

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO, )  
 ) No. 46680-2019  
 Plaintiff-Respondent, )  
 ) Kootenai County Case No.  
 v. ) CR-2017-22041  
 )  
 DESIREE ELAINE KARST, )  
 )  
 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 LANSING L. HAYNES**  
District Judge  
\_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature Of The Case

Desiree Elaine Karst appeals from the judgment entered upon her conditional guilty pleas to possession of methamphetamine, marijuana, and drug paraphernalia. On appeal, Karst argues that the district court erred when it denied her motion to suppress.

### Statement Of The Facts And Course Of The Proceedings

In November 2017, Sgt. Jeremy Hyle of the Kootenai County Sheriff's Office effectuated a stop on a vehicle for careless driving and for crossing the center double yellow lane divider. (7/31/18 Tr., p.9, Ls.15-20; p.10, L.7 – p.17, L.3.<sup>1</sup>) Sgt. Hyle made contact with the two occupants of the vehicle. (7/31/18 Tr., p.20, Ls.1-6.) The driver was identified as Jeffery Guydos, and the passenger as Desiree Karst. (7/31/18 Tr., p.21, Ls.1-9.)

Sgt. Hyle observed that Karst was not wearing a seatbelt. (7/31/18 Tr., p.21, L.17 – p.22, L.1.) Guydos provided Sgt. Hyle a Florida driver's license, but did not provide insurance or registration information. (7/31/18 Tr., p.22, Ls.6-15.) Sgt. Hyle returned to his patrol vehicle to provide dispatch relevant information about Guydos and Karst. (7/31/18 Tr., p.23, L.18 – p.24, L.1.) However, on his way back to the patrol vehicle, Sgt. Hyle paused for approximately 20

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<sup>1</sup> The three transcripts in the appellate record are all contained in a single PDF document. Citations to transcript page numbers in this brief refer to the separate pagination of each transcript.

seconds to request, over his radio, that Deputy Rich Lyons respond to the location with his drug dog. (7/31/18 Tr., p.24, Ls.2-5; State's Exhibit 2, 18:22:30-18:22:50.<sup>2</sup>)

From his vehicle, Sgt. Hyle then confirmed Karst's identity and learned from dispatch and his patrol computer database that Guydos' driving privileges were suspended in Idaho but not in Florida. (7/31/18 Tr., p.25, L.8 – p.31, L.12.) Sgt. Hyle returned to Guydos' vehicle. (7/31/18 Tr., p.30, Ls.13-24.) At that time, Guydos produced an Idaho driver's license and confirmed that he did not have insurance on the vehicle. (7/31/18 Tr., p.31, L.14 – p.33, L.25.) Sgt. Hyle returned to his patrol vehicle to write citations and to further investigate Guydos' license suspension and lack of insurance. (7/31/18 Tr., p.34, L.2 – p.42, L.6; p.47, Ls.7-25.) During this time, Deputy Lyons informed Sgt. Hyle that the drug dog alerted on the vehicle. (7/31/18 Tr., p.49, Ls.4-17; p.129, L.19 – p.134, L.5; State's Exhibit 2, 18:44:12-18:44:21.) Sgt. Hyle issued Guydos a citation for driving on a suspended license and without insurance. (7/31/18 Tr., p.48, Ls.2-4; State's Exhibit 2, 18:44:48 – 18:45:32.)

Sgt. Hyle then made contact with Karst, and issued her a citation for not wearing a seatbelt. (7/31/18 Tr., p.49, L.4 – p.52, L.7; State's Exhibit 2, 18:46:19 - 18:48:52.) He then ordered Karst to hand over a small tin that he observed on her lap, and a bag that he saw sticking out of Karst's pocket. (7/31/18 Tr., p.54, L.20 – p.56, L.23.) Methamphetamine was recovered from the tin, and marijuana and drug paraphernalia were recovered from the bag. (7/31/18 Tr., p.56, L.17 – p.58,

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<sup>2</sup> Citations to time codes in Exhibit 2, Sgt. Hyle's body camera video, refer to the hour:minute:second reading displayed on the top of the screen when utilizing the WGPlayer program, and not to the running time of the video starting at 0:00. The state notes that this hour:minute:second reading is not displayed if the video is played with other media players.

L.1; R., p.31.) Sgt. Hyle and Deputy Lyons then searched the vehicle and recovered additional marijuana. (7/31/18 Tr., p.57, Ls.15-18; p.135, Ls.8-12; R., p.31.) In the jail booking process following her arrest, Karst was found to have marijuana and a marijuana pipe concealed in her possession. (R., p.21.) The state charged Karst with introduction of contraband into a correctional facility, and possession of methamphetamine, marijuana, and drug paraphernalia. (R., pp.13, 51-53.)

Karst moved to suppress all of the evidence recovered by officers in the course of the traffic stop. (R., pp.59-72.) Karst asserted that Sgt. Hyle: (1) lacked reasonable suspicion for the traffic stop;<sup>3</sup> (2) unlawfully extended the traffic stop by requesting the drug dog, and by intentionally delaying the stop in order to give the dog time to sniff the vehicle; and (3) unlawfully ordered Karst to remove the bag containing the marijuana pipe from her pocket. (R., pp.64-72.) The state filed a Memorandum in Opposition in which it contested each of these grounds for suppression. (R., pp.77-103.)

After a hearing (7/31/18 Tr.), the district court granted Karst's motion to suppress in part, and denied it in part (R., pp.145-152). The court concluded that Sgt. Hyle did not intentionally delay the traffic stop or otherwise "drag his feet" in sorting through the complicated circumstances surrounding Guydos' license and insurance status.<sup>4</sup> (R., pp.148-149.) The court also concluded

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<sup>3</sup> Karst later conceded, during the hearing on the motion to suppress, that Sgt. Hyle had reasonable suspicion to stop the vehicle. (7/31/18 Tr., p.146, Ls.20-23.)

<sup>4</sup> The district court did not specifically address whether Sgt. Hyle's 20-second pause in the traffic stop investigation to request that the drug dog be dispatched to the scene constituted an unlawful extension of the stop. (See R., pp.147-151.) However, as discussed below, both the state and

that the automobile exception to the warrant requirement did not authorize Sgt. Hyle to order Karst to give him the bag from her pocket containing the marijuana pipe, and that the pipe must be suppressed.<sup>5</sup> (R., pp.150-151.)

Karst entered conditional guilty pleas to possession of methamphetamine, marijuana, and drug paraphernalia, and the state agreed to dismiss the charge for introducing contraband into a correctional facility.<sup>6</sup> (R., pp.156, 164-168; 8/23/19 Tr., p.2, L.1 – p.24, L.24; 9/10/19 Tr., p.4, L.11 – p.12, L.4.) With the conditional pleas, Karst preserved her right to appeal the district court’s partial denial of her motion to suppress. (R., p.156.) After the court entered the judgments (R., pp.176-181), Karst filed a timely notice of appeal (R., pp.185-189).

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Karst argued this issue in the pre-hearing briefing and at the hearing itself. (R., pp.65-67, 92-93; 7/31/18 Tr., p.159, L.21 – p.162, L.7; p.168, L.6 – p.171, L.8.)

<sup>5</sup> The state does not challenge this conclusion on appeal.

<sup>6</sup> The court initially declined to accept Karst’s guilty plea for possession of marijuana (8/23/19 Tr., p.24, L.12 – p.25, L.5), but then did so at a subsequent hearing (9/10/19 Tr., p.4, L.11 – p.12, L.4). The state did not object to the court’s description of the latter plea as still being conditional. (See 9/10/19 Tr., p.11, L.24 – p.12, L.11.)

ISSUE

Karst states the issue on appeal as:

Did the district court err by denying Ms. Karst's motion to suppress evidence obtained from an unlawfully prolonged traffic stop?

(Appellant's brief, p. 5.)

The state rephrases the issue as:

Has Karst failed to show the district court erred when it denied her motion to suppress?



## ARGUMENT

### The District Court Did Not Err When It Denied Karst's Motion To Suppress

#### A. Introduction

Karst contends that Sgt. Hyle's request that Deputy Lyons respond to the scene with his drug dog constituted an abandonment of the original purpose of the traffic stop and thus impermissibly extended the duration of the stop. (Appellant's brief, pp.6-10.) However, a review of the record and applicable law reveals that Sgt. Hyle's approximately 20-second pause to make the request did not unlawfully extend the stop because it did not constitute an abandonment of Sgt. Hyle's investigation into the vehicle driver's suspended license and lack of insurance, and of Karst's failure to wear a seatbelt. Therefore, Karst has failed to demonstrate that the district court erred in denying her motion to suppress.

#### 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).

C. The District Court Correctly Concluded That Sgt. Hyle Did Not Impermissibly Prolong The Traffic Stop

Pursuant to the Fourth Amendment of the United States Constitution “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Const. amend. IV. A police officer may detain a person for the purpose of investigating possible criminal behavior “if there is an articulable suspicion that the person has committed or is about to commit a crime.” State v. Wright, 134 Idaho 73, 76, 996 P.2d 292, 295 (2000) (quoting State v. Rawlings, 121 Idaho 930, 932, 829 P.2d 520, 522 (1992)). Such a detention “is permissible if it is based upon specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity.” State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003) (citing Terry v. Ohio, 392 U.S. 1, 21 (1968); United States v. Cortez, 449 U.S. 411, 417 (1981)).

“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).” Sheldon, 139 Idaho at 983, 88 P.3d at 1223. “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).

In Rodriguez v. United States, 575 U.S. \_\_\_, 135 S. Ct. 1609, 1612-1613 (2015), an officer issued a driver a written warning for an infraction after pulling him over. When the driver refused to grant the officer permission to walk his drug dog around the vehicle, the officer detained him,

retrieved his drug dog, ran the dog around the vehicle, and then recovered contraband from the vehicle after the drug dog alerted. Id. at 1613. Seven or eight minutes elapsed from the time the officer issued the written warning until the drug dog alerted. Id.

The United States Supreme Court held that the officer's extension of the traffic stop in order to conduct a drug dog sniff violated the Fourth Amendment prohibition against unreasonable seizures, and that the officer's authority for seizing the driver ended when the tasks tied to the traffic infraction investigation were, or reasonably should have been, completed. Id. at 1614-1617. The Court reasoned that a dog sniff does not fall into the "ordinary inquiries" that are permissible in the course of a traffic stop, rejected federal appellate court precedent that a brief departure from the purpose of the stop to conduct a suspicionless drug investigation could constitute a permissible *de minimis* intrusion into an individual's Fourth Amendment rights, and rejected the government's argument that an officer who completes all traffic-related tasks expeditiously earns extra time to pursue an unrelated criminal investigation. Id. at 1614-1616.

The Idaho Supreme Court analyzed and applied Rodriguez in Linze, 161 Idaho 605, 389 P.3d 150. In that case, in the course of conducting warrant checks during a traffic stop, the officer paused to request that a drug dog unit respond to the scene. Linze, 161 Idaho at 606, 389 P.3d at 151. The officer then continued the warrant check and citation-writing process, but paused again after the drug dog and handler arrived at the scene. Id. at 606-607, 389 P.3d at 151-152. The officer served as backup during the dog sniff of the exterior of the vehicle and did not engage in activities related to the mission of the traffic stop during this time. Id. at 607, 389 P.3d at 152. The dog alerted and contraband was recovered from the vehicle in the resulting search. Id.

The Idaho Supreme Court held that the officer unlawfully extended the seizure. Id. at 608-609, 389 P.3d at 153-154. The Court concluded that the officer abandoned the original purpose of the traffic stop; and in so doing, essentially initiated a new seizure. Id. at 609, 389 P.3d at 154. Because such a new seizure is unreasonable when unsupported by reasonable suspicion, and such suspicion was lacking in that instance, the officer violated the driver's Fourth Amendment rights "by delaying the traffic stop for two and a half minutes while performing a back-up function for a drug dog sweep." Id. The Court did not expressly address whether the officer's brief call and request for the drug dog violated the Fourth Amendment. See id. at 607-609, 389 P.3d at 152-154.

On appeal in this case, Karst does not challenge the district court's conclusions regarding the overall length of the traffic stop. (See Appellant's brief pp.6-10.) Instead, relying on Rodriguez and Linze, Karst contends that Sgt. Hyle's approximately 20-second pause in his traffic stop investigation to request that a drug dog be deployed to the scene constituted an abandonment of the original purpose justifying the detention and thus unlawfully extended that detention. (Id.)

Recently, in State v. Still, \_\_\_ P.3d \_\_\_, 2019 WL 4050018 (Idaho Ct. App. 2019) (not yet final), a case with facts similar to the present case, the Idaho Court of Appeals rejected an argument similar to that made by Karst. In Still, in the course of a traffic stop, the officer paused twice to request, over his radio, that a drug dog be deployed to the scene. Still at \*1. The second call took approximately 10 seconds and occurred while nothing related to the mission of the traffic stop was occurring. Still at \*1-2. The drug dog arrived and alerted on the vehicle while the officer was completing a citation and written warning. Still at \*1. A subsequent search of the vehicle revealed contraband. Id. On appeal, Still, relying on Rodriguez and Linze, argued that the second radio

call to request a drug dog constituted an abandonment of the purpose of the seizure because it was unrelated to the stop's purpose, and thus resulted in an unreasonable seizure under the Fourth Amendment. Id. at \*3.

The Court of Appeals rejected Still's argument and distinguished the case from Rodriguez and Linze. Id. at \*3-5. After acknowledging the holdings of those two cases, the Court of Appeals concluded that "a radio call to inquire if a drug dog is available does not constitute a Rodriguez abandonment." Id. at \*5. The Court reasoned:

Officer Clark did not abandon the purpose of the traffic stop to engage in a separate criminal investigation. Unlike Officer Clark's radio call, abandonment occurred in *Rodriguez* and *Linze* when officers converted the traffic stops into drug investigations by engaging in drug-dog sniffs unsupported by reasonable suspicion. Unlike the defendants in *Rodriguez* and *Linze* who challenged the officers' conduct in relation to the drug-dog sniff, Still challenges the radio call to the drug-dog officer. However, *Rodriguez* does not prohibit all conduct that in any way slows the officer from completing the stop as fast as humanly possible. It prohibits abandoning the stop to investigate other crimes. The *Rodriguez* Court took issue with the investigation (i.e. the drug-dog sniff) itself. *See Rodriguez*, — U.S. —, 135 S. Ct. 1609. Here, Officer Clark was not conducting a drug-dog sniff, taking safety measures aimed at conducting a drug-dog sniff, or engaging in any other alternate investigation. At most, a radio call to inquire if a drug-dog unit is available is a precursor to an alternate investigation. Although the call may (or may not) result in an alternate investigation which may or may not pass constitutional muster, the call itself does not amount to a Fourth Amendment violation.

We cannot conclude that any pause during a traffic stop requires a conclusion under *Rodriguez* and *Linze* that the officers abandoned the purpose of the traffic stop. In fact, such a conclusion is inimical to the Fourth Amendment's reasonableness requirement and is contrary to United States Supreme Court precedent. Our conclusion, that no Fourth Amendment violation occurred, comports with *Rodriguez*, *Linze*, and this Court's previous precedent, and gives meaning to the Fourth Amendment's reasonableness requirement.

Id. (footnotes omitted).

The present case is analogous to Still, and distinguishable from Rodriguez and Linze for all of the same reasons as set forth in Still. Sgt. Hyle, like the officer in Still, and unlike the officers in Rodriguez and Linze, did not actually participate in the drug dog sniff of the vehicle. Sgt. Hyle therefore did not abandon the purpose of the traffic stop – and of the permissible investigations into Guydos’ license and insurance status – to engage in a separate criminal investigation. As in Still, Sgt. Hyle’s radio call to inquire if a drug dog unit was available was, at most, a *precursor* to an alternative investigation – not an investigation in itself. By the time the drug dog alerted, Sgt. Hyle was still in the process of investigating the offenses against Guydos and Karst. Sgt. Hyle never abandoned the purposes and mission of the traffic stop, and therefore did not unlawfully extend the stop.

Despite not having the benefit of Still,<sup>7</sup> the state argued consistently with the subsequent holding of that case to the district court. In its brief in opposition to the motion to suppress, the state noted, in the context of arguing that Sgt. Hyle never abandoned the purpose of the stop, that: (1) the officer in Rodriguez unlawfully extended the traffic stop by effectuating the drug dog deployment himself after the purpose of the traffic stop had been fulfilled; and (2) the officer in Linze unlawfully extended the traffic stop by serving as backup for another officer who deployed a drug dog. (R., pp.90-93.)

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<sup>7</sup> Karst, likewise, did not have the benefit of Still at the time she filed her Appellant’s brief.

The district court correctly concluded that Sgt. Hyle did not unlawfully extend the duration of the traffic stop. Karst has therefore failed to demonstrate that the district court erred in denying her motion to suppress.

CONCLUSION

The state respectfully requests this Court affirm Karst's judgment of conviction and the district court's order denying Karst's motion to suppress.

DATED this 19th day of September, 2019.

/s/ Mark W. Olson  
MARK W. OLSON  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of September, 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/ Mark W. Olson  
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Deputy Attorney General

MWO/dd