8-2-2021

State v. Martin Respondent's Brief Dckt. 48397

Electronically Filed
8/2/2021 11:01 AM
Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
By: Brad Thies, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 48397-2020**
Plaintiff-Respondent,	)	
	)	**Nez Perce County Case No.**
v.	)	**CR35-19-6125**
	)	
LAYNE CURTIS MARTIN,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

HONORABLE JAY P. GASKILL
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

MARK A. KUBINSKI
Deputy Attorney General
Chief, Criminal Law Division

KACEY L. JONES
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

ATTORNEYS FOR PLAINTIFF-RESPONDENT

BEN P. McGREEVY
Deputy State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712
E-mail: documents@sapd.state.id.us

ATTORNEY FOR DEFENDANT-APPELLANT

TABLE OF CONTENTS

PAGE

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 13

ARGUMENT 14

Martin Has Failed To Show That The District Court Erred When It Denied His Motion To Suppress 14

A. Introduction 14

B. Standard Of Review 15

C. The Search Of The Vehicle And Seizure Of The Dabs Kit Was Valid Under The Plain View And Automobile Exceptions To The Warrant Requirement 15

CONCLUSION 25

CERTIFICATE OF SERVICE 26

TABLE OF AUTHORITIES

CASES **PAGE**

Baldwin v. State, 145 Idaho 148, 177 P.3d 362 (2008) 16

State v. Andersen, 164 Idaho 309, 429 P.3d 850 (2018) 15

State v. Anderson, 154 Idaho 703, 302 P.3d 328 (2012) 17

State v. Anderson, 163 Idaho 513, 415 P.3d 381 (Ct. App. 2015) 17

State v. Chambliss, 116 Idaho 988, 783 P.2d 327 (Ct. App. 1989) 18, 20

State v. Christensen, 131 Idaho 143, 953 P.2d 583 (1998) 15

State v. Clark, 124 Idaho 308, 859 P.2d 344 (Ct. App. 1993) 15

State v. Howard, 167 Idaho 588, 473 P.3d 857 (Ct. App. 2020) 17

State v. Kysar, 116 Idaho 992, 783 P.2d 859 (1989) 17

State v. Lankford, 162 Idaho 477, 399 P.3d 804 (2007) 15

State v. Loman, 153 Idaho 573, 287 P.3d 210 (Ct. App. 2012) 16

State v. Ramirez, 121 Idaho 319, 824 P.2d 894 (Ct. App. 1991) ..... passim

State v. Smith, 152 Idaho 115, 266 P.3d 1220 (Ct. App. 2011) 18, 20

State v. Tamez, 116 Idaho 945, 782 P.2d 353 (Ct. App. 1989) 16, 17

State v. Thla Hum Lian, ___ Idaho ___, 481 P.3d 759 (Idaho Ct. App. 2020) 16

Texas v. Brown, 460 U.S. 730 (1983) 16, 17, 20

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. IV 15

STATEMENT OF THE CASE

Nature Of The Case

Layne Curtis Martin appeals from the district court's orders denying his motion to suppress and motion for reconsideration.

Statement Of The Facts And Course Of The Proceedings

While patrolling, law enforcement officers observed Martin peering into vehicle windows in the Red Lion Hotel parking lot. (R., pp.16-17.) Martin entered an SUV, drove it to the front of the hotel, then returned and parked the vehicle near where it had originally been parked. (R., p.17.) After Martin exited the SUV and entered the hotel, an officer looked through the windows of the vehicle and observed items in the back seat that he identified as drug paraphernalia. (R., p.17.) Officers searched the SUV and found paraphernalia, a firearm, and financial transaction cards in someone else's name. (R., p.17.) Martin admitted he was a convicted felon; thereafter, officers arrested him. (R., p.17.) A woman who had exited the hotel with Martin gave officers consent to search her satchel. (R., p.62.) Officers located methamphetamine and heroin. (R., p.62.) Officers secured a search warrant for the hotel room in which Martin and the woman had been staying. (R., p.62.) Inside, officers located two semi-automatic Glock pistols, over one thousand dollars in suspected counterfeit cash, digital scales, small plastic baggies, a bag containing twenty-two pills of amphetamine, another bag containing ten tablets of fentanyl, and a bag containing over seventy-three grams of methamphetamine. (R., pp.62-63; State's Ex. 2.)

The state charged Martin with possession of methamphetamine with intent to deliver, forgery, two counts of possession of a controlled substance, and three counts of unlawful possession of a firearm, along with a persistent violator enhancement. (R., pp.271-75.) Martin

filed a motion to suppress evidence obtained following the officers' search of the vehicle, arguing that the alleged paraphernalia in the SUV was not immediately apparent to the officer as evidence of a crime and therefore the officer lacked probable cause to search the vehicle under the plain view and automobile exceptions to the Fourth Amendment. (R., pp.158-67.) The state opposed Martin's motion, arguing that the incriminating nature of the paraphernalia in plain view in Martin's SUV was immediately apparent and that the subsequent search of the vehicle was valid under the automobile exception. (R., pp.198-206.)

The district court held a hearing on the motion at which the preliminary hearing transcript, a picture of the alleged paraphernalia, and an officer's body camera video were admitted; no further testimony was given.[1] (See generally 5/14/2020 Tr., pp.7-17.[2]) The preliminary hearing transcript and body camera video set forth the following, as is relevant to Martin's motion.

Officer Michael Macuk testified that he was on patrol on October 13, 2019. (Tr., p.8, Ls.17-19.) At around 11:30 p.m., he was in the Red Lion parking lot with Officer Moyle. (Tr., p.8, L.20 – p.9, L.1.) The officers noticed a man walking around an SUV, talking on his cell phone, and looking in the SUV's windows. (Tr., p.9, Ls.12-15.) The man appeared to be watching other individuals who were taking items out of the bed of a pickup truck in the same parking lot. (Tr., p.9, Ls.17-23.) After the individuals left the truck and entered the hotel, the

[1] Both Martin and the state attached to their briefing a picture of the alleged paraphernalia, which had been admitted as State's Exhibit 6 at the preliminary hearing. (See R., pp.171, 207.) Martin also attached to his motion as Exhibit C a screenshot of an item available for purchase online. (See R., pp.172-74.) However, the state objected to Exhibit C and the district court did not consider it. (See Tr., p.12, L.22 – p.13, L.3.)

[2] Citations to "Tr." will refer to the preliminary hearing transcript, set forth in the "Exhibit to Clerk's Record" electronic document. All other transcripts appear in the continuously paginated "Transcript" electronic document and will be cited to by date.

man opened the back hatch of the SUV, closed it, got into the SUV, and drove towards the front entrance of the hotel. (Tr., p.9, L.25 – p.10, L.8.) Officer Macuk followed the SUV in his patrol vehicle. (Tr., p.10, L.13.) The man stopped "just shy of the entrance" to the hotel and then continued forward. (Tr., p.10, Ls.10-12.) He stopped again before turning around and parking in close proximity to where the SUV had originally been parked. (Tr., p.10, Ls.14-17.)

Officer Macuk testified that the man's behavior seemed suspicious. (Tr., p.11, Ls.1-2.) There had been "several vehicle prowler calls and vehicle thefts, or burglaries, recently." (Tr., p.11, Ls.2-3.) Officer Macuk found it suspicious that the man was looking inside the SUV through its windows, watching other individuals in the parking lot, and that the man didn't get into the SUV "until the parking lot was clear of any other people." (Tr., p.11, Ls.3-10.) Officer Macuk suspected that "there may have been a vehicle tampering, or a potential vehicle theft happening." (Tr., p.11, Ls.12-14.)

After the man parked, Officer Macuk exited his vehicle to approach the SUV; around that same time, the man exited the SUV and began walking towards the hotel's southeast entrance. (Tr., p.11, L.25 – p.12, L.3.) Officer Macuk made contact with the man, who identified himself as Martin and said he rented the SUV. (Tr., p.12, Ls.5-7.) Officer Macuk testified that he had "no reason to continue" his contact and Martin was "free to go." (Tr., p.12, Ls.17-20.) Martin continued into the hotel. (Tr., p.12, Ls.17-18.)

Officer Macuk walked back to the SUV, where Officer Moyle was standing. (Tr., p.12, Ls.22-23.) Officer Moyle advised Officer Macuk that "he could see drug paraphernalia sitting in the floorboard of the rear – rear seat." (Tr., p.12, Ls.24-25.) Officer Macuk looked through the SUV's windows and "could clearly see a silicone circle container, which is commonly used to hold dabs, and miscellaneous glass piping" "in a cut out styrofoam piece…which appeared to be

consistent with marijuana paraphernalia." (Tr., p.13, Ls.2-5; p.21, Ls.8-13; see State's Ex. 6.) The items were "on the floorboard of the back seat directly behind the center console." (Tr., p.21, Ls.15-16.)

At that time, Martin and a woman exited the hotel. (Tr., p.13, Ls.7-10; p.14, Ls.7-10.) Officer Macuk testified Martin had been walking towards the SUV but when he saw the officers, "he immediately stopped and began walking the opposite direction towards the front entrance to the hotel." (Tr., p.13, Ls.12-16.) The officers made contact with Martin, told him to stop, and confronted him about the paraphernalia in the SUV. (Tr., p.13, L.18 – p.14, L.2.) Martin got the SUV's keys from the woman and walked with Officer Moyle to the vehicle; Officer Macuk stayed with the woman. (Tr., p.14, Ls.2-6.) Officer Macuk testified that Officer Moyle detained Martin and began searching the SUV. (Tr., p.14, Ls.18-23.) Officer Macuk assisted by searching the glove box. (Tr., p.14, L.24 – p.15, L.3.)

The woman provided Officer Macuk with information about a hotel room. (Tr., p.15, Ls.4-10.) Officer Macuk and the woman entered the hotel, where the front desk clerk provided them with a room key. (Tr., p.15, Ls.17-19.) She, Officer Macuk, and Sergeant Ward briefly entered the hotel room, then exited the room; the officers secured the room while they applied for a search warrant. (Tr., p.15, L.19 – p.16, L.5.)

On cross-examination, Officer Macuk testified in further detail regarding the items he observed in the back seat of the SUV. He testified that the items appeared to be drug paraphernalia. (Tr., p.23, Ls.3-4; p.25, Ls.4-6.) In his experience, "the silicone circular container is commonly used for marijuana dabs, as well as the glass – glass pieces being commonly used to ingest – inhale marijuana." (Tr., p.25, Ls.8-11.) Officer Macuk testified that he has "only seen dabs" in round containers like the one in Martin's SUV. (Tr., p.26, Ls.3-6.) Officer Macuk

believed the glass piping was paraphernalia and appeared to belong to a type of bong. (Tr., p.26, Ls.16-22.) When asked specifically how the items are used, Officer Macuk responded: "I don't ingest marijuana. I don't know how they use them. I just know, from experience, those are commonly accompanied with bongs." (Tr., p.26, L.23 – p.27, L.1.) Although Officer Macuk testified he had not seen the specific items found in Martin's SUV used as a bong, he testified that they appeared to be paraphernalia and he has seen similar items "accompanied with marijuana devices, which are accompanied with marijuana, marijuana residue." (Tr., p.27, L.5 – p.28, L.6.)

Officer Macuk testified that he had not reviewed his body camera video prior to the hearing. (Tr., p.36, L.20 – p.37, L.1.) When shown Exhibit 6, Officer Macuk testified that the paraphernalia did not appear to be used in the photograph; however, he could not recall if the items appeared used at the time. (Tr., p.25, L.12 – p.26, L.2; State's Ex. 6.) He did not recall looking at the paraphernalia, seeing it placed on top of the SUV, or any discussion with Officer Moyle about the items. (Tr., p.38, L.10 – p.39, L.9.)

Officer John Moyle testified that he had been on patrol and in the Red Lion parking lot with Officer Macuk. (Tr., p.41, Ls.7-18.) Officer Moyle observed Martin "walking about, pacing back and forth, looking inside other vehicles, eventually opening the back hatch on one vehicle, getting inside, and then beginning to drive." (Tr., p.42, Ls.5-9.) Officer Moyle testified he was suspicious because Martin's behavior was "not normal" and there had been many vehicle burglaries and thefts in that area. (Tr., p.42, Ls.11-17.) After Martin drove off, returned to the same area, and parked again, Officer Moyle and Macuk exited their vehicles. (Tr., p.42, L.24 – p.43, L.6.) While Officer Macuk contacted Martin, Officer Moyle approached the SUV, called in its license plate to dispatch, and looked in the windows. (Tr., p.43, Ls.9-12.)

Officer Moyle saw "a small green silicone container, or plastic, as well as some glass piping." (Tr., p.43, Ls.23-24; State's Ex. 6.) The items were located "in the second row" of the SUV "on the floor." (Tr., p.44, Ls.17-18.) Officer Moyle testified that the items were "what [he] believed to be a dabs kit." (Tr., p.43, Ls.14-15.) He testified that a dabs kit is "a method to smoke marijuana products." (Tr., p.43, Ls.17-18.) Officer Moyle testified that there are items he commonly sees with a dabs kit, such as a "main body…usually made out of glass or silicone or some material like that." (Tr., p.43, Ls.19-23; p.44, Ls.8-11.)

Officer Moyle informed Officer Macuk about what he saw. (Tr., p.45, L.3.) Shortly thereafter, Martin exited the hotel with a woman. (Tr., p.45, Ls.3-5.) Officer Moyle testified that he and Officer Macuk made contact with Martin again "[b]ecause there was paraphernalia inside the vehicle in plain view." (Tr., p.45, Ls.3-11.) Officer Moyle asked Martin about the paraphernalia; at first, Martin "denied it was in there" but then "told [Officer Moyle] it was in there and that he would get it for [Officer Moyle]." (Tr., p.45, Ls.12-19.) Officer Moyle escorted Martin to the SUV, at which point Martin "started to get irritated and frustrated" and said he wouldn't retrieve the items. (Tr., p.45, Ls.23-25.) Officer Moyle then detained Martin. (Tr., p.45, L.25 – p.46, L.2.)

Officer Moyle opened the SUV, retrieved the paraphernalia items, and continued to search the vehicle. (Tr., p.46, Ls.12-14.) In the driver's side door of the vehicle, Officer Moyle located "a concealed black pistol." (Tr., p.47, Ls.21-22; State's Exs. 4-5.) Martin first denied knowing who the gun belonged to, then stated it was a friend's gun, and then said he bought the gun for seventy-five dollars from a man named Billy Bob. (Tr., p.50, L.23 – p.51, L.1.) When asked, Martin admitted he was a felon. (Tr., p.51, Ls.2-6.) Thereafter, Officer Moyle arrested Martin. (Tr., p.51, Ls.10-15.)

Officer Moyle then testified in more detail regarding the dabs kit. Officer Moyle testified that "[a] dab is marijuana oil" that is consumed "[b]y smoking" using a bong kit or dabs kit. (Tr., p.68, Ls.3-11.) He testified that the dabs kit items were in Styrofoam, as depicted in State's Exhibit 6, and not covered by a box lid or cellophane. (Tr., p.75, Ls.7-21.) Officer Moyle testified that the small circular silicone container was commonly associated with and used to contain paraphernalia; the small metal piece was used to smoke marijuana products. (Tr., p.59, Ls.1-19.) Officer Moyle testified that he knew the dabs kit is "used to smoke marijuana products." (Tr., p.60, L.7.) Officer Moyle did not know the names of the specific items, but knew them to belong to a dabs kit because he'd "seen them used," although he'd never personally witnessed someone use the items. (Tr., p.58, Ls.8-25.) Officer Moyle clarified that he had seen people use dabs kits similar to the one he found in Martin's SUV "in other cases" and "TV shows, lots of things." (Tr., p.64, Ls.16-24.) Specifically, he testified that he had seen dabs kits in "[m]ore than four" other cases, several of which he was the primary officer, and he had collected "[a] lot" of such kits. (Tr., p.66, Ls.9-23.)

Officer Moyle also testified that he had not reviewed the entirety of his body camera video prior to the hearing. (Tr., p.63, Ls.5-7.) Officer Moyle did not know whether the dabs kit in Martin's SUV had been used. (Tr., p.60, L.7 – p.61, L.17.) He did not recall having a discussion with Officer Macuk about the items. (Tr., p.63, Ls.8-22.)

Exhibit A—Officer Moyle's body camera video—was also presented to the district court in support of Martin's motion. The video begins after Officer Moyle had seen the dabs kit in the SUV and as he turned from the vehicle towards the hotel, where Martin and the woman just exited. (Ex. A, 00:00-00:10.) Officer Moyle approached and made contact with Martin. (Ex. A, 00:10-00:30.) The following exchange occurred:

> Officer Moyle: "Alright, the dabs sitting in the back seat."
>
> Martin: "What dabs?"
>
> Officer Moyle: "The dabs. The little circular container and the glass bowl sitting in the back."
>
> Martin: "Oh that's—that's unused."
>
> Officer Moyle: "Then go open it and get it for me. You know that's paraphernalia, right?"

(Ex. A, 00:30-00:45.) Martin got the keys to the SUV and walked to the vehicle with Officer Moyle. (Ex. A, 00:45-01:20.) Officer Moyle told Martin that he had permission to search the SUV due to the drug paraphernalia he observed inside. (Ex. A, ~1:22.) Officer Moyle then detained Martin, noting again that he could see drug paraphernalia in the SUV. (Ex. A, 01:25-01:55.) Shortly thereafter, Officer Moyle reiterated: "We could see the dabs kit sitting in the back." (Ex. A, ~03:39.)

Officer Moyle then began to search the vehicle. (Ex. A, ~04:10.) A while into the search, Officers Moyle and Macuk had a brief exchange about items found in the SUV. Officer Moyle held an item in his hand and asked, "What's this?" (Ex. A, ~32:40.) Officer Macuk responded, "I was looking at that. I'm not sure what that is." (Ex. A, ~ 32:43.) Officer Moyle replied that the item "[l]ooks like a torch." (Ex. A, ~ 32:48.) The torch-like item, which can be seen briefly in Officer Macuk's hand, is not an item from the dabs kit. (Compare Ex. A, ~32:49, with State's Ex. 6.) Then, Officer Moyle said, "What's all this stuff?" as Officer Macuk retrieved the dabs kit from the top of the SUV. (Ex. A, ~33:00.) Officer Macuk picked up and examined what appears to be a medical bracelet that was sitting in the dabs kit. (Ex. A, 33:00-33:10; see also State's Ex. 6.) Officer Moyle said: "Guy he said he took to the hospital," presumably referring to Martin's earlier comment that he had taken a friend named Caleb Birch

to the hospital that day. (Ex. A, ~33:09; 24:20.) Officer Moyle muttered something[3] and then after a short pause said, "It's enough for us"; Officer Macuk responded, "It's enough for paraphernalia." (Ex. A, 33:20-33:25.)

After taking the matter under advisement, the district court denied Martin's motion to suppress. (R., pp.220-25.) In its recitation of the facts, the district court found:

> Officer Moyle had looked through the windows of the SUV and observed a dabs kit in the vehicle. Officer Moyle testified he "observed a small green silicone container, or plastic, as well as some glass piping." Officer Moyle advised Officer Macuk that there was drug paraphernalia in the back seat of the SUV. Officer Macuk looked in the rear seat of the vehicle and also observed the drug paraphernalia. Both officers testified that they recognized the silicone container as commonly used for marijuana dabs.

(R., p.221 (citations omitted).) The district court found the officers then made contact with Martin "because there was paraphernalia inside the vehicle in plain view." (R., p.222 (quoting officer testimony).)

The district court then addressed whether the warrantless search of the vehicle was justified by the plain view exception. (R., pp.223-24.) The district court first concluded that the first prong of the plain view exception, which was unchallenged, was satisfied because "the officer was properly in a position to observe the paraphernalia that was sitting out in the back seat of the SUV." (R., p.223.) The district court then turned to the second prong—whether it was immediately apparent to the officer that the items were evidence of a crime. (R., pp.223-24.)

[3] Officer Moyle's statement is difficult to hear. (Ex. A, ~33:17.) Martin asserts that Officer Moyle said, "It's new," in reference to the dabs kit. (See Appellant's brief, pp.3, 22.) However, the statement could also be "his name," which would be consistent with the officers' discussion of the medical bracelet and may refer to Caleb Birch, whom Martin mentioned taking to the hospital. (See Ex. A, ~24:20, 33:17.)

The district court identified key portions of Officer Moyle's testimony, which demonstrated that he observed the items in plain view in the vehicle, recognized them as a "dabs kit," and knew from his training and experience that dabs kits are used as a method to smoke marijuana products. (R., pp.223-24.) The district court found that Officer Moyle "recognized the items were drug paraphernalia as defined in I.C. §37-2734A(1)" and, therefore, "it was immediately apparent that the items were evidence of the crime of possession of drug paraphernalia." (R., p.224.)

The district court specifically rejected Martin's assertion that the video contradicted Officer Moyle's testimony. (R., p.224.) "At approximately 33 minutes on the video, there is a conversation between the officers regarding an item from the car, but the video does not establish the conversation was about the dabs kit, nor does it show that Officer Moyle was unsure regarding the item he called a dabs kit." (R., p.224.) The district court concluded that "[t]he evidence submitted indicates the incriminating nature of the items, as drug paraphernalia, was readily apparent to Officer Moyle." (R., p.224.) The district court denied Martin's motion to suppress. (R., pp.224.)

Martin moved the district court to reconsider its ruling. (R., pp.227-37.) Martin specifically challenged the district court's finding that the officers' conversation on the video did not demonstrate that Officer Moyle had not recognized the dabs kit as drug paraphernalia. (R., pp.227-28.) Martin argued the video showed Officer Moyle hold the dabs kit and ask what it was. (R., p.228.) Therefore, Martin asserted, the "statements made during the search are inconsistent with Officer Moyle's sworn testimony during the preliminary hearing and specifically inconsistent with his testimony that he immediately recognized the items prior to the search." (R., p.228.) Martin identified specific portions of Officer Moyle's testimony that he

argued either contradicted the video or otherwise demonstrated Officer Moyle lacked credibility and did not immediately recognize the dabs kit as drug paraphernalia. (R., pp.228-36.)

After a brief hearing and taking the matter under advisement, the district court denied Martin's motion for reconsideration. (See generally 6/25/2020 Tr., pp.18-22; R., pp.260-63.) The district court re-reviewed the preliminary hearing transcript and body camera video. (R., p.260.) The district court found it "clear that Officer Moyle [confronted] the Defendant regarding his observation of drug paraphernalia in the Defendant's vehicle." (R., p.261.) The district court again rejected Martin's argument that the officers' conversation in the video demonstrate they did not recognize the dabs kit as paraphernalia. (R., p.261.) Although the officers did not know the "specific names of the items in the kit," see the items being used, or "explain exactly how each of the items could be used for the ingestion of drugs," "both officers testified that they recognized the items as a 'dabs kit' which is drug paraphernalia based upon their training and experience." (R., p.261.)

The district court reiterated its conclusions that the video and testimony established both elements of the plain view doctrine: "First, the officer was lawfully outside the car looking in the window, where he observed the items he repeatedly called a dabs kit. Second, it was immediately apparent to Officer Moyle that what he observed was evidence of a violation of I.C. §37-2734A(1)." (R., p.263.)

The district court rejected Martin's argument that the officers' testimony lacked credibility. (R., p.263.) The district court agreed that "Officer Moyle could have prepared more thoroughly prior to the testimony given in this case." (R., p.263.) However, the district court found that his "inability to give specific names to each item contained in" the dabs kit and "his testimony that he did not personally observe the items being used, does not establish that Moyle

was lying when he testified he recognized the items, as they were viewed together, as a dabs kit." (R., p.263.) Therefore, the district court concluded the state met its burden of establishing that the plain view exception to the warrant requirement justified the search and seizure in this case.[4] (R., p.263.)

Thereafter, pursuant to a plea agreement, Martin entered a conditional plea of guilty to possession of a controlled substance with intent to deliver, possession of a controlled substance, and one count of unlawful possession of a firearm; the state dismissed the remaining counts. (R., pp.276-82, 284-85, 296-98.) The district court sentenced Martin to eight years with three years fixed for possession of a controlled substance with intent to deliver; seven years with three years fixed for possession of a controlled substance; and five years with three years fixed for unlawful possession of a firearm; and ordered the sentences to run concurrently. (R., pp.290-93.) Martin filed a timely notice of appeal. (R., pp.304-06, 310-14.)

[4] Although the parties argued both the plain view and automobile exceptions, (see R., pp.158-67, 198-206), the district court did not expressly address the automobile exception in either of its orders, (see R., pp.220-25, 260-63). The state agrees with Martin that "the parties had adequate opportunity to present evidence and arguments on the automobile exception" and the district court's orders can be read "as including an implicit determination that the initial intrusion into Mr. Martin's vehicle was lawful." (Appellant's brief, p.14, n.3 (citations and quotation marks omitted).)

ISSUE

Martin states the issue on appeal as:

Did the district court err when it denied Mr. Martin's requests to suppress the evidence found as a result of the officers' warrantless seizure of the items inside his vehicle and warrantless search of his vehicle, because the plain view doctrine and the automobile exception did not apply?

(Appellant's brief, p.12.)

The state rephrases the issue as:

Has Martin failed to show that the district court erred when it denied his motion to suppress?

ARGUMENT

Martin Has Failed To Show That The District Court Erred When It Denied His Motion To Suppress

A. Introduction

Martin argues that the district court erred when it denied his requests to suppress evidence because the search of his vehicle and subsequent seizure of evidence was unlawful. (Appellant's brief, pp.13-26.) Specifically, Martin argues that the plain view and automobile exceptions to the warrant requirement do not apply because the officers did not immediately recognize the dabs kit in the back seat of Martin's vehicle as drug paraphernalia and therefore the officers lacked probable cause to search the vehicle or seize the items. (Appellant's brief, pp.15-26.) Martin's argument is contrary to the evidence.

The evidence demonstrates that the officers immediately recognized the items in the back seat of Martin's vehicle as a "dabs kit," which they knew from their training and experience to be drug paraphernalia. The officers testified about the items they observed in the vehicle, that they recognized the items as a dabs kit, that they knew such items to be used to ingest marijuana, that they have seen similar items before and been involved in other cases where similar items had been used or seized. Moreover, the video evidence corroborates that testimony. The video shows Officer Moyle confront Martin about the items in the vehicle, during which Officer Moyle specifically referred to the items as a "dabs kit" and drug paraphernalia. The officers' observation of drug paraphernalia in plain view inside Martin's vehicle provided probable cause to both search the vehicle under the automobile exception and seize the items under the plain view exception. Thus, the district court did not err when it denied Martin's motions for suppression and reconsideration.

B. Standard Of Review

"In an ordinary appeal from an order granting or denying a motion to suppress, our standard of review is bifurcated." State v. Andersen, 164 Idaho 309, 312, 429 P.3d 850, 853 (2018). "This Court will accept the trial court's findings of fact unless they are clearly erroneous" and "freely review the trial court's application of constitutional principles in light of the facts found." Id. However, "where this Court has exactly the same evidence before it as was considered by the district court," this Court "do[es] not extend the usual deference to the district court's evaluation of the evidence." Id. "'Under these limited circumstances, this Court has determined that its role on appeal is to freely review the evidence and weigh the evidence in the same manner as the trial court would do.'" Id. (quoting State v. Lankford, 162 Idaho 477, 492, 399 P.3d 804, 819 (2007)).

C. The Search Of The Vehicle And Seizure Of The Dabs Kit Was Valid Under The Plain View And Automobile Exceptions To The Warrant Requirement

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. U.S. Const. amend. IV. Warrantless searches and seizures are presumed to be unreasonable unless the search or seizure can be justified under one of the exceptions to the warrant requirement. State v. Christensen, 131 Idaho 143, 146, 953 P.2d 583, 586 (1998). However, an officer's mere observation of something open to public view from a vantage point that does not infringe upon a privacy interest normally does not implicate the Fourth Amendment because "observation of items readily visible to the public is not a 'search.'" State v. Clark, 124 Idaho 308, 312, 859 P.2d 344, 348 (Ct. App. 1993). Specifically, an officer's observation of items in plain view inside a vehicle in a parking lot accessible to the public is not a search and

does not implicate Fourth Amendment constraints.[5] See State v. Ramirez, 121 Idaho 319, 322, 824 P.2d 894, 897 (Ct. App. 1991). That being said, the warrantless search of such a vehicle or seizure of items in plain view inside must be justified under an exception to the warrant requirement.

The plain view exception to the warrant requirement permits the warrantless seizure of items observed in plain view where certain conditions are met. Baldwin v. State, 145 Idaho 148, 155, 177 P.3d 362, 369 (2008). "First, the officer must lawfully make an initial intrusion or otherwise properly be in a position from which she or he can view a particular area. Second, it must be immediately apparent to the police that the items they observe may be evidence of crime, contraband, or otherwise subject to seizure." Id. "The second requirement is met when an officer has probable cause to believe the item in question was associated with criminal activity." Id. at 155-56, 177 P.3d at 369-70; State v. Tamez, 116 Idaho 945, 946, 782 P.2d 353, 354 (Ct. App. 1989) (citing Texas v. Brown, 460 U.S. 730, 741-42 (1983)). Relatedly, "[u]nder the long-recognized automobile exception, police officers having probable cause to believe that an automobile contains contraband or evidence of a crime may search the automobile without a warrant." State v. Loman, 153 Idaho 573, 575, 287 P.3d 210, 212 (Ct. App. 2012); State v. Thla Hum Lian, ___ Idaho ___, ___, 481 P.3d 759, 764 (Idaho Ct. App. 2020), review denied (Mar. 16, 2021).

Taken together, these exceptions permit officers to conduct a warrantless search of a vehicle and seize items of contraband inside based on an officer's observation of items in plain view inside the vehicle that the officer has probable cause to believe constitute contraband or

[5] Martin agrees that the officers' observation of the dabs kit inside his vehicle did not constitute a search or otherwise implicate the Fourth Amendment. (See Appellant's brief, pp.16-17.)

evidence of criminal activity. State v. Anderson, 163 Idaho 513, 516-17, 415 P.3d 381, 384-85 (Ct. App. 2015); see also State v. Howard, 167 Idaho 588, 591, 473 P.3d 857, 860 (Ct. App. 2020). It is self-evident that an officer has probable cause to believe a vehicle contains contraband (thus justifying a search of the vehicle under the automobile exception) where the officer can see contraband or evidence of a crime in plain view inside the vehicle. See Howard, 167 Idaho at 591, 473 P.3d at 860 (officers' observation of marijuana in plain view in the center console of a vehicle gave the officers authority to detain the defendant and conduct a search of the vehicle).

"Probable cause is a flexible, common-sense standard, and a practical, nontechnical probability that incriminating evidence is present is all that is required." State v. Anderson, 154 Idaho 703, 706, 302 P.3d 328, 331 (2012) (citing Brown, 460 U.S. at 742). Such probable cause "is established when the totality of the circumstances known to the officer at the time of the search would give rise—in the mind of a reasonable person—to a fair probability that contraband or evidence of a crime will be found in a particular place." Id. "Absolute certainty is not required." Tamez, 116 Idaho at 946, 782 P.2d at 354. "[A]n officer is entitled to draw reasonable inferences from the available information in light of the knowledge that he has gained from his previous experience and training." State v. Kysar, 116 Idaho 992, 993, 783 P.2d 859, 860 (1989); Tamez, 116 Idaho at 946, 782 P.2d at 354 (an officer may draw reasonable inferences based on his training and experience in determining whether an object observed in plain view has a readily apparent connection to criminal activity).

An officer's observation of items in plain view that the officer recognizes, based on training and experience, as drug paraphernalia is sufficient to give rise to probable cause supporting the warrantless search of the vehicle and seizure of the items. See Brown, 460 U.S. at

742-43 (immediately apparent element of plain view exception satisfied where officer observed a tied off green balloon in a vehicle and testified that, based on his experience, balloons tied in that manner are frequently used to carry narcotics); State v. Chambliss, 116 Idaho 988, 991, 783 P.2d 327, 330 (Ct. App. 1989) ("The record indicates that [the officer], based upon extensive experience in drug-related cases, was able to immediately recognize that the marijuana pipe violated Idaho's drug paraphernalia statute."); Ramirez, 121 Idaho at 323, 824 P.2d at 898 (officer had probable cause to enter vehicle and seize spoon with residue that he observed in plain view and recognized to be drug paraphernalia, from his training and experience); State v. Smith, 152 Idaho 115, 121, 266 P.3d 1220, 1226 (Ct. App. 2011) (officer's observation of marijuana pipe in plain view, along with defendant's comment that the pipe was "the only illegal thing in the car," provided the officer with probable cause to search the vehicle).

The evidence presented, including the officers' testimony and the body camera video, demonstrates that the officers immediately recognized the items observed in plain view in the back seat of Martin's vehicle and referred to as a "dabs kit" to be drug paraphernalia, and therefore they had probable cause to seize the items and search the vehicle for additional contraband.

Officer Moyle testified that he saw "a small green silicone container, or plastic, as well as some glass piping" in an opened Styrofoam container, not covered by a lid or cellophane, inside Martin's vehicle. (Tr., p.43, Ls.23-24; p.75, Ls.7-21; State's Ex. 6.) Officer Moyle identified the items as "what [he] believed to be a dabs kit." (Tr., p.43, Ls.14-15.) Officer Moyle testified that "[a] dab is marijuana oil" that is consumed "[b]y smoking" using a bong kit or dabs kit. (Tr., p.68, Ls.3-11; p.43, Ls.17-18 ("A dabs kit is a…method to smoke marijuana products.").) Officer Moyle testified that there are items he commonly sees with a dabs kit, such as a "main

body…usually made out of glass or silicone or some material like that" and "silicone containers that hold the dabs of the marijuana product." (Tr., p.43, Ls.19-23; p.44, Ls.8-11.) Officer Moyle recognized the items as a dabs kit because he'd "seen them used," although he had not personally witnessed someone use these items. (Tr., p.58, Ls.8-25.) Officer Moyle testified that he has encountered dabs kits and they appeared similar to the one found in Martin's vehicle. (Tr., p.64, Ls.19-24.) Specifically, Officer Moyle testified he has seen items like the dabs kit in Martin's vehicle in "[m]ore than four" other cases, "[m]ultiple" cases where he was the primary officer who collected the kit, and that he's "been doing this…for a couple of years, so [he's] collected a lot of them." (Tr., p.66, L.9 – p.67, L.8.)

Officer Macuk testified that Officer Moyle stated he saw drug paraphernalia in the back seat of Martin's vehicle. (Tr., p.12, Ls.24-25.) Officer Macuk looked in the vehicle himself and "could clearly see a silicone circle container…and miscellaneous glass piping" "in a cut out styrofoam piece." (Tr., p.13, Ls.2-5; p.21, Ls.8-13; State's Ex. 6.) He testified that the silicone container "is commonly used to hold dabs" and he has "only seen dabs" in such containers, the glass pieces appeared to "belong to a type of bong" and are "commonly used to ingest -- inhale marijuana," and the items together appeared to be "marijuana paraphernalia." (Tr., p.13, Ls.2-5; p.21, Ls.8-13; p.25, Ls.8-11; p.26, Ls.3-6, 21-22.) Macuk testified that he had seen similar items "accompanied with marijuana devices, which are accompanied with marijuana, marijuana residue." (Tr., p.27, L.5 - p.28, L.6.)

The body camera video corroborates the officers' testimony and further demonstrates that they immediately recognized the items to be drug paraphernalia. As soon as Officer Moyle made contact with Martin and the audio began to record, Officer Moyle asked about the items he observed in the back seat of Martin's vehicle:

> Officer Moyle: "Alright, the dabs sitting in the back seat."
>
> Martin: "What dabs?"
>
> Officer Moyle: "The dabs. The little circular container and the glass bowl sitting in the back."
>
> Martin: "Oh that's—that's unused."
>
> Officer Moyle: "Then go open it and get it for me. You know that's paraphernalia, right?"

(Ex. A, 00:30-00:45.) Martin then stated he was "from Washington," to which Officer Moyle responded, "I don't care, you're in Idaho." (Ex. A, ~00:47.) Throughout his interaction with Martin, before entering the vehicle, Officer Moyle repeatedly referred to the items as a dabs kit and drug paraphernalia. (See Ex. A, ~01:22 ("[T]here's drug paraphernalia in the car."); ~01:34 ("I can see the paraphernalia in the car."); ~03:39 ("[W]e could see the dabs kit sitting in the back.").)

The evidence demonstrates that Officers Moyle and Macuk recognized the items in the back seat of Martin's vehicle as a "dabs kit," which they knew from their training and experience to be drug paraphernalia. Just as an officer's observation of items such as a tied off balloon, pipe, or spoon with tarry residue, which the officer recognized as drug paraphernalia based on training and experience, is sufficient to give rise to probable cause to search a vehicle and seize the items of paraphernalia, see Brown, 460 U.S. at 742-43; Chambliss, 116 Idaho at 991, 783 P.2d at 330; Smith, 152 Idaho at 121, 266 P.3d at 1226; Ramirez, 121 Idaho at 323, 824 P.2d at 898, Officers Moyle and Macuk's observation of items that they recognized, from their training and experience, as a dabs kit and drug paraphernalia gave rise to probable cause supporting the warrantless search of Martin's vehicle and seizure of the items. Because the officers' search and seizure were supported by probable cause and fell under recognized exceptions to the general

warrant requirement, the district court did not err when it denied Martin's motion to suppress and motion to reconsider.

There is no dispute regarding the applicable legal standards for the plain view and automobile exceptions and Martin appears to agree that the search of his vehicle and seizure of the items were lawful if the officers had probable cause to believe that the items observed in plain view in his vehicle constituted contraband or evidence of a crime prior to their entry into the vehicle. (See Appellant's brief, pp.17-18, 25.) Martin argues only that the officers did not have the requisite probable cause based on his assertion that the officers did not immediately recognize the items to be drug paraphernalia and their testimony to the contrary is not credible. (Appellant's brief, pp.13-26.)

Martin argues that the nature of the items as drug paraphernalia was not immediately apparent to the officers, given that they were unable to testify in detail regarding the specific names of items in the dabs kit or how such items are used. (Appellant's brief, pp.18-24.) However, the officers testified that they knew from their training and experience that the items were used to smoke or inhale marijuana. Martin appears to argue that this is insufficient. However, the Idaho Court of Appeals has concluded otherwise.

In State v. Ramirez, an officer observed a lighter and a spoon with dark, tarry residue in plain view inside a vehicle. Ramirez, 121 Idaho at 321, 824 P.2d at 896. The officer opened the door of the vehicle and seized the spoon. Id. The Idaho Court of Appeals determined that the entry into the vehicle and seizure were supported by probable cause, based on the officer's inference that the items constituted drug paraphernalia based on his training and experience. Id. at 323, 824 P.2d at 898. The Court of Appeals rejected Ramirez's argument that the state failed to sufficiently detail the experience upon which the officer's inference was based. Id. The Court

of Appeals concluded that the record was sufficient to establish that the officer had probable cause to believe the items were drug paraphernalia, where the officer testified he had made a previous arrest for heroin, knew what the substance looked like, and was aware of the practice of using a spoon to melt heroin prior to injection. Id.

Officer Moyle testified that he recognized the items to be a dabs kit, he explained what a "dab" is and how such kits are used to smoke marijuana, he testified that he had been involved in and even the lead officer in prior cases where he had seen such dabs kits, and he had confiscated numerous dabs kits in the past. (See Tr., p.43, Ls.14-23; p.66, Ls.9-23; p.68, Ls.3-11.) Just as in Ramirez, that evidence is sufficient to demonstrate that Officer Moyle had probable cause to believe the items were drug paraphernalia.

Martin makes much of a brief conversation between the officers that occurred nearly thirty minutes into the search of the vehicle and asserts "[t]he officers' statements during the search of the vehicle indicate they did not recognize what the observed items were before seizing them, much less believe they were evidence of a crime." (Appellant's brief, p.18.) This assertion fails for two reasons: first, it disregards the statements in the video *preceding* the search of the vehicle and second, the conversation does not demonstrate that the officers did not recognize the dabs kit as paraphernalia.

First, as discussed above, the video corroborates the officers' testimony that they recognized the items as drug paraphernalia prior to searching the vehicle. Both officers testified regarding the items they observed and believed to be a "dabs kit." The video shows that Officer Moyle began his contact with Martin by confronting Martin about those items—"the dabs" and "[t]he little circular container and the glass bowl" in Martin's vehicle. (See Ex. A, 00:30-00:45.) Officer Moyle continued to refer to the items as a dabs kit and drug paraphernalia throughout his

interaction with Martin *prior* to searching the vehicle or seizing the items. (See Ex. A, ~00:45, 01:22, 01:34, 03:39.) The video clearly demonstrated that Officer Moyle recognized the items as drug paraphernalia before he even initiated his encounter with Martin, well before his later conversation with Officer Macuk.

Second, contrary to Martin's assertion, that later conversation does not call into question whether the officers recognized the dabs kit as drug paraphernalia. The conversation that Martin relies on begins with Officer Moyle holding an item in his hand and asking, "What's this?" (Ex. A, ~32:40.) Officer Macuk responds that he is "not sure" what the item is, and Officer Moyle replies that the item "[l]ooks like a torch." (Ex. A, 32:43-32:48.) The torch-like item they are discussing can be seen briefly in Officer Macuk's hand. (Ex. A, ~32:49.) That item is *not* an item that was part of the dabs kit, as depicted in State's Exhibit 6. Therefore, the officers' brief discussion about that item is irrelevant to whether they recognized the items in the dabs kit as drug paraphernalia.

Officer Moyle then goes on to ask "[w]hat's all this stuff?" as Officer Macuk retrieves the dabs kit from the top of the vehicle. (Ex. A, ~33:00.) The video shows Officer Macuk pick up and examine what appears to be a medical bracelet that was sitting in the dabs kit; he does not appear to pick up or examine any other item from the dabs kit. (Ex. A, 33:00-33:10; see also State's Ex. 6.) Officer Moyle then states: "Guy he said he took to the hospital," presumably referring to Martin's earlier comment that he had taken a friend named Caleb Birch to the

hospital. (Ex. A, ~33:09; 24:20.) The officers do not discuss any other items in the kit.[6]

Martin asserts that Officer Moyle was looking at the green and yellow silicone container when he made these statements. (See Appellant's brief, p.18 (citing Ex. A, 33:15-33:22).) However, the video flatly contradicts that assertion. During the timestamp identified by Martin, neither officer handles the green and yellow silicone container, nor can that item even be seen in frame. The only item that was in the dabs kit that the video shows being specifically handled during this time is the medical bracelet.

Martin then goes on to challenge specific portions of the officers' testimony by pointing out alleged inconsistencies between the testimony and the video. First, Martin points out that Officer Moyle testified he did not know if the items were used, but on the video he appears to say "It's new." (Appellant's brief, pp.21-22.) This claim is dubious at best. As mentioned above, the audio does not demonstrate that Officer Moyle made that comment. Nor does the video show that Officer Moyle is specifically looking at any item in the dabs kit, aside from the medical bracelet, when he allegedly made that statement; even if he did say "it's new," as Martin asserts, it could have been in reference to the "torch" item he handled seconds earlier or the medical bracelet he and Officer Macuk had just been discussing. Moreover, Officer Moyle did not dispute whether the items were new or used, but states only that he did not know. (See Tr., p.60, L.14 – p.61, L.11.)

[6] As mentioned above, *infra* p.9 n.3, Martin asserts that Officer Moyle comments that the dabs kit appears new. (Appellant's brief, pp.3, 22.) However, Officer Moyle's comment is not clear, and can just as easily be understood as "his name," which would make more sense in context, given that the officers were examining a medical bracelet and Officer Moyle was relaying that Martin had earlier stated he took a friend to the hospital. Even if the kit was new, such would not show a lack of probable cause to believe it was paraphernalia.

Next, Martin points out that Officer Moyle testified he did not recall having a conversation with Officer Macuk about the dabs kit but the video shows that a brief conversation occurred. (Appellant's brief, pp.22-23.) However, Office Moyle did not testify that such conversation never happened, only that he did not recall. (Tr., p.63, Ls.8-22.) Officer Moyle testified that he had not reviewed his video prior to his testimony. (Tr., p.63, Ls.5-7.) As the district court noted, it would have been preferable for Officer Moyle to have been more prepared, (R., p.263), but the fact that he could not recall this brief conversation with Officer Macuk, which by generous estimation took only thirty seconds, does not demonstrate that Officer Moyle was not credible or was otherwise untruthful in his testimony.

For all the reasons explained above, the evidence demonstrates that the officers immediately recognized the items in plain view in the backseat of Martin's vehicle to be drug paraphernalia and therefore they had probable cause to believe the items constituted, and the vehicle contained, contraband or evidence of a crime. Accordingly, the warrantless search of the vehicle and seizure of the items was permissible under the plain view and automobile exceptions. Martin has failed to show that the district court erred when it denied his motion to suppress and his motion for reconsideration.

CONCLUSION

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

DATED this 2nd day of August, 2021.

/s/ Kacey L. Jones
KACEY L. JONES
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of August, 2021, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

BEN P. McGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

/s/ Kacey L. Jones
KACEY L. JONES
Deputy Attorney General

KLJ/dd