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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. 47167-2019**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR01-19-604**
	)	
ZACHARY JAMES DEVAN,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Following a conditional guilty plea to driving under the influence of alcohol, Zachary James Devan appeals the denial of his motion to suppress evidence gathered after a traffic stop.

Statement Of The Facts And Course Of The Proceedings

Ada County Sheriff's Deputy Amanda Livas was on patrol at around 9:30 p.m. on January 5, 2019, when she observed a large truck driving with both passenger-side tires completely over the line at the right edge of the road ("edge-line"). (Tr., p.7, Ls.4-21.[1]) When she first observed the truck, its tires were already over the edge-line. (Id.) As a result, she did not know how long the truck had been driving over the line, but she observed it do so for approximately one-hundred yards, or for about three to five seconds. (Tr., p.8, L.18 – p.9, L.1; p.11, Ls.5-12; p.15, Ls.1-7.) After the edge-line, there was around two feet of pavement and then "a dirt field." (Tr., p.8, Ls.3-17.) No road conditions, obstacles, or weather provided any explanation as to why the truck would be driving over the edge-line. (Tr., p.9, L.13 – p.10, L.19; p.11, Ls.22-25.) As the truck approached an intersection and, as a result of his position over the edge-line, Devan would have entered a turn-only lane, he "veered left a little" in order to continue straight. (Tr., p.9, Ls.2-12.) Deputy Livas initiated a traffic stop at that time. (Id.) She then observed an open container of alcohol, Devan failed field sobriety tests, and he refused a breath test. (R., p.13.) She obtained a warrant for a blood draw and Devan was arrested for DUI. (Id.)

[1] Citations to "Tr." are to the transcript of the hearing on Devan's motion to suppress, held April 29, 2019.

Devan was charged with felony DUI, having been twice convicted of DUI within the previous ten years, as well as possessing an open container of alcohol in a vehicle. (R., pp.40-41.) He filed a motion to suppress in which he relied on State v. Neal, 159 Idaho 439, 362 P.3d 514 (2015), and State v. Fuller, 163 Idaho 585, 416 P.3d 957 (2018), to argue that Deputy Livas did not have the reasonable suspicion of criminal conduct necessary to make the initial traffic stop. (R., pp.66-71.) The state responded by arguing that the road conditions and Devan's driving pattern provided reasonable suspicion that Devan violated multiple statutes, including Idaho Code §§ 49-637(1) (requiring that a "vehicle be driven as nearly as practicable entirely within a single lane"), 49-630(1) (requiring that vehicles be driven only on the right half of the roadway, subject to irrelevant exceptions), 49-1401A (prohibiting texting while driving), 49-1401(3) (prohibiting inattentive driving), and 18-8004 (prohibiting driving under the influence). (R., pp.77-83.)

Following a hearing on the motion to suppress at which only Deputy Livas testified, the district court denied the motion. (Tr., p.25, L.7 – p.28, L.14.) The court found that both tires were over the edge-line for a significant period of time, that there was no explanation or cause for Devan to drive like that, that he was driving on the narrow shoulder area that was the only place for pedestrians or bicyclists to travel, and that Deputy Livas therefore had reasonable suspicion to briefly detain him to investigate. (Id.)

Devan entered a conditional guilty plea to the DUI charge, reserving the right to appeal the denial of his motion to suppress, while the state dismissed the charge of possession of an open container of alcohol in a vehicle. (R., pp.86, 89, 112.) The district court entered judgment, sentenced Devan to a unified term of ten years with two years fixed, and suspended that sentence

in favor of ten years of probation. (R., pp.112-16.[2]) Devan timely appealed. (R., pp.99-103, 106-08.)

[2] At the sentencing hearing, the district court announced a sentence of ten years with two years fixed. (R., pp.97-98.) But the initial judgment of conviction announced a sentence of seven years with two years fixed, suspended in favor of seven years of probation. (R., pp.99-103.) In a "corrected" judgment of conviction, the district court revised the sentence to reflect what it had announced at the sentencing hearing: ten years with two years fixed, suspended in favor of ten years of probation. (R., pp.112-16.)

ISSUE

Devan states the issue on appeal as:

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

(Appellant's brief, p.3.)

The state rephrases the issue as:

Has Devan established that the district court erred by denying his motion to suppress?

ARGUMENT

Devan Has Failed To Establish The District Court Erred By Denying His Motion To Suppress

A. Introduction

The district court found that Devan drove with both of his passenger tires completely over the edge-line for "a hundred yards," which is a "significant distance" (Tr., p.27, Ls.12-18); that he was driving in a "shoulder area" that is "the only place that a cyclist or a pedestrian could possibly travel with some safety" (Tr., p.27, L.22 – p.28, L.3); and that there was no reason for him to do so (Tr., p.26, Ls.2-20; p.27, Ls.6-11). As a result, the court concluded, Deputy Livas had reasonable suspicion to initiate an investigatory traffic stop. (Tr., p.26, L.21 – p.28, L.11.)

On appeal, Devan does not take issue with the district court's understanding of the facts, but argues only that, in light of the Idaho Supreme Court's decisions in State v. Neal, 159 Idaho 439, 362 P.3d 514 (2015), and State v. Fuller, 163 Idaho 585, 416 P.3d 957 (2018), those facts could not justify a traffic stop. (Appellant's brief, pp.5-7.) He is mistaken. His driving pattern coupled with the road conditions provided reasonable suspicion that Devan had violated a number of statutes, including Idaho Code §§ 49-637(1) (requiring that a "vehicle be driven as nearly as practicable entirely within a single lane"), 49-630(1) (requiring vehicles to be driven on the right half of the roadway, subject to irrelevant exceptions), and 49-1401(3) (prohibiting inattentive driving).

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 freely reviews the application of constitutional

principles to those facts. State v. Klingler, 143 Idaho 494, 496, 148 P.3d 1240, 1242 (2006). Thus, "'[d]eterminations of reasonable suspicion are reviewed de novo,' while findings of fact that support a determination of reasonable suspicion are reviewed for clear error.'" State v. Perez, 164 Idaho 626, 628, 434 P.3d 801, 803 (2019) (alterations in original) (quoting State v. Morgan, 154 Idaho 109, 111, 294 P.3d 1121, 1123 (2013)).

C. Deputy Livas Reasonably Suspected Devan Violated Several Traffic Laws

"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)." State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). "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). "Whether an officer possessed reasonable suspicion is evaluated based on the totality of the circumstances known to the officer at or before the time of the stop." State v. Bishop, 146 Idaho 804, 811, 203 P.3d 1203, 1210 (2009). "An investigatory stop does not deal with hard certainties, but with probabilities." State v. Munoz, 149 Idaho 121, 126, 233 P.3d 52, 57 (2010). "Although a mere 'hunch' does not create reasonable suspicion, the level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause." Navarette v. California, 572 U.S. 393, 397 (2014) (internal quotations and citations omitted).

1. Deputy Livas Reasonably Suspected Devan Violated Idaho Code § 49-637(1)

Idaho Code § 49-637(1) provides that "[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety." Below, the state argued that Deputy Livas had reasonable suspicion that Devan violated that statute by driving within a very narrow, shoulder area in which pedestrians and bicyclists were likely to travel. (R., pp.81-82; Tr., p.24, L.13 – p.25, L.6.) On appeal, Devan relies on Neal and Fuller to argue that Deputy Livas did not reasonably suspect that he violated that statute. Those cases do not support that conclusion and, in the totality of the circumstances, Deputy Livas reasonably suspected that Devan violated Idaho Code § 49-637(1).

What Neal and Fuller make clear is that touching or crossing an edge-line is not, as a per se and categorical matter, sufficient to constitute a violation of Idaho Code § 49-637(1) because edge-lines do not operate legally to demarcate the boundaries of lanes. In Neal, over a dissent by two justices, the court held that "driving onto but not across the line marking the right edge of the road does not violate Idaho Code section 49-637." Neal, 159 Idaho at 447, 362 P.3d at 522. In Fuller, the Court explained its holding in Neal as having been based on the conclusion that edge-lines do not function as official markers for the boundaries of lanes. Fuller, 163 Idaho at 589-90, 416 P.3d at 961-62. It therefore rejected the state's argument that, because the edge-line "signifies a lane barrier," Fuller violated Idaho Code § 49-637(1) by letting her front-passenger tire briefly pass over the edge-line. Fuller, 163 Idaho at 590, 416 P.3d at 962.

Importantly, however, the Court was careful to emphasize that crossing the edge-line is a factor that is relevant in the totality of the circumstances to determine whether Idaho Code § 49-637(1) has been violated in a particular case, even if it is not, as a per se and categorical matter,

sufficient to constitute a violation. Id. Whether crossing the edge-line constitutes a violation of the statute in a particular case will depend on the nature of the driving pattern, whether it is "erratic or unsafe," and the nature of the roadway. Id. Immediately after noting that crossing the edge-line is a relevant factor for determining whether the statute has been violated, the Court approvingly cited a variety of cases from other jurisdictions in which courts looked to the nature of the road and of the crossing of the edge-line to determine whether there was a violation of similarly worded statutes:

> *Compare United States v. Delgado-Hernandez*, 283 Fed.Appx. 493, 499 (9th Cir. 2008) ("By crossing over the fog line for a brief instance, Delgado-Hernandez neither posed a safety threat nor failed to drive as nearly as practicable within a single lane."), *with United States v. Alvarado*, 430 F.3d 1305, 1309 (10th Cir. 2005) ("[W]e hold that Trooper Bowles had a reasonable articulable suspicion that Alvarado, by crossing *one foot* over the fog line, had violated [the statute]." (emphasis added)); *United States v. Williams*, 945 F.Supp.2d 665, 672 (E.D. Va. 2013) ("[T]he officer witnessed Defendant's vehicle repeatedly weaving and driving on one of the fog lines on at least five occasions. The initial touching lasted for approximately five feet—far from a quick, isolated touching."); *People v. Geier*, 407 Ill.App.3d 553, 348 Ill.Dec. 552, 944 N.E.2d 793, 795 (2011) (concluding traffic stop was based on reasonable, articulable suspicion when "all four tires passed over the fog line" and, further, the "front wheel crossed over the center line"); *State v. McBroom*, 179 Or.App. 120, 39 P.3d 226, 229 (2002) ("[D]efendant drove for more than 300 feet on the center line for no apparent reason. Given those facts, the officer reasonably believed that defendant had failed to stay 'within [his] lane' in violation of subsection (a) of the statute.").

Fuller, 163 Idaho at 590, 416 P.3d at 962. In Delgado-Hernandez, for example, the defendant was travelling on an interstate where the north- and south-bound lanes were separated by a grass and gravel median, and approximately eight feet of pavement separated the left, inner edge-line from the median. Delgado-Hernandez, 283 F. App'x at 494. In concluding that there was no violation where the defendant's driver's side tires "momentarily" passed over that left, inner

edge-line, the court emphasized that there was no actual or potential risk to anyone. Id. at 499.[3] In Alvarado, the court determined there was a violation where the defendant crossed over the right edge-line "about a foot" and "for a few seconds." Alvarado, 430 F.3d at 1306, 1309.[4]

Here, because of the nature of the road and the nature of Devan's crossing of the edge-line, he violated Idaho Code § 49-637(1). The evidence below was that there was "two feet" of pavement and then a "dirt field" beyond the edge-line. (Tr., p.8, Ls.3-17.) Deputy Livas testified that there was "about two feet to where a bicyclist could be riding or a person could be walking, and then it's a field so there is nowhere else for a pedestrian or bicyclist to go." (Tr., p.12, Ls.1-11.) Devan was driving a large truck (Tr., p.7, Ls.11-13) and both passenger-side tires were completely over the edge-line (Tr., p.14, Ls.18-22). Thus, Devan would have been occupying most or virtually all of the two feet of space between the edge-line and the dirt field, and was doing so for at least 100 yards or between three to five seconds (Tr., p.14, L.18 – p.15, L.7), though Deputy Livas did not know whether he had been doing so longer (Tr., p.8, Ls.18-22). This was not a case, like Delgado-Hernandez, in which there was a momentary crossing of an inner edge-line on an interstate beyond which there was eight feet of pavement and then a

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[3] Interestingly, the court in Delgado-Hernandez concluded that the defendant did not maintain his lane of travel, but held that his departure from his lane was not a violation of the statute because he maintained his lane "as nearly as practicable." Id. at 499. Thus, while the Idaho Supreme Court cites Delgado-Hernandez in Fuller as a friendly case from a foreign jurisdiction, the analysis in Delgado-Hernandez is inconsistent with the Court's analysis in Neal and Fuller. While the court in Delgado-Hernandez implies that crossing an edge-line is always sufficient for departing from the lane of traffic, Fuller rejected that conclusion.

[4] While the court's opinion in Alvarado speaks in terms of the vehicle crossing the edge-line by a foot, the briefing makes clear that the passenger-side tires, not the entire vehicle, crossed the edge-line. See Brief for The United States of America, Plaintiff/Appellee, United States v. Alvarado, 430 F.3d 1305 (10th Cir. 2005), 2005 WL 3986932 at *2 ("The Jeep crossed approximately one foot over the fog line, traveled *straddling* the line for a few seconds, and then crossed back into the lane." (emphasis added)).

median. As the district court found, this is a case in which Devan drove "quite a bit of distance" (Tr., p.28, Ls.18-21) in a very small "shoulder area" that was "the only place that a cyclist or a pedestrian could possibly travel with some safety" (Tr., p.27, L.22 – p.28, L.3). Unlike an interstate, this was a road in which a pedestrian or bicyclist might well be travelling, the area past the edge-line in which Devan was driving was the only place that a pedestrian or bicyclist could travel, he drove there for at least 100 yards, which was a significant distance, and a significant distance over the edge-line. Because Devan did not merely cross an edge-line, but did so in a manner and on a road that made his crossing significantly unsafe, the totality of the circumstances support the conclusion that Deputy Livas reasonably suspected Devan violated Idaho Code § 49-637(1). See Fuller, 163 Idaho at 590, 416 P.3d at 962 (holding that "driving onto or across the fog line may be considered when evaluating whether an overall pattern of erratic or unsafe driving gives rise to a reasonable, articulable suspicion that section 49-637(1) has been violated under the totality of circumstances").

Devan argues to the contrary that "[i]f the mere possibility of a pedestrian or bicyclist traveling outside the fog line was sufficient to make a driver touching or crossing that line be in violation of § 49-637(1), then *Neal* and *Fuller* would have been decided differently." (Appellant's brief, p.7.) But that argument both misconstrues Neal and Fuller and ignores crucial features of the circumstances here. It misconstrues Neal and Fuller because it ignores the fact that, in both of those cases, the Court was addressing the claim that edge-lines operate legally as the boundaries of lanes. See Neal, 159 Idaho at 444, 362 P.3d at 519 ("The State argues that the fog lines are not part of the lane of travel and that to drive upon them is to exit the lane of travel."); Fuller, 163 Idaho at 589, 416 P.3d at 961 ("the State quotes *Neal* and argues that nothing in *Neal* suggests that driving across the line marking the right edge of the road does not

violate 49-637. The district court erred, the State's argument continues, by expanding the holding of *Neal* to crossing the line marking the right edge of the road when this Court specifically limited that holding to driving on, and not over, that line." (internal quotation marks and alterations omitted)); see generally Brief of Appellant, State of Idaho, Plaintiff-Appellant, State v. Fuller, 163 Idaho 585, 416 P.3d 957 (2018), 2016 WL 4508030 (Idaho). Neal and Fuller might have come out differently if the state had made arguments based on the totality of the circumstances and the characteristics of the particular roads. But the fact that the Court addressed itself only to the parties' arguments, and did not sua sponte address facts and arguments not raised to it, does not provide any guidance here. Devan's argument also ignores crucial circumstances in this case. What is important is not merely that there could possibly have been a bicyclist or pedestrian on the other side of the edge-line, but that Devan was driving over a significant distance in a narrow space that was the only area in which a bicyclist or pedestrian could have been travelling on that road, which was a road on which a bicyclist or pedestrian might well travel, not an interstate.

Finally, even if—contrary to fact—Devan's crossing of the edge-line had been only very slight, very brief, and comparatively safe, it would still have violated Idaho Code § 49-637(1). As the two-justice concurring opinion in Fuller correctly notes, it may be that such a crossing violates Idaho Code § 49-637(1), depending upon the nature of the road. Fuller, 163 Idaho at 591-93, 416 P.3d at 963-65 (Brody, J., concurring). Though edge-lines do not operate legally to demarcate the boundaries of lanes, a particular edge-line on a particular road might be situated at the edge of the lane, so that crossing the edge-line also involves leaving the lane. That will be so, for instance, where the area just past the edge-line is a shoulder. Id. at 592, 416 P.3d at 964. "While 'shoulder' is not defined in the Idaho Code, the Court has previously relied on the

relevant dictionary definition, which reads: 'the part of a roadway outside of the traveled way on which vehicles may be parked in an emergency.'" Id. (quoting Neal, 159 Idaho at 445, 362 P.3d at 520). Shoulders are "not a part of the lane of travel." Id. (citing I.C. §§ 49-119(19) (defining "roadway" as "that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of sidewalks, shoulders, berms and rights-of-way"), 49-121(4) (defining "traffic lane" or "lane of travel" as "that portion of the roadway for movement of a single line of vehicles"). Because a shoulder is not part of a lane of traffic, a vehicle that drives on a shoulder has not maintained its lane of traffic. In both Neal and Fuller, the Court addressed arguments regarding the categorical legal import of edge-lines because those were the arguments with which it was confronted. Neal rejected the claim that edge-lines operate legally to mark the boundaries of lanes when the state argued that merely *touching* an edge-line is, as a matter of law, sufficient to leave the lane. Fuller again rejected the claim that edge-lines operate legally to mark the boundaries of lanes when the state argued that *crossing* an edge-line is, as a matter of law, sufficient to leave the lane. Neither case can or should be read to hold not only that edge-lines do not operate legally to mark the boundaries of lanes, but also that no edge-line is ever situated at the boundary of a lane.

The evidence here suggests that the "shoulder area" to which the district court referred when discussing the two-feet of pavement on which Devan drove when he crossed the edge-line was the shoulder of the road. (Tr., p.19, Ls.11-23; p.27, L.22 – p.28, L.3.) A "shoulder" is "'the part of a roadway outside of the traveled way on which vehicles may be parked in an emergency.'" Neal, 159 Idaho at 445, 362 P.3d at 520 (quoting Webster's Third New International Dictionary (2002)). The two feet of pavement next to the edge-line is the area—the only area—in which vehicles might be parked on that road in an emergency. Because a shoulder

is not part of the lane, see I.C. §§ 49-119(19) (defining "roadway" as "that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of sidewalks, shoulders, berms and rights-of-way"), 49-121(4) (defining "traffic lane" or "lane of travel" as "that portion of the roadway for movement of a single line of vehicles"), Devan did not maintain his lane when he drove on the shoulder. Importantly, and again, this is not the argument addressed and rejected in Neal and Fuller. The state is not arguing, as it did in those cases, that edge-lines are, as a categorical legal matter, the boundaries of lanes. Rather, the state is arguing that, as a result of the characteristics of this particular road, the edge-line was situated at the boundary of the lane and Devan left his lane by driving over it.

In the totality of the circumstances, both because Devan's driving pattern was unsafe and because he drove on the shoulder of the road, Deputy Livas had reasonable suspicion that Devan violated Idaho Code § 49-637(1).

2. Deputy Livas Reasonably Suspected Devan Violated Idaho Code § 49-630(1)

The state also argued, for similar reasons, that Deputy Livas reasonably suspected Devan violated Idaho Code § 49-630(1).[5] (R., pp.81-82.; Tr., p.23, L.9 – p.25, L.6.) That statute requires that a vehicle be driven on the right half of the roadway, subject to exceptions not

[5] In a footnote, Devan claims that "it is clear from the State's briefing in the district court that it believed the officer had reasonable suspicion to stop Mr. Devan's vehicle based on a suspected violation of Idaho Code § 49-637(1)." (Appellant's brief, p.2 n.1.) It is certainly correct that the state argued below, as it has on appeal, that Deputy Livas had reasonable suspicion that Devan violated that statute. But the state did not limit its argument below to that statute. The state argued, generally, that Devan displayed an abnormal and unsafe driving pattern that provided reasonable suspicion that Devan violated a number of statutes, including Idaho Code § 49-1401(3), addressed below, and Idaho Code § 49-630(1). (R., pp.81-82.)

relevant here.[6] As discussed above, the roadway does not include the shoulder. See I.C. § 49-119(18). As argued above, Devan drove onto the shoulder and, therefore, did not drive exclusively on the right half of the roadway. See State v. Anderson, 134 Idaho 552, 555, 6 P.3d 408, 411 (Ct. App. 2000) (holding that officer had reasonable suspicion to initiate traffic stop based on suspected violation of Idaho Code § 49-630(1) "for driving on the shoulder of the highway, rather than on the 'roadway'"); State v. Slater, 136 Idaho 293, 298, 32 P.3d 685, 690 (Ct. App. 2001) ("[W]hen Officer Burns observed Slater's tires cross the fog line, albeit fleetingly, Burns now possessed the requisite reasonable suspicion that Slater had violated I.C § 49-630 by driving on the shoulder of the highway, rather than on the 'roadway.'").

In addition to her reasonable suspicion that Devan violated Idaho Code § 49-637(1), Deputy Livas reasonably suspected that he violated Idaho Code § 49-630(1).

3. Deputy Livas Reasonably Suspected Devan Violated Idaho Code § 49-1401(3)

Finally, the state also argued that Deputy Livas had reasonable suspicion that Devan committed the misdemeanor offense of inattentive driving. (R., pp.81-82.) Idaho Code § 49-

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[6] (1) Upon all highways of sufficient width a vehicle shall be driven upon the right half of the roadway except as follows:

> (a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
> (b) When an obstruction exists making it necessary to drive to the left of the center of the highway. Any person doing so shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within a distance as to constitute an immediate hazard;
> (c) Upon a highway divided into three (3) marked lanes for traffic under the applicable rules; or
> (d) Upon a highway restricted to one-way traffic.

I.C. § 49-630(1).

1401 provides that inattentive driving is a lesser offense of reckless driving. The latter occurs when:

> Any person who drives or is in actual physical control of any vehicle upon a highway, or upon public or private property open to public use, carelessly and heedlessly or without due caution and circumspection, and at a speed or in a manner as to endanger or be likely to endanger any person or property, or who passes when there is a line in his lane indicating a sight distance restriction.

I.C. § 49-1401(1). Inattentive driving occurs:

> where the conduct of the operator has been inattentive, careless or imprudent, in light of the circumstances then existing, rather than heedless or wanton, or in those cases where the danger to persons or property by the motor vehicle operator's conduct is slight.

I.C. § 49-1401(3).

For many of the same reasons discussed above, Deputy Livas reasonably suspected that Devan committed inattentive driving. Devan was straddling the edge-line, driving on the narrow, two feet of space between the edge-line and a dirt field, which two-feet of pavement was the only place a pedestrian or bicyclist could travel on that road. The safety risk was increased as the events occurred at night, when it would be more difficult for Devan to see a bicyclist or pedestrian. (Tr., p.7, Ls.4-7.) His reaction as he approached the intersection, where a right-turn lane began, also suggested that he was driving inattentively. As he approached the intersection, he "veered left a little," suggesting that he was not aware that he had been straddling the edge-line. (Tr., p.9, Ls.2-9.) Devan was driving inattentively, carelessly, and/or imprudently, in light of the circumstances then existing, including the very narrow space between the edge-line and the dirt field and the time of night, and he posed at least a "slight" risk to others. I.C. § 49-1401(3). Deputy Livas observed all of this and was concerned about the safety risk he posed. (Tr., p.12, Ls.1-11.) She therefore had the reasonable suspicion necessary to initiate a traffic stop. See

Deen v. State, 131 Idaho 435, 436, 958 P.2d 592, 593 (1998) (holding that where driver left her right-hand turn signal activated while driving through three intersections, officers had reasonable suspicion to initiate stop for inattentive driving due to the possibility that another driver could have come through those intersections and could have mistakenly believed the driver was turning, which could have caused an accident); Anderson, 134 Idaho at 555, 6 P.3d at 411 (holding that officer had reasonable suspicion to initiate stop for inattentive driving where driver drove "outside of the traffic lane on the shoulder for an extended distance"); State v. Munhall, 118 Idaho 602, 604, 798 P.2d 61, 63 (Ct. App. 1990) (holding that officer had reasonable suspicion to initiate stop for inattentive driving where driver jerked car from center of road to the edge, crossing the fog line, and it appeared the driver was giving more attention to passengers than the road).

In addition to reasonably suspecting that Devan violated Idaho Code §§ 49-637(1) and 49-630(1), Deputy Livas reasonably suspected he violated § 49-1401(3).

CONCLUSION

The state respectfully requests this Court to affirm the denial of Devan's motion to suppress.

DATED this 2nd day of April, 2020.

/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of April, 2020, 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/ Andrew V. Wake
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AVW/dd