Electronically Filed
2/5/2019 2:04 PM
Idaho Supreme Court
Karel Lehrman, Clerk of the Court
By: Brad Thies, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45792**
Plaintiff-Respondent,	)	
	)	**Bonner County Case No.**
v.	)	**CR-2017-3923**
	)	
JESSE RAY STILL,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

HONORABLE BARBARA A. BUCHANAN
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

TED S. TOLLEFSON
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

KIMBERLY A. COSTER
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 4

ARGUMENT 5

The District Court Did Not Err When It Denied Still's Motion To Suppress 5

A. Introduction 5

B. Standard Of Review 5

C. The District Court Correctly Found That Officer Clark's Two Short Calls To Officer Inman Did Not Constitute An Abandonment Of The Purpose For The Stop, Nor Did They Impermissibly Prolong The Stop 6

CONCLUSION 17

CERTIFICATE OF SERVICE 17

TABLE OF AUTHORITIES

CASES **PAGE**

Illinois v. Caballes, 543 U.S. 405 (2005) 7

Rodriguez v. United States, 575 U.S. ___, 135 S. Ct. 1609 (2015) 7, 8, 15

State v. Gibson, 141 Idaho 277, 108 P.3d 424 (Ct. App. 2005) 3

State v. Irwin, 143 Idaho 102, 137 P.3d 1024 (Ct. App. 2006) 7

State v. Linze, 161 Idaho 605, 389 P.3d 150 (2016) .... passim

State v. McGraw, 163 Idaho 736, 418 P.3d 1245 (Ct. App. 2018) 13, 15, 16

State v. Purdum, 147 Idaho 206, 207 P.3d 182 (2009) 5, 6

State v. Ramirez, 145 Idaho 886, 187 P.3d 1261 (Ct. App. 2008) 7

State v. Rawlings, 121 Idaho 930, 829 P.2d 520 (1992) 6

State v. Renteria, 163 Idaho 545, 415 P.3d 954 (Ct. App. 2018) 13, 14, 15, 16

State v. Roe, 140 Idaho 176, 90 P.3d 926 (Ct. App. 2004) 7

State v. Sheldon, 139 Idaho 980, 88 P.3d 1220 (Ct. App. 2003) 6, 7

State v. Wright, 134 Idaho 73, 996 P.2d 292 (2000) 6

Terry v. Ohio, 392 U.S. 1 (1968) 6

United States v. Cortez, 449 U.S. 411 (1981) 6

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. IV 6

STATEMENT OF THE CASE

Nature Of The Case

Jesse Ray Still appeals from the judgment of the district court entered upon his guilty plea to unlawful possession of a weapon by a convicted felon. On appeal, Still argues the district court erred when it denied his motion to suppress.

Statement Of The Facts And Course Of The Proceedings

Officer Clark and Officer Kingery stopped Still for driving 46 miles per hour in a 35 mile per hour zone. (2/1/18 Tr., p. 8, L. 13 – p. 9, L. 18.) While Still was getting his license, registration and proof of insurance, Officer Clark used his personal radio and called Officer Inman and his canine to the scene. (2/1/18 Tr., p. 9, L. 16 – p. 10, L. 20; see also Ex. 1[1] at 1:20 to 1:22.) It was routine to call Officer Inman.[2] (Id.) When Officer Clark and Officer Kingery got back into their vehicle, Officer Clark called for Officer Inman on the car radio because they were having trouble with their personal radios. (See 2/1/18 Tr., p. 13, L. 10 – p. 14, L. 4; see also Ex. 1 at 2:27 to 2:38.) As Officer Clark and Officer Kingery were working on the paperwork in the car, Officer Inman arrived on scene and his canine alerted on Still's vehicle. (2/1/18 Tr., p. 10, L. 18 – p. 11, L. 20; see also Ex. 1 at 2:38 to 11:20; see also R., pp. 122-123, ns. 2-3.) The officers searched

---

[1] Officer Clark's body camera video was admitted into evidence at the suppression hearing. (2/1/18 Tr., p. 12, L. 4 – p. 13, L. 9, p. 23, L. 20 – p. 24, L. 1.) For the purposes of reference on appeal the video will be cited to as "Exhibit 1." The minute and second references are approximate.

[2] On the video Officer Clark calls for "SP-39." (See Ex. 1. at 1:20 to 1:22, 2:27 to 2:38.) "SP-39" refers to Officer Inman. (See 2/1/18 Tr., p. 13, L. 10 – p. 14, L. 4.)

Still's vehicle and found a used methamphetamine pipe, a couple of little white baggies, and a firearm under the passenger seat. (See 2/1/18 Tr., p. 10, L. 18 – p. 11, L. 20.)

The state charged Still with unlawful possession of a firearm by a felon and unlawful possession of methamphetamine. (R., pp. 71-72.) Still moved to suppress evidence obtained as a result of the traffic stop on the grounds that the stop was unlawfully prolonged because Officer Clark used his radio to call Officer Inman a second time. (See R., pp. 82-83, 91-98.) At the suppression hearing, the parties stipulated that there was reasonable suspicion for the initial traffic stop. (2/1/18 Tr., p. 6, L. 15 – p. 7, L. 9.)

The district court found that Officer Clark did not abandon the purpose of the stop and the two short calls to Officer Inman and the dog sniff did not prolong the traffic stop. (See R., pp. 119-127.) The district court found:

> ...Here, [Officer] Clark—from the time of his initial contact with Still until the time he re-contacted Still and told Still that the drug dog had alerted—diligently pursued the purpose of the traffic stop which was traffic enforcement. Clark never abandoned the purpose of the stop. [Officer] Inman's arrival and deployment of the drug dog *and* the dog's alert all occurred *before* [Officer] Clark had issued the citation and warning for Still's traffic violations. To the critical question in *Rodriguez* (as identified in *Linze*) of whether conducting the dog sniff prolonged the stop, the Court finds that it did not. After his initial contact with Still, [Officer] Clark reentered the patrol car, sat down, and immediately made the second call to Inman. That second call took approximately 10 seconds. When he began the second call, [Officer] Kingery was entering the passenger's side door. By the time the call had concluded, [Officer] Kingery was seated, and the passenger side door was closed. The Court finds that the few seconds [Officer] Clark used to make the call did not prolong the stop because during that time [Officer] Kingery was entering the vehicle, being seated, and as the call concluded, both officers began working as a unit to run and review the status of Still's license and registration.

> [Officer] Clark was notified of the drug dog's alert before he completed the citation and warning and got out of the patrol car. As soon as he re-contacted Still, he told Still that the dog had alerted. At this point, a new seizure began, the purpose of which was a drug investigation, for which the officers now had probable cause based on the alert.

(R., pp. 125-126 (emphasis in original) (citing State v. Gibson, 141 Idaho 277, 281, 108 P.3d 424, 428 (Ct. App. 2005).) The district court denied Still's motion to suppress. (R., pp. 119-127.)

Still entered a conditional guilty plea to unlawful possession of a firearm. (R., pp. 135-136.) The state dismissed the second count. (Id.) Still reserved the right to appeal the denial of his motion to suppress. (Id.) The district court entered judgment and sentenced Still to four years with two years fixed. (R., pp. 170-176.) The district court retained jurisdiction. (Id.) Still timely appealed. (R., pp. 177-179.)

<u>ISSUE</u>

Still states the issue on appeal as:

Did the district court err when it denied Mr. Still's motion to suppress?

(Appellant's brief, p. 6.)

The state rephrases the issue as:

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

ARGUMENT

The District Court Did Not Err When It Denied Still's Motion To Suppress

A. Introduction

While Officer Clark and Officer Kingery were in the patrol car working on the relevant paperwork, Officer Inman's canine alerted on Still's vehicle. (See R., pp. 121-122.) The district court found that neither the dog sniff nor Officer Clark's calls to Officer Inman constituted an abandonment of the stop, nor did they prolong the stop. (See R., pp. 123-127.)

On appeal, Still argues that Officer Clark's act of re-entering the patrol car and making a second call to Officer Inman, constituted an abandonment of the original purpose of the stop and impermissibly prolonged the stop. (See Appellant's brief, pp. 8-13.) Still's argument fails because the district court's factual conclusions are based upon the evidence, namely the video evidence, and Still's argument relies upon counting every pause made by Officer Clark, which is inimical to the reasonableness requirement of the Fourth Amendment. The district court correctly found that the brief second call to Officer Inman did not impermissibly extend the stop, nor did it constitute and abandonment of the original purpose. Still has failed to show the district court erred.

B. Standard Of Review

The appellate court reviews the denial of a motion to suppress using a bifurcated standard. State v. Linze, 161 Idaho 605, 607, 389 P.3d 150, 152 (2016) (citing State v. Purdum, 147 Idaho 206, 207, 207 P.3d 182, 183 (2009)). The appellate court will accept the trial court's findings of fact unless they are clearly erroneous. Id. (citing Purdum, 147

Idaho at 207, 207 P.3d at 183). However the appellate court freely review the trial court's application of constitutional principles in light of the facts found. Id. (citing Purdum, 147 Idaho at 207, 207 P.3d at 183).

C. The District Court Correctly Found That Officer Clark's Two Short Calls To Officer Inman Did Not Constitute An Abandonment Of The Purpose For The Stop, Nor Did They Impermissibly Prolong The Stop

The district court correctly applied the law to the facts and denied Still's motion to suppress because Officer Clark did not impermissibly extend the length of the stop, nor did he abandon the original purpose of the stop. (See R., pp. 119-126.) Pursuant to the Fourth Amendment of the United States Constitution "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. A police officer may detain a person for the purpose of investigating possible criminal behavior "if there is an articulable suspicion that the person has committed or is about to commit a crime." State v. Wright, 134 Idaho 73, 76, 996 P.2d 292, 295 (2000) (quoting State v. Rawlings, 121 Idaho 930, 932, 829 P.2d 520, 522 (1992)). Such a detention "is permissible if it is based upon specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity." State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003) (citing Terry v. Ohio, 392 U.S. 1, 21 (1968); United States v. Cortez, 449 U.S. 411, 417 (1981)).

"Because a routine traffic stop is normally limited in scope and of short duration, it is more analogous to an investigative detention than a custodial arrest and therefore is analyzed under the principles set forth in *Terry v. Ohio,* 392 U.S. 1, 88 S. Ct. 1868, 20

L.Ed.2d 889 (1968)." Sheldon, 139 Idaho at 983, 88 P.3d at 1223. "Under the Fourth Amendment, an officer may stop a vehicle to investigate possible criminal behavior if there is a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws." State v. Roe, 140 Idaho 176, 180, 90 P.3d 926, 930 (Ct. App. 2004).

"An investigative detention must be temporary and last no longer than necessary to effectuate the purpose of the stop." State v. Ramirez, 145 Idaho 886, 889, 187 P.3d 1261, 1264 (Ct. App. 2008). "Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose." Rodriguez v. United States, 575 U.S. ___, 135 S. Ct. 1609, 1616 (2015) (internal quotes, brackets and citations omitted). "[A]s a matter of course in a valid traffic stop, a police officer may order the occupants of a vehicle to exit or to remain inside." State v. Irwin, 143 Idaho 102, 105, 137 P.3d 1024, 1027 (Ct. App. 2006). "The stop remains a reasonable seizure while the officer diligently pursues the purpose of the stop, to which that reasonable suspicion is related. However, should the officer abandon the purpose of the stop, the officer no longer has that original reasonable suspicion supporting his actions." State v. Linze, 161 Idaho 605, 609, 389 P.3d 150, 154 (2016).

The United States Supreme Court has held that, "[b]eyond determining whether to issue a traffic ticket, an officer's mission includes 'ordinary inquiries incident to [the traffic] stop.'" Rodriguez, 575 U.S. at ___, 135 S. Ct. at 1615 (quoting Illinois v. Caballes, 543 U.S. 405, 408 (2005)). "Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." Id. "These checks

serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly." Id.

The Idaho Supreme Court analyzed the United States Supreme Court holding in Rodriguez and held that a traffic stop, supported by reasonable suspicion, "remains a reasonable seizure while the officer diligently pursues the purpose of the stop, to which that reasonable suspicion is related." Linze, 161 Idaho at 609, 389 P.3d at 154.

> The stop remains a reasonable seizure while the officer diligently pursues the purpose of the stop, to which that reasonable suspicion is related. However, should the officer abandon the purpose of the stop, the officer no longer has that original reasonable suspicion supporting his actions. Indeed, when an officer abandons his or her original purpose, the officer has for all intents and purposes initiated a new seizure with a new purpose; one which requires its own reasonableness under the Fourth Amendment. This new seizure cannot piggy-back on the reasonableness of the original seizure. In other words, unless some new reasonable suspicion or probable cause arises to justify the seizure's new purpose, a seized party's Fourth Amendment rights are violated when the original purpose of the stop is abandoned (unless that abandonment falls within some established exception).

Linze, 161 Idaho at 609, 389 P.3d at 154. In cases in which it is alleged that a dog sniff unreasonably prolongs a traffic stop, the critical question is not whether the dog sniff occurs before or after the traffic ticket is issued, but whether the dog sniff adds time to the traffic stop. Linze, 161 Idaho at 609, 389 P.3d at 154 (citing Rodriguez, 135 S. Ct. at 1616).

> The United States Supreme Court concluded that "the critical question, then, is not whether the dog sniff occurs before or after the officer issues a ticket ... but whether conducting the sniff 'prolongs'—*i.e.*, adds time to—'the stop'."

Id. (quoting Rodriguez, 135 S. Ct. at 1616).

Here, Officer Clark and Officer Kingery stopped Still for driving 46 miles per hour in a 35 mile per hour zone. (2/1/18 Tr., p. 8, L. 13 – p. 9, L. 18; see also R., p. 120.) The district court found that Officer Clark's two short calls to Officer Inman did not prolong the stop and that the officers diligently pursued the purpose of the traffic stop. (See R., pp. 123-126.)

On appeal, Still argues that the district court's factual finding that Officer Clark's second call did not prolong the length of the stop was clearly erroneous. (See R., pp. 11-13.) The district court found, in part, that Officer Clark made the second call as Officer Kingery was entering the patrol car and, once Officer Kingery was seated, they started "working as a unit to run and review the status of Still's license and registration."

> After his initial contact with Still, [Officer] Clark reentered the patrol car, sat down, and immediately made the second call to Inman. That second call took approximately 10 seconds. When he began the second call, [Officer] Kingery was entering the passenger's side door. By the time the call had concluded, [Officer] Kingery was seated, and the passenger side door was closed. The Court finds that the few seconds [Officer] Clark used to make the call did not prolong the stop because during that time [Officer] Kingery was entering the vehicle, being seated, and as the call concluded, both officers began working as a unit to run and review the status of Still's license and registration.

(R., p. 126.) On appeal, Still claims that this finding is clearly erroneous, arguing the Court's ruling includes an implicit finding that Officer Kingery's presence was needed to run and review the status of Still's license and registration and this implicit finding is not supported by the record. (See Appellant's brief, pp. 11-13.) Still's argument is misplaced.

Still's argument does not challenge the actual factual findings, but instead relies upon inserting extra factual findings into the district court's ruling and then challenging

those extra factual findings. The district court actually found that the "few seconds [Officer] Clark used to make the call did not prolong the stop because during that time [Officer] Kingery was entering the vehicle, being seated, and as the call concluded, both officers began working as a unit to run and review the status of Still's license and registration." (R., p. 126.) This finding is supported by the video evidence, which shows Officer Clark making the very short call to Officer Inman as Officer Kingery was getting in the vehicle and getting seated, and then shows both Officer Clark and Officer Kingery working together to run Still's information. (See Ex. 1 at 2:25 to 11:20.) Thus, the district court's factual findings are supported by substantial competent evidence in the record – namely the video evidence.

There was no factual finding that Officer Clark needed Officer Kingery to perform the checks – nor did there need to be. As cited above, the only requirement is that the officers diligently pursue the purpose of the stop, and both officers working on the paperwork is a diligent pursuit of the purpose of the stop.

Regarding the district court's legal conclusions, Still bases his argument, not so much on the law, but rather on statements made by the prosecutor during the suppression hearing. (See, e.g., Appellant's brief, p. 10 ("The State, below, acknowledged Officer Clark's call was a deviation from the traffic stop. (Tr. p. 19, Ls. 6-19; p. 20, Ls. 6-7; p. 11, Ls. 7-13.)"; p. 10 ("As described by the prosecutor, 'the officer ... reaches for and grabs that microphone, *that's where the deviation, I guess, would start or the abandonment* of his purpose of the stop. (Tr., p. 21, Ls. 14-18 (emphasis added).)"; see also Appellant's brief, pp. 11-13.) However, Still's argument is misplaced because the

prosecutor's statements are not the holding of the district court. The district court's legal conclusions are based upon the applicable law, not the prosecutor's arguments.

Regardless, Still's citations to the prosecutor's argument take the prosecutor's statements out of context. The prosecutor's ultimate argument was that, under Linze, the officers did not abandon the purpose of the stop when Officer Clark made the short second call to Officer Inman. (See 10/16/17 Tr., p. 18, L. 14 – p. 22, L. 2.) The prosecutor's argument needs to be examined in context. At the suppression hearing, the district court told the parties that, "just before [the hearing] started" it pulled the Linze case. (10/16/17 Tr., p. 5, L. 3 – p. 6, L. 6.) The prosecutor responded, "I didn't, you are ahead of me. I was just going to comment – I haven't had the time to really get into the case –." (Id.) The district court explained that, in Linze, there was a "[t]wo and a half-minute extension" of the stop and the case constituted "a fairly significant change in the way they're looking at calling for canines[.]" (Id.) The parties then presented evidence and argued the case. In response to Still's argument, the prosecutor argued the second call to Officer Inman was reasonable under the Fourth Amendment, and there was not really an abandonment:

> [PROSECUTOR]: Your Honor, I believe what it comes down to is what we find in in the Fourth Amendment, that word reasonable. And it's used throughout the Linze case – I haven't been able to read the whole thing – frankly, I can barely see the font.
>
> But it states – it's quoting Illinois via [sic] Caballes or something. The authority for the seizure thus ends when tasks tied to the traffic infraction are reasonably – should have been completed.
>
> It wouldn't have been completed at the time they put they call in, they were just barely getting started with the stop. I am not going to address the car side call because there was no deviation at all. He's

waiting for the defendant to provide him with the insurance and the registration that he had requested. So there wasn't any deviation there.

The only deviation there would be – is that very small amount of time that he went into the patrol vehicle placed that call a, second time and then went right back to work.

What I see here also in the case, in this Linze, it says, "The stop remains a reasonable seizure while the officer diligently pursues the purpose of the stop to which that reasonable suspicion is related. However, should the officer abandoned the purpose for the stop, etc."

What I'm getting out of this opinion is it's a complete – taking off on a complete angle without reasonable suspicion – like if the officer would observe, say, the odor of marijuana. Right there he will have reasonable suspicion to abandon the original reason for the traffic stop and go on from there. But I think the language that they use in this opinion, abandon, diligence, reasonableness – those are the things that they're talking about.

Again I don't know the facts behind the Linze case but it sounds – I think somebody said two minutes and 59 seconds or something. And it's also noteworthy that I see it says – interjecting this argument, the United State Supreme Court noted that an officer always has to be reasonably diligent. I don't think the deviation that we see in this case is unreasonable.

And it certainly isn't – I don't think that's the way the Supreme Court intends this decision to be used because quite frankly I could see this argument coming next. Well, Officer, why did you park 15 feet away? You could have parked right up behind him. You wasted all that time to go the extra 10 feet to walk up to that door when you could have put your bumper on his bumper and been that much closer. So there's a waste of time.

When you walked up and you said, how are you doing today, well, that has nothing to do with the speeding infraction, well, that's a waste of time. If we're going to take it as abandoned and unreasonable, we are going to become that absurd.

What I don't see is any effort by the Supreme Court, or the Court of Appeals, to withdraw our ability or the officer's ability to also engage the defendant in other questions while they've got him stopped for a speed violation or some kind of infraction. To wit: do you have any drugs or weapons in the vehicle? That has always been upheld, and I have not seen

> a case come down, you know, casting doubt on permitting an officer to do that.
>
> So, that though, if you read this case that way – that narrow focus – that's also a deviation. Why did you ask him about drugs if you didn't know there were drugs in there. Case after case, they are allowed to do that.
>
> So from the State's perspective, this is a very de minimis thing. I mean, you know, we're talking about seconds in this case. I didn't time it. But that's really what it comes down to. The officer gets in there, sits down, and until he reaches for and grabs that microphone, that's where the deviation, I guess, would start or the abandonment of his purpose for the stop.
>
> But again, it's not really an abandonment. The fact that his computer all of a sudden glitched and the stuff that he had pulled up there before is gone, and he has to redo that – does that time count against the officer diligently performing his duties, because he's having equipment issues? I don't think so. So I don't think this is a proper extension of the Linze case, Judge, and I would ask you to deny the motion.

(10/16/17 Tr., p. 18, L. 14 – p. 22, L. 2.) Thus, the entire thrust of the prosecutor's argument was not a concession that the stop violated the holding of Linze, but rather that there was "not really an abandonment" and the stop complied with the holding of Linze. As a result, Still's reliance on the prosecutor's argument to challenge the district court's conclusions is without merit.

Further, the district court's determination in this case in accordance with two recent Idaho Court of Appeals decisions. See State v. Renteria, 163 Idaho 545, 415 P.3d 954 (Ct. App. 2018) (review denied May 7, 2018); State v. McGraw, 163 Idaho 736, 418 P.3d 1245 (Ct. App. 2018) (review denied June 8, 2018).

In Renteria, an Idaho State Police Trooper stopped Renteria for failing to adequately signal before changing lanes. Renteria, 163 Idaho at 547, 415 P.3d at 956. "As Renteria searched for the registration and proof of insurance, Trooper Sproat asked

where the two men were coming from; what they did for work; whether they had previously received tickets or been arrested; and whether there were any drugs, marijuana, cocaine, cash, or weapons in the vehicle." Id. "After collecting the driver's license and registration, Trooper Sproat walked from Renteria's car back to his patrol car and, while doing so, requested the assistance of a canine officer from dispatch." Id. The Trooper ran Renteria's information through dispatch, and while awaiting a response from dispatch, the drug dog arrived on scene. Id. The drug dog alerted on Renteria's car before the information came back from dispatch. Id. The Troopers searched the car and found a brick of cocaine inside the trunk. Id. The state charged Renteria and Renteria moved to suppress the evidence on the grounds his detention had been unlawfully extended. Id. at 547-548, 415 P.3d at 956-957. The district court denied the motion and Renteria entered a conditional guilty plea and appealed. Id. at 548, 415 P.3d at 957.

On appeal, Renteria argued, in part, that Trooper Sproat unlawfully extended the stop in violation of the Fourth Amendment by deviating from the original purpose of the stop three times: (1) by asking Renteria whether there were drugs in the vehicle; (2) by requesting the assistance of a canine officer before relaying Renteria's information to dispatch; and (3) by discussing why he suspected Renteria of drug activity with the canine officer." Id.

The Idaho Court of Appeals rejected all of Renteria's arguments. See id. at 548-549, 415 P.3d at 957-958. First, the Court held that asking Renteria about drugs did not extend the length of the stop because Renteria was still in the process of searching for proof of insurance when Trooper Sproat asked about drugs. Id. Second, Trooper Sproat did not extend the length of the stop when he made the brief request for a drug-detection

dog because he was walking back to his patrol car when he made the request. See id. at 549, 415 P.3d at 958. Third, Trooper Sproat did not extend the stop by discussing his suspicions with Renteria because, at that point, dispatch had not responded regarding outstanding warrants or the status of Renteria's driving privileges. See id.

The Court of Appeals' decision in Renteria controls the outcome here. Like Trooper Sproat in Renteria, Officer Clark did not extend the length of the stop when he made two very brief calls for the canine officer. Like in Renteria, the first call was made while Still was looking for paperwork in his car. The second call was made as Officer Clark was settling into his car seat and at almost the same time as Officer Kingery was getting into the passenger seat.

In McGraw, during a traffic stop, a drug dog alerted on the defendants' car, the officers founds drugs, and the defendants were charged with drug related crimes. McGraw, 163 Idaho at 737-738, 418 P.3d at 1246-1247. The defendants filed motions to suppress arguing, in part, that the officers impermissibly extended the length of the traffic stop because one officer "directed" a second officer to issue a citation while the first officer deployed his canine. See id. at 738, 418 P.3d at 1247. The district court granted the defendants' motion, holding that the first officer abandoned the purpose of the stop and unlawfully extended the length of the stop. See id. The state appealed, and the Idaho Court of Appeals reversed. See id. at 737, 418 P.3d at 1246.

The Court of Appeals distinguished Rodriguez and Linze because the purpose of the stop was not abandoned simply because it took a few seconds to transfer the duties related to the stop:

> The question, instead, is whether the dog sniff occurred during the course of the traffic stop or whether the stop was unlawfully prolonged as a result of the sniff. While it is clear that Officer One was not pursuing the purpose of the traffic stop when he was conducting the dog sniff, it is equally clear that the purpose of the stop was not abandoned because the duties related thereto, which included the issuance of a citation, were transferred from Officer One to Officer Two before the sniff occurred. For this reason, this case is distinguishable from *Rodriguez* and *Linze*, upon which the district court relied.

Id. at 740, 418 P.3d at 1249. The Fourth Amendment does not require the officer to "continuously" write a citation without a pause. Id. Further it is "inimical" to the reasonableness requirement of the Fourth Amendment to count every pause:

> Counting every pause taken while writing a citation as conduct that unlawfully adds time to the stop is inimical to the Fourth Amendment's reasonableness requirement and is contrary to United States Supreme Court precedent.

Id. at 741, 418 P.3d at 1250.

Still's arguments are contrary to both Renetria and McGraw. First, as the district court found, Officer Clark's calls to Officer Inman did not prolong the stop. (See R., pp. 125-126.) Second, Still is asking this Court to "count[] every pause" Officer Clark made while he was working on the citation. This is inimical to the reasonableness requirement of the Fourth Amendment. As shown in the video, Officer Clark and Officer Kingery diligently pursued the purpose the traffic stop. (See Ex. 1 at 1:20 to 11:20.) While they diligently pursued the purpose of the stop, Officer Inman arrived on scene and his canine alerted on Still's vehicle. (2/1/18 Tr., p. 10, L. 18 – p. 11, L. 20; see also Ex. 1 at 2:38 to 11:20; see also R., pp. 122-123, ns. 2-3.) Only after the canine alert did the officers expand the scope of the stop, by which time they had probable cause to do so. (See R.,

pp. 125-126.) The district court properly applied the relevant law to the facts and correctly denied Still's motion to suppress.

CONCLUSION

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

DATED this 5th day of February, 2019.

/s/ Ted S. Tollefson
TED S. TOLLEFSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of February, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

KIMBERLY A. COSTER
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

/s/ Ted S. Tollefson
TED S. TOLLEFSON
Deputy Attorney General

TST/dd