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Idaho Supreme Court
Karel Lehrman, Clerk of the Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 46992-2019**
Plaintiff-Respondent,	)	
	)	**Kootenai County Case No.**
v.	)	**CR-2018-3931**
	)	
NICHOLAS KEITH BLYTHE,	)	
	)	
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 KOOTENAI

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Nicholas Keith Blythe appeals from the judgment of conviction entered upon his conditional guilty plea to possession of a controlled substance (heroin). On appeal, Blythe challenges the denial of his motion to suppress.

Statement Of Facts And Course Of Proceedings

Kootenai County Sheriff's Deputies Boardman and Fanciullo were patrolling the Stateline, Idaho, area as a two-man unit in the early morning of March 12, 2018, when they conducted a traffic stop of a vehicle for speeding and failure to stop at a designated stop line. (7/10/18 Tr., p.19, Ls.20-24; see also "PSI", p.45.[1]) Deputy Fanciullo approached the driver's side of the vehicle, and Deputy Boardman went to the passenger's side and made contact with Blythe. (7/10/18 Tr., p.9, Ls.16-24; p.20, Ls.4-10.) Upon seeing a "rolled-up dollar bill" on Blythe's lap, and "some tin foil on the floor that [the deputy] believed to be drug paraphernalia[,]" Deputy Boardman directed Blythe to get out of the vehicle and asked if he could search him, and Blythe responded affirmatively. (7/10/18 Tr., p.9, L.25 – p.10, L.8; p.11, L.21 – p.12, L.15.) The deputy conducted an exterior pat-down on Blythe, finding nothing of evidentiary value. (7/10/18 Tr., p.13, Ls.14-20.) Deputy Boardman explained that he believed the rolled-up dollar bill on Blythe's lap was a "tooter," slang for "tube," and in his training and experience, a substance is placed on tin foil and heated, and the smoke is inhaled through such a tube. (7/10/18 Tr., p.10, L.18 – p. 11, L.20.)

[1] Citations to "PSI" are to the "Confidential Documents" in the electronic file.

Deputy Fanciullo was told by the driver that there was marijuana in the vehicle, and upon searching the driver's side of the vehicle, one of the deputies found marijuana. (7/10/18 Tr., p.17, Ls.14-18; p.22, Ls.6-8.) During the vehicle search, Blythe stood, uncuffed, near the right corner of the vehicle and then moved back towards the front of the patrol car. (7/10/18 Tr., p.13, L.23 – p.14, L.24.) In the passenger area of the vehicle, Deputy Boardman found "several . . . used rolled-up pieces of tin foil with burn marks consistent with drug use, and one piece of tin foil had a usable amount of a substance on it" that, based on the officer's training and experience (including 25 to 30 heroin arrests), was consistent in appearance with heroin. (7/10/18 Tr., p.15, Ls.6-11; p.16, L.21 - p.17, L.11.) Deputy Boardman found the tin foil with the substance on it under the passenger seat, and explained, "it was a rolled-up piece of tin foil. Inside of it you could see several burn marks, and then you could see the piece of substance in the center of the tin foil." (7/10/18 Tr., p.16, Ls.4-11.)

After finding the tin foil items in the passenger area and under the passenger seat, Deputy Boardman "walked back and began to speak with Mr. Blythe further[,]" and said "something to the effect of, 'Do me a favor. Can you kick your shoes off for me?'" (7/10/18 Tr., p.17, L.22 – p.18, L.8.) Blythe kicked his shoes off, and the deputy saw that one of the shoes contained "two baggies with a brown tar-like substance, consistent with heroin." (7/10/18 Tr., p.18, Ls.15-18.) Deputy Boardman put handcuffs on Blythe, read him *Miranda* warnings, and placed him in his patrol car. (7/10/18 Tr., p.18, L.21 – p.19, L.2.) Blythe made several admissions after he was *Mirandized*. (7/10/18 Tr., p.19, Ls.8-12.)

The state charged Blythe with possession of heroin and possession of drug paraphernalia. (R., pp.45-46.) Blythe filed a motion to suppress all evidence and all statements he made during and after the stop of the vehicle he was a passenger in. (R., pp.51-52.) After an evidentiary hearing, the district court denied Blythe's motion to suppress, concluding that the search of his shoes was justified as a search incident to lawful arrest. (9/11/18 Tr., p.11, L.10 – p.17, L.5.)

Blythe entered a conditional guilty plea to possession of heroin, preserving his right to appeal from the district court's order denying his motion to suppress, and the paraphernalia charge was dismissed. (R., pp.74-78, 80-81, 98-99; 9/11/18 Tr., p.17, L.20 – p.28, L.24.) The district court imposed a unified four-year sentence with two years fixed on the felony charge, and suspended the sentence and placed Blythe on supervised probation for two years. (R., pp.100-104.) Blythe timely appealed. (R., pp.108-111, 118-122.)

ISSUE

Blythe states the issue on appeal as:

Did the district court err in denying Mr. Blythe's motion to suppress?

(Appellant's Brief, p.5.)

The state rephrases the issue as:

Has Blythe failed to show that the district court erred by denying his motion to suppress?

ARGUMENT

Blythe Has Failed To Show That The District Court Erred By Denying His Motion To Suppress

A. Introduction

Blythe contends the search of his shoes was not justified by the search incident to arrest exception to the warrant requirement because, he claims, Deputy Boardman would not have arrested him if not for the discovery of the heroin. (Appellant's Brief, pp.9-12.) Blythe's argument fails because a review of the record and of the totality of the circumstances surrounding Deputy Boardman's contact with Blythe does not indicate that, at the time of the search, the deputy was not going to arrest Blythe.

B. Standard Of Review

"The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, [the appellate court] accepts the trial court's findings of fact that are supported by substantial evidence, but [the court] freely reviews the application of constitutional principles to the facts as found." State v. Faith, 141 Idaho 728, 730, 117 P.3d 142, 144 (Ct. App. 2005).

C. The District Court's Findings Of Fact And Conclusions Of Law

The district court considered and ruled upon two arguments presented by the state: (1) Blythe consented to have his person (and shoes) searched, and (2) because, at the time Blythe's shoes were searched, there was probable cause to arrest him, the search was a legal search incident to arrest. (See generally 9/11/18 Tr., p.11, L.10 – p.17, L.5.) Although Blythe contends the district court correctly determined he did not consent to a search of his shoes (see Appellant's Brief, pp.7-8), the state is not contesting that issue.

Because the totality of the facts must be considered in determining whether the search of Blythe's shoes can be justified as a search incident to lawful arrest, the facts and intermixed legal conclusions pertaining to "consent" are necessarily included. See State v. Lee, 162 Idaho 642, 653, 402 P.3d 1095, 1106 (2017) ("If an arrest does not occur, and objectively the totality of the circumstances show an arrest is not going to occur, an officer cannot justify a warrantless search based on the search incident to arrest exception."). At the end of the suppression hearing, the district court set forth the following relevant facts, mingled with its conclusions of law as to whether Blythe consented to having his shoes searched:

> And a recap of the record that the Court heard or the evidence in the matter is that Deputy Eric Boardman from the sheriff's department on March the 12th of 2018 about 3:00 o'clock in the morning contacted Mr. Blythe near Stateline and Seltice. This was a situation of a traffic stop in which Mr. Blythe was the passenger in the vehicle that was stopped.
>
> Mr. Blythe was asked to step out of the vehicle. The evidence was from Deputy Boardman's testimony that he asked Mr. Blythe for consent to search. Now, it was unclear to the Court at that time whether this was consent to search his person or consent to search the vehicle. But whatever the scope of the consent to search was in terms of it being asked, Mr. Blythe verbally agreed according to Deputy Boardman for the police to search.
>
> Deputy Boardman had no specific memory of the words that he used regarding that request for consent to search, but he did recall that he asked Mr. Blythe if Mr. Blythe would give consent to search and that Mr. Blythe agreed to that. The Court reviewed the video, of course, of the situation and heard Deputy Boardman then, after there was admissions made by the co-defendant or the driver of the vehicle, Deputy Boardman used the phrase – and I try to quote here as best I can, "Do me a favor, can you kick your shoes off for a second." Mr. Blythe did that. And that's when the heroin was found in Mr. Blythe's shoe. He was then handcuffed. He was advised of his Miranda rights. He made admissions.
>
> The review of the video indicates to the Court or at least I draw the conclusion that this was a directive. This was a polite directive, but this was not a situation where, I think, Deputy Boardman was really giving Mr. Blythe the option of kicking off his shoe or not kicking off his shoe. Even

though he used the phrase, "Do me a favor, can you kick your shoes off for a second."

I really think this would be similar to if a person is booked into jail and they say, you know, "Do me a favor and turn your pockets out." It's not optional for the person. Or, "Give us your clothes and we're going to issue you jail clothes." It's not optional. It's just a polite way of directing that person to do something about which they have no option but to comply, really. And I do think that was the situation here that he was directed to do this.

Now, the State has argued whether this is a direction or not, he consented to that direction. He just did it on his own. And that he had previously consented to being searched.

The Court agrees with counsel for the defense's recitation of the facts otherwise of the circumstances. Mr. Blythe's ID had been taken by police. They had it in his possession when he was asked to kick off those shoes or told to. The Court makes note of the fact that at one point Mr. Blythe asks if he would be allowed to smoke a cigarette. He was allowed to do that. There were red and blue lights flashing at all times it appeared. The driver was indeed handcuffed and placed in the rear.

And so the Court is specifically going to find here that this was not a consent by Mr. Blythe to allow the police to search his shoe. The Court finds that although there is some evidence that there was a request for a consent to search, the scope of that request was very vague in the record. I don't know if it was a request to – for a pat-down search. I don't know if it was a request for consent to search the vehicle. Which Mr. Blythe may or may not have had authority to give consent to that or whether it was really a consent for Mr. Blythe for the police to search his person.

So I don't find the consent to be – or the testimony of Deputy Boardman that he agreed to the consent search to be very persuasive because I don't know what he really agreed to. I do also find, as I've indicated before, that this was a direction about which Mr. Blythe really had no choice and then I think consenting under these circumstances, so to speak, with no real choice in the matter is not a voluntary consent.

I don't find the police to have been engaged in overbearing behavior here. But the circumstances are one that I don't find that Mr. Blythe had a reasonable belief that he could not comply with that direction.

(9/11/18 Tr., p.11, L.16 – p.14, L.24.)

Having rejected the state's "consent" argument, the district court turned its attention to whether the search of Blythe's shoes could be justified as a search incident to lawful arrest, stating:

> And the Court has, of course, read State versus Gibson,[2] which stands for the proposition that the automobile exception does not extend to the defendant's person, and so this was not a lawful search under the automobile exception.
>
> The Court has also then read carefully because it's an interesting case, State versus Lee at 162 Idaho 642, a 2017 Supreme Court case.[3] And really, I think, the important holding in Lee was that a search incident to arrest after a decision to cite for driving without privileges – not arrest, but issue a citation – was not a valid search.
>
> The Court reads the Lee decision a bit differently than argued by Mr. Jones. The Court reads that decision to be not so much that the Supreme Court is directing trial courts to engage in hypothetical examinations in each and every circumstance like this. The Court read [sic] it more along the lines of the Supreme Court was engaging in a hypothetical situation under those specific facts. And under those facts, the Court found it to be an unreasonable search when they, as the Court reads the case, weren't so much engaging in the hypothetical as they were reviewing the facts as they existed. It was a fact that that citation was going to be issued and no arrest was going to be made.
>
> This Court believes it is, I think, not invited by the Supreme Court nor is it advisable for me to be speculating about what may or may not have happened depending on the rest of the circumstances that might have developed at the scene of this case for Mr. Blythe as to whether he would or would not have been ultimately arrested.
>
> This Court finds that there is evidence, there is probable cause, by which law enforcement could have arrested Mr. Blythe for frequenting a place where drugs were found, for possession of controlled substances, for possession of paraphernalia. Those may or may not have been arrests that could have resulted in convictions, but the Court finds that there was probable cause under the facts that the Court has seen where law enforcement could have arrested Mr. Blythe for those offenses.

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

[3] See State v. Lee, 162 Idaho 642, 402 P.3d 1095 (2017).

> Given that, the Court finds that this was a search incident to the arrest of Mr. Blythe; notwithstanding the fact that he was not arrested until after he kicked off his shoe. But it is immaterial to this Court at what point the formal words, "You are under arrest" are uttered. This Court finds that there was probable cause for him to be arrested even leading up to the point where he kicked off his shoes based on what the Court saw in this video and heard from the witness.
>
> And, therefore, the Court finds that the search incident to a lawful arrest was a legal search. It was done reasonably and the Motion to Suppress is therefore denied on that basis.

(9/11/18 Tr., p.15, L.1 – p.17, L.5.)

D. The District Court Correctly Concluded That The Search Incident To Arrest Exception Applied And, As A Result, Blythe Was Not Entitled To Suppression

The Fourth Amendment prohibits unreasonable searches and seizures. "A warrantless search is presumptively unreasonable unless it falls within certain special and well-delineated exceptions to the warrant requirement." State v. Kerley, 134 Idaho 870, 873, 11 P.3d 489, 492 (Ct. App. 2000) (citing Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971); State v. Ferreira, 133 Idaho 474, 479, 988 P.2d 700, 705 (Ct. App. 1999)). A search incident to a lawful arrest is one such exception to the warrant requirement and, as such, does not violate the Fourth Amendment. Chimel v. California, 395 U.S. 752, 762-63 (1969); Kerley, 134 Idaho at 874, 11 P.3d at 493. "For an arrest to be considered lawful, it must be based on probable cause" to believe the arrestee has committed a crime. State v. Bishop, 146 Idaho 804, 816, 203 P.3d 1203, 1215 (2009) (citations omitted). "Probable cause exists when the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been or is being committed." Id. (citations, quotations, and brackets omitted).

In Rawlings v. Kentucky, 448 U.S. 98 (1980), the United States Supreme Court addressed the question of whether the search incident to arrest exception to the warrant requirement could apply where the arrest occurred *after* the search. The Court concluded that "[w]here the formal arrest followed quickly on the heels of the challenged search of petitioner's person, we do not believe it particularly important that the search preceded the arrest rather than vice versa." Rawlings, 448 U.S. at 110 (citations omitted).

The Idaho Court of Appeals applied Rawlings in State v. Smith, 152 Idaho 115, 266 P.3d 1220 (Ct. App. 2011). An officer saw a marijuana pipe in plain view in Smith's vehicle, and therefore had probable cause that Smith was guilty of possessing drug paraphernalia. Smith, 152 Idaho at 119-120, 266 P.3d at 1224-1225. The officer then searched a backpack that Smith had retrieved from the vehicle during the traffic stop, from which he recovered marijuana. Id. at 117-118, 266 P.3d at 1222-1223. The officer formally arrested Smith only after the marijuana was discovered in the backpack. Id. at 119, 266 P.3d at 1224. The Court of Appeals held that the warrantless search of the backpack prior to Smith's formal arrest came within the search incident to arrest exception to the warrant requirement. Id. at 118-121, 266 P.3d at 1223-1226. The Court stated that, "[s]o long as the search and the arrest are substantially contemporaneous, and the fruits of the search are not required to establish probable cause for the arrest, the search need not precisely follow the arrest in order to be incident to that arrest." Id. at 119, 266 P.3d at 1224 (citations omitted).

In State v. Lee, 162 Idaho 642,02 P.3d 1095 (2017), the Idaho Supreme Court analyzed a different question – whether the search incident to arrest exception applies when an officer has probable cause to arrest a suspect, but has affirmatively decided not to arrest

the suspect until after a search reveals contraband. An officer pulled Lee's vehicle over and learned through dispatch that Lee had a suspended driver's license. Lee, 162 at 645-646, 402 P.3d at 1098-1099. The officer frisked Lee and found several cylindrical containers. Id. 162 at 646, 402 P.3d at 1099. The officer told Lee that he was "going to get a citation for driving without privileges," and then detained Lee by placing him in his patrol vehicle. Id. The officer then searched the containers and found a powdery residue. Id. The state charged Lee with possession of controlled substances, possession of drug paraphernalia, and driving without privileges. Id. The Idaho Supreme Court first held that, while the officer was permitted to pat down Lee for weapons pursuant to Terry[4], the officer exceeded the permissible scope of the Terry frisk by opening the containers. Id. at 647-649, 402 P.3d at 1100-1102.

The Court then considered whether the search of the containers could be justified under the search incident to arrest exception to the warrant requirement. Lee, 162 Idaho at 649-653, 402 P.3d at 1102-1106. The Court noted that the search incident to arrest exception is justified by two historical rationales: "(1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial." Id. at 650, 402 P.3d at 1103 (quoting Knowles v. Iowa, 525 U.S. 113, 116 (1998)). Considering these historical rationales, the Idaho Supreme Court concluded that a search incident to arrest is not constitutionally reasonable when no arrest was going to occur if not for the officer's discovery of the fruits of the search. Id. at 651-652, 402 P.3d at 1104-1105.

The Court next discussed how it would determine whether an arrest was going to occur if not for the discovery of the fruits of the search:

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[4] Terry v. Ohio, 392 U.S. 1 (1968).

> We determine if an arrest is going to occur based on the totality of the circumstances, including the officer's statements. While the subjective intent of an officer is usually not relevant in Fourth Amendment analysis, statements made by the officer of his intentions along with other objective facts are relevant in the totality of circumstances as to whether an arrest is to occur. If an arrest does not occur, and *objectively the totality of the circumstances show an arrest is not going to occur*, an officer cannot justify a warrantless search based on the search incident to arrest exception.

Lee, 162 Idaho at 652, 402 P.3d at 1105 (emphasis added).

In reviewing the totality of evidence surrounding the traffic stop in Lee, the Idaho Supreme Court noted the officer's statement to Lee that Lee would be cited for driving without privileges. Lee, 162 Idaho at 652-653, 402 P.3d at 105-1106. The Court also noted that, in considering the historical rationale for the search incident to arrest exception of evidence preservation, all of the evidence that was needed to issue Lee a citation for driving without privileges had already been obtained before the search of the containers. Id. at 651, 402 P.3d at 1104. The Court concluded that no arrest was to occur prior to the officer finding controlled substances in the containers, that the search was therefore a search incident only to an intended citation, and that the search incident to arrest exception to the warrant requirement could thus not justify the search. Id. at 652-653, 402 P.3d at 1105-1106.

In Lee, the totality of the circumstances showed that an arrest was not going to occur. Lee, 162 Idaho at 652, 402 P.3d at 1105. Likewise, other authorities cited by the Idaho Supreme Court in Lee, which held that the search incident to arrest exception was inapplicable in those cases, did so only after the evidence affirmatively and clearly demonstrated that the officer planned not to arrest the suspect until the search revealed contraband. See People v. Reid, 26 N.E.3d 237, 238-240 (N.Y. 2014) (finding the search incident to arrest exception inapplicable where the officer specifically testified, at the

suppression hearing, that he was not going to arrest the suspect until he discovered contraband during a patdown search); State v. Taylor, 808 P.2d 324, 324-325 (Ariz. Ct. App. 1990) (finding the search incident to arrest exception inapplicable where both officers involved in a contact with the suspect agreed that the suspect would not have been arrested if contraband had not been found during the search); People v. Macabeo, 384 P.3d 1189, 1196-1197 (Cal. 2016) (finding the search incident to arrest exception inapplicable where state law precluded the officers from arresting the suspect before the search revealed contraband, because "[o]nce it was clear that an arrest was *not* going to take place, the justification for a search incident to arrest was no longer operative." (emphasis in original)).

In the present case, like in Lee, Rawlings, and Smith, Deputy Boardman possessed probable cause to arrest Blythe for one or more crimes before he searched Blythe's shoes. However, unlike in Lee, a review of the totality of the circumstances in the present case does not demonstrate that Deputy Boardman had no affirmative plan to *not* arrest Blythe at the time of the search. In Lee, the officer specifically told the suspect, before the search was conducted, that he would be cited for driving without privileges. Lee, 162 at 646, 402 P.3d at 1099. The officer's statement indicated that, if not for finding contraband in the containers, the suspect would not have been arrested. In the present case, Deputy Boardman did not tell Blythe that he planned to only cite him for frequenting a place where drugs were found, possession of a controlled substance, or possession of drug paraphernalia. (See 9/11/18 Tr., p.16, Ls.8-12 (the three offenses the district court said were supported by probable cause).) Therefore, nothing in Deputy Boardman's suppression hearing testimony indicated that he planned merely to cite Blythe for any of those offenses, or that he planned to release Blythe without citing or arresting him.

Blythe contends the district court failed "to consider whether an arrest was going to occur based on the totality of the circumstances" (Appellant's Brief, p.11), assuming the court was required to speculate whether Blyth was, or was not, going to be arrested prior to the discovery of contraband on his person. However, as shown above, Lee does not require that the state affirmatively demonstrate that the officer intends to arrest the suspect in order for the search incident to arrest exception to apply. Rather, the relevant issue is whether "objectively the totality of the circumstances show an arrest is *not* going to occur[.]" Lee, 162 Idaho at 652, 402 P.3d at 1105 (emphasis added). The district court followed Lee's directive, stating:

> And really, I think, the important holding in Lee was that a search incident to arrest *after a decision to cite* for driving without privileges – *not arrest*, but issue a citation – *was not a valid search*.
>
> The Court reads the Lee decision a bit differently than argued by Mr. Jones. The Court reads that decision to be not so much that the Supreme Court is directing trial courts to engage in hypothetical examinations in each and every circumstance like this. The Court read [sic] it more along the lines of the Supreme Court was engaging in a hypothetical situation under those specific facts. *And under those facts, the Court found it to be an unreasonable search when they, as the Court reads the case, weren't so much engaging in the hypothetical as they were reviewing the facts as they existed. It was a fact that that citation was going to be issued and no arrest was going to be made.*

(9/11/18 Tr., p.15, Ls.8-25.) The district court correctly eschewed speculation about whether Deputy Boardman would have arrested Blythe. Instead, it acknowledged that Lee's holding was based on facts clearly indicating that the officer in that case was not going to arrest Lee prior to discovering controlled substances in the containers. The district court implicitly found that, in contrast to Lee, the totality of the circumstances in Blythe's case did not objectively show that "an arrest [was] not going to occur." Lee, 162 Idaho at 652, 402 P.3d at 1105.

A review of the totality of the circumstances of this case does not affirmatively demonstrate that Deputy Boardman would have cited or simply released Blythe if he had not found the contraband in Blythe's shoe. After seeing the "tooter"(rolled up dollar bill) in Blythe's lap and having him get out of the car, Deputy Boardman told Blythe he was not under arrest.[5] (St. Ex. A., 3:09:40-45.) However, that statement was made well before the deputy found the piece of burned tinfoil with a usable amount of heroin under the passenger seat (St. Ex. A., 3:17:35 - 3:18:05). Shortly after finding the "chunk" of heroin (see St. Ex. A, 3:17:52 - 3:18:44), Deputy Boardman told Deputy Fanciullo of his find and that Blyth had admitted that he smokes pills off of tinfoil. (St. Ex. A, 3:22:55 - 3:23:10.) Deputy Boardman said, "I say we Mirandize them, ask them about it a little, it's up to you," and Deputy Fanciullo responded, "go for it," to which Deputy Boardman said "alright." (St. Ex. A, 3:23:08-15.) Deputy Fanciullo said that he would put the driver in cuffs in the patrol car and separate the two suspects, and Deputy Boardman agreed, stating they would go from there. (St. Ex. A, 3:23:17-25.)

Although there is no clear indication by Deputy Boardman that he was going to arrest Blythe prior to searching Blythe's shoes, there is no clear indication that he would not. Therefore, under Lee, Blythe has failed to demonstrate that the district court erred by concluding that the search was justified under the search incident to arrest exception to the warrant requirement.

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[5] Three minutes into the stop, Deputy Fanciullo asked Deputy Boardman if he had found anything "felony," and Deputy Boardman answered, "No." (St. Ex. A, 3:11:54-57.) At that time, Deputy Boardman had not found the useable amount of heroin on the tin foil under the front passenger seat. (See Ex. A., 3:17:35 - 3:18:44.)

CONCLUSION

The state respectfully requests that this Court affirm the judgment of conviction and the district court's denial of Blythe's motion to suppress.

DATED this 9th day of October, 2019.

/s/ John c. McKinney___
JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of October, 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:

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/s/ John c. McKinney___
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Deputy Attorney General

JCM/dd