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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 45792
	)	
v.	)	BONNER COUNTY NO. CR 2017-3923
	)	
JESSE RAY STILL,	)	REPLY BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

\_\_\_\_\_  
**REPLY BRIEF OF APPELLANT**  
\_\_\_\_\_

**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  
\_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature of the Case

Jesse Ray Still appeals the denial of his motion to suppress evidence found in his car after a police officer stopped him for a traffic violation. Mr. Still claims the officer prolonged his detention, in violation of the Fourth Amendment, when the officer deviated from the purpose of the traffic stop to make a call to request a K-9 unit, before running his license check and registration verification. The State, below, offered no alternative reason for the period of delay but asserted that the deviation was a “de minimis thing,” and because the officer got right back to work, there was no Fourth Amendment violation. The district court came up with its own hypothesis to justify that period of delay: the district court found that, “during that time [the second 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 that basis, the district court concluded the officer’s call to a K-9 unit did not prolong the stop.

Mr. Still argues the State failed to carry its burden to show the duration of the stop was justified, and that the district court’s contrary factual findings are clearly erroneous and its legal conclusions are inconsistent with controlling precedent.

This Reply Brief is necessary to address the State’s assertion that the district court’s factual findings support its conclusion of no prolonging, and to distinguish the two Court of Appeals’ decisions cited by the State, *State v. Renteria*, 163 Idaho 545 (Ct. App. 2018) and *State v. McGraw*, 163, 736 (Ct. App. 2018), (Resp.Br. pp. 13-17).

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Still's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

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

## ARGUMENT

### The District Court Erred When It Denied Mr. Still's Motion To Suppress

A. Officer Clark's Call Prolonged The Traffic Stop And The District Court's Express Factual Findings Fail To Support Its Contrary Conclusion

As recognized by the United States Supreme Court and the Idaho Supreme Court, “an officer always has to be reasonably diligent,” and “[i]f an officer can complete traffic based inquiries expeditiously, then that is the amount of time reasonably required to complete the stop’s mission.” *Rodriguez v. United States*, 575 U.S. \_\_\_, 135 S.Ct. 1609, 1616 (2015). Ultimately, if an officer makes *unrelated* inquiries or investigations, the officer “will inevitably lengthen the time,” prolonging the stop in violation of the Fourth Amendment. *Rodriguez*, 135 S.Ct. at 1616; *State v. Linze*, 161 Idaho 605, 608 (2016). This rule “applies to *all* extensions of traffic stops including those that could reasonably be considered *de minimis*.” *Linze*, 161 Idaho at 608 (citing *Rodriguez*, 575 U.S. \_\_\_, 135 S.Ct. at 1615-16).

In the present case, the district court found that Officer Clark made a call to a K-9 unit requesting a drug dog *after* he was seated in his patrol car and *before* he began running the license and registration checks. (R., pp.125-26.) However, the district court erroneously concluded that Officer Clark’s call to the K-9 unit did not prolong the traffic stop. (R., pp.125-26.) To support its conclusion, the district court cited to the facts that (1) a second officer, Reserve Officer Kingery, was entering the patrol car while Officer Clark was on the call, and (2) that “*after* 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 (emphasis added).)

Contrary to the State’s assertion, (*see* Resp. Br., p.10), the district court’s finding that the two officers diligently pursued the stop’s purpose *after* Officer Clark completed his K-9 call,

does not support the conclusion that the call did not prolong the stop. The district court's factual findings are incomplete and fail to support its conclusion that the call did not prolong the stop.

Critically, the district court did not find, nor is there any evidence to show, that Officer Clark had completed his call *at or before* the time Kingery was seated. (*See R.*, pp.125-261; *see generally*, Tr.) To the contrary, and as set forth in the Appellant's Brief, at page 13, the undisputed video evidence establishes that Officer Clark remained on the K-9 call *even after* Kingery was fully seated, and that Kingery was, in fact waiting on Officer Clark to complete his K-9 call. (Ex., 2:25-35.) Based on this undisputed evidence, it was Officer Clark's K-9 call – and *not* the fact of Kingery seating himself – that delayed the beginning of the license and registration checks. Under the controlling precedent, even if the delay was brief, it amounted to an unacceptable intrusion in violation of the Fourth Amendment. *Rodriguez*, 135 S. Ct. at 1616; *State v. Linze*, 161 Idaho 605, 608 (2016).

Additionally, even if the evidence *had* supported a finding that Officer Clark had delayed the license checks in order to wait for Kingery, there still is no basis in record to show or explain that waiting for Kingery complied with Officer Clark's duty to diligently and expeditiously pursue the completion of the stop. *Rodriguez*, 135 S. Ct. at 1615. (*See generally*, Tr.) The fact Kingery was entering the patrol car somewhat contemporaneously with Officer Clark's call is not a fact that justifies the delay. As argued in Appellant's Brief, at page 12, *Officer Clark* had control of Mr. Still's license and registration documents, and *Officer Clark* was in control of the patrol car's computer and radio. (*See generally*, Ex.0:01-10:00.) *All* of the activities necessary for conducting the license check were within the control of *Officer Clark*. (*See generally*, Ex.0:01-10:00.) The State offered no reason why Officer Clark did not begin the license checks, other than because he was making the call to request the drug dog; and Officer Clark himself

testified that he was doing nothing else during the time of that call. Thus, the district court's findings regarding Kingery do not support its conclusion that the time Officer Clark took to call for the drug dog did not prolong the traffic stop.

B. The State's Reliance On *State v. Renteria* And *State v. McGraw* Is Misplaced

Contrary to the State's assertions (Resp. Br., pp.13-17), the Court of Appeals' holdings in *State v. Renteria*, 163 Idaho 545 (Ct. App. 2018) and *State v. McGraw*, 163, 736 (Ct. App. 2018), (Resp.Br. pp.13-17) do not apply to the facts of this case.

In *Renteria*, the Court of Appeals considered whether an officer had prolonged the traffic stop when the officer engaged in three distinct activities that were unrelated to the initial purpose of the traffic stop: (1) asking the driver whether there were drugs in the vehicle; (2) requesting the assistance of a canine officer; and (3) discussing his suspicions of drug activity with the canine officer. 163 Idaho at 548. The Court agreed that all three of these activities were "unrelated to" the initial purpose of the traffic stop, but concluded that none had extended the length of the stop.

With respect to the first instance, the Court concluded that asking the driver whether there were drugs did not extend the stop "because Renteria [the driver] was still in the process of searching for proof of insurance with the officer posed the question." *Id.* at 459; Addressing the second instance, the Court likewise concluded that requesting the assistance of a canine officer did not extend the stop because the officer made the request "while walking" back to his patrol car to generate a ticket for lack of proof of insurance, and therefore did not add time to the stop. *Id.* Then, turning to the third instance, the Court again concluded the officer's unrelated discussions with the canine unit did not extend the stop because the officer was still in his patrol car "awaiting a response from dispatch" regarding the licensing and warrants checks. *Id.*

In each of the three instances presented in *Renteria*, the officer made his unrelated inquiry while *simultaneously* engaged in – and without interrupting – tasks related to the mission of the traffic stop. *Id.* In Mr. Still’s case, by contrast, Officer Clark had *already* obtained Mr. Still’s documents, and had *already* arrived back at and was seated in his patrol car when, instead of beginning to run the license checks – or warrants checks or any other checks related to the mission of the traffic stop – the first thing he did was call the K-9 unit officer. (R., pp.96-97; Tr., p.17, L.8 – p.18, L.12.) Also distinct from the facts in *Renteria*, Officer Clark confirmed that during his call to request a drug dog, he was not “doing anything else.” (Tr., p.16, Ls.9-11.) For these reasons, the *Renteria*’s holdings are in applicable here.

The Court of Appeals’ holding in *State v. McGraw*, 163 Idaho 736, is likewise inapplicable to Mr. Still’s case. In *McGraw*, a traffic stop case, the officer (“Officer One”) handed off his ticket book to a second officer (“Officer Two”) to write the citation while he, Officer One, deployed his dog. *Id.* While writing the citation, Officer Two also provided cover for Officer One. *Id.* The trial court concluded that Officer One had abandoned the stop and that because Officer Two was covering for him, the stop was unlawfully prolonged. *Id.*, at 738. The Court of Appeals reversed. *Id.* at 736.

The Court of Appeals concluded there was no unlawful extension of the stop. *Id.* at 740. The Court explained that, while Officer One had personally abandoned the purpose of the traffic stop to conduct the dog sniff, there was “no added time” to the stop “because the duties related [to the stop] were transferred from Officer One to Officer Two before conducting” the unrelated dog sniff. *Id.* at 740 (emphasis added). The Court also concluded that writing the citation “while” at the same time providing cover did not amount to an unlawful extension of the traffic stop. *Id.* at 741.

In contrast to the facts in *McGraw*, in this case there was no *transfer* of duties to Kingery *before* Officer Clark deviated from the purpose of the traffic stop, and in contrast to *McGraw*, there is no showing that Kingery was diligently pursuing tasks related to the traffic stop *while* Officer Clark was on the call requesting the drug dog. Rather, Officer Clark deviated from the original purpose of the traffic stop when he made the K-9 call, and only *after* he completed that call did he and Kingery resume the tasks related to the traffic stop. Unlike in *McGraw*, Officer Clark did not relinquish nor assign those tasks to Kingery.

Officer Clark's call to the K-9 unit to request a drug dog prolonged the traffic stop, in violation of Mr. Still's Fourth Amendment rights. Suppression should have been granted.

#### CONCLUSION

For the reasons set forth above and in his Appellant's Brief, Mr. Still respectfully asks this Court to reverse the district court's denial of his suppression motion, to vacate his judgment of conviction, and to remand his case to the district court for further proceedings.

DATED this 19<sup>th</sup> day of March, 2019.

/s/ Kimberly A. Coster  
KIMBERLY A. COSTER  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19<sup>th</sup> day of March, 2019, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

KENNETH K. JORGENSEN  
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/s/ Evan A. Smith  
\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

KAC/eas