

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 46636-2018
 Plaintiff-Respondent,)
) Ada County Case No.
 v.) CR01-2018-12907
)
 JON THOMAS DAMIAN,)
)
 Defendant-Appellant.)
)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE PETER G. BARTON
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

TED S. TOLLEFSON
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

ATTORNEYS FOR
PLAINTIFF-RESPONDENT

BEN P. McGREEVY
Deputy State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712
E-mail: documents@sapd.state.id.us

ATTORNEY FOR
DEFENDANT-APPELLANT

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE.....	1
Nature Of The Case.....	1
Statement Of The Facts And Course Of The Proceedings.....	1
ISSUE	5
ARGUMENT	6
The District Court Did Not Err When It Found The Traffic Stop Was Justified Because Officer Tiner Had Reasonable Suspicion That Damian Committed Three Traffic Violations.....	6
A. Introduction.....	6
B. Standard Of Review	6
C. The District Court Correctly Determined That Officer Tiner Possessed Reasonable Suspicion That Damian Committed Three Traffic Violations	7
CONCLUSION.....	9
CERTIFICATE OF SERVICE	9

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Delaware v. Prouse</u> , 440 U.S. 648 (1979).....	7
<u>State v. Emory</u> , 119 Idaho 661, 809 P.2d 522 (Ct. App. 2016)	8, 9
<u>State v. Henage</u> , 143 Idaho 655, 152 P.3d 16 (2007).....	7
<u>State v. Linze</u> , 161 Idaho 605, 389 P.3d 150 (2016).....	6
<u>State v. Morgan</u> , 154 Idaho 109, 294 P.3d 1121 (2013).....	7
<u>State v. Neal</u> , 159 Idaho 439, 362 P.3d 514 (2015)	7
<u>State v. Purdum</u> , 147 Idaho 206, 207 P.3d 182 (2009).....	6
<u>State v. Schevers</u> , 132 Idaho 786, 979 P.2d 659 (Ct. App. 1999).....	6
<u>State v. Valdez-Molina</u> , 127 Idaho 102, 897 P.2d 993 (1995)	6
 <u>STATUTES</u>	
I.C. § 49-637	8
I.C. § 49-808	8

STATEMENT OF THE CASE

Nature Of The Case

Jon Thomas Damian appeals from the judgment of the district court entered upon his guilty plea to possession of a controlled substance, methamphetamine. On appeal, Damian argues the district court erred when it denied his motion to suppress.

Statement Of The Facts And Course Of The Proceedings

Officer Tiner testified that at around 10:30 p.m. he was parked south of the intersection of Cassia and Orchard and he had a clear view of the intersection. (8/14/18 Tr., p. 38, L. 13 – p. 41, L. 25.) Officer Tiner observed a blue van turn north onto Orchard off of Cassia. (Id.) Officer Tiner had a clear view of the front of the blue van. (8/14/18 Tr., p. 57, L. 16 – p. 59, L. 14.) The blue van did not use its turn signal. (8/14/18 Tr., p. 38, L. 13 – p. 41, L. 25.) Officer Tiner followed behind the blue van. (Id.) The blue van then turned left off of Orchard onto Franklin. (Id.) This time the blue van did use its turn signal. (Id.)

When the blue van turned left it did not stay in its lane. (Id.) Both of its right-side tires crossed over the dotted line separating the westbound lanes of Franklin, so that the van straddled the two lanes on Franklin. (Id.) After the blue van made the turn and was straddling the lanes, it briefly used its turn signal and immediately began to merge into the outside lane. (Id.) The blue van did not travel 100 feet with its turn signal on before making the lane change (Id.) Officer Tiner then activated his overhead lights. (Id.)

The blue van stopped and Officer Tiner identified the driver of the blue van as Damian. (8/14/18 Tr., p. 41, L. 24 – p. 44, L. 18.) Damian was able to provide a driver's

license, but did not provide registration or insurance. (Id.) Officer Tiner ran Damian's license plate and discovered that Damian's registration was expired. (Id.) Dispatch also informed Officer Tiner that Damian had a warrant for his arrest. (Id.) When dispatch confirmed the warrant Officer Tiner arrested Damian. (Id.) Officer Tiner searched Damian and found a sunglass case in his coat pocket that contained methamphetamine. (Id.)

The state charged Damian with possession of a controlled substance, methamphetamine, and possession of drug paraphernalia with the intent to use. (R., pp. 24-25.) Damian filed a motion to suppress and argued that the traffic stop was unlawful, claiming Officer Tiner did not have reasonable articulable suspicion that Damian committed a traffic offense. (R., pp. 39-46.) The state objected. (R., pp. 48-52.) The district court held a hearing on the motion to suppress. (R., pp. 65-66.)

Damian testified and claimed that he used his turn signal when he made the turn off of Cassia onto Orchard. (8/14/18 Tr., p. 16, L. 15 – p. 31, L. 2; Ex. A.) In support of his claim, Damian presented a video from his friend Vickie's home purporting to show his rear turn signal blinking as he turned on to Orchard. (See id.) Damian admitted he did not know if the date stamp on the video was accurate, and he admitted he told the officer he was at Tom's house, not Vickie's, that night. (8/14/18 Tr., p. 31, L. 11 – p. 32, L. 10.)

Officer Tiner testified that from his parked vantage point he had a clear line of sight of the front of the blue van and he could see the blue van turning off of Cassia onto Orchard without using a turn signal. (See 8/14/18 Tr., p. 57, L. 16 – p. 59, L. 14.)

Officer Tiner testified that he stopped Damian for three separate traffic violations. (8/14/18 Tr., p. 40, L. 12 – p. 41, L. 25.) He stopped Damian for failing to use a turn signal when he turned onto Orchard, for straddling the lane as he drove westbound on Franklin, and for not signaling for 100 feet when he merged into the outside lane as he drove on Franklin. (Id.)

The district court denied Damian’s motion to suppress. (R., pp. 71-77.) The district court considered the video exhibit and found that, “even taken for what they were presented to be (there was no witness to testify that the clock in the camera was correct so that the time-stamps were correct), the video clips do not show what Officer Tiner saw that night. They do not show whether the front turn signal of Mr. Damian’s van – the signal visible to Officer Tiner – was activated.” (R., p. 74.) The district court also found credible Officer Tiner’s testimony that Damian did not maintain his lane while driving on Orchard and Franklin. (Id.) The district court also determined that Damian violated Idaho Code § 49-808(2) by failing to signal for at least 100 feet before turning. (R., pp. 74-75.) The district court concluded that Officer Tiner had reasonable articulable suspicion that Damian committed three traffic violations, and thus the traffic stop was justified. (R., p. 75.)

Damian pled guilty to possession of a controlled substance, methamphetamine, and reserved the right to appeal the district court’s denial of his motion to suppress. (R., pp. 79-86; 10/10/18 Tr., p. 77, L. 22 – p. 80, L. 19.) The state dismissed the paraphernalia charge. (See id.) The district court entered judgment and sentenced Damian to three years with one year fixed. (R., pp. 89-96.) The district court suspended

the sentence and placed Damian on probation for three years. (Id.) Damian timely appealed. (R., pp. 99-102.)

ISSUE

Damian states the issue on appeal as:

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

(Appellant's brief, p. 6.)

The state rephrases the issue as:

Has Damian failed to show the district court erred when it denied his motion to suppress?

ARGUMENT

The District Court Did Not Err When It Found The Traffic Stop Was Justified Because Officer Tiner Had Reasonable Suspicion That Damian Committed Three Traffic Violations

A. Introduction

The district court found that Officer Tiner had reasonable suspicion that Damian committed three traffic violations and denied the motion to suppress. (R., pp. 71-76.) On appeal Damian is “[m]indful” of the relevant authorities and deference accorded to the district court’s factual findings, but argues the district court erred. (Appellant’s brief, pp. 7-9.) Damian has failed to show the district court erred.

B. Standard Of Review

The appellate court reviews the denial of a motion to suppress using a bifurcated standard. State v. Linze, 161 Idaho 605, 607, 389 P.3d 150, 152 (2016) (citing State v. Purdum, 147 Idaho 206, 207, 207 P.3d 182, 183 (2009)). The appellate court will accept the trial court’s findings of fact unless they are clearly erroneous. Id. (citing Purdum, 147 Idaho at 207, 207 P.3d at 183). However, the appellate court freely reviews the trial court’s application of constitutional principles in light of the facts found. Id. (citing Purdum, 147 Idaho at 207, 207 P.3d at 183).

The power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences at a suppression hearing is vested in the trial court. See State v. Valdez-Molina, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); State v. Schevers, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

C. The District Court Correctly Determined That Officer Tiner Possessed Reasonable Suspicion That Damian Committed Three Traffic Violations

“Traffic stops constitute seizures under the Fourth Amendment.” State v. Neal, 159 Idaho 439, 442, 362 P.3d 514, 517 (2015) (citing State v. Henage, 143 Idaho 655, 658, 152 P.3d 16, 19 (2007); Delaware v. Prouse, 440 U.S. 648, 653 (1979)). “Nevertheless, “[l]imited investigatory detentions are permissible when justified by an officer’s reasonable articulable suspicion that a person has committed, or is about to commit, a crime.” Id. (citing State v. Morgan, 154 Idaho 109, 112, 294 P.3d 1121, 1124 (2013)). “Thus there are two possible justifications for a traffic stop—the officer has reasonable suspicion that a driver has committed an offense, such as a traffic offense, or the officer has reasonable suspicion of other criminal activity, such as driving under the influence.” Id.

Here, the district court found that Officer Tiner had reasonable articulable suspicion that Damian committed three traffic violations and any one of the three violations would provide a basis for the traffic stop. (See R., p. 76.) “Mindful of the ... authorities on traffic violations and on appellate court deference to the district court’s findings of fact and credibility determinations regarding motions to suppress,” Damian nevertheless argues on appeal that “the stop of his van was unlawful.” Thus Mr. Damian submits there was no basis for the officer to have reasonable suspicion that he had committed a traffic offense.” (Appellant’s brief, p. 9 (internal citations omitted).) Damian has failed to show the district court erred.

Officer Tiner testified that he saw Damian’s blue van turn onto Orchard from Cassia without using a turn signal. (See 8/14/18 Tr., p. 38, L. 13 – p. 41, L. 25, p. 57, L.

16 – p. 59, L. 14.) Failing to use a turn signal when turning is a violation of Idaho traffic law. See I.C. § 49-808. Damian claimed that he did use his turn signal and provided a video from his friend Vickie’s house. (8/14/18 Tr., p. 16, L. 15 – p. 31, L. 2; Ex. A.) The district court found the video unpersuasive because there was no witness to testify as to the correctness of the time stamp and it was not clear that the video was what it was “presented to be.” (R., p. 74.) Further, even if the video was accurate, it did not show the front turn signal, which was the turn signal that Officer Tiner testified was not used. (Id.) The district court used its power to assess the credibility of witnesses, resolve factual conflicts and weigh evidence to determine that Officer Tiner had reasonable suspicion that Damian did not use his turn signal when he turned onto Orchard. (R., pp. 74-76.)

Second, Officer Tiner testified that Damian twice failed to maintain his lane as he drove on Orchard and Franklin. (8/14/18 Tr. 40, Ls. 3-23.) This is also a violation of Idaho traffic laws. See, e.g., I.C. §§ 49-637, -808. Damian claimed that he did not leave his lane. (R., p. 74.) The district court again resolved this factual issue and found that Damian failed to maintain his lane. (Id.)

Finally, Officer Tiner testified that Damian failed to signal for 100 feet before he changed lanes after he turned onto Franklin. (8/14/18 p. 40, L. 24 – p. 41, L. 25.) Damian argued that failing to signal for the required 100 feet was “normal driving behavior” and thus did not give rise to reasonable suspicion. (R., pp. 44-45 (citing State v. Emory, 119 Idaho 661, 809 P.2d 522 (Ct. App. 2016).) The district court distinguished Emory because it dealt with driving that did not violate an Idaho statute. (R., pp. 74-76.) In contrast, Damian’s driving violated Idaho Code § 49-808(2). (Id.) On appeal, Damian

does not present an argument that the district court erred when it distinguished Emory. Damian has failed to show the district court erred when it determined there were three traffic violations, any one of which gave rise to reasonable suspicion for the traffic stop.

CONCLUSION

The state respectfully requests this Court affirm the judgment of the district court.

DATED this 12th day of August, 2019.

/s/ Ted S. Tollefson
TED S. TOLLEFSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th 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:

BEN P. McGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

/s/ Ted S. Tollefson
TED S. TOLLEFSON
Deputy Attorney General

TST/dd