard Operating Procedure Was Not Followed, Therefore, the Breath Test Was Invalid

D. The Standard Operating Procedure in Existence at the Time of Mr. Hamilton's Stop Was Not Properly a Rule and Therefore the Breath Test Was Invalid.

VI.
ARGUMENT

A.
THERE WAS NO LEGAL CAUSE TO STOP HAMILTON PURSUANT TO IDAHO CODE §18-8002A(7)(a)

The hearing officer wrongly decided that Mr. Hamilton had an "improper registration sticker". There is nothing on the record that indicates that Mr. Hamilton's registration sticker was improper. In addition, there is nothing on this record that supports the hearing officer's statement that: "Idaho Code §49-428(2) clearly notes a vehicle is not properly registered if the registration sticker is not located on the license plate as set forth in Idaho Code §49-443(4)." Exhibit to Clerk's Record at p. 361. The hearing officer makes conclusionary statements but provides no analysis of the statute nor an analysis of any case law that supports what are clearly ill-informed points. There is nothing in the record that indicates that the registration document that was provided to the arresting officer was incorrect. There is nothing on this record to show that the license plate was not a current license plate. There is nothing about the registration sticker that indicates that it is out of date or falsified or that it is not a duly purchased registration sticker for 2014 - 2015. The fact that the registration sticker wasn't in the rectangle doesn't mean it was an "improper registration sticker" and it doesn't mean the vehicle wasn't properly registered. The license plate displayed the current registration sticker for the current registration year.

The Court can easily see that the decision made by the hearing officer is flawed as Idaho Code §49-456(1) states as follows:

> **Violation of Registration Provisions**. It shall be unlawful for any person: (1) To operate or for the owner to permit the operation upon a highway of any motor vehicle, trailer or semitrailer which is not registered and which does not have attached and displayed the license plates assigned to it for the current registration year ... (emphasis added as to what is underlined)

If the Legislature had wanted there to be a law violation for the failure to place the sticker then the Legislature could have specifically set this out in I.C. §49-456(1) as it did in I.C. §49-456(2), which reads:

> (2) To operate or for the owner to permit the operation on state and federal lands or upon highways, or sections of highways, as permitted under section 49-426(3) and (4), Idaho Code, any all-terrain vehicle, utility type vehicle or motorbike that does not have a valid and properly displayed restricted license plate issued pursuant to this chapter and attached registration sticker issued pursuant to section 67-7122, Idaho Code, subject to the exemptions allowed in section 49-426(2), Idaho Code. (emphasis added)

The Legislation was specific in subsection 2 about registration stickers for off road type vehicles. On this record, there is no evidence to support the hearing officer's finding that Trooper Talbott stopped the vehicle driven by Mr. Hamilton for having an "improper registration sticker" in violation of I.C. §49-443(4). Exhibit to Clerk's Record at p. 361. Mr. Hamilton had a proper registration sticker on his license plate.

The Idaho Infraction Rules don't indicate that I.C. §49-443(4) is an infraction. See Idaho Infraction Rules, Rule 9(b)(15)[4], this rule is specific to license plates.

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[4] Failure to display license plate. Section 49-428, Idaho Code. (Fixed penalty $10.50, court costs $16.50, county justice fund fee $5.00, peace officers training fee $15.00, court technology fund fee $10.00, and emergency surcharge fee $10.00)

Idaho Code §49-443(1) notes: "...each license plate and registration sticker shall be treated with a fully reflectorized material according to specifications prescribed by the board." Mr. Hamilton had the required license plate and sticker on his vehicle.

Mr. Hamilton's license plate was registered for the current year, 2014 - 2014. His license plate was securely fastened, was not less than twelve (12) inches from the ground and was maintained free of foreign material and in a condition to be clearly legible. The registration sticker was securely attached to Mr. Hamilton's license plate. The Legislature made it clear that placement of the license plate and the sticker was to make sure that they were legible for law enforcement's observation. There is no question in this case that the current registration sticker was clearly visible to Trooper Talbott.

Failing to place the stickers in the rectangle area is not a law violation pursuant to I.C. §49-456(1). The legibility of the sticker and the securing of the license plate are what is deemed important by the Legislature. One could look at I.C. §49-443(4)[5] and note that there is no requirement for the registration sticker to actually be legible. A registration sticker could be turned around with the color and the registration information facing the license plate as long as it was

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[5]"DISPLAY OF PLATE AND STICKERS. (1) License plates assigned to a motor vehicle shall be attached, one (1) in the front and the other in the rear...
License plates shall be displayed during the current registration year. The annual registration sticker for the current registration year shall be displayed on each license plate, . . . For the purposes of this title, the license plates together with the registration stickers shall be considered as license plates for the year designated on the registration sticker.
(2) Every license plate shall at all times be securely fastened to the vehicle to which it is assigned to prevent the plate from swinging, be at a height not less than twelve (12) inches from the ground, measuring from the bottom of the plate, be in a place and position to be clearly visible, and shall be maintained free from foreign materials and in a condition to be clearly legible, and all registration stickers shall be securely attached to the license plates and shall be displayed as provided in section 49-443(4), Idaho Code.

placed in the lower right-hand corner of the plate; at least this is an argument that could be made based upon the literal reading of I.C. §49-443(4). The Court can note that there is no requirement in I.C. §49-428 for the registration sticker to be legible. The statute specifically addresses the legibility of the license plate but not the sticker.

Mr. Hamilton has the affirmative duty to show the trooper lacked legal cause to stop his vehicle. The Courts have routinely used the following standard:

> "A traffic stop by an officer constitutes a seizure of the vehicles occupants and implicates the Fourth Amendment's prohibition against unreasonable search and seizures. *Delware v. Prouse*, 440 U.S. 648, 653, 99 S. Ct. 1391, 1396, 59 L.Ed.2d. 660, 667 (1976); *State v. Atkinson*, 128 Idaho 559, 561-916 P.2d 1284, 1286 (Ct. App. 1996). Under the Fourth Amendment, an officer may stop a vehicle to investigate possible criminal behavior if there is a reasonable and articulable suspension that the vehicle is being driven contrary to traffic laws. *United States v. Cortez*, 449 US 411-417, 101 S.Ct. 690-695, 66 L.Ed.2d. 621, 628 (1981); *State v. Flowers*, 131 Idaho 205-208, 953 P.2d 645-644, (Ct. App. 1998). The reasonableness of the suspension must be evaluated upon the totality of the circumstances at the time of the stop. *State v. Ferreira*, 131 Idaho 474-483, 988 P.2d 700-709 (Ct. App. 1999). The reasonable suspension standard requires less than probable cause but more than more than mere speculation or instinct on the part of the officer. *Id.* An officer may draw a reasonable inferences from the facts in his or her possession, and those inferences may be drawn from the officer's experience and law enforcement training. *State v. Montague*, 114 Idaho 319-312, 756 P.2d. 1083-1085 (Ct. App. 1988). Suspicion will not be found to be justified if the conduct observed by the officer fell within the broad range of what can be described as normal driving behavior. *Atkinson*, 128 Idaho at p. 561, 916 P.2d at 1286;"

Wheeler v. Transportation Department, 148 Idaho 374, 223 P.3d 761 (Ct App. 2009) at p. 383. See also *State v. Brooks*, 157 Idaho 890, 341 P.3d 1259 (Ct. App. 2014).

The case law from the U.S. Supreme Court and the Idaho Supreme Court rests on a vehicle being driven contrary to traffic laws. Mr. Hamilton's vehicle was not being driven in violation of

traffic laws. The Idaho Courts have noted that: "It is well-established in Idaho that when a police officer observes conduct which leads to the reasonable conclusion that 'criminal activity may be afoot and that the person with whom he is dealing may be armed and dangerous' the officer is entitled to conduct a limited stop of the suspect." *State v. Devault*, 131 Idaho 559, 61 P.2d 641 (Ct. App. 1998). There is no evidence in this case that criminal activity was afoot. There is no evidence in this case that Mr. Hamilton had committed, or was about to commit, a criminal act. See *State v. Anderson*, 134 Idaho 552, 6 P.3d 408 (Ct. App. 2000).

I.C. §49-456(1) is clearly written and having a registration sticker outside of the rectangle box is not noted as a violation of the registration provisions. In Mr. Hamilton's case, the District Court simply cited to I.C. §49-443(4) regarding the placement of the registration sticker in the lower right-hand corner of the plate and noted I.C. §49-236(2): "It is an infraction for any person to violate any of the provision of Chapter 3, 4 and 6 through 9 of this Title unless otherwise specifically provided." R. at p. 106. The District Court at no time discusses I.C. §49-456(1). The District Court does not discuss the fact that <u>if</u> I.C. §49-236(2) was applicable to Chapter 4; why did the Legislature in §49-401B(6) add: "A violation of the provisions of this section shall be an infraction" to the end of I.C. §49-401B(6). The Legislature put in I.C. §49-236(2), the language: ".... unless otherwise specifically provided." When someone reads the language: "Violation of Registration Provisions - It shall be unlawful for any person: ...", one would think that this language outlines the violations for registration provisions. I.C. §49-456(1) is the "unless otherwise specifically provided" for

Chapter 4 of the motor vehicle registration section of Idaho Code. Why would the hearing officer discuss I.C. §49-456(1) if it was not relevant to the issues regarding the legal cause to stop. The District Court simply ignored I.C. §49-456(1).

The District Court in Mr. Hamilton's case failed to recognize the requirement for interpreting all the relevant statutes in this case. The Supreme Court in *State of Idaho v. Neal*, 215 Westlaw 74, 24812 (November 23, 2015) specifically stated, in dealing with the fog line issue: "Statutes must be construed as a whole without separating one provision from another. (Cite omitted) Language of a particular section need not be viewed in a vacuum. And all sections of applicable statutes must be construed together so as to determine the legislature's intent."*Neal* at p. ___. The *Hamilton* District Court Judge is the same judge that determined that the SOPs did not require rulemaking in *Gary Alexander Hern v. Idaho Transportation Department*, Court of Appeals, Docket No. 42287. In the *Neal* case, the Idaho Supreme Court construed I.C. §49-630(1) and §49-637(1). The District Court in Mr. Hamilton's case should have construed I.C. §49-443(4) and I.C. §49-456(1). The District Court could have also looked at what the Legislature did with regard to registration stickers in I.C. §49-456(2) as the Legislature was quite specific in addressing registration stickers. The District Court's analysis in *Hamilton* was too simplistic and failed to construe all of the statutes.

When the Court determines that a criminal statute is ambiguous; the doctrine of Lenity applies and the statute must be construed in favor of the accused. Even though this is an administrative license suspension matter, the Courts in Idaho consider this matter criminal in nature and therefore the doctrine of Lenity applies. *State v. Neal*, 41534, October 15, 2014, Westlaw

515426 (Ct. App. 2014). The application of §49-456(1) to I.C. §49-443(4) confuses what is unlawful.

Mr. Hamilton was in substantial compliance with the intent of all three statutes noted above and could not possibly have known that placing his current registration sticker at the location found in this case would be a violation of any particular law of the State of Idaho. The magistrate in his DUI case made this determination. See *State of Idaho v. Patrick Hamilton,* Nez Perce County Case No. CR 2014-7158. The placement of the sticker is not a violation of the law according to the Legislature's mandate in I.C. §49-456(1). The State argued below: "Trooper Talbott stopped Mr. Hamilton's vehicle for improperly displayed registration stickers." (emphasis added) State's Brief, R at p.77. No where on this record does it indicate that Mr. Hamilton's vehicle was stopped for a display of improper registration "stickers", plural. There is no evidence about the sticker on the front license plate. The only sticker at issue would be on the back license plate.

In *State v. Morris*, 41933, February 18, 2015, 2015 WL 668871 (Idaho App. 2015) the Court of Appeals noted;

> "A traffic stop by an officer constitutes a seizure of the vehicle's occupants and implicates the Fourth Amendment's prohibition against unreasonable searches and seizures. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979); *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). Under the Fourth Amendment, an officer may stop a vehicle to investigate possible criminal behavior if there is a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws. *United States v. Cortez*, 449 U.S. 411, 417 (1981); *State v. Flowers*, 131 Idaho 205, 208, 953 P.2d 645, 648 (Ct. App. 1998). The reasonableness of the suspicion must be evaluated upon the totality of the circumstances at the time of the stop. *State v. Ferreira*, 133 Idaho 474, 483, 988 P.2d 700, 709 (Ct. App. 1999).

Opinion at p. 3

This case dealt with Mr. Morris' vehicle moving right and completely crossing over the solid white line for two or three seconds. This case also dealt with the interpretation of a statute. The Court indicated that the plain language of the statute must be given effect without engaging in statutory instruction. It is Mr. Hamilton's position that I.C. §49-456(1) is plain and unambiguous. The State noted below: "Unfortunately, the hearing examiner had a difficult time with Mr. Hamilton's argument as to the application of I.C. §49-456. Idaho Code §49-456(1)is not helpful to determine whether the failure to comply with I.C. §49-428 and I.C. §49-443 constitute a violation of law." State's Brief at p. 80. The State does not explain why this statement might be true. The State then cites to I.C. §49-236(2), which states in pertinent part: "It is an infraction for any person to violate any of the provisions of chapters 3, 4 and 6 through 9 of this title unless otherwise specifically provided." State's Brief at p. 80. But the State's ignores the "unless otherwise specifically provided" language. The pertinent section of I.C. §49-456(1) states:

> "VIOLATIONS OF REGISTRATION PROVISIONS. It shall be unlawful for any person: (1) To operate or for the owner to permit the operation upon a highway of any motor vehicle, trailer or semitrailer which is not registered and which does not have attached and displayed the license plates assigned to it for the current registration year, subject to the exemptions allowed in sections 49-426, 49-431 and 49-432, Idaho Code."

The State fails to note for the Court that in Idaho, where more than one statute is related to the same subject, the statutes are *in pari materia*. The Courts in Idaho have determined: "When construing such statutes, 'the specific statute will control over the more general statute'." *Leavitt v. Craven*, 154 Idaho, 661, at p. 667, 302 P.3d 1 Idaho (2012).

In addition, the Courts have determined that the latest expression of the legislative intent will control. Idaho Code §49-456(1), was amended in 2009 and is found in the supplement to the Idaho Code while §49-236 is not. Therefore, I.C. §49-456(1)is more specific and is the more recent statute. Subsection 1 is very clear about what is unlawful for any person regarding the violation of registration provisions. Idaho Code §49-456(1) could not be more specific.

In this case, there is no indication that the Trooper had a search warrant or an arrest warrant and as the State has pointed out, an infraction is a civil public offense not constituting a crime. See State's Brief R at p. 80.

The State's references I.A.R. 9(23) in it's brief below. There is no such Rule. One will assume that the State meant Idaho Infraction Rule 9(23)[6]. However, once again the application of the more specific to the more general must be applied. In this case, the failure to display a license plate is an infraction as noted in I.I.R. 9(15)[7]. Mr. Hamilton displayed his license plate. I.I.R. 9(16)[8] Operating a Vehicle Without Registration applies to I.C. §49-456. I.I.R. 9(23) does not apply. There is no law violation in Mr. Hamilton's case.

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[6](23) Non-moving traffic infractions. (Fixed penalty $10.50, court costs $16.50, county justice fund fee $5.00, peace officers training fee $15.00, court technology fund fee $10.00, and emergency surcharge fee $10.00)

[7](15) Failure to display license plate. Section 49-428, Idaho Code. (Fixed penalty $10.50, court costs $16.50, county justice fund fee $5.00, peace officers training fee $15.00, court technology fund fee $10.00, and emergency surcharge fee $10.00).

[8](16) Operating vehicle without registration. Section 49-456(1), Idaho Code. (Fixed penalty $44.50, court costs $16.50, county justice fund fee $5.00, peace officers training fee $15.00, court technology Fund fee $10.00, and emergency surcharge fee $10.00).

The hearing officer noted: "Even if Idaho Code §49-443(4) is not an infraction traffic violation, Exhibit O shows Hamilton was still driving a motor vehicle in violation of this statute." Exhibit to Clerk's Record at pp. 361-362. The hearing officer also noted: "Senior Trooper Talbott stopped the vehicle driven by Hamilton for having an improper registration sticker, a violation of Idaho Code §49-443(4)." Exhibit to Clerk's Record at p. 361. Mr. Hamilton had a proper registration sticker.

Idaho Code §49-456(1) is specific to violation of registration provisions. One can only believe that the Legislature didn't want to give law enforcement the authority to pull citizens over for such silly circumstances as is found in Mr. Hamilton's case

Trooper Talbott did not have legal cause to stop Mr. Hamilton's vehicle, thus a violation of Idaho Code Section 18-8002A(7)(a). The hearing officer should have vacated the license suspension.

B.
THE STATUTES ARE VAGUE; IDAHO CODE IS UNCONSTITUTIONALLY VAGUE WITH REGARD TO THE APPLICATION OF CHAPTER 4, TITLE 49

As the Court is aware, a statute may be challenged as unconstitutionally vague on its face or as applied to a complainant's conduct. *Williams v. State*, 155 Idaho 380, 283 P.3d 127 (Ct. App. 2012) at p. 137. A recent Supreme Court case, *Johnson v. U.S.*, 135 S.Ct. 2551 (2015) alters Idaho's case law requiring that a facial vagueness challenge show vagueness in all of the law's applications. The *Johnson* Court noted:

> In all events, although statements in some of our opinions could be read to suggest otherwise, our holdings squarely contradict the theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision's grasp. For instance, we have deemed a law prohibiting grocers from charging an "unjust or unreasonable rate" void for vagueness – even thought charging someone a thousand dollars for a pound of sugar would surely be unjust and unreasonable. *L. Chen Grocery Co.*, 255 U.S. at 89, 41 S.CT. 298. We similarly have deemed void for vagueness a law prohibiting people on sidewalks from "conduct[ing] themselves in a manner annoying to persons passing by" – even though spitting in someone's face would surely be annoying. *Coates v. Cincinnati*, 402 U.S. 611, 91 S.Ct. 1686, 29 L.Ed.2d 214 (1971). These decisions refute any suggestions that the existence of *some* obviously risky crimes establishes the residual clause's constitutionality.

*Johnson v. United State*s, 135 S.Ct. 2551, 2560-61, 192 L.Ed.2D 569 (2015)

Due process requires that all be informed as to what the State commands or forbids and that persons of ordinary intelligence not be forced to guess at the meaning of the law. *Id.* at p. 136. The void for vagueness doctrine applies to statutes employing civil sanctions for violations. *Williams v. State*, supra, at p. 136.

Mr. Hamilton begins with the challenge as applied which requires that a complainant show that the statute failed to provide fair notice that the complainant's specific conduct was prohibited or failed to provide sufficient guidelines such as the police had unbridled discretion in determining whether to charge the complainant. In *Burton v. State*, 149 Idaho 746, 240 P.3d 933 (Ct. App. 2010), the Court noted:

> "Accordingly the Void for Vagueness Doctrine, premised upon the Due Process Clause of the Fourteenth Amendment, requires that a statute defining criminal conduct or imposing civil sanctions [1] be worded with sufficient clarity and definiteness that ordinary people can understand what conduct is prohibited, and the statute must be worded in a manner that does not allow arbitrary and discriminatory enforcement." (cites omitted)

At p. 748.

It is clear that people of ordinary intelligence would not know that placing the registration sticker near the rectangled area was a law violation, there is not adequate notice considering what I.C. §49-456(1)states. I.C. §49-428 seems to require that the license plate be legible and that the registration sticker be securely attached to the license plate. Mr. Litteneker, one could argue, has a common level of intelligence. Mr. Litteneker's placement of his stickers was not completely in the rectangle. Exhibit to Clerk's Record at p. 329-331.

There are no guidelines for law enforcement officers to govern how I.C. §49-443(4) might be enforced. If someone has their registration sticker slightly outside of the rectangle, is that a law violation? How about 50% in the rectangle and 50% outside of the rectangle? If there is a showing of a prior registration sticker underneath the current registration sticker, is that a law violation?

The Court in *Burton v. State*, supra, found vagueness in the language of I.C. §49-808(1). In *State v. Martin*, 141 Idaho 31, 218 P.3d 10 (Idaho App. 2009), the Court made it clear that due process cannot place someone in peril for the loss of liberty because they needed to speculate on the meaning of penal statutes. At p. 35. Mr. Hamilton was not put on fair notice that his placement of the registration sticker would be a law violation. The *Martin* case dealt with a dangling license plate. The Court noted that common sense dictates that where a license plate is secured by only one bolt and hanging at angle, it is reasonable for an observer to suspect that it had not been fastened securely. Of course, the statute is very clear about fastening securely. Mr. Hamilton used a license plate frame to securely fasten his license plate, as do the majority of drivers in the State of Idaho. The District

Court, in its discussion regarding the issue of vagueness, once again fails to look at I.C. §49-456(1) in its analysis of the application of I.C. §49-443(4). The Court of Appeals, has in past cases such as *State v. Keith*, 2015 Opinion No. 82, filed December 9, 2015, noted that neither party contended that the code section in question, I.C. §49-1627, was ambiguous. The Court, in *State v. Ellias*, 157 Idaho 511, 337 P.3d 670 (2014) needed to interpret I.C. §18-6608. In *Ellias*, the Supreme Court noted that neither party had asserted that I.C. §18-6608 was ambiguous. *Ellias* at p. 514. Mr. Hamilton is raising ambiguity in his case.

The District Court, in its decision in *Hamilton*, cited *State v. Patterson,* 140 Idaho 612, 97 P.3d 479, (Ct. App 2004) to support its position. However, *Patterson* is not helpful as the District Court did not compare the statutory scheme used in *Patterson* which is the problem with its lack of analysis of I.C. §49-456. The Court in *Patterson* stated:

> "If the legislature had intended to allow an exception for colors other than red, it could have included it in the statute. Instead, both section 49-906 and 49-910 refer to only the color red when discusses colors that may be admitted from taillights."

At p. 615.

The *Patterson* Court actually noted I.C. §49-902 in its analysis of Mr. Patterson's argument. It might have been helpful for the District Court in Mr. Hamilton's case to actually address I.C. §49-456(1) and its application to the vagueness issue but the District Court choose to simply ignore this code section. I.C. §49-902, states the scope and effect with regard to the provisions of Chapter 9. Chapter 4 does not have such a statute at its beginning, however, Chapter 4 does have §49-456 that notes specifically what is unlawful with regard to registration provisions.

The Court can look at the *State v. Case,* (Court Appeals 2015, Opinion No. 82) decision when it cites to *State v. Salois*, 144 Idaho 344, 160 P.3d, 1279 (Ct. App. 2007) in which the Court rejected the State's argument that a mere presence of a temporary permit provided reasonable suspension to perform a stop. The Court noted: "To hold otherwise would allow law enforcement officers of this State unfettered discretion to stop each and every vehicle being operated with a temporary registration to 'investigate' its validity." The same could be said in Mr. Hamilton's case. What is the standard that is to be used as to how far the registration sticker might be outside the rectangle. There is no guidance. The magistrate in Mr. Hamilton's DUI case rejected the State's argument and suppressed the evidence because she found that the placement of the registration sticker in substantial compliance based on her analysis of the statutes involved in Chapter 4. This was appealed to the District Court and Judge Brudie declined to follow Judge Evan's analysis. The matter was remanded back and the prosecutor promptly offered an inattentive driving.

Counsel for Mr. Hamilton walked through the parking lot of the Supreme Court building when he was there for oral argument on November 24, 2015. There were vehicles in the parking lot that are not in compliance with I.C. §49-443(4). There was a Jeep with a Boise Broncos license plate cover that blocks the registration sticker. There was a GMC with a Harley Davidson frame that has the license plate numbe[redacted]with the registration sticker in the upper right-hand corner. There were other vehicles that had the registration stickers totally covered by their frames, which is probably the reason the GMC owner placed the registration sticker in the upper-right hand corner as the Harley frame covered the rectangle for the most part.

As the Court stated in *Neal,* citing to *Lawless v. Davis*, 98 Idaho 175, 177, 560 P.2d 497, 499 (1997):

> "Courts should presume that a statute was not enacted to work a hardship or to effect an oppressive result. Constructions that would render the statute productive of unnecessarily harsh consequences are to be avoided. Accordingly, any ambiguity in a statute should be resolved in favor of a reasonable operation of the law."

Neal, 215 Westlaw 74, 24812, Opinion at p. ____.

The Court in *State v. Freitas*, 157 Idaho 257, 335 P.3d 597 (Idaho App. 2014) stated that: "A void for vagueness challenge is more favorably acknowledged and a more stringent vagueness test will be applied where a statute imposes a criminal penalty. *Cobb,* 132 Idaho 198, 969 P.2d 247" at p. ___. The Idaho Constitution, Article 1, Section 13, should provide more protection it Idaho citizens than the Federal Constitution. See *State v. Donato*, 135 Idaho 469, 20 P.3d 5 (2001).

Considering the application of the three statutes: §§49-428, 49-443(4) and 49-456(1), one would be hard pressed to really know that placing a registration sticker in a location near the rectangle box would somehow be a violation that would allow a driver to be stopped for legal cause of criminal activity. One wonders when this sort of unregulated or unbridled discretion on the part of law enforcement is going to be put to an end.

It is necessary that "laws provide sufficient standards to those who will enforce them." *State v. Bitt*, 118 Idaho 584, 585-586, 798 P.2d 43, 45-44 (1990). A vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. The statutes in question

provide no guidelines for enforcement whatsoever and as such, enforcement is totally subjective to law enforcement officers.

The statutory schemes of I.C. §§ 49-428, 49-443(4) and 49-456(1) are poorly drafted and fail to provide any objective standards which a person of common intelligence could rely upon in determining whether their conduct was a violation of law. The three statutes , I.C. §§49-428, 49-443(4) and 49-456(1), keep people guessing as to what is criminal activity.

In this case, Mr. Hamilton was in substantial compliance with Chapter 4 Title 49. I.C. §49-456(1) does not notify a driver that the placement of the sticker outside the rectangle would be a law violation. There was no legal cause to allow Mr. Hamilton to be pulled over based on the record before the Court. It must be remembered that hearing officers cannot make decisions regarding constitutional challenges to statutes. See IDAPA Rule 04.11.01.415.

In this case, the State below argued the standard of review as follows:

> "Idaho Code §18-8002A(7) sets out the burden of the driver to demonstrate to the hearing officer that driving privileges should be reinstated because:
> (a) The peace officer did not have legal cause to stop the person; or
> (b) The officer did not have legal cause to believe the person had been driving or was in actual physical control of a vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code; or;
> (c) The test results did not show an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code; or
> (d) The tests for alcohol concentration, drugs or other intoxicating substances administered at the direction of the peace officer were not conducted in accordance with the requirements of section 18-8004(4), Idaho Code, or the testing equipment was not functioning properly when the test was administered; or
> (e) The person was not informed of the consequences of submitting to evidentiary

testing as required in subsection (2) of this section."

State's Brief, R at 74-75.

The State told the District Court that the hearing officer can only make a decision on these five factors. None of the five factors deal with whether a non-lawyer, non-judge, can make constitutional decisions. Idaho Code §67-5279(3) specifically requires that the District Court make determinations regarding constitutional issues.

In addition, the State ignores IDAPA Rule 04.11.01.415. IDAPA Rule 04.11.01.415 states in pertinent part: "CHALLENGES TO STATUTES (RULE 415). A hearing officer in a contested case has no authority to declare a statute unconstitutional." At no time would it have been productive for Mr. Hamilton to argue a constitutional challenge to a hearing officer in an administrative license suspension case. However, Mr. Hamilton did make an argument regarding vagueness to the ALS hearing officer. The argument was made to the hearing officer as follows:

> "And if you would somehow want to extrapolate out that somehow a failure to display a license plate could also include not putting the tab in the exact spot where the little white space, I would submit that that is a stretch and potentially would cause an argument to be made regarding vagueness. And if the statute and legislature wanted to make a violation for not placing the tab exactly where the little white spot is, it could have said that in 49-456, but it didn't say that."

Exhibit to Clerk's Record, ALS Tr at p. 13

This issue of vagueness was before the District Court on judicial review. Not only was the argument preserved; I.C. §67-5279(3) only allows the District Court on review to hear issues of constitutionality.

The State cited to *Bell v. Idaho Department of Transportation*, 151 Idaho 659, 262 P.3d. 1030 (Ct. Apps. 2011) below. At no time did the *Bell* Court considered IDAPA Rule 04.11.01.415. Also, Idaho Code §18-8002 specifically has set out in it, that the Court can considered whether civil rights were violated. There is no such provision in I.C. §18-8002A for ALS hearing officers. Mr. Hamilton did raise the issue of vagueness in front of the hearing officer.

In *State v. Martin*, 141 Idaho 31, 218 P.3d 10 (Idaho App. 2009), the Court made it clear that due process cannot place someone in peril for loss of liberty because they need to speculate on the meaning of penal statutes. At p. 35. Based on I.C. §49-456(1), Mr. Hamilton was not placed on notice that placing his registration sticker outside the rectangle would be a crime. The *State v. Martin* holding does not apply to Mr. Hamilton's situation. Mr. Hamilton's registration sticker was securely fastened to his license plate. His license plate was clear for view; as was his registration sticker.

The State argued in its brief that the hearing officer had a difficult time with Mr. Hamilton's argument as to the application of I.C. §49-456(1). State's Brief, R at p. 80. One would assume that the hearing officer had at least a common level of intelligence. One would assume that Mr. Litteneker has a common level of intelligence, however, his registration stickers are not in compliance with his version of how Idaho Code should be applied. The problem with the State's argument is that it totally disregards I.C. §49-456(1) and its specific language.

The cases cited by both the State and Mr. Hamilton require that persons of ordinary intelligence not be forced to guess at the meaning of the law. In addition, there are no guidelines for

law enforcement that the State has cited to, or the Counsel for Mr. Hamilton has been able to find, with regard to the application of I.C. §49-443(4) by law enforcement. Is placing the sticker slightly outside the rectangle a crime? What is the standard for law enforcement?

Cases that deal with I.C. §49-808 really do not help the State in its argument regarding vagueness. Chapter 8, Title 49 does not have a comparable statute to I.C. §49-456(1). The analysis of I.C. §49-808 only deals with the interpretation of one statute. Even the State admits that there are several statutes that are in play regarding the vagueness issue: I.C. §49-456, I.C. §49-428; I.C. §49-443 and I.C. §49-236(2). The State, in its brief below, cited to the *Burton v. State of Idaho, Department of Transportation*, 149 Idaho at 749, 240 P.3d 933 (ID.App 2010) and *State v. Colvin*, 157 Idaho 881, 341 P.3d 598 (Ct. App. 2014). Of course, the State gives no analysis as to how the Court came up with its decisions in *Burton* and *Colvin*. The Court in *Colvin* stated:

> "The trooper possessed reasonable suspicion to conduct a stop. As noted in *Burton*, signaling is required in circumstances where there exists '*signage* or other indicator that one lane was ending and the other surviving.' *Burton*, 149 Idaho at 749, 240 P.3d at 936." (Emphasis added.) In *Burton*, neither the sign nor the road configuration made clear which lane terminated. In *Spies*, the road configuration itself indicated which lane ended. In this case, the sign indicated which lane ended."

State v. Colvin, 157 Idaho 881, 341 P.3d 598 (Ct. App. 2014)

The Court of Appeals in *Colvin* did not answer the question about the vagueness of the statute. It simply indicated that *Colvin* contended the statute was unconstitutionally vague. The Court decided that there was signage noting that the lanes merged and Mr. Colvin clearly should have signaled.

In *State v. Martin*, 140 Idaho 31, 218 P.3d 10 (Idaho App 2009), the Court did not considered the application of I.C. §49-456(1) and therefore the application of *Martin* to Mr. Hamilton's case is inappropriate.

In addition, the Idaho Constitution should provide more protection to Idaho citizen then the Federal Constitution. In *State v. Koivu,* 272 P.3d 483, 152 Idaho 511 (Idaho 2012), this Court issued a thorough analysis of our constitution's search and seizure jurisprudence, and a comprehensive recitation of its relevant history. 152 Idaho 511 (2012). In *Koivu,* the State asked the Court to overrule *State v. Guzman,* 122 Idaho 981 (1992). *Guzman* rejected the state's invitation to apply the "good faith" exception to the exclusionary rule. In analyzing the issue in *Koivu,* the Court began by providing a synopsis of the progression of the exclusionary rule within the *Federal* Constitution. Importantly, the Court explained that the U.S. Supreme Court's "view of the exclusionary rule ... changed [i]n *Stone v. Powell,* 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976), [where] the Court held that the exclusionary rule 'is not a personal constitutional right: nor is it 'calculated to redress the injury to the privacy of the victim of the search or seizure.'" *Koivu,* 152 Idaho 511 at p. 514. Next, the Court explained *United States v. Leon,* the case that the Court declined to follow in *Guzman.* "In *Leon,* the police had seized evidence acting in reasonable reliance on a search warrant, but the warrant was later determined to have been issued without probable cause." *Id.* at 514-15. As a result, the U.S. Supreme Court "held that the exclusionary rule would not apply to evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant" because "the exclusionary rule is designed to deter police misconduct rather than to punish the errors of

judges and magistrates." *Id.* (quotations omitted). The good-faith exception, the Court explained, was expanded to include reasonable reliance on subsequently invalidated statutes, an arrest pursuant to a "warrant" that the officer had no reason to know was quashed, and searches pursuant to precedents that were later overruled. *Id.* The reason in all of those cases was the same: exclusion would not advance the interest in deterring police misconduct.

As the Court explained, however, that rationale is not as significant when interpreting Idaho's constitution. "In its decision[in *State v. Arregui,* 44 Idaho 43 (1927),] **the [Idaho Supreme] Court made it clear that the evidence unlawfully obtained should be excluded *simply because it was obtained in violation of the defendant's constitutional rights.*** " *Id.* at 516 (emphasis added). As the *Arregui* Court stated:

> A continued disregard of the rights guaranteed under the Fourth and Fifth Amendments, and the principles thereof incorporated in state Constitutions, heads us directly to revolution against their usurpation, if history tells us correctly that violation of the rights sought to be protected thereby was one of the chief moving reasons for the Revolution. If, one by one, the rights guaranteed by the federal Constitution, can and must, for expediency's sake, be violated, abolished, stricken from that immortal document, and from state Constitutions, we will find ourselves governed by expediency, not laws or Constitutions, and the revolution will have come.
>
> I can see no such expediency or necessity for the enforcement of any law as to justify violation of constitutional rights to accomplish it. **The shock to the sensibilities of the average citizen when his government violates a constitutional right of another is far more evil in its effect than the escape of any criminal through the courts' observance of those rights.** 44 Idaho at 58 (emphasis added).

This principle was reiterated over a decade later, when the Court noted that the "rule is well settled in this state that evidence, procured in violation of defendant's constitutional immunity from

search and seizure, is inadmissible and will be excluded if request for its suppression be timely made." *State v. Conner,* 59 Idaho 695, 703, 89 P.2d 197, 201 (1939). The principle was again reiterated in 1978: "The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land." *State v. Rauch,* 99 Idaho 586. *Rauch* and *Arregui* "held that **there were reasons supporting the exclusionary rule other than deterring unconstitutional searches and seizures that the law enforcement officers did not reasonably believe were lawful.**" *Koivu,* 152 Idaho at 518 (emphasis added); *see also, id.* at 519 ("Idaho ha[s] clearly developed an exclusionary rule as a constitutionally mandated remedy for illegal searches and seizures **in addition to other purposes behind the rule such as recognizing the exclusionary rule as a deterrent for police misconduct.**") (emphasis added, quotations omitted). The Court in *Hamilton* can apply the Idaho State Constitution to provide protection that may not be found in the U.S. Constitution.

The application of the statutory scheme is vague. Therefore the Court must determine that the suspension must be vacated.

C.
THE REQUIREMENT FOR RULEMAKING WITH REGARD TO THE STANDARD OPERATING PROCEDURE WAS NOT FOLLOWED, THEREFORE, THE BREATH TEST WAS INVALID

The record contains the e-mails that have been used in other cases regarding the lack of rulemaking. Exhibits to Clerk's Record, R at pp. 58-226. Mr. Hamilton's stop was made on

September 6, 2014. The hearing officer notes that on September 2, 2014, ISP Forensic Services adopted the SOP into the IDAPA Rules. However, ISP does not have the ability to adopt anything into the IDAPA rules. There is a process that is set out that has been argued in other cases such as *Jeremy C. Ewing v. Idaho Transportation Department,* Court of Appeals, Docket No. 42599 and *Gary Alexander Hern v. Idaho Transportation Department*, Court of Appeals, Docket No. 42287. The IDAPA Rules regarding breath testing were not in effect at the time Mr. Hamilton was stopped and his breath test was taken. Therefore, the breath test must be rejected because the SOPs in existence at the time of Mr. Hamilton's stop were void.

D.
THE STANDARD OPERATING PROCEDURE IN EXISTENCE AT THE TIME OF MR. HAMILTON'S STOP WERE NOT PROPERLY RULES AND THEREFORE THE BREATH TEST WAS INVALID.

The issue of rule-making was addressed by the Idaho Supreme Court regarding two Kootenai County cases. It is submitted that the District Court, on judicial review, pursuant to I.C. §67-5279(3), is allowed to determine the issues raised by Mr. Hamilton is his judicial review regarding rule-making, the SOPs, and the validity of the breath test in Mr. Hamilton's case. See briefing in the *Ewing* case to support this issue in Mr. Hamilton's case.

The State has not cited to anything that allows Idaho State Police Forensic Services (hereinafter: "ISP" or "ISPFS") to simply, on September 2, 2014, adopt the SOPs into IDAPA Rules. The Court can note the current status of the IDAPA Rules regarding breath testing after the rule-making process was completed. The Court can also go to ISP's website and note the frivolous

adoption of SOP after SOP that has occurred since September 2014. Change after frivolous change has been made without any regard for rule-making, science or the like. ISPFS does whatever it likes and until an appellate court issues a decision, ISP will continue with its disregard of science and due process.

VII.
CONCLUSION

ISPFS has failed to follow the statutory mandate of I.C. §18-8002A regarding "rule" making and thus the breath testing system in Idaho fails. I.C. §67-5279 mandates a reversal because this action of the agency was unconstitutional, was beyond statutory authority and was arbitrary. Additionally, there was no legal cause to stop Mr. Hamilton. The three statutes noted above when read together are vague. The Court must set aside the hearing officer's decision and send the matter back to the Department with instructions to set aside the suspension.

DATED this 28th day of December, 2015.

CLARK and FEENEY, LLP

By _____
Charles M. Stroschein, a member of the firm
Attorneys for Appellant

I hereby certify on the 28th
day of December 2015, a two (2) true
copies of the foregoing instrument
was: ✓ Mailed
____ Faxed
____ Hand delivered to:

Edwin L. Litteneker
Special Deputy Attorney General
Idaho Transportation Department
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CLARK and FEENEY, LLP

By _____
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