

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

STATE OF IDAHO, )  
 ) No. 47032-2019  
 Plaintiff-Respondent, )  
 ) Ada County Case No.  
 v. ) CR01-18-32036  
 )  
 MATTHEW BOYD DAVIS, )  
 )  
 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 SAMUEL A. HOAGLAND**  
**District Judge**  
\_\_\_\_\_

**LAWRENCE G. WASDEN**  
**Attorney General**  
**State of Idaho**

**COLLEEN D. ZAHN**  
**Deputy Attorney General**  
**Chief, Criminal Law Division**

**ANDREW V. WAKE**  
**Deputy Attorney General**  
**Criminal Law Division**  
**P. O. Box 83720**  
**Boise, Idaho 83720-0010**  
**(208) 334-4534**  
**E-mail: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)**

**ATTORNEYS FOR  
PLAINTIFF-RESPONDENT**

**KIMBERLY A. COSTER**  
**Deputy State Appellate Public Defender**  
**322 E. Front St., Ste. 570**  
**Boise, Idaho 83702**  
**(208) 334-2712**  
**E-mail: [documents@sapd.state.id.us](mailto: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 .....	4
ARGUMENT .....	5
Davis Fails To Show That The District Court Erred By Denying His Motion To Suppress .....	5
A.    Introduction.....	5
B.    Standard Of Review .....	6
C.    Officer Stokes Had Reasonable Suspicion To Initiate The Traffic Stop .....	6
1.  Officer Stokes Had Reasonable Suspicion That Davis Violated I.C. § 49-651 .....	7
2.  Officer Stokes Had Reasonable Suspicion Davis Violated I.C. §§ 49-906 And 49-903 .....	8
CONCLUSION.....	10
CERTIFICATE OF SERVICE .....	10

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Navarette v. California</u> , 572 U.S. 393 (2014) .....	7
<u>Snider v. Arnold</u> , 153 Idaho 641, 289 P.3d 43 (2012) .....	9
<u>State v. Bishop</u> , 146 Idaho 804, 203 P.3d 1203 (2009) .....	6
<u>State v. Klingler</u> , 143 Idaho 494, 148 P.3d 1240 (2006) .....	6
<u>State v. Morgan</u> , 154 Idaho 109, 294 P.3d 1121 (2013) .....	6
<u>State v. Munoz</u> , 149 Idaho 121, 233 P.3d 52 (2010) .....	7
<u>State v. Perez</u> , 164 Idaho 626, 434 P.3d 801 (2019) .....	6, 8
<u>State v. Roe</u> , 140 Idaho 176, 90 P.3d 926 (Ct. App. 2004) .....	6
<u>State v. Sheldon</u> , 139 Idaho 980, 88 P.3d 1220 (Ct. App. 2003) .....	6
<u>State v. Zichko</u> , 129 Idaho 259, 923 P.2d 966 (1996) .....	5
 <u>STATUTES</u>	
I.C. § 49-651 .....	7, 8
I.C. § 49-903 .....	8
I.C. § 49-906 .....	8

## STATEMENT OF THE CASE

### Nature Of The Case

Matthew Boyd Davis appeals from the denial of his motion to suppress evidence after entering a conditional guilty plea to possession of methamphetamine.

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

On July 1, 2018, at around 2:45 a.m., Officer Trevor Stokes was parked in a marked patrol car near a gas station. (Tr., p.8, L.14 – p.9, L.13.<sup>1</sup>) He saw a vehicle exit the gas station's parking lot onto Vista Avenue without coming to a full stop and apparently without braking. (Tr., p.9, L.15 – p.10, L.13.) Officer Stokes began following the vehicle. (Tr., p.10, Ls. 14-16.) As he did so, he noticed that the taillights on the vehicle were not operating. (Tr., p.10, L.17 – p.11, L.2.) He then turned off his own headlights to reduce any potential glare on the vehicle and confirmed that the taillights were not functioning. (Tr., p.11, Ls.3-10.) Officer Stokes initiated a traffic stop and identified Matthew Davis as the driver. (Tr., p.11, L.11 – p.12, L.15.) After two other officers arrived on scene, they observed what appeared to be a bulge in Davis' pocket, as well as a container of alcohol in the console of the vehicle. (R., pp.47-48, 54.<sup>2</sup>) When officers asked him to exit the vehicle so that they could frisk him for weapons, he exited the vehicle and then ran. (Id.) Officers arrested him, searched him incident to that arrest, and discovered methamphetamine. (Id.)

---

<sup>1</sup> References to 'Tr.' are to the file titled 'Davis 47032 trs.pdf,' which contains the transcript of the hearing on Davis' motion to suppress, held January 4, 2019, and the transcript of the change of plea hearing, held January 24, 2019.

<sup>2</sup> Because the motion to suppress that is the subject of this appeal focused only on whether the initial traffic stop was justified, the parties did not elicit testimony regarding events after the stop was initiated. But, as reflected in the parties' briefing on the motion to suppress, cited here, there does not appear to be any dispute regarding those events.

The state charged Davis with possession of methamphetamine, resisting and obstructing an officer, possession of an open container of alcohol in a vehicle, possession of drug paraphernalia, and driving without privileges. (R., pp.27-28.) Davis filed a motion to suppress and memorandum in support arguing that because a magistrate judge found him not guilty of the traffic violations that prompted Officer Stokes to initiate the traffic stop, that stop was not justified and any evidence recovered after the stop should be suppressed as fruit of an unlawful detention. (R., pp.39-51.) The prosecutor responded that a finding in a separate matter of insufficient evidence to show beyond a reasonable doubt that the traffic violations were committed was irrelevant to the question whether Officer Stokes had reasonable suspicion at the time to initiate the stop. (R., pp.53-57.)

The hearing on Davis' motion to suppress began with Davis' attorney suggesting that he intended to provide the court a copy of the recording or transcript of the trial on the traffic violations. (Tr., p.6, Ls.5-16.) After testimony from the only witness, Officer Stokes, the prosecutor objected to any consideration of the recording or transcript from the trial of the traffic violations, arguing that any testimony provided therein would be irrelevant hearsay. (Tr., p.23, L.14 – p.25, L.4.) The district court sustained that objection and declined to consider any transcript or audio recording from the trial of the traffic violations. (Tr., p.30, L.5 – p.31, L.19.)

The court then held that Officer Stokes had reasonable suspicion to initiate the traffic stop and denied the motion to suppress. (Tr., p.39, L.4 – p.40, L.20.) It concluded that Officer Stokes had reasonable suspicion to believe both that Davis failed to properly stop before turning out of the parking lot and reasonable suspicion to believe that his taillights were not properly functioning. (Id.)

Davis entered a conditional guilty plea to possession of methamphetamine, reserving the right to appeal the denial of his motion to suppress, and the state dismissed the remaining charges. (R., pp.60, 71-72, 76.) The district court sentenced Davis to seven years with two years fixed, but suspended that sentence in favor of seven-year period of probation. (Tr., pp.76-83.) Davis timely appealed. (Tr., pp.88-90.)

ISSUE

Davis states the issues on appeal as:

Did the district court err in denying Mr. Davis's motion to suppress?

(Appellant's brief, p.4)

The state rephrases the issues as:

Has Davis failed to show that the district court erred by denying his motion to suppress?

## ARGUMENT

### Davis Fails To Show That The District Court Erred By Denying His Motion To Suppress

#### A. Introduction

Davis' motion to suppress was premised on the proposition that Officer Stokes did not have reasonable suspicion to initiate the traffic stop from which Davis later fled, which flight led to his arrest and the recovery of narcotics. (R., pp.45-52.) His argument below relied almost entirely on the fact that a magistrate court acquitted him of the traffic violations that were the bases of the stop. (Id.) According to Davis, that acquittal somehow implied that the Officer Stokes did not have reasonable suspicion. (Id.) On appeal, though, he has abandoned that argument.<sup>3</sup> Instead, he argues only that Officer Stokes' testimony at the suppression hearing was insufficient to establish that he had reasonable suspicion to initiate the stop and investigate whether Davis committed a traffic violation. (See Appellant's brief, p.6 ("Mr. Davis asserts that, contrary to the district court's conclusions, the facts established by Officer Stokes' testimony were inadequate to provide a reasonable suspicion that Mr. Davis had committed either of the [traffic] offenses.")). This argument fails. Based on Officer Stokes' testimony, which was the only evidence presented in association with the motion to suppress, the district court correctly concluded that Officer Stokes had reasonable articulable suspicion both that Davis failed to

---

<sup>3</sup> Davis is explicit that he is not challenging the district court's determination not to consider any recording or transcript from the trial of the traffic violations. (Appellant's brief, p.2 n.1.) More generally though, on appeal he does not discuss or mention the acquittal when arguing that the district court erred in denying the motion to suppress, nor does he cite any authority or make any argument to suggest that it is in any way relevant. (See generally Appellant's brief, pp.5-10.) He has therefore abandoned and waived that argument. State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996) ("When issues on appeal are not supported by propositions of law, authority, or argument, they will not be considered.").



properly stop when he exited the parking lot and that he was operating a vehicle without functioning taillights.

B. Standard Of Review

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts. State v. Klingler, 143 Idaho 494, 496, 148 P.3d 1240, 1242 (2006). Thus, “[d]eterminations of reasonable suspicion are reviewed de novo,’ while findings of fact that support a determination of reasonable suspicion are reviewed for clear error.” State v. Perez, 164 Idaho 626, 628, 434 P.3d 801, 803 (2019) (alterations in original) (quoting State v. Morgan, 154 Idaho 109, 111, 294 P.3d 1121, 1123 (2013)).

C. Officer Stokes Had Reasonable Suspicion To Initiate The Traffic Stop

“Because a routine traffic stop is normally limited in scope and of short duration, it is more analogous to an investigative detention than a custodial arrest and therefore is analyzed under the principles set forth in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).” State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). “Under the Fourth Amendment, an officer may stop a vehicle to investigate possible criminal behavior if there is a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws.” State v. Roe, 140 Idaho 176, 180, 90 P.3d 926, 930 (Ct. App. 2004). “Whether an officer possessed reasonable suspicion is evaluated based on the totality of the circumstances known to the officer at or before the time of the stop.” State v. Bishop, 146 Idaho 804, 811, 203 P.3d 1203, 1210 (2009). “An investigatory stop does not deal with hard certainties, but with

probabilities.” State v. Munoz, 149 Idaho 121, 126, 233 P.3d 52, 57 (2010). “Although a mere ‘hunch’ does not create reasonable suspicion, the level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause.” Navarette v. California, 572 U.S. 393, 397 (2014) (internal quotations and citations omitted).

Officer Stokes had reasonable suspicion that Davis violated the traffic laws in two ways: (1) by turning out of the gas-station parking lot without coming to a full stop immediately prior to crossing the sidewalk, in violation of Idaho Code § 49-651, and (2) by driving a vehicle without operational taillights, in violation of Idaho Code §§ 49-906 and 49-903. As the district court found, though Officer Stokes had reasonable suspicion that Davis violated the traffic laws in both of these ways, either alone was sufficient to justify the traffic stop. (Tr., p.39, L.4 – p.40, L.20.)

1. Officer Stokes Had Reasonable Suspicion That Davis Violated I.C. § 49-651

Idaho Code § 49-651 provides that:

The driver of a vehicle emerging from an alley, building, private road or driveway within a business or residential district shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across the alley, building entrance, or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the highway to be entered where the driver has a view of approaching traffic.

Officer Stokes testified that he observed Davis’ vehicle exit the gas station onto Vista Avenue without coming to a stop before doing so, which he believed to be a traffic violation and which prompted him to follow Davis. (Tr., p.9, L.15 – p.10, L.16.) On appeal, Davis argues that observation did not provide reasonable suspicion to believe he violated Idaho Code § 49-651 because, on cross-examination, Officer Stokes acknowledged that there were gas pumps that

briefly obstructed his view and the vehicle could have stopped while his view was obstructed. (Appellant's brief, pp.7 (citing Tr., p.14, Ls.5-23; p.20, Ls.3-13).)

But on redirect examination Officer Stokes clarified that he was able to see the entire sidewalk and entry to the gas station and, with that view and what he saw, Davis could not have stopped "immediately prior" to crossing the sidewalk or sidewalk area as required by Idaho Code § 49-651. (Tr., p.20, L.25 – p.21, L.20.) While he acknowledged that Davis could possibly have stopped several feet before reaching the sidewalk when his view was blocked, he nevertheless had reasonable suspicion that Davis violated Idaho Code § 49-651. That is so both because stopping several feet before the sidewalk, as opposed to immediately before driving onto it, would not constitute compliance with that statute, and because, even if it did, reasonable suspicion of criminal conduct does not require eliminating every possibility of error. State v. Perez, 164 Idaho 626, 629, 434 P.3d 801, 804 (2019). At a minimum, Officer Stokes was entitled to initiate a traffic stop to further investigate whether Davis complied with the statute.

2. Officer Stokes Had Reasonable Suspicion Davis Violated I.C. §§ 49-906 And 49-903

Idaho Code § 49-906 requires that "[e]very motor vehicle . . . shall be equipped with at least one (1) tail lamp mounted on the rear, which when lighted as required, shall emit a red light plainly visible from a distance of five hundred (500) feet to the rear. . . . Any tail lamp shall be wired so to be lighted whenever the head lamps or auxiliary driving lamps are lighted." Idaho Code § 49-903 requires a vehicles lights to be operational between sunset and sunrise. Officer Stokes observed Davis' vehicle at 2:30 in the morning. (Tr., p.16, Ls.22-25.) Davis' taillights should have been operational. Officer Stokes testified that when he began following Davis he observed that neither of Davis' taillights appeared to be operational and he confirmed that they

were not by briefly turning off his headlights to eliminate any reflective glare. (Tr., p.10, L.18 – p.11, L.10.) Having done so, he testified that he was “a hundred percent sure” that Davis’ taillights were not on. (Tr., p.18, L.14 – p.19, L.5.)

On appeal, Davis argues that Officer Stokes’ testimony that he could see the taillights were not operating when he first started following Davis somehow “conflict[s]” with his testimony that he then confirmed as much by briefly turning off his headlights. (Appellant’s brief, p.9.) Officer Stokes testified that he believed Davis’ taillights were not operating and, to ensure he was correct, turned off his headlights so that the taillights would be more visible if he was mistaken and they were lit. (Tr., p.10, L.17 – p.11, L.10; p.16, Ls.12-21.) There is no “conflict” between initially observing that the taillights were not functioning, on the one hand, and then confirming that observation by eliminating a possibility of error, on the other. Davis also suggests that Officer Stokes’ testimony that he was sure the taillights were not operating was not credible in light of his testimony that “Vista Avenue was ‘well lit’ that night (Tr., p.17, Ls.1-8), a fact defense counsel suggested would make it difficult to determine whether taillights were illuminated (Tr., p.17, Ls.1-8).” (Appellant’s brief, p.9.) Apparently, defense counsel made this suggestion by simply asking if Vista Avenue was well lit. (Tr., p.17, Ls.1-8.) Even if that question constituted a suggestion that it would have been difficult for Officer Stokes to see the taillights, suggestions from defense counsel are not evidence. Finally, even if there were concerns about Officer Stokes’ credibility, “it is for the district court to weigh the evidence and judge the credibility of witnesses.” Snider v. Arnold, 153 Idaho 641, 645, 289 P.3d 43, 47 (2012). The district court credited Officer Stokes’ testimony. (Tr., p.40, Ls.1-20.)

The district court correctly determined that Officer Stokes testimony established reasonable suspicion for the traffic stop. Davis has not shown that the district court erred in denying his motion to suppress.

CONCLUSION

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

DATED this 2nd day of March, 2020.

/s/ Andrew V. Wake  
ANDREW V. WAKE  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of March, 2020, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

KIMBERLY A. COSTER  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
documents@sapd.state.id.us.

/s/ Andrew V. Wake  
ANDREW V. WAKE  
Deputy Attorney General