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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 45252
Plaintiff-Appellant,	)	
	)	Nez Perce County Case No.
v.	)	CR-2016-6655
	)	
JORDAN DAVID DAILY,	)	
	)	
Defendant-Respondent.	)	
	)	

REPLY BRIEF OF APPELLANT

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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ARGUMENT IN REPLY

The District Court Erred By Granting Daily's Motion To Suppress And By Denying The State's Motion For Reconsideration

A. Introduction

In its Appellant's brief, the state argued that the district court erred by granting Daily's motion to suppress evidence recovered during a traffic stop, and by denying the state's motion for reconsideration of that order. (See generally Appellant's brief.) In response, Daily cited four facts found by the district court, which, Daily asserts, demonstrates that the glove compartment was not within the scope of the search permitted by the automobile exception and that the district court thus did not err in granting his motion to suppress. Daily's argument fails for the same reason the district court's legal analysis was erroneous – the state was not required to demonstrate probable cause, or even specific articulable facts, indicating that there were open containers or evidence of possession of open containers in the glove compartment. Instead, once Officer Martin possessed probable cause to search the truck, he was entitled to search any portion of the truck which could have concealed objects of the search, including the glove compartment.

B. The District Court Erred By Granting Daily's Motion To Suppress

"Under 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) (citing Wyoming v. Houghton, 526 U.S. 295, 300 (1999); State v. Gallegos, 120 Idaho 894, 897-898, 821 P.2d 949, 952-953 (1991); State v. Johnson, 152 Idaho 56, 61, 266 P.3d 1161, 1166 (Ct. App. 2011); State v. Smith, 152 Idaho 115, 120, 266 P.3d 1220, 1225 (Ct. App. 2011);

State v. Newman, 149 Idaho 596, 599, 237 P.3d 1222, 1225 (Ct. App. 2010)). If probable cause exists to believe a vehicle contains evidence of criminal activity, the search of any area of the vehicle in which the evidence might be found is authorized. Johnson, 152 Idaho at 61, 266 P.3d at 1166 (citing United States v. Ross, 456 U.S. 798, 820–821 (1982)). When an officer observes contraband in plain view inside a vehicle, the officer is justified under the automobile exception in searching the vehicle for additional contraband, as long as the scope of the search is limited to "only those places where such contraband might reasonably be found." State v. Anderson, 2015 WL 7204541, at *2 (Idaho Ct. App., November 17, 2015).

In this case, the state argued that the district court's analysis was erroneous because the court: (1) utilized the "minor or innocuous" nature of an open container misdemeanor crime to inform its Fourth Amendment analysis; (2) analyzed and considered the officers' subjective motives for the search; and (3) based its conclusion on a determination that the state failed to demonstrate that Officer Martin lacked probable cause, or some other articulable and particularized suspicion, to search the glove box specifically. (Appellant's brief, pp.9-10.) Further, the state argued that application of the correct legal standards demonstrated that the officers had lawful authority under the automobile exception to the warrant requirement to search the glove compartment because the compartment was an area where "such contraband might reasonably be found" or which "may conceal the object of the search." (Appellant's brief, pp.10-11.)

In response, Daily does not directly respond to the state's arguments regarding the legal standards utilized by the district court. Instead, Daily relies upon four factual findings made by the court, which, Daily asserts, demonstrate that the 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." (Respondent's brief, pp.6-7.) Specifically, the district court found: (1) Daily did not dispose of the open container found in the center console during the approximately eight minutes Daily was left alone in his truck while Officer Martin was waiting for a backup officer, and thus, presumably, the open container discovered in plain view by Officer Martin would not be found in the glove compartment; (2) Officer Martin did not observe any liquid or odor of alcohol emanating from either the vehicle or the glove compartment at any time; (3) Daily was driving alone in the truck and could presumably only drink one open container of alcohol at a time; and (4) while Officer Martin testified that he previously discovered open containers of alcohol in glove compartments, on those previous occasions, "it was a type [of container] that could be resealed, and not a non-resealable can such as those found in Daily's vehicle." (Id. (citing R., pp.88-89).)

The facts found by the district court do not demonstrate that Officer Martin's search of the glove compartment was unlawful. The relevant question before the court was not whether there was some particular fact, or the absence of fact, which demonstrated a likelihood that additional open containers would be found in the glove compartment. As Daily acknowledges on appeal (Respondent's brief, p.5), by locating the open container in plain view in the center console, Officer Martin *already* possessed probable cause that the truck contained open containers or evidence of Daily's possession thereof. At this point, the restrictions on Officer Martin's search of the truck were limited, and the state was not required to demonstrate additional facts justifying a search of the glove compartment or any other portion of the vehicle in which open containers or evidence of possession of open containers might be found. In United States v. Ross, 456 U.S. 798, 820-823 (1982), the United States Supreme Court explained:

> A lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search. Thus, a warrant that authorizes an officer to search a home for illegal weapons also provides authority to open closets, chests, drawers, and containers in which the weapon might be found. A warrant to open a footlocker to search for marihuana would also authorize the opening of packages found inside. A warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search. When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.
>
> …
>
> The scope of a warrantless search based on probable cause is no narrower – and no broader – than the scope of a search authorized by a warrant supported by probable cause. Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize.

(footnotes omitted); see also Houghton, 526 U.S. at 302 (extending the Ross rule to searches of containers belonging to passengers and holding, "[w]hen there is probable cause to search for contraband in a car, it is reasonable for police officers – like customs officials in the founding era – to examine packages and containers without a showing of individualized probable cause for each one. A passenger's personal belongings, just like the driver's belongings or containers attached to the car like a glove compartment, are 'in' the car, and the officer has probable cause to search for contraband *in* the car.").

The lawful scope of Officer Martin's search was no narrower and no broader than the scope of a search that would have been authorized had he possessed a warrant to search the truck. Therefore, just as an officer executing a search warrant on a house does not need to demonstrate separate articulable facts to justify the search of each closet, drawer, or container which might contain the objects of the search warrant, the same is true when an officer conducts

a search of a car pursuant to the automobile exception to the warrant requirement. Similarly, just as Officer Martin would be lawfully permitted to search the glove compartment had he possessed a warrant to search the truck for open containers or evidence of open containers, he was likewise entitled to search the glove compartment pursuant to the automobile exception to the warrant requirement.

The state submits that the primary consideration in determining the scope of a search authorized by a warrant or the automobile exception to the warrant requirement is simply whether the space or container searched is physically capable of concealing the object of the search. See, e.g., Ross, 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. Probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab."); Houghton, 526 U.S. at 307 ("We hold that police officers with probable cause to search a car may inspect passengers' belongings found in the car that are *capable of concealing the object of the search*." (emphasis added)); United States v. Johns, 469 U.S. 478, 487 (1985) ("We note that in this case there was probable cause to believe that the trucks contained contraband and there is no plausible argument that the object of the search could not have been concealed in the packages."); State v. Fix, 730 P.2d 601, 604 (Or. App. 1986) ("The officers had probable cause to believe that the two male passengers had committed a crime and that evidence of that crime (the guns) would be in the truck. Defendant's purse was large enough to contain a gun. The search [of the purse] was lawful."); see also Safford Unified Sch. Dist. No. 1 v. Redding, 557 U.S. 364, 388 (2009) (Thomas, J. dissenting in part) ("The Court has generally held that the reasonableness

of a search's scope depends only on whether it is limited to the area that is capable of concealing the object of the search."). In the present case, because the glove compartment was capable of concealing open containers or evidence of Daily's possession thereof, the compartment was within the lawful scope of Officer Martin's search.

Further, even to the extent that the factual findings made by the district court and relied upon by Daily on appeal have some limited relevance to the question of the scope of Officer Martin's search, these findings do not demonstrate that the search of the glove compartment was unlawful. Three of the four factual findings[1] Daily relies on illustrate only the *absence* of some fact which, if present, would have provided additional cause to believe that the glove compartment specifically contained contraband. For all of the reasons discussed above, the state was not required to demonstrate the existence of such individualized, articulable facts to justify the search of the glove compartment. Finally, the district court's finding that Daily was traveling alone, and that an individual person "could presumably only drink one open container at a time" (Respondent's brief, p.6), necessarily implies that an open container of alcohol found in plain view of a vehicle containing only one individual *does not* establish probable cause to search the entire truck. As Daily has acknowledged (Respondent's brief, p.5), this is not the case, and Officer Martin had probable cause to believe that Daily's truck contained contraband or evidence of contraband.

[1] Specifically, these findings consist of the following: (1) Daily did not dispose of the open container found in plain view in the center console; (2) Officer Martin did not observe liquid or odor of alcohol emanating from the glove compartment; and (3) Officer Martin did not specifically testify that he had discovered non-resealable cans of alcohol in glove compartments in prior traffic stops. (Respondent's brief, pp.6-7.)

CONCLUSION

The state respectfully requests this Court to vacate the district court's order granting Daily's motion to suppress and the district court's order denying the state's motion for reconsideration, and to remand for further proceedings.

DATED this 28th day of March, 2018.

/s/ Mark W. Olson____________________________
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th day of March, 2018, served a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Mark W. Olson____________________________
MARK W. OLSON
Deputy Attorney General

MWO/dd