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IN THE SUPREME COURT OF THE STATE OF IDAHO

|                       |   |                  |
|-----------------------|---|------------------|
| STATE OF IDAHO,       | ) |                  |
|                       | ) |                  |
| Plaintiff-Appellant,  | ) | NO. 45252        |
|                       | ) |                  |
| v.                    | ) | NEZ PERCE COUNTY |
|                       | ) | NO. CR 2016-6655 |
| JORDAN DAVID DAILY,   | ) |                  |
|                       | ) |                  |
| Defendant-Respondent. | ) |                  |
| <hr/>                 |   |                  |

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**BRIEF OF RESPONDENT**

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

---

**HONORABLE JEFF M. BRUDIE  
District Judge**

---

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## STATEMENT OF THE CASE

### Nature of the Case

The State appeals from the district court's order granting Jordan Daily's motion to suppress. This Court should affirm because the district court correctly concluded the police officer's warrantless search of the locked glove compartment of Mr. Daily's vehicle was not authorized by the automobile exception to the warrant requirement, as the officer did not have probable cause to believe the glove compartment contained additional evidence of the offense of possessing an open container of alcohol.

### Statement of Facts and Course of Proceedings

At approximately 10:40 a.m. on May 5, 2016, police officer Lucas Martin stopped a blue Nissan pickup truck after observing the driver fail to stop at a stop sign and fail to signal a turn. (Tr., p.12, Ls.12-15, p.12, L.24 – p.13, L.15.) The driver of the truck identified himself as Mr. Daily and said he did not have a driver's license. (Tr., p.14, Ls.17-19, p.15, Ls.4-5.) During his initial conversation with Mr. Daily, Officer Martin observed an open green can in the cup holder in the center console with the name "Mikes" on the label. (Tr., p.15, Ls.18-21, p.16, Ls.5-7.) The officer testified at the suppression hearing that he believed this was an alcoholic beverage. (Tr., p.15, L.22 – p.16, L.2.) The officer did not ask Mr. Daily about the beverage, and did not conduct a DUI investigation at any point. (Tr., p.16, Ls.8-10, p.36, Ls.16-18.)

Officer Martin called Mr. Daily's information into dispatch, and learned he was driving without a valid license, and had an outstanding warrant for failure to appear. (Tr., p.17, L.20 – p.18, L.13.) Officer Martin waited in his patrol car for approximately eight to ten minutes for a backup officer to arrive. (Tr., p.20, Ls.7-12.) Once the backup officer arrived, Officer Martin handcuffed Mr. Daily, patted him down, and placed him in the back of the patrol car. (Tr., p.21,

Ls.9-22.) Officer Martin then searched Mr. Daily's truck. He first took the can from the center console (which Mr. Daily had not moved), and confirmed it contained an alcoholic beverage and was "cool to the touch." (Tr., p.22, Ls.3-17, p.33, Ls.18-20.) The officer then "began a search of the vehicle for any other open containers of alcohol." (Tr., p.23, Ls.9-13.) The officer found an open, warm, empty can on the passenger floor, and some unopened bottles and cans in the back seat area. (Tr., p.24, Ls.2-17.) The officer then went to search the glove compartment, but found it was locked. (Tr., p.25, Ls.5-15.) The officer removed Mr. Daily's keys from the ignition and opened the locked glove compartment. (Tr., p.25, Ls.18-20.) He found drugs and drug paraphernalia in the glove compartment but no open (or closed) containers of alcohol. (Tr., p.25, Ls.21-23, p.26, L.20 – p.27, L.4.) Mr. Daily made incriminating statements to the officer upon questioning. (Tr., p.29, Ls.6-8.)

Mr. Daily was charged by Information with possession of a controlled substance (methamphetamine) and possession of drug paraphernalia. (R., pp.58-59.) He filed a motion to suppress the evidence seized from the vehicle and the statements he made to the police. (R., pp.65-72.) Following a hearing, the district court issued a written opinion and order granting Mr. Daily's motion to suppress. (R., pp.86-91.) The district court concluded the search of the locked glove compartment was not permissible pursuant to either the automobile exception to the warrant requirement or the search incident to arrest exception to the warrant requirement. (R., pp.88-90.) The State filed a motion for reconsideration, which the district court denied. (R., pp.94-101, 122-25.) The State filed a notice of appeal timely from the district court's original opinion and order. (R., pp.107-10.)

ISSUE

Did the district court correctly grant Mr. Daily's motion to suppress?

## ARGUMENT

### The District Court Correctly Granted Mr. Daily's Motion To Suppress

#### A. Introduction

The district court granted Mr. Daily's motion to suppress because it concluded the warrantless search of the locked glove compartment of his truck was not permissible pursuant to either the automobile exception to the warrant requirement or the search incident to arrest exception to the warrant requirement. (R., pp.88-90.) On appeal, the State challenges the district court's conclusion only with respect to the automobile exception. (*See* Appellant's Br., p.5, n.2.) This Court should affirm because the district court correctly concluded the officer's warrantless search of the locked glove compartment was not permissible under the automobile exception because "no reasonable person . . . would conclude that an open container would be present in the glove box." (R., p.89.)

#### B. Standard Of Review

"In reviewing a district court order granting or denying a motion to suppress evidence, the standard of review is bifurcated." *State v. Purdum*, 147 Idaho 206, 207 (2009) (citation omitted). "This Court will accept the trial court's findings of fact unless they are clearly erroneous. However, this Court may freely review the trial court's application of constitutional principles in light of the facts found." *Id.* (citations omitted). "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. Aguirre*, 141 Idaho 560, 562 (Ct. App. 2005) (citations omitted).



C. The District Court Correctly Concluded The Warrantless Search Of The Locked Glove Compartment Was Not Permissible Under The Automobile Exception To The Warrant Requirement

The Fourth Amendment of the United States Constitution requires that all searches and seizures be reasonable. Warrantless searches and seizures are considered unreasonable *per se* unless they come within one of the few specifically established and well-delineated exceptions to the warrant requirement. *California v. Acevedo*, 500 U.S. 565, 580 (1991); *State v. Murphy*, 129 Idaho 861, 863 (Ct. App. 1997). “When a police search has been conducted without a warrant, the State bears the burden to show that the search was done pursuant to a recognized exception to the warrant requirement.” *State v. Yeoumans*, 144 Idaho 871, 873 (Ct. App. 2007) (citations omitted). Under the automobile exception, police may search an automobile when they have probable cause to believe it contains contraband or evidence of a crime. *State v. Gallegos*, 120 Idaho 894, 898 (1991).

Here, it is undisputed that Officer Martin had probable cause to believe Mr. Daily’s truck contained contraband or evidence of the crime of possessing an open container of alcohol, and the officer thus had the right to search Mr. Daily’s truck for additional evidence of that offense. But that is the beginning, not the end, of the analysis. In *State v. Gibson*, the Court of Appeals recognized that “[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.” 141 Idaho 277, 282 (Ct. App. 2005) (citing *United States v. Ross*, 456 U.S. 798, 825 (1982)). The corollary of this proposition is that probable cause does *not* justify a search of a part of the vehicle that may *not* conceal the object of the search.

Here, after observing an open container of alcohol, Officer Martin had probable cause to search Mr. Daily’s vehicle for additional evidence of an open container violation. But the

officer's search of the locked glove compartment went beyond the permissible scope of that search as the locked glove compartment could not reasonably conceal additional evidence of an open container violation. As the United States Supreme Court explained in *Ross*, "the scope of a warrantless search of an automobile . . . is defined by the object of the search and the places in which there is probable cause to believe that it may be found." 456 U.S. at 824. "Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase." *Id.* Similarly here, probable cause to search for additional evidence of an open container violation cannot support a warrantless search of a locked glove compartment.

The State contends the district court applied an erroneous legal standard because it wrongly required the State "to demonstrate separate probable cause to search the glove box even after Officer Martin already located contraband in plain view during the traffic stop." (Appellant's Br., p.5.) The district court did not make a legal error, but properly considered whether the search of the locked glove compartment was within the scope of the search permitted by the automobile exception. In analyzing this question, the district court considered the following facts:

- Mr. Daily was left alone in his truck for approximately eight minutes while Officer Martin was waiting for a backup officer, and he did not hide or otherwise dispose of the open container in the center console during that period of time.
- Officer Martin did not observe any liquid or odor of alcohol emanating from either the vehicle or the glove compartment at any time.
- Mr. Daily was traveling alone in his truck, and could presumably only drink one open container of alcohol at a time.

- While Officer Martin testified he previously discovered an open container of alcohol in a glove compartment, “it was of a type that could be resealed, not a non-resealable can such as those found in Daily’s vehicle.”

(R., pp.88-89.) Based on these facts, which the State does not challenge on appeal, the district court concluded “no reasonable person . . . would conclude that an open container would be present in the glove box” and “no magistrate, presented with these facts, would have found probable cause to support issuing a search warrant for the glove box had one been requested.”

(R., p.89.) It was simply not reasonable for Officer Martin to believe, on these facts, that he would find an additional open container of alcohol in Mr. Daily’s locked glove compartment. The officer’s search of the glove compartment was a fishing expedition for evidence of another crime and was not supported by the automobile exception to the warrant requirement. The district court properly granted Mr. Daily’s motion to suppress, and this Court should affirm.

#### CONCLUSION

Mr. Daily respectfully requests that this Court affirm the district court’s order granting his motion to suppress.

DATED this 25<sup>th</sup> day of January, 2018.

\_\_\_\_\_/s/\_\_\_\_\_  
ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 25<sup>th</sup> day of January, 2018, 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:

JORDAN DAVID DAILY  
910 MILES AVENUE  
OROFINO ID 83544

JEFF M BRUDIE  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

ANDREW BETSON  
ATTORNEY AT LAW  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

AWR/eas