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State v. Fuller Respondent's Brief Dckt. 44172

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Appellant,)	NO. 44172
)	
v.)	KOOTENAI COUNTY
)	NO. CR 2015-20159
)	
ANTONIA KATE FULLER,)	RESPONDENT'S BRIEF
)	
Defendant-Respondent.)	
_____)	

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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**ATTORNEY FOR
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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 Proceedings	1
ISSUE PRESENTED ON APPEAL	4
ARGUMENT	5
The District Court Correctly Granted Ms. Fuller's Motion To Suppress	5
A. Introduction	5
B. Standard Of Review	5
C. The District Court Correctly Granted Ms. Fuller's Motion To Suppress	5
CONCLUSION	10
CERTIFICATE OF MAILING	11

TABLE OF AUTHORITIES

Cases

<i>Lawless v. Davis</i> , 98 Idaho 175 (1977)	7
<i>State v. Bishop</i> , 146 Idaho 804 (2009).....	6
<i>State v. Danney</i> , 153 Idaho 405 (2012).....	5
<i>State v. Ellis</i> , 155 Idaho 584 (Ct. App. 2013)	5
<i>State v. Hunter</i> , 156 Idaho 568 (Ct. App. 2014)	5
<i>State v. Neal</i> , 159 Idaho 439 (2015).....	2, 7
<i>State v. Willoughby</i> , 147 Idaho 482 (2009)	6
<i>State v. Wulff</i> , 157 Idaho 416 (2014).....	5
<i>Wong Sun v. United States</i> , 371 U.S. 471 (1963).....	6

Statutes

I.C. § 49-630(1)	7
I.C. § 49-637	1, 2, 7, 8

STATEMENT OF THE CASE

Nature of the Case

Antonia Kate Fuller asserts that the State has failed to demonstrate error in the district court's order granting her motion to suppress. The district court suppressed evidence seized after Ms. Fuller was stopped for crossing the line on the right side of the roadway. Ms. Fuller's vehicle was searched pursuant to an inventory search and methamphetamine, prescription drugs, and drug paraphernalia were located in the vehicle. The district court suppressed the evidence, finding that the officer did not have reasonable, articulable suspicion that Ms. Fuller was violating the law.

Statement of the Facts and Course of Proceedings

Officer Harvey Ballman observed a vehicle being driven by Antonia Kate Fuller cross the fog line and then again touch the fog line. (Plaintiff's Exhibit No. 1.) Ms. Fuller was not weaving within her lane of travel and she did not swerve; however, the road curved to the right and her tires touched and crossed the fog line. (3/28/16 Tr., p.6, Ls.1-8.) Officer Ballman stopped the vehicle for failing to maintain the lane of travel, a violation of I.C. § 49-637. (R., pp.7-8.) Ms. Fuller had an invalid driver's license and did not have insurance. (R., pp.7-8.) Officer Ballman arrested Ms. Fuller for the invalid driver's license and failing to display insurance. (R., pp.7-8.)

When an inventory search was performed on Ms. Fuller's vehicle, officers found drug paraphernalia, methamphetamine, and two Hydrocodone pills. (R., p.8.) Based on these facts, Ms. Fuller was charged by Information with one count of possession of

methamphetamine, one count of possession of drug paraphernalia, one count of invalid driver's license, and one count of failing to maintain insurance. (R., pp.54-56.)

Thereafter, Ms. Fuller moved to suppress the evidence arguing, in part, that she was seized in violation of her rights under the Fourth Amendment of the United States Constitution and Article I, Section 17 of the Idaho Constitution, and the evidence gathered against her should be suppressed as fruits of the unlawful seizure. (R., pp.52-53, 56-63.)

The district court held a hearing on the motion to suppress. (*See generally*, 3/28/16 Tr.) At the hearing, Ms. Fuller's counsel and the State stipulated that Ms. Fuller's vehicle's front tire crossed the fog line. (3/28/16 Tr., p.3, L.10 – p.4, L.1.) That stipulation, combined with the officer's dash-cam video recording (Plaintiff's Exhibit No. 1 to the Suppression Hearing), constituted all of the evidence introduced at the hearing. (3/28/16 Tr.) After hearing argument from the parties, the district court took the matter under advisement. (3/28/16 Tr., p.4, L.22 – p.15, L.9.) The district court then held another hearing during which it orally granted the motion to suppress, finding that the Idaho Supreme Court's decision in *State v. Neal*, 159 Idaho 439 (2015), was fact-specific and did not hold that crossing the fog line was a violation of I.C. § 49-637.¹ (4/1/16 Tr., p.5, Ls.8-25.) The court found "that the principle of law articulated in *Neal* is that the fog line is not a road barrier," but is "a warning that one is getting near the road barrier." (4/1/16 Tr., p.5, Ls.22-25.) The district court found that touching or crossing the fog line is not a violation of Idaho law, and, because the sole basis of the stop was

¹ Although the parties stipulated that Ms. Fuller's front tires crossed the fog line (3/28/16 Tr., p.3, L.20 – p.4, L.1), the district court told the parties that it had watched the video and found that the tires touched, but did not cross, the fog line (4/1/16 Tr., p.4, Ls.12-19). Ultimately, the court accepted the stipulation. *Id.*

the purported traffic violation, there was no reasonable and articulable suspicion of criminal activity by Ms. Fuller. (4/1/16 Tr., p.6, L.12 - p.7, L.10.)

The district court held that Ms. Fuller was unlawfully seized, and the evidence obtained as a result of the seizure was inadmissible. (4/1/16 Tr., p.7, Ls.16-22.) The district court granted the motion to suppress for the reasons it stated at the April 1, 2016 hearing. (R., pp.84-85.)

The State appealed. (Augmentation, pp.1-5.)

ISSUE

Did the district court correctly grant Ms. Fuller's motion to suppress?

ARGUMENT

The District Court Correctly Granted Ms. Fuller's Motion To Suppress

A. Introduction

Ms. Fuller moved the district court to suppress the evidence seized because the traffic stop was not based on reasonable, articulable suspicion that she was driving contrary to Idaho law and thus violated her constitutional rights. This Court should affirm the order granting Ms. Fuller's motion to suppress.

B. Standard Of Review

This Court uses a bifurcated standard to review a district court's order on a motion to suppress. *State v. Danney*, 153 Idaho 405, 408 (2012); see also *State v. Hunter*, 156 Idaho 568, 571 (Ct. App. 2014) (same). This Court will accept the trial court's findings of fact "unless they are clearly erroneous." *State v. Wulff*, 157 Idaho 416, 418 (2014). "At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court." *State v. Ellis*, 155 Idaho 584, 587 (Ct. App. 2013). This Court exercises free review of "the trial court's application of constitutional principles to the facts found." *Danney*, 153 Idaho at 408.

C. The District Court Correctly Granted Ms. Fuller's Motion To Suppress

The State has not challenged any of the district court's factual findings in this appeal. As such, the question for this Court is whether, in light of the facts found by the district court, the district court erred in granting Ms. Fuller's motion to suppress. Ms. Fuller submits that the district court's ruling granting her motion to suppress was

amply supported both by the evidence and by governing case law, and that this Court should therefore affirm the district court.

The Fourth Amendment of the United States Constitution secures to the people the right to be free from unreasonable searches and seizures. *State v. Willoughby*, 147 Idaho 482, 486 (2009). Fourth Amendment protections have been incorporated to apply to the states through the Due Process Clause of the Fourteenth Amendment.² *State v. Bishop*, 146 Idaho 804, 810 (2009).

“When a defendant moves to exclude evidence on the grounds that it was obtained in violation of the Fourth Amendment, the government carries the burden of proving that the search or seizure in question was reasonable.” *Id.* at 811. In addition, even brief detentions of individuals must meet the Fourth Amendment’s requirement of reasonableness. *Id.* This means that the detention must be both justified at its inception and reasonably related in scope to the circumstances that originally justified the interference in the first place. *Id.*

When the discovery of the evidence to be used against a defendant was the product of his illegal seizure, it is rightfully suppressed as “fruit of the poisonous tree.” See *Wong Sun v. United States*, 371 U.S. 471, 478-488 (1963).

In *Neal*, the Idaho Supreme Court held that Idaho Code Section 49-637 “does not provide any definitions that clarify what is meant by ‘within a single lane’, or, more to the

² Although the attorney who presented and argued Ms. Fuller’s suppression motion made a general argument that Article I § 17 of the Idaho Constitution provides greater protection than the Fourth Amendment, citing several Idaho cases in which the Court found the Idaho Constitution provided greater protections (R., pp.52-53), no specific authority was cited regarding traffic stops such as the one in Ms. Fuller’s case. (R., pp.52-53; see 3/28/16 Tr.) Therefore, Ms. Fuller will rely upon Fourth Amendment jurisprudence in this appeal.

point, ‘as nearly as practicable entirely within a single lane.’” *Id.* 159 Idaho 445. The *Neal* Court thus concluded the statute was ambiguous where it was reasonably susceptible to more than one meaning. *Id.* In its analysis, the Court held “any ambiguity in a statute should be resolved in favor of a reasonable operation of the law.” *Id.* (quoting *Lawless v. Davis*, 98 Idaho 175, 177 (1977)).

The *Neal* Court found that “[I.C. §] 49-637(1) regulates the interaction of traffic between lanes, not a driver’s interaction with the sidewalk, curb, or shoulder.” *Id.*

Section 49-630(1) does not prohibit driving anywhere on the right side half of the roadway except sidewalks, shoulders, berms, and rights-of-way. Construing this section together with 49-637(1) does not prohibit driving on an edge line in the roadway. There was no allegation here that *Neal* was driving on the shoulder, therefore, he was still in the roadway.

Id. The Court found that the edge line’s “purpose is not to create a lane boundary but to inform the driver of the road’s edge so that under certain conditions the driver can safely maintain his or her position on the roadway.” *Id.* at 445-446.

The Court held:

Where the lines are absent, the edge of the road is considered the curb, and it is an unreasonable interpretation to conclude that where there is a stripe near the edge, the inside of the stripe marks the limits of where a driver’s tires can go, but where it is absent, the curb—which would be located at the outer edge of the painted line—marks those limits.

Neal, 159 Idaho at 446. The Court found that fog lines were painted on the roadway itself, and not on the sidewalks, curbs, shoulders, etc. *Id.* The Court held that “[t]he evil to be remedied in this statute is to prevent dangerous, unsafe movement out of a lane of traffic and into another lane of traffic.” *Id.* at 447. That is, I.C. § 49-637(1) “regulates the interaction of traffic between lanes, not a driver’s interaction with the sidewalk, curb, or shoulder.” *Id.* at 446.

While the *Neal* Court limited its holding to “driving onto but not across the line marking the right edge of the road,” the Court provided no additional reasoning to support a conclusion that simply crossing the edge of the fog lane, while maintaining travel on the roadway, constitutes a violation of I.C. § 49-637(1). Further, the plain language of the statute does not give drivers notice that crossing the fog line is a ticketable offense. The language requiring drivers to drive their vehicles “as nearly as practicable” within a single lane does not lend itself to a conclusion that failing to do so is a violation of Idaho law. I.C. § 49-637(1).

In this case, the district court found:

The Court did review, as I indicated previously, the dash-cam of the arresting officer or the -- yeah, the arresting officer. The Court could not conclude from that view of the video that the tires had all the way crossed over that line; however, I’m accepting that stipulation of fact by the parties and so the Court deems that if they crossed over, it was a little bit. But the parties seem to agree that it crossed -- the tires crossed over completely.

(4/1/16 Tr., p.4, Ls.10-18.)

The district court held:

The Court reads the *Neal* case in a way that I don’t think supports the State’s position in this. I’m going to grant the motion to suppress. The State’s position as the Court understood it was that the *Neal* case was fact-specific and it was.

The facts in the *Neal* case being that the Court determined that the tires of the vehicle going onto the fog line does not constitute a violation of traffic code, but that by implication or by reasonable inference, tires crossing over the fog line does violate traffic code.

There was quite a bit of language that the State referred to and quoted it appropriately. However, this Court finds that the overall reading of the *Neal* case is of -- and I don’t understand quite the phrase that the State referred to -- but the overall reading of this case leads the Court to the conclusion that the principle of law articulated in *Neal* is that the fog line is not a road barrier; the fog line is, in fact, a warning that one is getting close to the road barrier.

Therefore, it makes sense that tires traveling onto the fog line does not constitute a traffic violation, it just constitutes driving on the warning line. And the Court also finds that crossing over the fog line under these circumstances did not constitute a traffic violation. The Court could see even if the tires crossed over just a little bit where it completely crossed that fog line, the vehicle did not leave its lane of travel. It did not drive off the road. It stayed on the lane of travel. Getting towards the edge, for sure, but maintained its lane of travel.

That's why the Court asked the State, Is [sic] the basis of this stop purely the traffic violation? The answer to that question was, Yes [sic]. And so based on that theory that the basis of this stop was purely the traffic violation, the Court finds that there was not a traffic violation here and therefore there was not a reasonable basis on which to pull Ms. Fuller over.

(4/1/16 Tr., p.5, L.6 – p.6, L.18.) The Court added that it would have considered Ms. Fuller's vehicle drifting within its lane of travel—touching the fog line twice—as possible indicia of inattention, sleepiness, or possible DUI, but the State only argued that it was a traffic violation, “and therefore, no reasonable and articulable suspicion of criminal activity from which the law enforcement was justified in pulling over Ms. Fuller.”

(4/1/16 Tr., p.6, L.19 – p.7, L.10.)

The district court correctly suppressed the evidence seized as the result of the search of Ms. Fuller's vehicle where Officer Ballman did not have reasonable, articulable suspicion that her vehicle was being driven contrary to Idaho law. Where Ms. Fuller merely crossed the fog line but did not leave the lane of travel, she was complying with the statute requiring “[a] vehicle to be driven as nearly as practicable entirely within a single lane.” Ms. Fuller respectfully requests that this Court affirm the district court's order suppressing the evidence.

CONCLUSION

Ms. Fuller respectfully requests that this Court affirm the district court's Order Granting Motion to Suppress.

DATED this 14th day of November, 2016.

_____/s/_____
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of November, 2016, I served a true and correct copy of the foregoing RESPONDENT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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108 E JADYNN CT
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DISTRICT COURT JUDGE
E-MAILED BRIEF

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

SJC/eas