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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO FOR KOOTENAI COUNTY

STATE OF IDAHO,
Plaintiff – Respondent,
vs.
JOSHUA PAUL KAGARICE,
Defendant - Appellant.

Docket No. 46758-2019
Kootenai County District Court
CR-2017-21189

APPELLANT’S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE STATE OF IDAHO
FOR KOOTENAI COUNTY

HONORABLE JOHN T. MITCHELL,
District Judge

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TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITY.....ii

STATEMENT OF THE CASE.....1

FACTS AND PROCEDURAL HISTORY.....1

STANDARD OF REVIEW.....8

DISCUSSION.....9

**1. JUDGE COMBO CORRECTLY RULED THAT CORPORAL KAGARICE HAD
LAWFUL AUTHORITY TO MAKE CONTACT WITH AND TO IDENTIFY
MADSEN FOR PURPOSES OF INVESTIGATING A POTENTIAL MISDEMEANOR
OFFENSE.....9**

**2. JUDGE COMBO CORRECTLY RULED AS A MATTER OF LAW THAT THE
OWNER OF A NUISANCE HAS THE OBLIGATION TO IDENTIFY HIMSELF OR
HERSELF UNDER HAUSER CITY ORDINANCE 3-1-1.....10**

**3. JUDGE COMBO CORRECTLY RULED THAT AS A MATTER OF LAW
CORPORAL KAGARICE HAD LAWFUL AUTHORITY TO ARREST MADSEN
FOR RESISTING AND OBSTRUCTING BY FAILING TO IDENTIFY HERSELF....13**

**4. JUDGE COMBO CORRECTLY RULED THAT DISMISSAL PURSUANT TO I.C.R.
48(A)(2) WAS THE ONLY APPROPRIATE SANCTION BECAUSE THE STATE’S
AFFIANT, KOOTENAI COUNTY SHERIFF’S OFFICE DETECTIVE DUNCAN,
HAD FAILED TO SET FORTH IN HIS AFFIDAVIT MATERIAL EXCULPATORY
EVIDENCE AND SUCH OMISSION WAS “MATERIAL, DELIBERATE, AND/OR
RECKLESS.”.....14**

CONCLUSION.....16

TABLE OF CASES AND AUTHORITY

Cases

<i>Brady v. Maryland</i> , 373 U.S. 83, 83 S. Ct. 1194 (1963)	14
<i>Paradis v. State</i> , 110 Idaho 534, 716 P.2d 1306 (1986)	14
<i>State v. Bilbao</i> , 130 Idaho 500, 943 P.2d 926 (1997)	9
<i>State v. Dixon</i> , 140 Idaho 301, 92 P.3d 551 (Ct.App. 2004)	8
<i>State v. George</i> , 127 Idaho 693, 905 P.2d 626 (1995) (citing <i>State v. Godwin</i> , 121 Idaho 517, 826 P.2d 478 (Ct. App.1991), aff'd, 121 Idaho 491, 826 P.2d 452 (1992))	13
<i>State v. Godwin</i> , 121 Idaho 491, 826 P.2d 452 (1992)	11
<i>State v. Hayes</i> , 108 Idaho 555, 700 P.2d 959 (Ct.App. 1985)	8
<i>State v. Hogan</i> , 132 Idaho 412, 973 P.2d 764 (1999)	6
<i>State v. Johnson</i> , 120 Idaho 408, 816 P.2d 364 (Ct.App. 1991)	14
<i>State v. Swartz</i> , 109 Idaho 1033, 712 P.2d 734 (Ct.App. 1985)	8
<i>State v. Swenson</i> , 119 Idaho 706, 809 P.2d 1185 (Ct.App. 1991)	8
<i>State v. Trusdall</i> , 155 Idaho 965, 318 P.3d 955 (Ct.App. 2014) (quoting <i>Bailey v. Bailey</i> , 153 Idaho 526, 529, 284 P.3d 970, 973 (2012))	8
<i>Stuart v. State</i> , 127 Idaho at 816, 907 P.2d 793 (1995)	14
<i>United States v. Bagley</i> , 473 U.S. 667, 105 S. Ct. 3375 (1985)	14, 15
<i>United States v. Santana</i> , 427 U.S. 38, 96 S.Ct. 2406 (1976) (citing <i>Katz v. United States</i> , 389 U.S. 347, 351, 88 S.Ct. 507, 511 (1967))	12

Rules/Statutes/Ordinances

<i>Hauser City Ordinance</i> § 3-1-1	7, 9, 10
<i>Hauser City Ordinance</i> § 3-1-2	9
<i>Hauser City Ordinance</i> § 3-1-3	9
<i>Hauser City Ordinance</i> § 3-1-7	9
<i>Idaho Code</i> § 18-703	5, 6, 7
<i>Idaho Code</i> § 18-705	5, 13
<i>Idaho Code</i> § 19-603	13
<i>Idaho Code</i> § 67-2901	9
<i>Idaho Criminal Rule</i> 12	6
<i>Idaho Criminal Rule</i> 48	passim

Transcripts/Affidavits

<i>Order Finding Probable Cause, CR-2017-9215</i>	5
<i>Order Finding Probable Cause, CR-2017-21189</i>	5
<i>Affidavit in Support of Probable Cause CR-2017-21189</i>	5, 7
<i>Transcript of Decision</i>	passim

STATEMENT OF THE CASE

The Defendant/Appellant, by and through his attorney of record, Joseph R. Sullivan, of Sullivan Law Office, PLLC, appeals the Memorandum Decision And Order On Appeal From Magistrate Division, entered and filed on January 2, 2019, whereby the district court reversed the Honorable James Combo's Order to Dismiss, entered and filed on May 21, 2018. Appellant avers that the district court erred as a matter of law by reversing Judge Combo's Order to Dismiss because Judge Combo correctly identified that dismissal pursuant to I.C.R. 48(b) was a matter of the court's discretion and the court identified substantial competent evidence on the record supporting the decision to dismiss.

I. FACTS AND PROCEDURAL HISTORY

On June 1, 2017, Corporal Kagarice, who is POST certified Firearms and Krav Maga (self-defense and arrest techniques) instructor and sworn Trooper with the Idaho State Police, was on-duty, in full Class A uniform and driving a marked Idaho State Police patrol vehicle. At approximately 0329 hours, he was made aware of a car alarm in the area of Spuler Road in the City of Hauser, Idaho, which had been going off for approximately ten (10) minutes. He responded and arrived at the scene at approximately 0354 hours. When he arrived at 18138 W. Spuler Road he found a beige Subaru Legacy, Idaho [REDACTED], in the driveway with what sounded to be a car alarm going off. At the time of this observation, Corporal Kagarice believed there was a County Ordinance prohibiting nuisances after 10:00 PM and had actual knowledge of the Hauser City Ordinance, prohibiting nuisances generally. Corporal Kagarice recalled a male individual with officer safety alerts associated with the residence from approximately a year earlier but was unaware of who currently lived at that address.

As Corporal Kagarice approached the residence, he was confronted by an aggressive dog that ran toward him and began circling him. He observed the dog's body was lowered, the hackles or hair on the back of the body was bristled, and the dog's ears were back. The dog's bark was loud and, based on his Canine Encounter's with Law Enforcement Training, Corporal Kagarice recognized these signs to be indicators of territorial aggression.

As the dog neared Corporal Kagarice, he deployed his department issued pepper spray to deter the dog's aggression. As Corporal Kagarice deployed the pepper spray, the dog moved and Corporal Kagarice was unable to tell if the pepper spray connected with the intended target; the dog's face. As Corporal Kagarice neared the porch of the residence, he noticed the dog at a small dog door next to the main door still displaying the same aggressive body language. Corporal Kagarice deployed his pepper spray again and the dog retreated inside the residence.

While standing at the door, Corporal Kagarice loudly announced "State Police come to the door!" multiple times and searched the exterior and windows using his department issued flashlight. While Corporal Kagarice was announcing his presence, he noticed surveillance cameras mounted under the awnings of the roof looking down at the entrances to the residence. He also noticed what appeared to be music playing from possibly a lower level of the residence. After making multiple attempts to contact someone inside the residence for approximately four minutes, Corporal Kagarice determined no one was going to come out and talk with him about the car alarm.

While Corporal Kagarice was still on scene, the vehicle's battery appeared to be draining down as the noise lessened, sputtered, and then stopped all together. Corporal Kagarice informed ISP dispatch he was unable to locate a person responsible for the disturbance and left

the residence. Because Corporal Kagarice deployed his pepper spray, Idaho State Police policy required him to report his use of force.

On June 1, 2017, at approximately 1717 hours, Corporal Kagarice returned to the residence at 18138 W. Spuler Road to follow up on the nuisance from earlier that morning. He approached the residence and contacted a female who answered the door. Corporal Kagarice told the female that he responded to the residence earlier in the morning and asked her if she was aware her car alarm had been going off. The female said someone had been working on the car's electrical system and that it had an alarm in it.

Corporal Kagarice told the female he would need to identify her for his report and she just told him her name was "Courtney." Corporal Kagarice told Courtney he was investigating a misdemeanor offense and she was required to identify herself. The female, who Corporal Kagarice later identified as Courtney R. Madsen, became verbally aggressive and refused to identify herself.

Madsen told Corporal Kagarice that she knew he "maced" her dog because of the surveillance system. When Corporal Kagarice asked Madsen why she didn't respond to his request to come to the door during his first contact at the residence, Madsen told him she came out after he left.

Corporal Kagarice told Madsen multiple times she needed to identify herself but she refused to give him any form of identification or provide her last name or date of birth. Corporal Kagarice told Madsen, who was argumentative and verbally aggressive, to exit the residence because of her demeanor and his inability to determine whether there were other individuals in the residence that may pose a risk to his safety. Madsen continued to refuse to cooperate.

Based upon Madsen's refusal to identify herself, Corporal Kagarice placed her under arrest for resisting and obstructing his investigation of the nuisance. Corporal Kagarice ordered Madsen to turn around and began to secure her hands to place her in handcuffs. Madsen twisted her upper body and pulled away from Corporal Kagarice. Corporal Kagarice placed Madsen's left arm in a shoulder-control hold and moved her on the ground to restrict her movement.

After handcuffing Madsen, Corporal Kagarice escorted her to the front of his marked patrol vehicle and she struggled against him as they walked. After Madsen was moved to the front of his marked patrol vehicle, Corporal Kagarice told her he was going to search her person and she began thrashing and struggling against him while screaming. Corporal Kagarice advised Madsen of her rights according to Miranda but she interrupted him and refused to listen. During Corporal Kagarice's search of Madsen's upper body she twisted her body and thrashed; prohibiting him from being able to complete a search of her person for weapons that could harm him. Corporal Kagarice had to stabilize Madsen against the hood of his patrol vehicle, using a shoulder control technique in order to complete the search of her person.

After Corporal Kagarice searched Madsen for weapons, he had to forcibly escort her to the back passenger side of his patrol vehicle. As Corporal Kagarice placed Madsen in the back seat area of his patrol vehicle, she kicked her leg out to block him from closing the rear door to secure her in the vehicle. Corporal Kagarice ordered Madsen multiple times to move her leg so he could close the door but she refused to comply. Corporal Kagarice saw a moment when Madsen flexed her leg and was able to force the door shut.

Corporal Kagarice released Madsen's children to the custody of their grandfather, Jerry Madsen, at Madsen's request.

After Corporal Kagarice had Madsen in custody and was driving to the Kootenai County Public Safety Building, he was able to access his mobile data terminal and find a driver's license photograph that ISP dispatch had located, finally confirming Madsen's identity.

Corporal Kagarice transported Madsen to the Kootenai County Jail and booked her into custody for Resisting and/or Obstructing an Officer, in violation of Idaho Code § 18-705.

On June 2, 2017, Corporal Kagarice submitted his probable cause affidavit to the court and on June 6, 2017, at 0948 hours, the Magistrate Court (Honorable Judge Anna Eckhart) signed an Order Finding Probable Cause that the crime of Resisting or Obstructing an Officer, in violation of Idaho Code § 18-705, had been committed and that the Defendant, Courtney Madsen, committed said crime. (Order Finding Probable Cause, CR-2017-9215).

Corporal Kagarice's conduct was referred to the Kootenai County Sheriff's Office for further investigation on July 27, 2017, and on November 15th, 2017, Detective R. Duncan filed his Affidavit in Support of Probable Cause in support of the Criminal Complaint; alleging that Corporal Kagarice did commit the crime of Unlawful Arrest, in violation of Idaho Code § 18-703, by arresting Courtney Madsen on June 1, 2017. (Affidavit in Support of Probable Cause, CR-2017-21189). Notably, Detective Duncan's probable cause affidavit included an unsigned copy of Corporal Kagarice's probable cause affidavit, despite the fact that the State had in its possession a copy of the affidavit signed by Corporal Kagarice and including a finding of probable cause by Judge Eckhart. The complaint was sworn before the Honorable Judge Mayli Walsh on the same date and Judge Walsh signed an Order Finding Probable cause based on the Court's examination of the affidavit and police reports submitted by Detective Duncan. (Order Finding Probable Cause, CR-2017-21189). The case was assigned to the Honorable Judge Anna Eckhart.

Corporal Kagarice filed his first Motion to Dismiss on January 28th, 2018, on the grounds that the case should be dismissed: pursuant to I.C.R. 12(b) and I.C.R. 48(a)(2) because the conduct did not amount to a crime in that probable cause for the arrest had already been found; pursuant to I.C.R. 12(b) and I.C.R. 48(a)(2) because the complaint was defective as a matter of law because an essential element of the offense (an arrest without probable cause) was already found in favor of Corporal Kagarice; pursuant to I.C.R. 12(b) and I.C.R. 48(a)(2) because Judge Walsh's determination that Corporal Kagarice made an arrest without probable cause was procedurally defective under the principle of collateral estoppel (issue preclusion); and pursuant to I.C.R. 12(b) and I.C.R. 48(a)(2) because Judge Walsh was prohibited from making a second determination as to probable cause for the underlying arrest for Obstructing and Delaying an Officer according to *State v. Hogan*, 132 Idaho 412, 973 P.2d 764 (1999) (setting forth the rule that a magistrate does not have "the discretion to hold a second probable cause hearing after one determination of probable cause has already been made by another magistrate" in a misdemeanor case).

On March 2, 2018, Magistrate Anna Eckhart filed an Order of Voluntary Disqualification and the case was reassigned to the Honorable James Combo on March 8, 2018.

Corporal Kagarice filed his Amended Motion to Dismiss on March 13, 2018, and his Second Motion to Dismiss on March 19, 2018, arguing that the case should be dismissed pursuant to I.C.R. 48(a)(2) because Idaho Code § 18-703, in all of its applications, is unconstitutionally vague on its face and as applied to Corporal Kagarice's conduct.

Oral argument on Corporal Kagarice's motions was heard before Judge Combo on April 30, 2018. Following oral argument, Judge Combo requested additional briefing regarding Corporal Kagarice's lawful authority to make contact with and to identify Courtney Madsen for

the purposes of investigating a misdemeanor offense and regarding the State's burden at a trial for a violation of Hauser City Ordinance 3-1-1 without the proper identification of the person who was violating the ordinance. The requested briefing was provided by Corporal Kagarice and the State.

On May 18, 2018, Judge Combo gave his opinion in open court, finding in favor of the Defendant and ordering that the case be dismissed finding: as a matter of law that the owner of a nuisance has an obligation to identify himself or herself (under Hauser City Ordinance 3-1-1); that Corporal Kagarice had lawful authority to make contact with and identify Madsen for purposes of an investigation of a potential misdemeanor offense; and as a matter of law that Corporal Kagarice has lawful authority to arrest Madsen for resisting and obstructing by failing to identify herself. Judge Combo went on in his decision to further find as a matter of law that dismissal pursuant to I.C.R. 48(a)(2) was the only appropriate sanction given the State's affiant, Kootenai County Sheriff's Office Detective Duncan, had failed to set forth in his affidavit material exculpatory evidence that Judge Eckhart had reviewed Corporal Kagarice's affidavit of probable cause for the resisting and obstructing charge and had found probable cause to believe that such a crime had indeed occurred, characterizing such omission as "material, deliberate, and/or reckless." Because the Court dismissed this case on the preceding grounds, it declined to consider the constitutionality of Idaho Code § 18-703 on its face or as applied.

The State filed its Notice of Appeal on June 12, 2018, and its Appellant's Brief on September 17, 2018.

The Defendant/Respondent, Corporal Kagarice, filed his Respondent's Brief on October 17, 2018.

The State filed its Reply Brief on November 7, 2018, and oral argument was heard before the Honorable John T. Mitchell.

The District Court issued its Memorandum Decision And Order On Appeal From Magistrate Division, on January 2, 2019, and the Defendant/Appellant filed its Notice of Appeal From the District Court Pursuant To I.A.R. 11(c)(10) on January 31, 2019.

The Defendant/Appellant, Corporal Kagarice, now files his Appellant's Brief supporting Judge Combo's findings, proper use of discretion, and his decision to dismiss this case in the interest of justice and effective administration of the court's business.

II. STANDARD OF REVIEW

There are two (2) standards of review with regards to Rule 48 dismissals: (1) whether the trial court erred as a matter of law in dismissing the criminal action; and/or (2) whether the trial court abused its discretion. *E.g. State v. Swenson*, 119 Idaho 706, 708, 809 P.2d 1185, 1187 (Ct.App. 1991); *State v. Dixon*, 140 Idaho 301, 304, 92 P.3d 551, 554 (Ct.App. 2004).

“On its face, the rule requires a judge who dismisses a case in order to ‘serve the ends of justice’ to ‘state in the order of dismissal [his] reasons for such dismissal.’” *State v. Hayes*, 108 Idaho 556, 559, 700 P.2d 959, 962 (Ct.App. 1985). “When the district court acts in an appellate capacity on appeal from the magistrate's division, and a further appeal is taken, [this Court] will review the record independently of the decision of the district court.” *State v. Swartz*, 109 Idaho 1033, 1035, 712 P.2d 734, 736 (Ct.App. 1985).

This Court reviews the magistrate court record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. *See State v. Trusdall*, 155 Idaho 965, 968, 318 P.3d 955, 958 (Ct.App. 2014) (quoting *Bailey v. Bailey*, 153 Idaho 526, 529, 284 P.3d 970, 973

(2012)). This Court “will uphold the magistrate's findings of fact if supported by substantial competent evidence” and exercise free review over whether the magistrate erred as a matter of law in dismissing a criminal action. *State v. Bilbao*, 130 Idaho 500, 502, 943 P.2d 926, 928 (1997).

III. DISCUSSION

1. Judge Combo correctly ruled that Corporal Kagarice had lawful authority to make contact with and to identify Madsen for purposes of investigating a potential misdemeanor offense.

Idaho Code § 67-2901 is the enabling statute creating the Idaho State Police, which provides the power to, “[e]nforce all of the penal and regulatory laws of the state, to preserve order, and exercise any and all powers, duties and authority of any sheriff or other peace officer anywhere in the state of Idaho, in the same manner and with like authority as the sheriffs of the counties.” Idaho Code § 67-2901(5)(a). Hauser City Ordinance § 3-1-1 defines a nuisance as “[w]hatever is injurious to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property.” The code specifically provides that “all unnecessary noises and annoying vibrations” are a nuisance and that the “creation or maintenance of a nuisance is prohibited within the city.” Hauser City Ordinance §§ 3-1-1(E); 3-1-2. “Whenever the mayor, city clerk or law enforcement agency finds that a nuisance exists, he shall cause to be served upon the owner, agent or occupant of the property on which the nuisance is located, or upon the person causing or maintaining the nuisance, a written notice to abate or to request a hearing.” Hauser City Ordinance § 3-1-3(B) (emphasis added). The code further identifies that “[a]ny person violating any of the provisions of this chapter, after a notice to abate is served and any appeal is exhausted, shall, upon conviction, be guilty of a misdemeanor.” Hauser City Ordinance § 3-1-7 (emphasis added).

At the time Corporal Kagarice made his initial contact at Madsen's residence, the car alarm was actively going off at approximately 4:00 AM. This was clearly prohibited conduct constituting a nuisance in violation of the Hauser City Ordinance. As soon as Corporal Kagarice identified a possible violation of the Nuisance Ordinance, he was affirmatively obligated under the plain language of the Ordinance to issue a notice to abate or request a hearing regarding the person causing or permitting the nuisance. Due to the time of night and unknown duration of time that the car alarm had been sounding, it was perfectly reasonable for Corporal Kagarice to conclude it was at least possible that a notice to abate under the Ordinance had previously been issued to the responsible party (thus making the offense a misdemeanor at the time of his initial arrival), or, if a notice had not been issued, that the Ordinance's affirmative obligation would still require Corporal Kagarice to issue such notice as a warning against future violations. That obligation was not relieved simply because the noise had abated by the time he returned later in the day.

2. Judge Combo correctly ruled as a matter of law that the owner of a nuisance has the obligation to identify himself or herself under Hauser City Ordinance 3-1-1.

Without the positive identification of the owner of the nuisance, Corporal Kagarice would not have had any reasonable way to determine whether such owner had been previously issued a notice to abate or whether he would be obligated under the statute to issue the notice himself. Absent such knowledge of identity and notice, Corporal Kagarice could neither confirm nor deny the commission of a misdemeanor offense. Despite the State's and district court's contention to the contrary, nothing in the Ordinance relieves the officer of the affirmative duty to issue the notice simply because the nuisance may have been abated prior to the officer being able to issue such notice. It is well within the bounds of common sense and reason to conclude that

nuisances can be, and often are, repetitive in nature. The obvious purpose of notice requirement itself is to prevent an ongoing nuisance, not simply to punish the owner if one occurs.

The Supreme Court of Idaho has also identified multiple other reasons relevant to this incident for a police officer to “be allowed to identify, with certainty, the person with whom he is dealing” when carrying out his duties. *See State v. Godwin*, 121 Idaho 491, 495, 826 P.2d 452, 456 (1992) (i.e. to protect himself and other officers from danger, to accurately prepare any required reports, and to allow the officer to adequately respond to allegations of illegal conduct or improper behavior) (emphasis added). “The need to identify the person with whom a police officer is dealing would logically extend to making a correct identification.” *Id.* (emphasis added).

The district court’s opinion that *State v. Godwin* has no relevance whatsoever to this issue, because the contact was not in relation to a traffic stop, is non-sensical. Clearly police officers have a right to protect themselves from danger on any law enforcement contact, not just a traffic stop. Clearly police officers have an obligation to accurately prepare any required reports for any law enforcement contact, not just a traffic stop. Further, case in point, police officers should be allowed to adequately respond to allegations of illegal conduct or improper behavior for any law enforcement contact, not just a traffic stop. The reasons for identification articulated in *Godwin* are based on the dangers and nature of police work in general and not just limited to one type of enforcement activity.

The State and district court in this case are also conflating the issue of identity with that of method of service. While the Ordinance does provide for alternative methods of service, it is still incumbent on the officer to issue the notice to the correct person. In his decision, Judge Combo correctly identified that, absent positive identification, the State would never be able to

prove at trial that a defendant neglected or failed to abate a nuisance if it couldn't identify (with certainty) the person to whom notice was served. Transcript of Decision, pp. 10, lines 14-20 (May 18, 2018). Specifically, Judge Combo identified that "to argue that the officer has no legal authority to demand identification when the ordinance mandates that he serve on the person responsible for the nuisance notice to abate potentially leads to mystifying results of law enforcement misidentifying citizens, charging the wrong or innocent persons, and certainly that's not the effective administration of this court's business either." Transcript of Decision, pp. 14, lines 13-21 (May 18, 2018)

Further, while Judge Combo correctly considered "the heightened constitutional protections that are afforded persons in their home," he did not find that there was an "unreasonable infringement for an officer while investigating a nuisance to require someone to simply identify themselves." Transcript of Decision, pp. 11, lines 12-17 (May 18, 2018).

In *United States v. Santana*, the Supreme Court determined that a woman who opened her door for the police was "in a 'public place' for the purposes of the Fourth Amendment, since she was not in an area where she had any expectation of privacy and was not merely visible to the public but was exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house." 427 U.S. 38, 38, 96 S.Ct. 2406, 2408 (1976) (citing *Katz v. United States*, 389 U.S. 347, 351, 88 S.Ct. 507, 511 (1967) ("What a person knowingly exposes to the public, even in his own house or office, is not a subject of Fourth Amendment protection.") Like in *Santana*, Madsen was not merely visible to the public "but was as exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house" when she opened the door to speak with Corporal Kagarice.

3. Judge Combo correctly ruled that as a matter of law Corporal Kagarice had lawful authority to arrest Madsen for resisting and obstructing by failing to identify herself.

Idaho Code § 18-705 states that “[e]very person who wilfully resists, delays or obstructs any public officer, in the discharge, or attempt to discharge, of any duty of his office is punishable by a fine not exceeding one thousand dollars (\$1,000), and imprisonment in the county jail not exceeding one (1) year.” When a person fails to cooperate with an officer, by refusing to identify himself or herself, it constitutes “delaying and obstructing an officer in carrying out one of the duties of his office pursuant to I.C. § 18-705.” *See State v. George*, 127 Idaho 693, 699, 905 P.2d 626, 632 (1995) (citing *State v. Godwin*, 121 Idaho 517, 826 P.2d 478 (Ct. App.1991), *aff'd*, 121 Idaho 491, 826 P.2d 452 (1992)). A peace officer may arrest a person for a public offense committed or attempted in his presence. I.C. § 19-603.

Corporal Kagarice had legal authority to make a positive identification of “Courtney” because: he was investigating her for a possible misdemeanor violation of the Hauser City Ordinance; he had an affirmative duty under the Ordinance to issue her a notice to abate the previously identified nuisance; he had personal safety concerns due to her suspicious behavior and his personal knowledge of other occupants at the residence with officer safety alert codes; he had to write a use-of-force report for the Idaho State Police after pepper spraying her aggressive dog; and so that he could defend himself from allegations or misconduct. Any one of these reasons for Corporal Kagarice to make a positive identification of “Courtney” are sufficient to establish that he had probable cause to believe Madsen was committing the criminal offense of Obstructing and Delaying an Officer, in violation of Idaho Code § 18-705, in his presence. When Madsen refused to provide her last name and date of birth or a state-issued identification, Corporal Kagarice was well within the bounds of his authority to arrest her for that offense and

Judge Combo correctly found “as a matter of law that Officer Kagarice had lawful authority to arrest her for resisting and obstructing by failing to identify herself.” Transcript of Decision, pp. 11, lines 22-25 (May 18, 2018).

4. Judge Combo correctly ruled that dismissal pursuant to I.C.R. 48(a)(2) was the only appropriate sanction because the State’s affiant, Kootenai County Sheriff’s Office Detective Duncan, had failed to set forth in his affidavit material exculpatory evidence and such omission was “material, deliberate, and/or reckless.”

Due process requires the State to disclose to the defense exculpatory evidence within its possession. *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196 (1963). When the State fails to disclose material exculpatory evidence that pertains to guilt or punishment, the defendant’s due process rights are violated. *Id.* Material evidence is evidence that would change the result of the proceeding if it had been disclosed. *United States v. Bagley*, 473 U.S. 667, 682, 105 S. Ct. 3375 (1985). To determine whether a defendant’s due process rights have been violated by the State’s failure to disclose material exculpatory evidence, Idaho Supreme Court adopted a three-prong balancing test: (1) whether the evidence was material to the question of guilt; (2) whether the defendant was prejudiced by the loss or destruction; and (3) whether the State was acting in good faith when it lost or destroyed the evidence. *Paradis v. State*, 110 Idaho 534, 540-41, 716 P.2d 1306, 1312-13 (1986). Later, in *Stuart v. State*, the Idaho Supreme Court went even further in its approach and stated that “materiality and prejudice to the defense can be presumed where the government acts in bad faith.” 127 Idaho at 816, 907 P.2d at 793 (1995). “Failure to disclose exculpatory and material evidence is a denial of due process irrespective of the good or bad faith of the prosecutor and requires reversal of the conviction.” *State v. Johnson*, 120 Idaho 408, 412, 816 P.2d 364, 368 (Ct.App. 1991).

In this case, Judge Combo was correct in finding that; as a matter of law, dismissal was the only appropriate remedy based upon Detective Duncan’s “failure to set forth in his affidavit

material exculpatory evidence that Judge Eckhart had reviewed Trooper Kagarice's affidavit of probable cause for the resist and obstruct and had probable cause to believe that such a crime had indeed occurred." Transcript of Decision, pp. 12, lines 11-18 (May 18, 2018).

Corporal Kagarice's due process rights were violated when Detective Duncan failed to notify Judge Walsh that Judge Eckhart had found probable cause for the arrest of Courtney Madsen because the omitted evidence was material evidence in that it found an essential element of the offense, an arrest without probable cause, in favor of Corporal Kagarice. Because the probable cause order submitted to Judge Walsh was left blank, this misleading information "certainly would have altered Judge Walsh's finding of probable cause," indicating this evidence was material evidence, pursuant to *Bagley*. Transcript of Decision, pp. 12, line 23 – pp.13, line 1 (May 18, 2018). Judge Combo correctly identified that "[t]his problem is compounded by the fact that not only did the detective fail to disclose that probable cause had already been found by Judge Eckhart, but he had attached to Trooper Kagarice's affidavit of probable cause a probable cause order that had been left blank, suggesting to this court and any viewer of that document that no PC had been found." Transcript of Decision, pp. 13, lines 2-8 (May 18, 2018).

Pursuant to Idaho's three-prong balancing test, Trooper Kagarice's due process rights were violated because (1) Detective Duncan's omission would have altered Judge Walsh's analysis when she found probable cause for an unlawful arrest; (2) Trooper Kagarice was prejudiced by Detective Duncan's omission because he was charged with a misdemeanor offense; and (3) Detective Duncan's omission was "material, deliberate, and/or reckless." Transcript of Decision, pp. 14, lines 5-6 (May 18, 2018).

Judge Combo properly dismissed this matter because Detective Duncan's failure to provide exculpatory evidence was deliberate and reckless; therefore materiality and prejudice can be presumed because the State acted in bad faith.

IV. CONCLUSION

Corporal Kagarice was statutorily authorized and obligated to investigate the nuisance he personally observed. Corporal Kagarice had legal authority to identify Madsen because of the notice requirement of the ordinance, for officer safety reasons, for accurate report writing, and to allow him to adequately respond to allegations of illegal conduct or improper behavior. Madsen's refusal to identify herself under the circumstances constituted the misdemeanor offense of resisting and obstructing an officer and Corporal Kagarice was well within his legal authority to arrest her for that offense because it was committed in his presence. Corporal Kagarice utilized proper arrest and control techniques in effecting Madsen's arrest; according to his training and experience.

Judge Combo correctly perceived the dismissal of this matter as one within his discretion pursuant to I.C.R. 48(a)(2). Judge Combo acted within the bounds of his discretion, consistent with the applicable legal standards, in finding "as a matter of law that dismissal would serve the ends of justice and the effective administration of the court's business," and reached his decision by an exercise of reason by correctly identifying that "[t]o hold otherwise would allow the State to essentially cherry pick only those facts that support the charge and not disclose any potential exculpatory evidence, which would result in gross miscarriages of justice" and "to argue that the officer has no legal authority to demand identification when the ordinance mandates that he serve on the person responsible for the nuisance notice to abate potentially leads to mystifying results of law enforcement misidentifying citizens, charging the wrong or innocent persons, and

certainly that's not the effective administration of this court's business either.” Transcript of Decision, pp. 14, lines 6-21 (May 18, 2018).

For all of the foregoing, Appellant respectfully requests this Honorable Court to uphold Judge Combo’s findings of fact as supported by substantial competent evidence and affirm the dismissal of the criminal action.

DATED this 31st day of May, 2019.

/s/ Joseph R. Sullivan

JOSEPH R. SULLIVAN, ISBA #9791
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of May, 2019, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

IDAHO SUPREME COURT

Via iCourt File & Serve

ATTORNEY GENERAL
FOR THE STATE OF IDAHO

Via iCourt File & Serve

/s/ Joseph R. Sullivan

JOSEPH R. SULLIVAN, ISBA #9791

Attorney for Defendant