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

STATE OF IDAHO,	)	
	)	**No. 46109-2018**
Plaintiff-Respondent,	)	
	)	**Kootenai County Case No.**
v.	)	**CR-2017-957**
	)	
CALEB MICHAEL LEONARD,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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

HONORABLE SCOTT WAYMAN
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Caleb Michael Leonard appeals from the district court's denial of his motion to suppress evidence following his conditional guilty plea to possession of a controlled substance (cocaine).

Statement Of The Facts And Course Of The Proceedings

The state charged Leonard with possession of a controlled substance (cocaine) with intent to deliver and possession of drug paraphernalia. (R., pp.71-72.) Leonard filed a Motion to Suppress (R., pp.64-65), claiming "the warrantless stop by the officers was unlawful and without legal justification, therefore in violation of the Fourth Amendment" (id., p.64). At the end of the suppression hearing in which the parties relied solely upon testimony presented by Deputy Sheriff Jeremy Hyle at the preliminary hearing, the district court summarized the underlying facts and its relevant legal conclusions as follows:

> On January 20th, Deputy Hyle was on patrol on Interstate 90 heading east, and according to his testimony . . . he stated, "That a vehicle was in front of us as we were driving east on I-90 and I had our vehicle set at 65 mile [sic] an hour. The vehicle in front of us was pulling away to an extent that I believe it was traveling approximately 70 mile [sic] an hour."
>
> The Deputy went on to state, "When I turned my radar on to see if he could verify the speed of the vehicle, it hit the brakes and slowed down."
>
> Further on in the Deputy's testimony, he states that, "We saw the vehicle with its right side tires cross the fog line on the right side of the road two times, I believe."
>
> The Deputy turned on his overhead lights and eventually effectuated a traffic stop. And during the traffic stop, there wasn't any discussion of speeding. The Deputy did not advise Mr. Leonard or the passenger regarding his observations as to the speeding of the vehicle. And on Page 13 of the preliminary hearing transcript, he explained why. He says, "My discretion was that the vehicle leaving its lane of travel was a bigger safety concern."

The defense is arguing that there is insufficient evidence factually to establish that the vehicle being driven by Mr. Leonard had its tires completely cross over the fog line. The defense contends that there is insufficient evidence to establish that the vehicle was speeding and alternatively if it was speeding, that the State or the Officer abandoned that claim by not bringing it up.

This becomes a question of fact. The video in this case does not capture every observation that the Officer may have made, particularly with regard to alleged speeding. What I do have is sworn testimony under oath from an experienced deputy indicating that in his opinion a vehicle was pulling away from him while he was going 65 miles an hour. When he attempted to verify that, the vehicle hit the brakes and slowed down. As a result of that, the Officer continued to follow the vehicle.

. . . .

. . . He's set his speed at 65 miles an hour and something's pulling away from him. He can't tell exactly how much the speed is exceeding 65 miles an hour and before he can verify it, the person recognizes or may have recognized, we never know for sure, that there was a police officer behind him and backs off the speed. Pretty common. But it doesn't change the fact the Deputy observed a violation of the Idaho Code for exceeding the posted speed limit of 65 miles an hour.

There is no legal requirement that a police officer immediately pull over someone when they see a law violation relating to a vehicle. . . . In this case the Deputy observed the speeding, did not choose to immediately turn on his lights and effect a traffic stop but did choose to follow the vehicle for a certain distance.

According to the preliminary hearing transcript, the video doesn't really go on until the Officer's lights turn on and that may have been far before – or far after, excuse me, the Deputy observed the speeding violation. And even if the video goes back 30 seconds from when the overhead lights go on, it does not seem improbable at all that it was not captured on the video.

Having reviewed the video and compared it to the Officer's testimony, the Officer's sworn testimony was that the vehicle's tires on the right side crossed over the fog line on the road. The video is taken at night. It is taken from some distance away. And it may or may not have actually captured what the Deputy said that he saw. Because again, the video only goes back 40 seconds from when he turned on his lights, and I cannot conclude that the Deputy's sworn testimony is sufficiently contradicted or impeached by the lack of a videotape capturing the alleged fog line violation.

In order for the stop of a vehicle to be valid, an officer has to be able to articulate specific facts that a vehicle has been or is about to be driven in violation

of the traffic code. That must be based on the totality of the circumstances and any inferences to be drawn by those circumstances. . . .

. . . .

Here the Officer articulated that he observed the vehicle exceeding the posted speed limit of 65 miles an hour. The Officer also articulated that he observed the vehicle drive outside of the marked lane of travel by crossing the fog lines. I find that those two bases have been established by specific facts and they provide a reasonable articulable suspicion for the Deputy to have stopped the vehicle being driven by Mr. Leonard.

Having concluded that the stop of the vehicle was lawful, the defense is arguing that the stop was unlawfully extended by the actions of the officers and that the evidence that they ultimately seized from the vehicle should be suppressed.

. . .

In this case, the Officers, as allowed by law, stopped the vehicle and inquired of the driver regarding driver's license, registration, and proof of insurance. The typical information that is requested at a traffic stop. Then the Officers, quite politely, engaged in what I would call small talk regarding destination and purpose of the trip that the defendant and his passenger were on. The questions were brief and not intrusive at all.

The defendant was able to produce his information and there was a delay in producing a valid insurance certificate. The passenger [Kayla Echeverry] was in possession of or was providing the insurance certificate and provided one that was expired and the Deputy gave the passenger the opportunity to look for another one or to even get some confirmation of proof of insurance through her telephone.

All of this quite naturally prolonged the stop and it was during this particular delay that the Deputy smelled the distinct odor of marijuana in his opinion. And you can plainly see on the video that he signaled his partner by looking – lifting his head up and looking over at his partner pointing to his nose. . . .

At that point, the Officer, based on his training and experience, now has another reason to continue his investigation.[1]

. . . .

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[1] During the subsequent search of the vehicle, Deputy Hyle found and seized two baggies from the center console; one had a white residue and the other had "a large amount of white powder substance" which, according to an I.S.P. Forensic Controlled Substance Analysis Report, contained 12.45 grams of cocaine (including the plastic bag). (2/23/17 Tr., p.18, Ls.14-23; St. Ex. 1 (see Conf. Docs. Appeal Volume 1.pdf, pp.46-47).)

That happens in police work. The Officer stopped the vehicle for the lane violation, had observed a speeding violation earlier, and now has the smell of marijuana emanating from the vehicle. Everybody at this point is being very cooperative. . . . They're talking . . . while the information that has been presented to the Deputy is being verified back in his patrol car.

Once all of that was done and the Deputy advised that he was not going to be writing a ticket for the lane violation, that he was simply gonna give a warning, the Deputy brings up the question of when did – to the defendant, "When did you last smoke marijuana?" And the defendant was candid, indicating that he had earlier in the day I believe was his answer or sometime prior. And then there was a fairly candid discussion at that point, a brief discussion, and then the Deputy inquired about, 'Are there any drugs in the car or anything else he needed to know about.' Are there any drugs in the car or anything else he needed to know about.' And from that point on the Deputy had already developed probable cause to search the vehicle when he smelled the marijuana and testified about its odor and he could detain the defendant and the passenger. He did not unlawfully extend the detention.

. . . .

The observation or the smell was obtained by the Deputy in a place where he had the right to be and just because he was standing near the vehicle or outside the vehicle talking to the passengers, there's no unlawful police activity in that smell if you will. And once the Deputy had that, there was no reason, I mean he didn't have to go too much farther as far as justifying the search of the vehicle.

. . . .

But in this case I find that based on the totality of the circumstances that there was not any unlawful delay in the traffic stop and that during the delay caused by the passenger's inability to provide the current proof of insurance and verify that, that that's when the plain smell observation was made giving the Deputy probable cause to search the vehicle.

For those reasons, I will find the defendant has not met their burden on establishing that the State did not have reasonable articulable suspicion, that the vehicle was being driven contrary to the traffic laws in Idaho, and that the stop of the vehicle was therefore lawful in compliance with the Fourth Amendment and with the provisions of the Idaho Constitution.

Additionally, I will find that the defendant has not established that the lawful stop was unlawfully detained – extended or prolonged by the action of the State and that, therefore, the Motion to Suppress is denied.

(8/15/17 Tr., p.23, L.16 – p.33, L.15 (emphases and explanation added).)

After Leonard's Motion to Suppress was denied (R., pp.117-118), pursuant to a plea agreement preserving his right to appeal the suppression order, he entered a conditional plea to possession of a controlled substance (cocaine) and the paraphernalia charge was dismissed (R., pp.119-126). The district court withheld judgment for two years, and placed Leonard on supervised probation for that same period. (R., pp.127-136.) Leonard timely appealed from the judgment of conviction. (R., pp.137-140.)

ISSUE

Leonard states the issue on appeal as:

> Did the district court err when it denied Mr. Leonard's motion to suppress because crossing the fog line did not provide Deputy Hyle with reasonable suspicion to make the traffic stop, and Deputy Hyle's abandonment of the alleged speeding violation unlawfully prolonged the stop?

(Appellant's Brief, p.7.)

The state rephrases the issue as:

Has Leonard failed to show the district court erred in denying his motion to suppress?

ARGUMENT

Leonard Has Failed To Show The District Court Erred In Denying His Motion To Suppress

A. Introduction

Leonard argues on appeal that the district court erred in denying his motion to suppress. While he concedes the stop of his vehicle due to speeding was supported by reasonable suspicion, he argues, "mindful that Deputy Hyle smelled marijuana prior to the owner of the car providing proof of insurance, Mr. Leonard asserts that Deputy Hyle's affirmative statement to Mr. Leonard about why he pulled him over [for crossing over the fog line] proved he abandoned the only potentially legitimate purpose for the stop.[2] While Deputy Hyle may have had reasonable suspicion to make the stop based on the speeding violation, he abandoned that basis to pursue the fog line issue only." (Appellant's Brief, p.11 (explanation added).)

Leonard fails to show that Deputy Hyle abandoned the "speeding" basis for the traffic stop merely because he believed Leonard's improper lane travel was "a bigger safety concern" and chose to discuss that matter with Leonard. (2/23/17 Tr., p.13, L.24 – p.14, L.5.) There is no evidence that Deputy Hyle abandoned his investigation into Leonard's speeding before he smelled the odor of marijuana coming from inside Leonard's vehicle, giving the officer probable cause to search it.

Although the Neal and Fuller decisions make clear that fog lines do not define lanes of travel for purposes of Idaho Code § 49-637(1) (failure to maintain lane), those decisions are not determinative here. Because Leonard was speeding *and* drove over the fog line twice, under the totality of those circumstances, Deputy Hyle had reasonable suspicion (or grounds) to stop

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[2] Leonard contends that driving onto or over a fog line cannot provide an officer with reasonable grounds to conduct a traffic stop. (Appellant's Brief, pp.10-11); see State v. Neal, 159 Idaho 439, 362 P.3d 514 (2015); State v. Fuller, 163 Idaho 585, 416 P.3d 957 (2018).

Leonard's vehicle in order to investigate his overall driving – regardless of whether there was a lane infraction.

B. Standard Of Review

On review of a ruling on a motion to suppress, the appellate court defers to the trial court's findings of fact unless clearly erroneous, but exercises free review of the trial court's determination as to whether constitutional standards have been satisfied in light of the facts. State v. Willoughby, 147 Idaho 482, 485-86, 211 P.3d 91, 94-95 (2009); State v. Fees, 140 Idaho 81, 84, 90 P.3d 306, 309 (2004). If findings are supported by substantial evidence in the record, those "[f]indings will not be deemed clearly erroneous." State v. Stewart, 145 Idaho 641, 648, 181 P.3d 1249, 1256 (Ct. App. 2008) (quoting State v. Jaborra, 143 Idaho 94, 98, 137 P.3d 481, 485 (Ct. App. 2006)).

C. Deputy Hyle Did Not Abandon The "Speeding" Basis For The Traffic Stop

"Because a routine traffic stop is normally limited in scope and of short duration, it is more analogous to an investigative detention than a custodial arrest and therefore is analyzed under the principles set forth in *Terry v. Ohio,* 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968)." State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). "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." State v. Roe, 140 Idaho 176, 180, 90 P.3d 926, 930 (Ct. App. 2004). "[W]hen an officer has an objectively reasonable basis for making an investigative stop, the officer's subjective motive or actual state of mind is irrelevant"; consequently, where a stop is justified by an "objectively reasonable basis," such as an observed traffic violation, "any underlying motive … in stopping [a defendant's] vehicle

as a pretext to search for drugs" is irrelevant. State v. Myers, 118 Idaho 608, 610, 798 P.2d 453, 455 (Ct. App. 1990).

"An investigative detention must be temporary and last no longer than necessary to effectuate the purpose of the stop." State v. Ramirez, 145 Idaho 886, 889, 187 P.3d 1261, 1264 (Ct. App. 2008). "Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose." Rodriguez v. United States, ___ U.S. ___, 135 S. Ct. 1609, 1616 (2015) (internal quotes, brackets and citations omitted). "The stop remains a reasonable seizure while the officer diligently pursues the purpose of the stop, to which that reasonable suspicion is related. However, should the officer abandon the purpose of the stop, the officer no longer has that original reasonable suspicion supporting his actions." State v. Linze, 161 Idaho 605, 609, 389 P.3d 150, 154 (2016).

The United States Supreme Court has held that, "[b]eyond determining whether to issue a traffic ticket, an officer's mission includes 'ordinary inquiries incident to [the traffic] stop.'" Rodriguez, 135 S. Ct. at 1615 (quoting Illinois v. Caballes, 543 U.S. 405, 408 (2005)). "Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." Id. "These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly." Id.

The district court acknowledged that Leonard argued that Deputy Hyle abandoned the "speeding" purpose for the traffic stop (8/15/17 Tr., p.24, Ls.18-22), but it did not specifically rule on that point (see generally id., p.22, L.13 – p.34, L.3). Nonetheless, the court's acknowledgment of the issue and denial of Leonard's suppression motion suffices as a rejection of that argument. See Herman ex rel. Herman v. Herman, 136 Idaho 781, 786, 41 P.3d 209, 214 (2002) ("In

unconditionally granting defendant's motion for summary judgment, the district court implicitly ruled against Matthew's argument . . . ."); Lester v. Salvino, 141 Idaho 937, 941, 120 P.3d 755 (Ct. App. 2005) ("While the court does not explicitly state its finding, . . . the finding was implicitly made."). The district court correctly, albeit implicitly, rejected Leonard's argument that the purpose of the stop for speeding was abandoned prior to the officer's olfactory detection of marijuana.

In this case, there was an objectively reasonable basis for the stop: Deputy Hyle was travelling at the exact speed limit -- a verified 65 miles per hour -- when he observed Leonard's vehicle pulling away from him in front of him. The deputy testified at the preliminary hearing:

> The vehicle was in front of us as we were driving east on I-90, and I had our vehicle set at 65 mile[s] an hour, and the vehicle in front of us was pulling away to an extent that I believe it was traveling approximately 70 mile[s] an hour.
>
> . . . .
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> There are two speedometers on the dash of the car, one's digital and one's the regular dial, as well as the CPS that we have in our vehicle and the radar, and each of those was showing our vehicle speed at 65 mile[s] an hour.

(2/23/17 Tr., p.8, Ls.4-15 (emphasis added).) When the deputy was asked if he had testified that "the reason for the stop was the speed," he answered, "[y]es." (2/23/17 Tr., p.43, L.25 – p.44, L.2.)

During the traffic stop, Deputy Hyle did not ask Leonard any questions about speeding. (2/23/17 Tr., p.13, Ls.20-22.) Instead, he questioned Leonard about his staying inside the fog line (or, as the officer believed, lane of travel) because it "was a bigger safety concern, as leaving the lane of travel is one of the top reasons, according to the national statistics, for causing crashes," and he "couldn't verify an exact speed to tell them at which they were speeding other than that they were going faster than 65 mile[s] an hour." (2/23/17 Tr., p.13, L.23 – p.14, L.5.) However,

the deputy did not, as Leonard claims, abandon the "speeding" basis for the stop merely by asking questions about his driving on, and over, the fog line on a winter night[3] when snow was on the side of the road and guardrail. See State v. Hays, 159 Idaho 476, 362 P.3d 551 (Ct. App. 2015) (citation and quotations omitted) (questioning unrelated to purpose of stop appropriate so long as it does not "measurably extend the duration of the stop"); State v. Grantham, 146 Idaho 490, 496, 198 P.3d 128, 134 (Ct. App. 2008) (observations during encounter may give rise to other legitimate areas of inquiry and investigation). The record does not support Leonard's claim that Deputy Hyle abandoned the "speeding" purpose of the stop before developing probable cause to search the vehicle upon smelling marijuana coming from inside it. See State v. Willoughby, 147 Idaho 482, 489, 211 P.3d 91, 98 (2009) (citing Deen v. State, 131 Idaho 435, 436, 958 P.2d 592, 593 (1998)) (Whether an officer has reasonable suspicion to detain a suspect is an objective test not dependent on the subjective beliefs of an individual officer.).

The evidence also shows that Deputy Hyle continued to engage in tasks consistent with a standard traffic stop by, in sequence, obtaining Leonard's driver's license, Ms. (Echeverry) Laursen's vehicle registration, and attempting to obtain her proof of insurance. (2/23/17 Tr., p.16, L.3 – p.17, L.3.) It was "[w]hile [Deputy Hyle] was waiting for her to show [him] her proof of insurance, [that he] smelled the odor of marijuana coming from the vehicle." (2/23/17 Tr., p.17, Ls.23-25 (explanation added).) All of Deputy Hyle's actions leading up to the discovery of the odor of marijuana were appropriate actions during a traffic stop. See Rodriguez, 135 S. Ct. at 1615.

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[3] See St. Ex. 2, 00:00–01:00, Unassigned_20170120_11_13_UC2_DrugSeizure_47308163.ts, Camera 0; see also 2/23/17 Tr., p.33, L.15 – p.35, L.24; p.70, L.5 – p.72, L.21; 8/15/17 Tr., p.3, L.16 – p.4, L.11 (path of admission of the front dash cam video of Leonard's vehicle up to the time of the stop).)

D. Deputy Hyle's Testimony That Leonard's Vehicle Crossed The Fog Line Twice Was Part Of The Totality Of Circumstances Relevant To Show Officer Hyle Had A Reasonable, Articulable Suspicion To Conduct A Traffic Stop

The district court's second basis for finding Deputy Hyle had reasonable suspicion to conduct a traffic stop was the deputy's testimony that he "saw the vehicle with its right side tires cross the fog line on the right side of the road two times[.]" (2/23/17 Tr., p.9, Ls.18-24; p.66, Ls.11-16; 8/15/17 Tr., p.24, Ls.2-5; p.28, Ls.4-10.) Leonard correctly cites the Idaho Supreme Court's decision in Fuller for the proposition that "crossing or touching a fog line does not provide an officer with reasonable suspicion that a traffic violation has been committed." (Appellant's Brief, p.10.) Based on that concept, Leonard contends that "the district court erred in holding that crossing the fog line *contributed to the totality of circumstances*, which provided Deputy Hyle with reasonable suspicion to stop Mr. Leonard." (Id. (emphasis added).) However, Fuller does not supply the blanket rule suggested by Leonard; the Idaho Supreme Court explained:

> *Neal* was unequivocally clear that an *isolated* incident of touching the fog line does not violate section 49-637(1). And given that the fog line does not signify a formal lane barrier, an *isolated* incident of temporarily crossing the fog line likewise does not violate section 49-637(1). . . .
>
> . . . .
>
> We reiterate the rule recently pronounced in *Neal* by emphasizing that the fog line, if present, does not serve to demarcate the boundary of the lane of travel. If present, the fog line serves as a point of reference that is geared toward ensuring drivers' safety. *Neal*, 159 Idaho at 447, 362 P.3d at 522 ("The evil to be remedied in this statute is to prevent dangerous, unsafe movement out of a lane of traffic and into another lane of traffic."). The fog line is especially useful when driving in inclement weather or when driving conditions are otherwise adverse. *Merely that a tire temporarily touches or crosses the fog line will not by itself give rise to a reasonable, articulable suspicion* that section 49-637(1) has been violated. *To be sure, driving onto or across the fog line may be considered when evaluating whether an overall pattern of erratic or unsafe driving give rise to a reasonable, articulable suspicion that section 49-637(1) has been violated under the totality of circumstances. But that suspicion must be based on more than one tire temporarily touching or briefly crossing the fog line.*

Fuller, 163 Idaho at 590, 416 P.3d at 962 (emphasis added). Contrary to Leonard's argument, even an isolated touching or crossing of a fog line "*may be considered* when evaluating whether an overall pattern of erratic or unsafe driving give rise to a reasonable, articulable suspicion that I.C. § 49-637(1) has been violated under the totality of circumstances." Id.

This case involves more than just an isolated instance where Leonard's vehicle crossed over the fog line. Not only did Deputy Hyle testify that he saw Leonard's vehicle cross the fog line *twice* (2/23/17 Tr., p.9, Ls.18-24), there was snow on the side of the road (see St. Ex. 2, 00:00–01:00, Unassigned_20170120_11_13_UC2_DrugSeizure_47308163.ts, Camera 0), and, as the deputy testified, Leonard's vehicle was traveling over the 65 miles per hour speed limit (2/23/17 Tr., p.8, Ls.2-8). Therefore, under the totality of the circumstances, buttressed by Fuller's acknowledgment that a "fog line is especially useful when driving in inclement weather or when driving conditions are otherwise adverse," Deputy Hyle had a reasonable, articulable suspicion, that Fuller's driving pattern was erratic and he was having difficulty maintaining his lane of travel – regardless of whether the fog line marked the right side of his lane.

Because Leonard was speeding *and* drove over the fog line twice, under the totality of those circumstances, Deputy Hyle had a reasonable, articulable suspicion to stop Leonard's vehicle in order to investigate his apparent inability to maintain his lane of travel – regardless of whether a fog line technically defines one's lane of travel.

CONCLUSION

The state respectfully requests this Court affirm the district court's denial of Leonard's motion to suppress evidence.

DATED this 27th day of August, 2019.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 27th day of August, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General