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IN THE SUPREME COURT FOR THE STATE OF IDAHO

SCOTT A. KINCH,)
)
 Appellant)
)
 vs.)
)
 STATE OF IDAHO,)
)
 Appellee)
 _____)

Supreme Court No. 42787-2015

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APPELLANT'S BRIEF ON SUPPRESSION OF EVIDENCE

Appeal from the District Court of the
Third Judicial District of the State of Idaho,
in and for the County of Canyon

HONORABLE CHRISTOPHER S. NYE, District Judge

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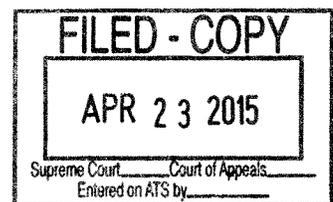


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STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from the final judgment of the Honorable Christopher S. Nye in the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, dated December 22, 2014, in which Appellant was convicted of Possession of a Controlled Substance under Idaho Code (“I.C.”) § 37-2732(c)(1).

B. Course of the Proceedings Below

Appellant was pulled over for a traffic stop on November 23, 2013. (R Vol. I, p. 10, L. 6-12). At that time he was issued a citation for Paraphernalia with Intent to Utilize pursuant to I.C. § 34-2734A. (R Vol. I, p. 10, L. 38-39). An Amended Complaint was filed on February 7, 2014 adding the felony charge of Possession of a Controlled Substance, a violation of I.C. § 37-2732(c)(1). (R Vol. I, pp. 16-17). A substitution of counsel was filed July 30, 2014 in which Michael Jacques of Jacques Law Office, P.C. substituted in as counsel in place of the Canyon County Public Defender. (R Vol. I, p. 4, L. 30). An Amended Motion to Suppress Evidence was filed on August 8, 2014 challenging the legality of the traffic stop made on November 23, 2013. (R Vol. I, pp. 59-71). Argument was heard and the motion was denied on August 19, 2014. (R Vol. I, p. 79). A Motion for Reconsideration Based Upon New Evidence was filed September 9, 2014 after counsel received a video of the stop taken by Canyon County Sheriff’s Deputy Leavell (“CCSO Leavell”). (R Vol. I, pp. 80-83). The video was received from the State on or about September 5, 2014 which counsel submitted to the court along with his Motion for Reconsideration. Id. Argument was heard and the Motion for Reconsideration Based Upon New

Evidence was denied on October 14, 2014. (R Vol. I, pp. 86-87). A Motion for Permission to Appeal from an Interlocutory Order was filed October 23, 2014. (R Vol. I, pp. 88-90). Argument was heard and the Motion for Permission to Appeal from an Interlocutory Order was denied October 30, 2014. (R Vol. I, p. 91). Appellant entered a conditional plea of guilty on November 13, 2014 reserving his right to appeal the district court's denial of the Amended Motion to Suppress Evidence. (R Vol. I, pp. 92-97). Appellant now submits for the Court's consideration this Brief on Appeal.

C. Statement of the Facts

On November 23, 2013, at approximately 2112 hours, CCSO Leavell observed "a 2000 gold Chrysler four door car traveling... in Canyon County, [sic] Idaho." (R Vol. I, p. 10, L. 6-8). CCSO Leavell stopped the vehicle because she could not read the temporary registration tag ("TRT") posted in the rear window. (R Vol. I, p. 10, L. 14-15; Tr., Vol. I, p. 8, L. 12-14; Tr., Vol. I, p. 9, L. 1-3; Tr., Vol. I, p. 12, L. 1-6; Tr., Vol. I, p. 15, L. 20-23). She did, however, identify the TRT as being a temporary registration before engaging in the traffic stop. *Id.*; (Tr., Vol. I, p. 12, L. 14-17; Tr., Vol. I, p.11, L. 14-25; Tr., Vol. I, p. 12, L. 1-6). She admits the TRT was placed in the upper left corner of the vehicle's rear window consistent with where people normally place TRTs. (Tr., Vol. I, p. 9, L. 10-13; Tr., Vol. I, p. 15, L. 9-19). This location is in accordance with Idaho Code. I.C. § 49-432(4). The Deputy also admits that inspecting the TRT was the only reason for the traffic stop. (Tr., Vol. I, p. 15, L. 24-p. 16, L. 1; R Vol. I, p. 10, L. 14-15).

CCSO Leavell states in her written report that the “temporary registration tag in the back window was bent and unreadable” and that there was a “thick layer of condensation obscuring the temporary tag further.” (R Vol. I, p. 10, L. 9-11). In her testimony, nine months after the traffic stop, she adds that the registration was also “kind of crumpled.” (Tr., Vol. I, p. 9, L. 18-20).

After observing that Appellant “seemed nervous” at the traffic stop, CCSO Leavell “asked [Appellant] if he had any illegal substances in the vehicle.” (R Vol. I, p. 10, L. 17-21). Appellant “pointed to his black stocking cap setting on the passenger seat of the vehicle” and informed the Deputy “that his pipe was located in the stocking cap” and proceeded to hand the cap over to the Deputy. (R Vol. I, p. 10, L. 21-23). The pipe was collected and “submitted to the Canyon County Crime Lab for additional drug testing” and Appellant was issued “a misdemeanor citation for Possession of Paraphernalia with Intent to Utilize.” (R Vol. I, p. 10, L. 37-39).

After finally receiving the video of the traffic stop, a review of the video paints a different picture from CCSO Leavell’s written report and/or testimony. (Ex. C). At approximately one (1) minute into the traffic stop video, before CCSO Leavell exits her vehicle, the video shows the TRT clearly posted in the upper left corner of the rear window of Appellant’s vehicle. Id. It appears securely fashioned without any visible condensation obstructing the view of the registration, and appears as though the bottom right corner of the registration is slightly bent. Id. It also appears that the small corner that is bent does not obstruct or hide any information displayed on the registration as the bent corner is rather small. Id. At

approximately 1:34 into the video it shows CCSO Leavell removing the TRT and carefully removing the tape on the right side of the registration tag showing it was securely fashioned. Id. One can also observe CCSO Leavell walking back to her vehicle at approximately 1:48 into the video carrying a crisp registration in her hands contradicting any testimony that the registration was crumpled. Id.

ISSUES PRESENTED ON APPEAL

- I. DID THE DISTRICT COURT ERR IN DENYING THE MOTION TO SUPPRESS WHERE APPELLANT WAS STOPPED EXCLUSIVELY TO INVESTIGATE A PROPERLY PLACED TEMPORARY REGISTRATION TAG THAT WAS OBSERVED AND IDENTIFIED BY LAW ENFORCEMENT PRIOR TO INITIATING THE TRAFFIC STOP?
 - A. WERE THE FACTUAL FINDINGS OF THE DISTRICT COURT SUPPORTED BY SUBSTANTIAL EVIDENCE OR CLEARLY ERRONEOUS BASED UPON THE VIDEO EVIDENCE SUBMITTED FOR REVIEW?
 - B. WERE THE FACTUAL FINDINGS OF THE DISTRICT COURT RELEVANT TO THE ANALYSIS OF WHETHER OR NOT THE OFFICER HAD A REASONABLE SUSPICION OF CRIMINAL ACTIVITY IN ORDER TO JUSTIFY A TRAFFIC STOP?

STANDARD OF REVIEW

When the Appellate Court reviews “a trial court's denial of a defendant's motion to suppress, [the] Court gives deference to the trial court's findings of fact, which will be upheld so long as they are not clearly erroneous. Findings of fact are not clearly erroneous if they are supported by substantial and competent evidence.” State v. Bishop, 146 Idaho 804, 810, 203 P.3d 1203, 1209 (2009), *citing*: State v. Henage, 143 Idaho 655, 658-59, 152 P.3d 16, 19-20 (2007). The trial court is vested with the discretion to determine “the credibility of witnesses, weight to be given to conflicting evidence, and factual inferences to be drawn.” Bishop, 146 Idaho at 810, 203 P.3d at 1209. The Appellate Court “exercises free review, however, over the trial court's conclusions regarding ‘whether constitutional requirements have been satisfied in light of the facts found.’” Id. *citing*: Henage, 143 Idaho at 658, 152 P.3d at 19. “Accordingly, [the Appellate Court] freely reviews the constitutionality of a search and seizure.” Bishop, 146 Idaho at 810, 203 P.3d at 1209.

ARGUMENT

“The Fourth Amendment to the United States Constitution protects ‘[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.’” Bishop, 146 Idaho at 810, 203 P.3d at 1209 *citing*: U.S. CONST. amend. IV. “This guarantee has been incorporated through the Due Process Clause of the Fourteenth Amendment to apply to the states.” Id., *citing*: Mapp v. Ohio, 367 U.S. 643, 655, 81 S.Ct. 1684, 1691, 6 L.Ed.2d 1081, 1089 (1961). “The essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of ‘reasonableness’ upon the exercise of discretion by government officials, including law enforcement agents, in order ‘to safeguard the privacy and security of individuals against arbitrary invasions.’” Delaware v. Prouse, 440 U.S. 648, 653-54, 99 S.Ct. 1391, 1396 (1979), *citing*: Marshall v. Barlow's, Inc., 436 U.S. 307, 312 (1978), *quoting* Camara v. Municipal Court, 387 U.S. 523, 528 (1967). “The Fourth Amendment’s reasonableness requirement has been held to apply to brief investigatory detentions.” Bishop, 146 Idaho at 811, *citing*: Terry v. Ohio, 392 U.S. 1, 19, 88 S.Ct. 1868, 1878 (1968). In Idaho, the Fourth Amendment is bolstered by the language of the Constitution of the State of Idaho which states in pertinent part,

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized.

IDAHO CONST. art. I, § 17. “Evidence obtained in violation of the amendment generally may not be used as evidence against the victim of the illegal government action.” Bishop, 146 Idaho at 810, *citing*: State v. Page, 140 Idaho 841, 846, 103 P.3d 454, 459 (2004).

“A traffic stop by a law enforcement officer constitutes a seizure of the vehicle's occupants which implicates the Fourth Amendment's guarantee of freedom from unreasonable searches and seizures, as applied to the states by the Fourteenth Amendment.” State v. Atkinson, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct.App.1996) *citing*: Delaware v. Prouse, 440 U.S. at 653; State v. Emory, 119 Idaho 661, 809 P.2d 522 (Ct.App.1991). “An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation.” Delaware v. Prouse, 440 U.S. at 662.

A traffic stop, which constitutes a seizure under the Fourth Amendment, must be supported by reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws or that either the vehicle or the occupant is subject to detention in connection with a violation of other laws. The reasonableness of the suspicion must be evaluated upon the totality of the circumstances at the time of the stop.

State v. Atkinson, 128 Idaho at 561, *citing*: State v. Naccarato, 126 Idaho 10, 12, 878 P.2d 184, 186 (Ct.App.1994). Additionally,

[w]hen reviewing an officer's actions the court must judge the facts against an objective standard. That is, “would the facts available to the officer at the moment of the seizure or search ‘warrant a [person] of reasonable caution in the belief’ that the action taken was appropriate.” Because the facts making up a probable cause determination are viewed from an objective standpoint, the officer's subjective beliefs concerning that determination are not material.

State v. Schwarz, 133 Idaho 463, 468, 988 P.2d 689, 694 (Idaho 1999) *citing*: State v. Julian, 129 Idaho 133, 136-137, 922 P.2d 1059, 1062-1063 (Idaho 1996). Additionally, the time of day or night “does not enhance the suspicious nature of the observation.” Emory, 119 Idaho at 664.

In regards to TRTs, the Idaho Court of Appeals has declared:

[W]e hold that the presence of a properly displayed temporary permit... dispels any reasonable suspicion of a violation of I.C. § 49–456(1). 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. To the contrary, an officer must have a reasonable suspicion of criminal activity before a traffic stop is initiated, not after. A temporary permit displayed in compliance with I.C. § 49–432(3) carries with it a presumption of validity, not of invalidity. *The mere existence of the properly placed temporary permit cannot serve as the basis for reasonable suspicion to allow an officer to stop a vehicle to inspect the permit unless the invalidity of the permit, such as by improper alteration, is obvious and discernable [sic] by the officer prior to stopping the vehicle.*

State v. Salois, 144 Idaho 344, 348, 160 P.3d 1279, 1283 (Ct.App.2007) (emphasis added). This decision bolsters an earlier holding that “an officer who stops a vehicle being operated without license plates has a reasonable suspicion to make a traffic-related stop as long as he has looked for and has not seen a temporary registration prior to initiating the stop.” Id., *citing*: State v. Reed, 129 Idaho 503, 927 P.2d 893 (Ct.App.1996).

The pertinent Idaho Code declaring the placement of the temporary registration reads:

(4) A temporary permit shall be in a form, and issued under rules adopted by the board, and shall be displayed at all times while the vehicle is being operated on

the highways by posting the permit upon the windshield of each vehicle or in another prominent place, where it may be readily legible.

I.C. § 49-432(4)¹.

I. THE DISTRICT COURT ERRED IN DENYING THE MOTION TO SUPPRESS WHERE APPELLANT WAS STOPPED EXCLUSIVELY TO INVESTIGATE A PROPERLY PLACED TEMPORARY REGISTRATION TAG THAT WAS OBSERVED AND IDENTIFIED BY LAW ENFORCEMENT PRIOR TO INITIATING THE TRAFFIC STOP.

Appellant was illegally seized on November 23, 2013. CCSO Leavell testified in both her written report and on the stand that she stopped Appellant's vehicle because she could not read the posted TRT. (R Vol. I, p. 10, L. 14-15; Tr., Vol. I, p. 8, L. 12-14; Tr., Vol. I, p. 9, L. 1-3; Tr., Vol. I, p. 12, L. 1-6; Tr., Vol. I, p. 15, L. 20-23). She states that while she was behind Appellant's vehicle and before initiating the traffic stop she observed a TRT in the rear window but could not read the TRT. (Tr., Vol. I, p. 8, L. 12-14; Tr., Vol. I, p. 9, L. 1-3; R Vol. I, p.10, L. 6-12). She also informed that this was the *only* reason for detaining Appellant. (Tr., Vol. I, p. 15, L. 24-p. 16, L. 1; R Vol. I, p. 10, L. 14-15). She further testified, and the video confirms, the TRT was properly located in the upper left corner of the vehicle's rear window which is in accordance with Idaho law and consistent with where people normally place TRTs. I.C. § 49-432(4); (Tr., Vol. I, p. 9, L. 10-13; Tr., Vol. I, p. 15, L. 9-19; Ex. C).

This Court has articulated that “[a] temporary permit displayed in compliance with I.C. § 49-432(3)² carries with it a presumption of validity, not of invalidity.” Salois, 144 Idaho at 348. The identifiable presence of a “properly placed temporary permit cannot serve as the basis for

¹ Counsel believes this is the current location of the pertinent statutory language based upon indications that the statute was modified since the Court authored its decision.

² This statutory provision is now located at I.C. § 49-432(4).

reasonable suspicion to allow an officer to stop a vehicle to inspect the permit unless the invalidity of the permit, such as by improper alteration, is obvious and discernable [sic] by the officer *prior* to stopping the vehicle.” Id. (emphasis added). “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.” Id.

Appellant was stopped on November 23, 2013, without a reasonable suspicion of criminal activity. CCSO Leavell pulled over Appellant to investigate the validity of the TRT. The TRT was posted in accordance with Idaho law and there was no discernible invalidity or improper alteration to the TRT to validate the seizure.

It should be noted that the district court made its original ruling denying the motion to suppress based upon the testimony of CCSO Leavell that the TRT was “crumpled up” and the window was “fogged over.” (Tr., Vol. I, p. 26, L. 6-10, 14-15, 22-24; Tr., Vol. I, p. 27, L. 3-4; Tr., Vol. I, p. 29, L. 9-12). It concluded this condition of the TRT rendered it not “readily legible” as required by I.C. § 49-432(4). (Tr., Vol. I, p. 26, L. 25-p. 27, L. 10). The district court explained in its analysis of the facts in the Salois case that it was “uncontroverted -- they had it on the film -- and the presence of the Temporary Permit was clearly visible on the videotape.” (Tr., Vol. I, p. 28, L. 23-25). The district court went on to state after it was revealed in testimony that a video of the traffic stop in question was made and not previously disclosed that, “[i]f the video looks like the Salois video -- that anybody can see the Permit -- then we have a different story.” (Tr., Vol. I, p. 29, L. 20-22).

Not only does the video clearly display a TRT posted in the rear window of Appellant's vehicle, but it also fails to substantiate any condensation obstructing the view of the TRT. (Ex. C). It reveals a crisp, un-crumpled TRT as the officer removes it from Appellant's rear window and carries it back to her vehicle. (Ex. C). It is, in the words of the district court, "uncontroverted -- they had it on the film -- and the presence of the Temporary Permit was clearly visible on the videotape." (Tr., Vol. I, p. 28, L. 23-25).

There was no legal basis for stopping Appellant where the officer observed and identified a TRT properly placed in the rear window of Appellant's vehicle. This fact is established in evidence by the testimony of CCSO Leavell and confirmed by the video of the stop. Appellant's seizure violated the rights of Appellant to be free from unreasonable seizures as dictated by both the United States' and Idaho's constitutions. In fact, the seizure for investigative purposes offends the very reasoning behind this Court's holding against allowing "law enforcement officers of this state unfettered discretion to stop each and every vehicle being operated with a temporary registration to 'investigate' its validity." Salois, 144 Idaho at 348. The district court erred in denying the motion to suppress where appellant was stopped exclusively to investigate a properly placed temporary registration tag that was observed and identified by law enforcement prior to initiating the traffic stop.

A. THE FACTUAL FINDINGS OF THE DISTRICT COURT WERE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND WERE CLEARLY ERRONEOUS BASED UPON THE VIDEO EVIDENCE SUBMITTED FOR REVIEW.

The district court ultimately found, based upon CCSO Leavell's testimony, that "the tag was bent and not readily legible." (Tr., Vol. II, p. 5, L. 14-15). After reviewing the video, the court found "the tag was not readily legible when the defendant was stopped... [a]nd it *has* to be readily legible to satisfy the Idaho Code [§]49...- 432(4)." (Tr., Vol. II, p. 5, L. 17-19)(emphasis added). The district court reiterated from "what [it] recall[ed], the officer pulled [Appellant] over because the permit was not legible. It was either crumpled, covered with condensation, otherwise." (Tr., Vol. II, p. 9, L. 1-3). More specifically, the court ultimately denied the motion to suppress because it found that the TRT was not in a condition "where it may be readily legible." (Tr., Vol. II, p. 9, L. 9).

CCSO Leavell testified on August 19, 2014, based upon her memory of the traffic stop that occurred with Appellant on November 23, 2013, almost nine (9) months earlier. Her memory was likely bolstered by her written report which indicated the TRT "in the back window was bent and unreadable... [and] the area that the temporary tag was displayed also had a thick layer of condensation, obscuring the temporary tag further." (R Vol. I, p. 10, L. 9-11). Her testimony included, however, a new element she allegedly recalled on the stand that was not included in her written report. She testified that the TRT was "kind of crumpled." (Tr., Vol. I, p. 9, L. 18-20).

The very nature of testimony is that it is subject to the memory of the individual testifying. Memory, and one's ability to recall a memory, is subject to variation and imperfection and logically influenced by the nature and objective of the testimony. Intuitively, that is why multiple people recalling the same event do not recall it with perfect harmony.

Video evidence, however, is not subject to the flaws inherent in human recollection. It is objective and factual and not subject to the judgment of a law enforcement "officer engaged in the often competitive enterprise of ferreting out crime." Johnson v. United States, 333 U.S. 10, 14, 68 S. Ct. 367 (1948). The video indubitably shows at the time of the stop there was an unobstructed view of the TRT posted "upon the windshield of [the] vehicle... where it may be readily legible." I.C. § 49-432(4); (Ex. C). The video does not show evidence of any condensation that would have obstructed one's view of the TRT. (Ex. C). It also reveals the TRT is a flat, crisp, paper document that is not crumpled. (Ex. C). The factual findings of the district court were clearly erroneous based upon the video evidence submitted for review.

B. THE FACTUAL FINDINGS OF THE DISTRICT COURT WERE IRRELEVANT TO THE ANALYSIS OF WHETHER OR NOT THE OFFICER HAD A REASONABLE SUSPICION OF CRIMINAL ACTIVITY IN ORDER TO JUSTIFY A TRAFFIC STOP.

The district court's denial of the motion to suppress was based upon factual findings that should not be dispositive of the legal analysis. Even if the video evidence supported a finding that the TRT was crumpled and covered with condensation, those facts are not determinative under the law. Under the law, the TRT must *only* be properly displayed to dispel reasonable suspicion of criminal activity "unless the invalidity of the permit, such as by improper alteration,

is obvious and discernable [sic] by the officer prior to stopping the vehicle.” Salois, 144 Idaho at 348.

The district court’s finding that the “officer pulled [Appellant] over because the permit was not legible” because “[i]t was either crumpled [or] covered with condensation” infers a vantage point from the officer’s vehicle and is not consistent with the reading of the statute or interpretation of case law. The statute states, “[a] temporary permit shall be... displayed at all times while the vehicle is being operated on the highways by posting the permit upon the windshield of each vehicle or in another prominent place, *where it may be readily legible.*” I.C. § 49-432(4) (emphasis added). It does not require that it be legible from the vantage point of another vehicle. It must only be legible upon a closer inspection.

When the legislature promulgated the codes defining the form and content of a license plate, it required that the “letters and numerals... shall be of sufficient size to be plainly readable from a distance of seventy-five (75) feet during daylight.” I.C. § 49-443(1). It was significant to the legislature that license plates be readable from the vantage point of law enforcement’s vehicle. No such requirement is found in regards to TRTs.

This Court’s holding that “[a] temporary permit displayed in compliance with I.C. § [49–432(4)] carries with it a presumption of validity, not of invalidity” supports the recognition that a TRT will not likely be readable from the vantage point of an officer’s vehicle. In fact, in the instant case the video strongly suggests the officer could not have made a determination that the TRT was crumpled and covered with condensation until after the officer was standing at

Appellant's vehicle. Salois, 144 Idaho at 348, 160 P.3d at 1283. This Court went on to articulate,

[t]he mere existence of the properly placed temporary permit cannot serve as the basis for reasonable suspicion to allow an officer to stop a vehicle to inspect the permit unless the *invalidity of the permit*, such as by improper alteration, is obvious and discernable [sic] by the officer prior to stopping the vehicle.

Id., (emphasis added).

In the Salois case, it was found that the officer could see the TRT displayed in the window before making the traffic stop. Id. at 349. The officer later inspected the TRT and found that it "had been issued for a different vehicle and that the expiration date had been altered, rendering the temporary registration for Salois's vehicle invalid." Id. at 346. The Court's ultimate holding that a "properly placed temporary permit cannot serve as the basis for reasonable suspicion" buttresses the principle that the legislature did not intend the print on the TRT to be sized so that it would be "readily legible" from the vantage point of an officer's vehicle. Id. at 348; I.C. § 49-432(4).

Even if the evidence supported a finding that the TRT was crumpled and covered by condensation, it would not suggest that the TRT was invalid in any way. If it were crumpled, but posted in a prominent place, as it was, it would still be readily legible upon closer inspection.

Furthermore, the transient nature of condensation should not be justification for alleging the TRT was not readily legible. Not only is water transparent and would not impede one's ability to discern the writing on a TRT, but when it is in the form of condensation it is temporary. To authorize law enforcement to inspect a TRT under such fleeting conditions would lead to

allowing an officer to stop a vehicle because the sun was reflecting off the window rendering the TRT no longer readily legible.

The factual findings of the court were irrelevant to the analysis of whether or not the officer had a reasonable suspicion of criminal activity in order to justify a traffic stop. Neither finding that the TRT was crumpled and/or covered with condensation justifies a traffic stop in light of the indisputable fact that the TRT was properly placed and identified by the officer prior to initiating the traffic stop.

CONCLUSION

The district court erred in denying the motion to suppress. CCSO Leavell established that she stopped Appellant exclusively to investigate a TRT that she noted was properly placed and that she identified as a TRT before initiating the traffic stop. This Court has unambiguously communicated that a properly placed TRT carries with it a presumption of validity and dispels any reasonable suspicion of invalidity unless the invalidity of the TRT is obvious and discernible by law enforcement prior to initiating the stop. Salois, 144 Idaho at 348, 160 P.3d at 1283. No invalidity was obvious or discernible and, in fact, there was never a finding that the TRT was invalid after closer inspection.

The district court's factual findings that lead to its conclusion that the TRT was not posted in a fashion rendering it readily legible were clearly erroneous. The testimony of CCSO Leavell was that the TRT was bent, crumpled, and covered with condensation rendering it illegible. Those statements were dispelled by the video recording of the stop. The video shows the TRT properly placed with a possible bent corner that did not interfere with it being readily

legible, that it was not crumpled but crisp and flat, and that there was no discernible condensation on the rear window obstructing the view of the TRT.

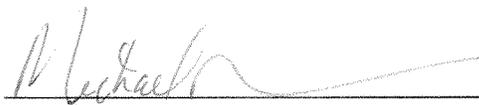
Furthermore, the ultimate factual findings of the district court that the TRT was crumpled and/or covered with condensation are irrelevant to the analysis of whether or not the officer had a reasonable suspicion of criminal activity in order to justify a traffic stop. Idaho code requires the TRT to be readily legible, but not from the vantage point of law enforcement's vehicle. Unlike a license plate that the legislature specified should be readable from seventy-five (75) feet during daylight, there is no such size requirement for the lettering or numbers on the TRT. I.C. §§ 49-443(1) & 49-432(4). This Court implicitly recognized this fact when it held that a properly placed TRT has a presumption of validity and cannot form the basis for a lawful stop. *Id.* Neither being crumpled nor being covered by condensation would render the TRT illegible upon closer inspection.

The district court erroneously denied the motion to suppress evidence where Appellant was stopped exclusively to investigate a properly placed TRT that was observed and identified by law enforcement prior to initiating the traffic stop. Given the holding of this Court in Salois, this Court has no option but to find that Appellant was stopped in contravention to the law. To “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” flies in the face of the cornerstone principle offered by the United States and Idaho Constitutions that citizens are protected from unreasonable searches and seizures. Salois, 144 Idaho at 348, 160 P.3d at 1283; IDAHO CONST. art. I, § 17; U.S. CONST. amend. IV. Protecting that cornerstone principle

requires the suppression of evidence discovered in violation of that right, and Appellant hereby respectfully requests this Court reverse the decision of the district court and suppress all evidence that followed the violation of the Fourth Amendment and Constitution of the State of Idaho, Article I, § 17.

RESPECTFULLY SUBMITTED this 23rd day of April, 2015.

JACQUES LAW OFFICE, P.C.



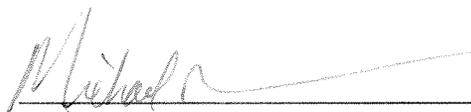
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of April, 2015, I served two (2) true and correct copies of the within and foregoing *Appellant's Brief on Suppression of Evidence* upon the following as named below and in the manner checked:

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