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State v. Southworth Appellant's Reply Brief Dckt. 45820

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	**NO. 45820**
	)	
v.	)	**KOOTENAI COUNTY NO. CR 2017-11650**
	)	
KAIRA NOELLLE SOUTHWORTH,	)	**REPLY BRIEF**
	)	
Defendant-Appellant.	)	
	)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

HONORABLE LANSING L. HAYNES
District Judge

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

MAYA P. WALDRON
Deputy State Appellate Public Defender
I.S.B. #9582
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

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

Ms. Southworth has challenged the district court's order denying her motion to suppress in part due to its erroneous conclusion that Officer Cushman had reasonable suspicion to believe she violated either I.C. § 49-637(1) or I.C. § 49-808 when changing lanes. In response, the State makes a handful of arguments that are divorced from the plain language of the statutes and one that was never made below. This Court should therefore reject those arguments and reverse the district court's order denying Ms. Southworth's motion to suppress.

ISSUE

Did the district court err by denying Ms. Southworth's motion to suppress because Officer Cushman did not have reasonable suspicion to believe that her muffler or lane change violated Idaho Code?

ARGUMENT

The District Court Erred By Denying Ms. Southworth's Motion To Suppress Because Officer Cushman Did Not Have Reasonable Suspicion To Believe That Her Muffler Or Lane Change Violated Idaho Code

As articulated by this Court in *Verska v. Saint Alphonsus Regional Medical Center*, 151 Idaho 889, 892–93 (2011):

> The interpretation of a statute *must begin with the literal words of the statute*; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written. *We have consistently held that where statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature.*

(Internal citations and quotation marks omitted) (emphasis added); *see also* I.C. § 73–113(1) ("The language of a statute should be given its plain, usual and ordinary meaning. Where a statute is clear and unambiguous, the expressed intent of the legislature shall be given effect without engaging in statutory construction. The literal words of a statute are the best guide to determining legislative intent."). The bulk of the State's arguments opine that Ms. Southworth violated I.C. § 49-637 and I.C. § 49-808, without regard for the plain language of the statutes. In addition, it makes one of its arguments for the very first time on appeal. This Court should therefore reject those arguments, vacate the order denying Ms. Southworth's motion to suppress, and remand this case to the district court.

First, the State's interpretation of I.C. § 49-637(1) is unsupported by the unambiguous language of the statute. Idaho Code § 49-637(1), titled "driving on highways laned for traffic," provides that, "[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety." The State suggests that Officer Cushman had reasonable suspicion to

believe Ms. Southworth had violated I.C. § 49-637(1) because "a driver who straddles the dividing line between lanes longer than is necessary to change lanes has not driven "as nearly as practicable entirely within a single lane." (Resp. Br., p.14.) It frames Ms. Southworth's argument to the contrary to mean that "as long as a turn signal is on continuously, Idaho Law permits a driver to drift across as many lanes as she likes, as slowly or quickly as she likes, and no matter how long she straddles multiple lanes while doing so." (Resp. Br., p.14.) Despite the State's insistence, I.C. § 49-637(1) says absolutely nothing about the speed with which a driver must accomplish a lane change. And though the extreme driving the State describes could certainly give rise to reasonable suspicion that the driver violated *some other* section of the Idaho Code, such actions do not violate the plain language of I.C. § 49-637(1). A holding to the contrary would add language into the statute which simply isn't there.

The State's assertions regarding I.C. § 49-808 are similarly unavailing. According to I.C. § 49-808(2),

> A signal of intention to turn or move right or left when required shall be given continuously to warn other traffic. On controlled-access highways and before turning from a parked position, the signal shall be given continuously for not less than five (5) seconds and, in all other instances, for not less than the last one hundred (100) feet traveled by the vehicle before turning.

The State suggests that Ms. Southworth violated I.C. § 49-808(2) because she did not signal for one-hundred feet before changing lanes. (Resp. Br., p.15.) That claim is not preserved, as the State below did not argue that Ms. Southworth had to signal for one-hundred feet, instead arguing that she did not change lanes "with reasonable safety." *See State v. Garcia-Rodriguez*, 162 Idaho 271, 275–76 (2017) (holding that "the parties will be held to the theory upon which the case was presented to the lower court"); R., p.103 (stating that "section 49-808 prohibits a driver from moving a vehicle left or right (i.e. changing lanes or merging) unless an *appropriate*

signal is given and the movement can be made 'with reasonable safety,'" but not arguing whether Ms. Southworth drove on a controlled-access highway and thus not stating whether the "appropriate signal" was signaling for five seconds or one-hundred feet) (emphasis added); 10/27/17 Tr., p.3, Ls.15–18 (the prosecutor agreeing that the issue was "whether there was an improper lane change" not an improper signal preceding that lane change), p.41, Ls.18–21 (the prosecutor arguing, "[a]s for the lane change, Judge, Trooper Cushman testified that this took several seconds, much longer than an average sober driver is going to take to negotiate a lane change or get into a turn lane."); Resp. Br., p.13 n.5 (stating that "[n]either Southworth nor the state introduced evidence regarding whether Highway 95 is a controlled-access highway," which determination would be a prerequisite to deciding whether Ms. Southworth had violated I.C. § 49-808(2) as now alleged by the State on appeal). Indeed, the State's argument below (that Ms. Southworth changed lanes too slowly (*see* 10/27/17 Tr., p.41, Ls.18–21)), is the exact opposite of the one it makes on appeal (that Ms. Southworth needed to stay in the first left-hand lane for at least one-hundred feet, and thus she changed lanes too quickly (*see* Resp. Br., p.15)).

Because the State did not make this argument below, it also did not present any evidence to prove that Ms. Southworth violated the statute in the way it now claims on appeal—in particular, evidence of how many feet Ms. Southworth drove in the first left-hand lane before entering the second left-hand lane—and thus the court never made any factual findings on that issue. (*See generally* 10/27/17 Tr.) Instead, the court concluded that Ms. Southworth's truck "did continue down the center of the—both left-hand turn lanes for a distance, which would be a violation of traffic laws," in particular a violation of I.C. § 49-637(1). (10/27/17 Tr., p.49, Ls.6–11, p.51, Ls.12–20.) The State therefore not only failed to preserve this issue, but also failed to

meet its burden of presenting evidence to justify the stop on this basis. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973).

The State further argues that "[t]he statute contemplates that each lane change is a separate 'movement,' and so a driver who desires to change two lanes must signal for 100 feet, move into the intermediate lane, initiate a new turn signal for 100 feet, and then move into the third lane." (Resp. Br., p.15.) This interpretation is wholly absent from the unambiguous plain language of the statute. Again, I.C. § 49-808(2) simply requires a driver to "continuously" signal for either one-hundred feet or five seconds "before turning." It is silent about whether that requirement applies to multiple "movements" made back-to-back.

CONCLUSION

Ms. Southworth respectfully asks that this Court vacate her judgment of conviction, reverse the order denying her motion to suppress, and remand her case to the district court.

DATED this 24th day of April, 2019.

/s/ Maya P. Waldron
MAYA P. WALDRON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of April, 2019, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

MPW/eas