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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47818-2020
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-19-18740
v.)	
)	
DANIELLE L. FITZPATRICK,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE STEVEN J. HIPPLER
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Danielle Fitzpatrick contends the district court erred when it denied her motion to suppress. Because the officer did not have reasonable suspicion to justify immediately deviating from the mission of the traffic stop, he unlawfully prolonged the detention by conducting a DUI investigation instead of completing the mission of the traffic stop. As such, this Court should reverse the order denying the motion to suppress.

Statement of the Facts and Course of Proceedings

On May 9, 2019, at approximately 9:50 a.m., Officer Jared Bish observed a female driver in a Ford Mustang legally pass him while he was assisting with another investigation. (Tr. Vol. I,¹ p.8, Ls.9-25.) At a later time that same day, Officer Bish observed that vehicle parked illegally between a no parking sign and a stop sign. (Tr. Vol. I, p.9, Ls.11-22.) Officer Bish asked the driver of the vehicle to back the vehicle up behind the no parking sign so that it would be legally parked. (Tr. Vol. I, p.17, Ls.17-21.) After the vehicle was backed up, Officer Bish observed that the vehicle was now parked more than eighteen inches from the curb in violation of Boise City Code 6-10A-7(A). (R., pp.62-63; Tr. Vol. I, p.11, Ls.5-11.) Officer Bish parked his bike in front of the Ford Mustang and approached the driver's side of that vehicle so that he could ask the driver to park the car legally. (Tr. Vol. I, p.11, L.21—p.13, L.5.)

While talking with the driver, Officer Bish noted that:

¹ There are three transcripts on appeal. The first transcript, cited herein as “Tr. Vol. I”, contains the motion to suppress hearing from October 9, 2019 and the sentencing hearing from January 6, 2020. The second transcript, cited herein as “Tr. Vol. II”, contains the entry of plea hearing from November 4, 2019. The third transcript contains the preliminary hearing from May 23, 2019, and this transcript is not cited herein.

[S]he was very animated, she was turning her head back and forth, hands were constantly moving, she was holding the phone up towards her face, but it was constantly moving as she was talking back and forth. It was hard for me to understand everything that she was saying in my mind at that point because she wasn't talking to me. As I did initiate contact, it became apparent to me that's just how she was talking was kind of mumbling but constantly talking . . . She was difficult to understand at times simply for me because she was turning away, and because she was talking so low it was hard for me to hear at times with traffic noise, and the connector is right above us and all that stuff.

(Tr. Vol. I, p.14, L.8—p.15, L.9.) The officer stated that he noticed the driver sweating even though there was a light breeze that morning. (Tr. Vol. I, p.15, L.23—p.16, L.5.) The driver identified herself as Danielle Fitzpatrick, and she provided the officer with her Delaware driver's license number and vehicle registration. (Tr. Vol. I, p.18, Ls.3-13.) Officer Bish left the vehicle with the registration in his hand and asked dispatch about whether a drug dog would be available. (State's Exhibit 1,² ~15:24:23.) Officer Bish subsequently asked a second time about the availability of a canine narcotics unit and what the estimated time of arrival would be for that unit. (State's Exhibit 1, ~15:25:23.) After this second inquiry, Officer Bish provided dispatch with Ms. Fitzpatrick's name and license number. (State's Exhibit 1, ~15:25:45.)

Sometime later, dispatch informed Officer Bish that Ms. Fitzpatrick had a valid license. (Tr. Vol. I, p.33, L.23—p.34, L.3; State's Exhibit 1, ~15:38:20³.) After over eleven minutes had passed since the beginning of this encounter, Officer Bish asked Ms. Fitzpatrick if she "had used anything today." (State's Exhibit 1, ~15:30:42.) Officer Bish testified he had seen Ms. Fitzpatrick around the area before and that her demeanor was different during this stop compared to how she had previously acted. (Tr. Vol. I, p.13, L.18—p.14, L.2, p.16, Ls.22-25.)

² Where applicable, citations to the video exhibit will identify the relevant time stamp on the video. If quotations to the video are necessary, they are reproduced to the best of appellate counsel's ability.

³ Officer Bish informed another officer that arrived at the scene that "she has a valid one out of Delaware."

Officer Bish then asked Ms. Fitzpatrick “when was the last time you used meth?” (State’s Exhibit 1, ~15:32:37.) Officer Bish then informed Ms. Fitzpatrick that her demeanor was similar to someone who used methamphetamine. (State’s Exhibit 1, ~15:32:45.)

After a second bike officer parked in front of Ms. Fitzpatrick’s car, Officer Bish asked that second officer about an estimated time of arrival. (State’s Exhibit 1, ~15:33:25.) That second officer shook her head in the negative and made a statement to Officer Bish.⁴ (State’s Exhibit 1, ~15:33:25.) Officer Bish then immediately asked Ms. Fitzpatrick if there was anything illegal in the car, including illegal drugs. (State’s Exhibit 1, ~15:33:30.) Officer Bish subsequently asked Ms. Fitzpatrick if there was any marijuana in the vehicle. (State’s Exhibit 1, ~15:34:48.) Officer Bish asked Ms. Fitzpatrick multiple times if a drug dog would alert on the vehicle and where it would alert. (State’s Exhibit 1, ~15:34:52.) The officer asked Ms. Fitzpatrick if it was possible that someone could have left drugs in her car without her knowledge. (State’s Exhibit 1, ~15:35:43.) Over fifteen minutes into the encounter, Officer Bish asked Ms. Fitzpatrick if he could search her car for her protection. (State’s Exhibit 1, ~15:36:06.)

After not receiving permission to search the vehicle, Officer Bish then asked the passenger in the vehicle if he had any drugs. (State’s Exhibit 1, ~15:37:02) Shortly thereafter, Officer Bish asked Ms. Fitzpatrick for the second time if he could search the car. (State’s Exhibit 1, ~15:37:20.) Officer Bish then asked Ms. Fitzpatrick for a third time if he could search her vehicle. (State’s Exhibit 1, ~15:37:50.) Approximately five minutes later, Officer Bish asked Ms. Fitzpatrick for a fourth time about whether he could search the vehicle. (State’s

⁴ Officer Bish testified that that he was informed that a K9 unit was not available prior to asking Ms. Fitzpatrick to exit her vehicle. (Tr., p.36, Ls.20-25.)

Exhibit 1, ~15:42:45.) Officer Bish then asked for permission to search the vehicle for a fifth time. (State's Exhibit 1, ~15:43:14.)

Over twenty-eight minutes into the encounter, Officer Bish asked Ms. Fitzpatrick to step out of her vehicle and onto the nearby sidewalk because he was having a hard time hearing her. (State's Exhibit 1, ~15:47:45.) Officer Bish informed Ms. Fitzpatrick that he was not trying to arrest her, but that he was having difficulty hearing her. (State's Exhibit 1, ~15:48:05.) When Ms. Fitzpatrick did not exit her vehicle, Officer Bish informed Ms. Fitzpatrick that he felt like she was under the influence of something. (State's Exhibit 1, ~15:48:20.) Officer Bish eventually opened Ms. Fitzpatrick's car door and put his hand on her wrist after she refused to leave the vehicle. (Tr. Vol. I, p.19, L.21—p.20, L.1; State's Exhibit 1, ~15:51:00.)

Officer Bish attempted to conduct standardized field sobriety testing on Ms. Fitzpatrick, but Ms. Fitzpatrick was unable to complete the tests. (Tr. Vol. I, p.20, L.2—p.21, L.3.) Officer Bish then arrested Ms. Fitzpatrick on suspicion of driving under the influence ("DUI"). (Tr. Vol. I, p.21, Ls.9-12.) After Ms. Fitzpatrick was removed from her vehicle, law enforcement found methamphetamine shards on the driver's seat of the vehicle. (Tr. Vol. I, p.21, Ls.13-21.) Eventually, a drug recognition expert ("DRE") was called to examine Ms. Fitzpatrick at the jail. (Tr. Vol. I, p.21, L.22—p.22, L.3.)

Officer Bish testified that he did not observe any irregular driving patterns by Ms. Fitzpatrick. (Tr. Vol. I, p.28, Ls.10-13.) Officer Bish stated that he never intended to give Ms. Fitzpatrick a citation for either parking violation.⁵ (Tr. Vol. I, p.28, L.20—p.29, L.9, p.34,

⁵ There does not appear to be any attempt by Officer Bish to fill out a citation for Ms. Fitzpatrick for any traffic violation in his body worn camera footage. Furthermore, there was no further dialogue between Officer Bish and Ms. Fitzpatrick regarding a traffic violation after Officer Bish obtained Ms. Fitzpatrick's registration documentation less than five minutes into the encounter. (State's Exhibit 1, ~15:24:20.) It also does not appear that Officer Bish returned the vehicle

Ls.7-8.) The officer did not see or smell any alcohol or controlled substances in the vehicle prior to Ms. Fitzpatrick being removed from it, nor did Ms. Fitzpatrick admit to having consumed alcohol or a controlled substance. (Tr. Vol. I, p.32, Ls.2-16.) Officer Bish also testified that he was not a certified drug recognition expert. (Tr. Vol. I, p.38, Ls.13-19.)

The State charged Ms. Fitzpatrick with possession of methamphetamine and misdemeanor operating a motor vehicle while under the influence of drugs. (R., pp.33-34.) Ms. Fitzpatrick filed a motion to suppress all the evidence found in her case, arguing, *inter alia*, that Officer Bish deviated from the mission of the traffic stop and unlawfully prolonged the detention of Ms. Fitzpatrick without reasonable suspicion to justify a DUI investigation. (R., pp.62-68, 87-95.)

After the hearing on the motion to suppress, the district court subsequently entered a Memorandum Decision And Order On Motion To Suppress. (R., pp.99-106.) The district court found that the officer had reasonable suspicion, given his training and experience, based on his observations that:

The video shows Defendant speaking rapidly, repetitively, and sometimes hard to understand. She appears to be ranting to herself, embarking on scattered, digressive tangents while Officer Bish attempts to focus her with simple questions. She is visibly *[sic]* sweating on her face despite the cool temperature and her light clothing. She does not make eye contact with him. There is clearly more going on than nervousness. While she attempts to explain her actions on her mental issues, such as anxiety and schizophrenia, her behavior is bizarre enough to give rise to reasonable suspicion that a stimulant is also a factor attributing to her demeanor. In no uncertain terms, Defendant was what is colloquially described as ‘tweaking’ throughout the entire encounter . . . It was during these first few minutes, if not immediately, that Officer Bish developed reasonable suspicion that Defendant was driving while under the influence of a stimulant and that Defendant likely had a stimulant on her person or in the vehicle.

registration to Ms. Fitzpatrick at any time prior to her arrest. (Tr. Vol. I, p.34, Ls.7-14; *See* State’s Exhibit 1, ~15:39:35 (Officer Bish has the registration in his hand), ~16:05:37 (the registration is on top of the trunk of Ms. Fitzpatrick’s vehicle).)

(R., pp.103-04.) The district court denied Ms. Fitzpatrick's motion to suppress. (R., p.104.)

Thereafter, Ms. Fitzpatrick entered a conditional guilty plea, preserving her right to challenge the decision on her motion to suppress. (Tr. Vol. I, p.67, Ls.3-7, p.68, Ls.8-10; Tr. Vol. II, p.5, Ls.8-21; R., pp.109-20.) The district court subsequently sentenced Ms. Fitzpatrick to five years, with two years fixed, suspended for probation, on the felony conviction and to time served on the misdemeanor DUI conviction.⁶ (Tr. Vol. I, p.75, L.22—p.76, L.5, p.78, Ls.20-22; R., pp.128-37.) Ms. Fitzpatrick filed a timely notice of appeal from the judgment of conviction. (R., pp.141-43.)

⁶ In particular, the district court sentenced Ms. Fitzpatrick to thirty days, with thirty days credit for time served, for the DUI. (Tr. Vol. I, p.78, Ls.20-22; R., pp.128-37.)

ISSUE

Did the district court err by denying Ms. Fitzpatrick's motion to suppress because the officer did not have reasonable suspicion to justify a deviation from the original purpose of the traffic stop?

ARGUMENT

The District Court Erred When It Denied Ms. Fitzpatrick's Motion To Suppress Because The Officer Did Not Have Reasonable Suspicion To Justify A Deviation From The Mission Of The Traffic Stop

A. Introduction

Ms. Fitzpatrick argues that the district court erred by denying her suppression motion because Officer Bish unlawfully extended the stop without reasonable suspicion prior to discovering controlled substances in the vehicle. This seizure violated Mr. Fitzpatrick's Fourth Amendment rights, and all evidence obtained from the unlawful seizure, including the contraband in the vehicle and any evidence of Ms. Fitzpatrick driving under the influence obtained after the initial encounter with the officer, must be suppressed as the fruit of the illegality.

B. Standard Of Review

The Court "defer[s] to the trial court's factual findings unless clearly erroneous. However, free review is exercised over a trial court's determination as to whether constitutional requirements have been satisfied in light of the facts found." *State v. Henage*, 143 Idaho 655, 658 (2007) (citations omitted); *State v. Linze*, 161 Idaho 605, 607 (2016).

C. The District Court Should Have Granted Ms. Fitzpatrick's Motion To Suppress Because Officer Bish Did Not Have Reasonable Suspicion To Justify A Deviation From The Mission Of The Traffic Stop

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. "The Fourth

Amendment of the United States Constitution protects citizens from unreasonable search and seizure.” *State v. Hansen*, 138 Idaho 791, 796 (2003). “The stop of a vehicle by law enforcement constitutes a seizure of its occupants to which the Fourth Amendment applies.” *Linze*, 161 Idaho at 608 (citing *Delaware v. Prouse*, 440 U.S. 648, 653 (1979)).

When an officer stops a vehicle for a traffic violation, the Fourth Amendment requires that detention last no longer than the time it takes, or reasonably should have taken, to complete the mission of the traffic stop. *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). “Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.* As such, the officer may conduct other, unrelated checks during a traffic stop without additional reasonable suspicion only if those other tasks do not prolong the time it takes, or should have taken, to complete the mission of the traffic stop. *Id.* at 355. However, if the deviation increases the time the stop should have taken, effectively, a new seizure has occurred. *Linze*, 161 Idaho at 609. The Fourth Amendment requires that new seizure be justified by its own reasonable suspicion and it “cannot piggy-back on the reasonableness of the original seizure.” *Id.*

Still, reasonable suspicion requires more than a mere hunch or ‘inchoate and unparticularized suspicion.’ 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. Not every suspicious or abnormal behavior is sufficient to establish reasonable suspicion.

State v. Gonzales, 165 Idaho 667, 673 (2019) (internal citations omitted).

Completing the mission of the traffic stop includes ordinary inquiries incident to that traffic stop, including: checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. *Rodriguez*, 575 U.S. at 355. Investigations into other potential criminal activity are “not an

ordinary incident of a traffic stop.” *Id.* at 356-357. “[A] police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures.” *Id.* at 350. “This rule is both broad and inflexible. It applies to all extensions of traffic stops including those that could reasonably be considered *de minimis*.” *Linze*, 161 Idaho at 608.

The district court found the following in determining that Officer Bish had reasonable suspicion during his initial encounter with Ms. Fitzpatrick that she was driving under the influence of a controlled substance:

Defendant, however, was talking on her cell phone, seemingly unaware or unconcerned that Officer Bish was standing there waiting to speak to her. Her speech while on the phone was rapid and incessant, and she was wildly gesticulating with her hands and moving her head back and forth. After about thirty seconds, she put down the phone yet continued to behave manically, persistently talking about various unrelated topics, gesticulating and swinging her head from side to side. Her speech was difficult for Officer Bish to understand and she often mumbled and slurred her words. She would not look at Officer Bish and it appeared at times that she was unaware of his presence. Though wearing light clothing, Defendant was sweating profusely despite the cool air temperature that morning. . . . Based on her extremely animated demeanor and profuse sweating, Officer Bish suspected—based on his training and experience—that Defendant was under the influence of some type of stimulant while operating the vehicle.

(R., p.100.) The district court further found that Ms. Fitzpatrick was detained when Officer Bish returned to her vehicle after his initial inquiries over dispatch and subsequently did not return her vehicle registration. (R., pp.100-01.)

The district court determined that Ms. Fitzpatrick’s behavior was indicative of being under the influence of a controlled substance rather than mere nervousness. (R., p.103.) In particular, the district court focused on the following regarding Ms. Fitzpatrick’s behavior: (1) she was speaking rapidly, repetitively, and she was sometimes hard to understand; (2) she had “scattered, digressive tangents” when talking with Officer Bish; (3) she was sweating despite the

cold temperature and her light clothing; (4) she did not make eye contact with Officer Bish; and (5) she was “tweaking” throughout the encounter. (R., p.103.) The district court determined that, “[i]t was during these first few minutes, if not immediately, that Officer Bish developed reasonable suspicion that Defendant was driving while under the influence of a stimulant and that Defendant likely had a stimulant on her person or in the vehicle.” (R., p.104.)

Based on the district court’s findings, the critical question at issue is whether Officer Bish had reasonable suspicion that Ms. Fitzpatrick was driving under the influence of a controlled substance after his initial encounter with her. Ms. Fitzpatrick asserts that her behavior was indicative of nervousness, and that Officer Bish did not have the necessary reasonable suspicion of further criminal activity that would have justified prolonging the stop. (R., pp.62-68, 87-98.)

“A nervous demeanor during an encounter with law enforcement is of limited significance in establishing the presence of reasonable suspicion because it is common for people to exhibit signs of nervousness when confronted with law enforcement regardless of criminal activity.” *State v. Neal*, 159 Idaho 919, 924 (Ct. App. 2016). In *Neal*, the Court found that the Defendant having a face wet with sweat, bouncing a leg steadily throughout the encounter, having difficulty sitting still, and having quick or rapid speech were “signs of nervousness and as such, are alone insufficient to establish reasonable suspicion.” *Id.*

Likewise, in *State v. Kelley*, 160 Idaho 761, 763 (Ct. App. 2016), the Court found that law enforcement did not have reasonable suspicion of criminal activity based on the State’s assertion in that case that: “(1) Kelley displayed extreme nervousness; (2) lacked eye contact; (3) continued trembling on a warm evening; (4) had a pulsing carotid artery; (4) [*sic*] had an unusual travel itinerary; and (5) was traveling on a known ‘drug-trafficking corridor.’” The

Court held that, “Kelley's nervousness, evidenced by lack of eye contact, trembling, and pulsing carotid artery, is of limited significance in establishing the presence of reasonable suspicion.” *Id.*

Here, Officer Bish initially had reasonable suspicion that Ms. Fitzpatrick’s vehicle was illegally parked in violation of the Boise City Code. However, Officer Bish never started, or attempted to start, a citation for any traffic violation throughout his encounter with Ms. Fitzpatrick. After receiving Ms. Fitzpatrick’s license number and vehicle registration, Officer Bish’s first two inquiries over dispatch were about the availability of a canine narcotics unit. (State’s Exhibit 1, ~15:24:23.) Only after these inquiries did Officer Bish eventually provide dispatch with Ms. Fitzpatrick’s name and license number. (State’s Exhibit 1, ~15:25:45.) Officer Bish was subsequently informed that Ms. Fitzpatrick’s license was valid. (Tr. Vol. I, p.33, L.23—p.34, L.3; State’s Exhibit 1, ~15:38:20).

Rather than beginning a citation for a traffic offense or returning Ms. Fitzpatrick’s registration, Officer Bish instead almost immediately deviated from the original purpose of the traffic stop when the officer began to ask Ms. Fitzpatrick multiple questions about controlled substances. (*See, e.g.*, State’s Exhibit 1, ~15:30:42 – 15:35:50.) Eventually, Officer Bish asked Ms. Fitzpatrick for permission to search her vehicle at least five separate times. (State’s Exhibit 1, ~15:36:06 – 15:43:20.) When Ms. Fitzpatrick refused to give the officer permission to search her vehicle, the officer began to ask the passenger in the vehicle if he had any drugs. (State’s Exhibit 1, ~15:37:02.) The officer did not ask Ms. Fitzpatrick to step out of the vehicle until over twenty-eight minutes into the encounter, and even then the officer made that request because he was having a hard time hearing her. (State’s Exhibit 1, ~15:47:45.) When Ms. Fitzpatrick continued to refuse to exit her vehicle, Officer Bish opened the car door and put

his hand on her wrist to remove her from the vehicle. (Tr. Vol. I, p.19, L.21—p.20, L.1; State’s Exhibit 1, ~15:51:00.)

Officer Bish’s multiple inquiries into the presence of controlled substances in the vehicle were deviations from the original purpose of the stop and therefore inevitably lengthened the time needed to complete the original purpose of the stop. *See Linze*, 161 Idaho at 609. “The rule isn’t concerned with when the officer deviates from the original purpose of the traffic stop, it is concerned with the fact that the officer deviates from the original purpose of the stop at all.” *Id.* at 609. At the time that Officer Bish began his investigation into whether Ms. Fitzpatrick was driving under the influence of a controlled substance, the only observations he had made about her behavior were that she was: (1) very animated and fidgeting while talking; (2) difficult to understand due to her mumbling and talking constantly; (3) sweating; (4) talking at a low timbre; and (5) having difficulty answering questions.⁷ (Tr. Vol. I, p.14, L.8—p.16, L.21, p.29, L.10—p.31, L.23.)

Ms. Fitzpatrick asserts that, like in *Neal* and *Kelley*, her behavior was a sign of nervousness and did not give Officer Bish reasonable suspicion to conduct a further investigation into whether she was driving while under the influence of a controlled substance. In *Neal*, the Court found that the Defendant bouncing his leg up and down throughout the encounter, having difficulty sitting still, speaking rapidly, and sweating were all “signs of nervousness” and were insufficient, under the totality of the circumstances, to give the officer in that case reasonable suspicion. *Neal*, 159 Idaho at 924. Likewise, in *Kelley*, the Court characterized the Defendant’s lack of eye contact, trembling, and pulsing carotid artery as “nervousness” and found that those

⁷ In regard to whether Ms. Fitzpatrick made eye contact with Officer Bish, the officer testified that he could not tell whether she was making eye contact with him since she had sunglasses on. (Tr. Vol. I, p.14, Ls.23-24.)

signs were insufficient to establish reasonable suspicion. *Kelley*, 160 Idaho at 763. Therefore, Ms. Fitzpatrick argues that the officer's testimony that she was fidgeting constantly, speaking rapidly, and sweating were insufficient to establish reasonable suspicion. In regard Officer Bish's other observed signs of impairment, the officer explained at the motion to suppress hearing that "because she was talking so low it was hard for me to hear at times with traffic noise, and the connector is right above us and all that stuff." (Tr. Vol. I, p.15, Ls.2-11.) The officer also testified that Ms. Fitzpatrick answered his questions despite the difficulty he had in engaging her. (Tr. Vol. I, p.15, Ls.13-22.)

In *Neal*, the Court explained that the district court in that case had "determined that the officer's investigative actions were inconsistent with his articulated basis for the investigation—driving under the influence of drugs—because while waiting for the K-9 unit, the officer did not call a drug recognition expert, conduct any drug recognition tests himself, or conduct standard field sobriety tests." *Neal*, 159 Idaho at 923-24. Here, Officer Bish did not ask Ms. Fitzpatrick to step out of the vehicle until over twenty-eight minutes into the encounter, and even then the officer made that request because he was having a hard time hearing her. (State's Exhibit 1, ~15:47:45.) Officer Bish did not take any steps towards conducting standard field sobriety testing until over thirty-two minutes into the encounter. (State's Exhibit 1, ~15:51:53.) Officer Bish was not a certified drug recognition expert, and he did not call for a drug recognition expert to arrive at the scene of the investigation.⁸ (Tr. Vol. I, p.38, L.13—p.39, L.6.). These significantly delayed actions were inconsistent with the officer's articulated basis for the continued investigation.

⁸ Officer Bish testified that he did not call for a drug recognition expert until he was already en route to the jail after arresting Ms. Fitzpatrick. (Tr. Vol. I, p.38, L.13—p.39, L.6.)

When viewed in the totality of the circumstances of this stop, Officer Bish did not have reasonable suspicion that Ms. Fitzpatrick was driving under the influence of a controlled substance when he seized her by continuing to hold onto her registration and asking her questions about controlled substances instead of taking any steps towards completing the original mission of the stop. Rather, at the time that the purpose of the stop transformed into an investigation regarding whether Ms. Fitzpatrick was driving under the influence of controlled substances, the officer only had a hunch that she had committed such a law violation. A hunch cannot be the basis for a prolonged detention. *See Rodriguez*, 135 S. Ct. at 1615; *Linze*, 161 Idaho at 609. This illegal seizure violated Ms. Fitzpatrick’s Fourth Amendment rights. Due to this Fourth Amendment violation, the district court should have granted her motion to suppress. The evidence obtained, such as the contraband in the vehicle and any evidence beyond the initial encounter between Officer Bish and Ms. Fitzpatrick, would not have been found but for the illegal seizure. The evidence was “come by at exploitation of that illegality.” *Wong Sun v. United States*, 371 U.S. 471, 488 (1963) (evidence obtained through unconstitutional police conduct subject to exclusion); *see also State v. Bishop*, 146 Idaho 804, 810–11 (2008) (same). Therefore, the district court erred by denying Ms. Fitzpatrick’s motion to suppress the evidence following his illegal seizure.

CONCLUSION

Ms. Fitzpatrick respectfully requests that this Court vacate the district court's order of judgment and commitment and reverse the order which denied her motion to suppress.

DATED this 23rd day of November, 2020.

/s/ Jacob L. Westerfield
JACOB L. WESTERFIELD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of November, 2020, 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

JLW/eas