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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46702-2019
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY
)	NO. CR-2017-17638
v.)	
)	
KYLE JOSEPH EVENSON,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

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 RICH CHRISTENSEN
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

Klye Joseph Evenson appeals the district court's order denying his motion to suppress the evidence of his intoxication including the results of the blood alcohol content (BAC) test administered by the police. Mr. Evenson was arrested for DUI and at the scene he submitted to breath tests, the results of which showed an excessive BAC. He questioned the accuracy of the results and requested additional BAC testing, multiple times. Because he requested additional testing, he had the right, as a matter of constitutional due process, to make a phone call; the State's denial of that right required suppression of the State's evidence, pursuant to *State v. Carr*, 128 Idaho 181, 184 (Ct. App. 1995).

After submitting to the officer's BAC test, Mr. Evenson wanted to make a call to his grandmother, Margret Evenson. However, he was denied his request to use his own cell phone to make the call and he was instructed to make any call he wanted from the "unique" pre-booking phones at the Kootenai County Jail. Using the designated jail phone, Mr. Evenson attempted to call Margret Evenson; however, he was prevented from making that call due to a dysfunctionality with the phone. Although the phone was supposed to permit Mr. Evenson to make a free 60-second call, and although the call was to a local number, Telmate – the jail's phone system vendor – had previously stored Margret Evenson's phone number and credit card information and consequently defaulted to processing the call as a collect call using her potentially years-old credit card information. Even though Margret Evenson answered the phone and indicated she would accept the call and charges when prompted by the Telmate Automated Operator, the Telmate Automated Operator disconnected the calls because of the credit card information stored by the Telmate system. The Kootenai County Jail was aware of the defect in

phone system it was using but did not correct the problem or otherwise allow DUI arrestees any other telephone option.

Mr. Evenson asserts on appeal, as he did below, that the State failed in its duty to permit him to make his requested phone call, in violation of his due process right to obtain potentially exculpatory evidence. The district court's contrary conclusion was erroneous, and its order denying suppression should be reversed.

Statement of the Facts and Course of Proceedings

The following facts¹ were established in connection with the suppression motion. On September 17, 2017, at approximately 11:30 p.m., Mr. Evenson was stopped and arrested for driving under the influence (DUI). (R., p.132). At the arrest scene, Post Falls Police Officer Daniel Sanicola advised Mr. Evenson of his right to arrange for independent BAC testing, and Mr. Evenson then submitted to a BAC test by providing two breath samples. (R., pp.127-28.) The results of that testing showed a BAC of .166 and .163. (R., p.128.) Mr. Evenson questioned the test results and insisted his BAC was not that high; at the scene and while in transit to the jail, he made repeated requests for additional BAC testing. (R., pp.128; (See Ex.1-A 36:06, 36:22, 36:53, 46:30; Ex.1-B, 22:55.) In response to these requests, Officer Sanicola told Mr. Evenson, "you can do it at your own choosing at your own expense, but not through us." (Ex.1A, 36:05.)

¹ At the insistence of the district court, the parties submitted a written stipulation setting forth some, but not all, of the facts relevant to the motion to suppress. (See 6/13/18 Tr., p.12, Ls.4-6; R., p.127.) The parties expressly agreed that the exhibits and testimony presented at the June 13, 2018 suppression hearing is relevant and applicable. (R., p.127.) This evidence consists of the following: Defendant's Exhibits A-1 and A-2, documenting four (4) calls made from the jail's phone to Margret Evenson's number, which is contained within the file designated as "Confidential Exhibits"; the audio recordings of these calls, designated as "Defendant's Exhibit B"; Officer Sanicola's bodycam video, designated as "State's Exhibit 1a, 1b"; and the testimony of Kootenai County Jail's administrative sergeant, Rick Hinchee. (Tr., p.16, Ls. 3 – p.45, L.4).

Mr. Evenson also asked if he could use his cell phone, and Officer Sanicola replied, “they have phones at the jail you can use.” (Ex.1-A, 36:22.)

Mr. Evenson was transported to the Kootenai County Public Safety Building (“the Jail”) and held without bond until arraignment because his DUI was charged as a felony. (R., p.128.). Shortly after arriving at the jail, Officer Sanicola brought Mr. Evenson to the jail’s two “unique” phones designated for arrestees awaiting booking. (R., p.128.) Mr. Evenson was told he could use these two phones to call anyone he wanted to call. (R., p.128.) Mr. Evenson said he wanted to call Margret Evenson, his grandmother, and using the designated phone, he attempted to call her number four times. (R., p.137; Defendant’s Exhibits A-2, B.) Mrs. Evenson picked up the phone each time, and each time the Telmate Automated Operator announced the call was from an inmate at the Kootenai County Jail, and advised her that her credit card would be charged if she accepted the call, then it prompted her to accept or decline. (Defendant’s Exhibit B.)

Contrary to the district court’s factual finding (R., p.137), Mrs. Evenson *accepted* at least three of the calls and agreed to pay the charges (Defendant’s Exhibits A-2, B). However, the Telmate Automated Operator did not connect the call, stating that it did not recognize the security code on Margret Evenson’s credit card. (Defendant’s Exhibit B.) Each of the three accepted calls ended with the Telmate Automated Operator disconnecting Mr. Evenson, and then instructing Margret Evenson to call a 1-866 number for customer assistance. (Defendant’s Exhibit B.) As a result of this dysfunctionality, Mr. Evenson was not able to make a call to his grandmother, Margret Evenson, and he did not obtain additional BAC testing.

Mr. Evenson filed a motion to suppress the State’s BAC test results on the ground he was deprived of his due process right to gather exculpatory evidence by the denial of access to a

functional phone that would permit him to make his requested phone call. (R., pp.61, 81.) The district court denied the motion, stating:

Defendant's grandmother *failed to accept* Defendant's call [and] the factual record fails to show that law enforcement interfered with or affirmatively denied Defendant access to a telephone The record here shows that the Defendant was given *access to a telephone* but was unsuccessful in arranging independent BAC testing.

(R., p.137) (emphasis added).

The district court also indicated that it was "troubled by the jail's telephone procedures as provided by Telmate," and was critical of "[s]uch arbitrary decisions as to not allow a free call to a local number if that number had been called previously." (R., p.137.) The court took judicial notice of the decision in a similar, contemporaneous case, *State v. Smith*, Kootenai County Case No. CR-2016-18491, and "echoed the admonishment in [*Smith*] to urge the Kootenai County Sheriff's Department to make simple due process a higher priority at the jail." (R., p.138.)

Following the denial of his motion to suppress, Mr. Evenson entered a conditional *Alford*² plea to DUI, reserving his right to appeal the district court's decision. (R., p.146; 8/14/18 Tr., p.5, L.19 – p.6, L.7.) He was sentenced to six years, with three years fixed, and granted probation. (R. p.169.) Mr. Evenson filed a timely Notice of Appeal. (*See* Notice of Appeal, filed December 5, 2018.)

² *North Carolina v. Alford*, 400 U.S. 25 (1970).

ISSUE

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

ARGUMENT

The District Court Erred When It Denied Mr. Evenson's Motion To Suppress

A. Introduction

A DUI arrestee who requests an independent BAC test must, as a matter of due process, be permitted to make a phone call, and if the State denies or interferes with the arrestee's right to make such call, the State's evidence must be suppressed. *State v. Carr*, 128 Idaho 181, 184 (Ct. App. 1995). In this case, the State violated Mr. Evenson's Fourteenth Amendment due process rights by denying him access to a functional phone that would permit him to make his call to Margret Evenson. Contrary to the district court's factual findings, Margret Evenson *did accept* Mr. Evenson's calls and she agreed to accept the charges. However, due to the dysfunctionality of the phone the jail gave Mr. Evenson – a dysfunctionality known to the jail – the phone would connect the call. Contrary to the district court's legal conclusion, simply providing access to "a phone" did not satisfy the State's constitutional obligation, where the phone system was defective and thus failed to permit Mr. Evenson to make his requested phone call. Mr. Evenson was entitled to suppression of the State's evidence, and the district court's denial of his motion should be reversed.

B. Standard Of Review

On review of the trial court's denial of a motion to suppress, the appellate court defers to factual findings that are not clearly erroneous but freely examines whether statutory and constitutional requirements have been met in light of the facts as found. *See Carr*, 128 Idaho at 184.

C. The Deficient Telephone Provided To Mr. Evenson By The Kootenai County Jail Failed To Meet The Minimum Due Process Requirement That The State Permit Him To Make A Phone Call

Mr. Evenson's request for additional BAC testing triggered the State's obligation to permit him to make a phone call. However, the "Telmate" automated telephone system employed by the Kootenai County Jail prevented Mr. Evenson from making that call. The jail was aware that its phone system was defective but took no action to correct it. The failure by the State to provide Mr. Evenson with a functional telephone was a breach of the State's minimal duty, required by due process, to enable him to arrange for additional testing and to gather potentially exculpatory evidence. Suppression of the State's BAC test results and other evidence of intoxication was required pursuant to *Carr*, 128 Idaho at 184.

1. The State Was Obligated To Permit Mr. Evenson To Make A Phone Call

The Court of Appeals addressed the statutory provision relating to an individual's right to independent BAC testing in *State v. Madden*, 127 Idaho 894, 896 (Ct. App. 1995). In *Madden*, the Court held that, by refusing the arrestee access to a telephone for approximately two hours after her initial request for an independent test, and three and one-half hours after her arrest, the officers denied her a meaningful and timely opportunity to make her own arrangements for an additional test. *Id.* The Court held that, pursuant to I.C. § 18-8002(4)[f],³ the results of the State's BAC test was inadmissible. 127 Idaho at 896.

³ Idaho Code § 18-8002(4)(f) provides:

After submitting to evidentiary testing at the request of the peace officer, [the driver] may, when practicable, at his own expense, have additional tests made by a person of his own choosing. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission of results of evidentiary testing for alcohol concentration or for the presence of drugs or other intoxicating substances taken at the direction of the peace officer unless the additional test was denied by the peace officer.

Shortly after deciding *Madden*, the Court of Appeals held that as a matter of constitutional due process, a DUI arrestee who requests an additional BAC test must be permitted to make a phone call. *See Carr*, 128 Idaho at 184. In *Carr*, the arrestee, Carr, was transported to the Kootenai County Public Safety Building (jail) where she submitted to BAC testing and was advised of her right to obtain an independent test. *Id.* Ms. Carr did not specifically ask for independent testing, but she did ask to be allowed to make a phone call to her attorney. *Id.* The officer told Ms. Carr she could “make any phone calls as soon as the jail personnel were ready to let her make the phone calls.” *Id.* Ms. Carr was then placed in a holding cell but continued to make requests to make a call, or to have others make the call for her. *Id.* Ms. Carr was allowed to make a call five hours later. *Id.*

The Court of Appeals held that, by denying the arrestee’s request to make a telephone call, the State had denied her the means by which she could establish her defense, in violation of her right to under the Fourteenth Amendment to the United States Constitution. *Carr*, at 184. The Court found that the denial of her request to make a phone call prevented her from procuring evidence to challenge the result of the State’s BAC test, which was inconsistent with the “fundamental fairness” guaranteed by due process. *Id.* The Court explained:

[W]hen a person is arrested for DUI and given an evidentiary BAC test, that person must be allowed, at a minimum, to make a phone call upon request to do so. Such contact provides the means through which the arrestee is able to gather evidence tending to refute the State’s evidence of intoxication and thereby preserve the right to a fair opportunity to defend against the State’s accusations. For example, the person contacted by the arrestee could facilitate the administration of an independent BAC test, a right guaranteed by I.C. § 18-8002(4)(d).

...

In addition ... the person contacted by the arrestee could arrange for a photograph to be taken to demonstrate that the arrestee’s eyes were not bloodshot but clear and white; prepare a tape recording to demonstrate that the arrestee had clear speech, videotape the arrestee to show that he or she has balance and is able to

walk in a straight line; perform a gaze nystagmus test to show smooth eye pursuit at all angles, or simply serve as a witness who observed the aforementioned characteristics of sobriety.

Carr, 128 Idaho at 184-85 (internal quotation marks and citations omitted). The Court concluded that, by denying Carr's request to make a phone call in a timely manner, "the State violated Carr's right to due process." *Id.* at 185. The Court held that suppression of the State's BAC test results⁴ was the appropriate remedy for the State's violation. *Id.*

In *State v. Hedges*, the Court of Appeals repeated that, "in the context of a DUI arrest, due process requires that police give a person accused of DUI a reasonable opportunity to procure a timely BAC sample through the accused's own efforts and expense." 143 Idaho 884, 888 (Ct. App. 2007); accord *State v. Jacobson*, 150 Idaho 131, 135 (Ct. App. 2010). The Court has also explained that,

Idaho courts recognize that there is an inherent exigency in DUI cases due to the destruction of evidence through the metabolism of alcohol in the blood. Because of this exigency, the only opportunity to obtain a meaningful, independent BAC test is within a reasonable time following arrest and administration of the state's evidentiary BAC test. *This means that, after administration of the evidentiary BAC test, a defendant cannot be denied access to a telephone upon request to arrange for an independent test.*

Hedges, 143 Idaho at 888. (Emphasis added.) See also *State v. Green*, 149 Idaho 706 (Ct. App. 2010), (recognizing an arrestee's due process right to take steps to preserve evidence after his submission to the State's BAC test), (*State v. Jacobsen*, 150 Idaho 131, 137 (Ct. App. 2010)

⁴ *Carr* was a State's appeal, and the district court had ordered suppression of the BAC evidence, only. 128 Idaho 181. However, it does not appear there was a cross-appeal by the defendant to challenge the district court's failure to suppress the State's other evidence of his intoxication, so that question was not before the Court. Thus, the remedy in *Carr* – requiring suppression of the State's BAC test results – should not be read to limit the scope of the remedy in this case, where Mr. Evenson's motion sought suppression of all evidence of his intoxication (*See R.*, p.188.) *Carr*, 128 Idaho at 181 (Lansing, J. specially concurring)("[T]he rationale for suppression of the BAC test is equally applicable to other evidence of [defendant] Carr's intoxication that the State might present through testimony of the arresting officer and others regarding their observation of Carr's appearance and behavior.")

(“We recognize that arbitrary or unreasonable conduct by jail staff could result in the denial of an arrestee’s access to the necessary means of securing exculpatory evidence and thereby violate due process.”).

Relatedly, and although not dealing with the State’s denial of an arrestee’s right to alternative BAC testing, the Idaho Supreme Court recently explained that, while the DUI statute lets the State demonstrate a per se violation by a BAC test result, “[t]he test result, however, does not ... mandate an unassailable conclusion not open to defense.” *State v. Austin*, 163 Idaho 378, 381 (2018). The Court also observed that proof of a driver’s actual BAC is be admissible to defend against the State’s allegation of a per se violation. *Id.*

In the present case, Mr. Evenson submitted to the officer’s BAC testing after being informed of his right to obtain an additional test. His requests for an additional BAC test triggered the State’s duty to allow him to make his phone call. As discussed below, the State failed in that duty because the telephone it provided was dysfunctional in a way that prevented Mr. Evenson from making his phone call. Otherwise stated, requiring Mr. Evenson to make his requested call using the jail’s “unique” phones denied or materially interfered with Mr. Evenson’s constitutional right to make his call.

2. The Officer Denied Mr. Evenson’s Request To Use His Cell Phone And The Jail Provided Only A Dysfunctional Telephone, Preventing Mr. Evenson From Making His Requested Call

Mr. Evenson had made repeated requests for additional BAC testing. (R., p.128.) Officer Sanicola denied Mr. Evenson’s initial request to use his own cell phone, and told Mr. Evenson “they have phones at the jail you can use.” (Ex.1-A, 36:22.) Then, at the jail, Officer Sanicola brought him to the two “pre-booking” phones designated by the jail for new arrestees waiting to be booked, and he told Mr. Evenson he could use those phones to call

anyone he wanted. (R., p.128.) However, the functionality of those phones prevented Mr. Evenson from calling his grandmother, Margret Evenson, who was the person Mr. Evenson wanted to call.

As explained by the jail's administrative officer, Sergeant Hinchee, the two pre-booking phones worked differently from phones the jail provided its inmates. As described by Sergeant Hinchee, after an inmate is booked, he is provided a PIN that allows him to make outside calls using the Jail's *other* phones. (Tr., p.20, Ls.3-8.)⁵ The two pre-booking phones, however, were "unique." (Tr., p.19, Ls.15-19.) The two pre-booking phones did not use PINs. (Tr., p.20, Ls.8-9.) Those phones allowed a free one-minute call "to certain numbers," but otherwise made "collect" calls. (Tr., p.20, Ls.8-9.) Generally, a collect call to a landline number would require the person receiving the call to enter credit card information; a collect call to a cell phone number required pre-payment to the carrier for minutes. (Tr., p.20, L.20 – p.21, L.3.)

However, a call made to any number that had previously been "stored" in the Telmate system, regardless how long ago it had been stored,⁶ was automatically processed as a collect call, with the credit card associated with the number – which Telmate also stored – as the credit card to be charged for the call. (Tr., p.21, Ls.5-20.) However, a call to a stored phone number would *not* be connected *unless* the (1) recipient entered the credit card's three-digit security code *and* (2) the Telmate automated system "recognized" the number that the recipient entered, meaning that it matched the information on file with Telmate. (*See* Tr., p.21, Ls.1-18, p.32, Ls.4-7; Defendant's Exhibit B.) Thus, even if the recipient of a call to a stored phone number agreed

⁵ Except as otherwise indicated, "Tr." refers to the transcript of the July 13, 2018 suppression hearing.

⁶ Telmate continuously stores all numbers and the associated credit card information unless and until the number's owner contacts a Telmate customer service representative to have the information removed. (R., p.12; Tr., p.21, Ls.12-18.)

to “accept” the call and the charges, the Telmate system would not allow the call if the recipient did not enter a credit card security code that the automated operator “recognized.” (See Defendant’s Exhibit B.) This means that the call’s recipient must not only have access to credit card that was stored by Telmate, but that the card display the *same* information that had been stored by Telmate, potentially years earlier. (Tr., p.32, Ls.4-10.)

In this case, the parties agreed, and the district court found, that Mr. Evenson was required to use the pre-booking phones, that the telephone system did not permit him to make a free call, and that the call he attempted to make was to a number that had been stored, along with credit card information, at some unknown previous time by Telmate, perhaps years earlier. (R., pp.129, 133.)

Even as a collect call, the jail’s phone system failed to allow Mr. Evenson’s call to go through, disconnecting Mr. Evenson and directing Margret Evenson to call a 1-866 number for customer service. The audio recordings of those failed attempts are reflected as follows:⁷

1st Call

AUTOMATED
OPERATOR:

This is a Telmate automated operator with a call from an inmate at Kootenai County Jail.

This call is subject to recording and monitoring. If you accept this call, your credit card ending in 7332 will be charged.

Press “1” to accept this call. To deny this call, press “2.”
Press “4” for charges related to this call.

Please enter the three or four digit security code that is printed on the back of the card, followed by the pound (#) sign.

⁷ Undersigned appellate counsel has attempted to accurately transcribe the contents of the recording, recognizing the exhibit is the official court record.

Sorry. I didn't recognize that security code.

Sorry. I didn't recognize that security code.

Please enter the three or four digit security code that is printed on the back of the card, followed by the pound (#) sign.

Sorry. I didn't recognize that security code.

We are unable to complete the transaction. Please call customer service at 866-516-0115.

Sorry. The caller was disconnected. No minutes will be deducted or charged.

< end >

2nd Call

AUTOMATED
OPERATOR:

This is a Telmate automated operator with a call from an inmate at Kootenai County Jail. This call is subject to recording and monitoring.

If you accept this call, your credit card ending in 7332 will be charged.

Press "1" to accept this call. To deny this call, press "2."
Press "4" for charges related to this call.

Please enter the three or four digit security code that is printed on the back of the card, followed by the pound (#) sign.

You entered 515. If this is correct, press "1." Otherwise, press "2."

We are unable to complete this transaction.

Please call customer service at 866-516-0115.

Sorry. The caller was disconnected. No minutes will be deducted or charged.

No minutes will be deducted or charged.

< end >

3rd Call

AUTOMATED
OPERATOR:

This is a Telmate automated operator with a call from an inmate at Kootenai County Jail. This call is subject to recording and monitoring.

If you accept this call, your credit card ending in 7332 will be charged.

Press "1" to accept this call. To deny this call, press "2"
Press "4" for charges related to this call.

< end >

4th Call

AUTOMATED
OPERATOR:

This is a Telmate automated operator with a call from - an inmate at Kootenai County Jail. This call is subject to recording and monitoring. If you accept this call, your credit card ending in 7332 will be charged.

Press "1" to accept the call. To deny this call, press "2."
Press "4" for charges related to this call.

[pause]

CALLER/
DEFENDANT:

[Sigh]

AUTOMATED
OPERATOR:

Press "1" to accept the call. To deny this call, press "2."
Press "4" for charges related to this call.

Please enter the three or four digit security code that is printed on the back of the card, followed by the pound (#) sign.

[Pause]

MRS. EVENSON: Hey, [inaudible] I have credit on this card.

AUTOMATED
OPERATOR:

Sorry. I didn't recognize that security code. Please enter the three or four digit security code that is printed on the back of the card, followed by the pound (#) sign.

MRS. EVENSON: I have credit on this card.

AUTOMATED
OPERATOR:

Sorry. I didn't recognize that security code. Please enter the three or four digit security code that is printed on the back of the card, followed by the pound (#) sign.

Sorry. I didn't recognize that security code.

We are unable to complete this transaction. Please call customer service at 866-516-0115.

Sorry. The caller was disconnected.
No minutes will be deducted or charged.

< end >

(Defendant's Exhibit B.)

As demonstrated by the foregoing, the phone provided by the Kootenai County jail did not allow Mr. Evenson to make his call. Mr. Evenson made multiple attempts to call his grandmother, Margret Evenson, and she was available and willing to take his calls. She answered the phone, and she agreed to accept the charges, and even entered her card's three-digit security code when prompted. (Defendant's Exhibit B.) However, because the Telmate Automated Operator did not "recognize" the number, the Telmate system would not permit the call.

The limited functionality of the jail's "unique" pre-booking phones prevented Mr. Evenson from making the call he had requested. Contrary to the district court's conclusion, the State did not comply with Mr. Evenson due process rights by simply "giving access to a phone" that lacked the functionality necessary to permit him to make his call. As noted above,

Mr. Evenson was denied his request to make a call using his own cell phone and was required by the officer to use the phones provided at the jail. The jail did not allow him access to the normal inmate phones which allowed outgoing calls using a PIN, but instead allowed him access only to the jail's unique pre-booking phones, which were defective. By providing a dysfunctional phone, the jail denied and materially interfered with Mr. Evenson's ability to make his phone call, and thereby deprived him of his "right to a fair opportunity to defend against State's accusations," in violation of his right to due process. *See Carr*, 121 Idaho at 185.

3. The Failure To Provide Mr. Evenson With A Functional Telephone Requires Suppression Of The State's BAC Evidence

Because Mr. Evenson had requested additional BAC testing, the State was obligated to permit him to make a call and to provide him access to a *functional* telephone for that purpose. By failing to provide a functional phone, the Jail effectively denied Mr. Evenson the ability to gather exculpatory evidence, in violation of his right to due process. In *State v. Carr*, the Court of Appeals held that, where the State violates a DUI arrestee's due process right by denying him access to a phone, suppression of the State's BAC test results is the appropriate remedy. 121 Idaho at 185. As in *Carr*, the appropriate remedy for the State's violation here is suppression of all evidence of Mr. Evenson's intoxication, including the State's BAC test results. *Carr*, 121 Idaho at 185.

The State's failure here is particularly troubling given that the Jail's sergeant-in-charge was well aware of the dysfunctionality of its pre-booking phones (Tr., p.17, L.3 – p.45, L.4), and that other DUI arrestees had been denied the ability to make calls as judicially noticed by the district court. (*See R.*, p.137.) It also should not be lost on this Court that decision in *Carr* centered on the prior practices of the Kootenai County Jail. *Id.*

Pursuant to the holding in *Carr*, Mr. Evenson was entitled to suppression of the State's BAC evidence. The district court's contrary conclusion was erroneous and should be reversed.

CONCLUSION

Mr. Evenson respectfully asks that this Court reverse the district court's order denying suppression, vacate his judgment of conviction for driving under the influence, and remand his case to the district court for further proceedings and to allow Mr. Evenson to withdraw his guilty plea.

DATED this 2nd day of July, 2019.

/s/ Kimberly A. Coster
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of July, 2019, I caused a true and correct copy of the foregoing APPELLANT'S 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

KAC/eas