3-8-2018

State v. Cook Respondent's Brief Dckt. 45273

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45273**
Plaintiff-Respondent,	)	
	)	**Kootenai County Case No.**
v.	)	**CR-2016-20853**
	)	
SAMANTHA NICOLE COOK,	)	
	)	
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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STATEMENT OF THE CASE

Nature of the Case

Samantha Nicole Cook appeals from the withheld judgment entered upon her guilty plea to possession of heroin and possession of paraphernalia.

On appeal Cook argues the district court erred when it denied her motion to suppress. On appeal Cook argues that State v. Kinch, 159 Idaho 96, 356 P.3d 389 (Ct. App. 2015), was manifestly wrong and should be overturned.

Statement of Facts and Course of Proceedings

Shortly after midnight Deputy Jacobson observed a white Honda Accord without a front or back license plate. (1/20/17 Tr., p. 7, L. 17 – p. 10, L. 11.) Deputy Jacobson turned around and followed the white Honda Accord. (Id.) He did not see a temporary permit. (Id.) After Deputy Jacobson saw the white Honda Accord cross the white fog line, Deputy Jacobson got closer and activated his overhead lights. (1/20/17 Tr., p. 10, L. 12 – p. 14, L. 12.) As they were slowing and almost stopped, Deputy Jacobson observed a piece of paper in the rear window. (Id.) However, Deputy Jacobson could still not read the piece of paper. (Id.) When they stopped and Deputy Jacobson approached the parked vehicle he could make out that the paper was a registration but still could not tell the date of expiration or any other details. (Id.) There was a large amount of condensation all over the windows. (Id.)

Deputy Jacobson contacted Cook who was the driver of the white Honda Accord. (R., pp. 10-12.) Cook appeared unusually nervous and Deputy Jacobson could smell the odor of marijuana. (Id.) Cook admitted to smoking marijuana in the car. (Id.) Pursuant

to a search of the car Deputy Jacobson found heroin, methamphetamine and paraphernalia. (Id.) Deputy Jacobson placed Cook under arrest. (Id.) Deputy Jacobson then found methamphetamine in Cook's jacket pocket. (Id.) Prior to being booked into jail, the police found paraphernalia in Cook's bra along with four unopened suboxone strips. (Id.) The state charged Cook with possession of heroin, possession of methamphetamine, possession of suboxone, and possession of drug paraphernalia. (R., pp. 50-52.)

Cook filed a motion to suppress. (R., pp. 53-54, 75-81.) The state responded. (R., pp. 65-74, 108-117.) The district court held a hearing. (R., pp. 118-121.) Deputy Jacobson testified that Cook's car did not have a front or back license plate and he could not see a temporary permit in the window or in the rear license plate area. (1/20/17 Tr., p. 7, L. 17 – p. 10, L. 11.) Eventually after they were stopped, Deputy Jacobson had to wipe away the condensation before he could read the temporary permit. (1/20/17 Tr., p. 12, L. 18 – p. 14, L. 12.)

The parties stipulated to the admission of Deputy Jacobson's car mounted video. (1/20/17 Tr., p. 5, L. 4 – p. 6, L. 11; Ex. 1.) Deputy Jacobson testified that because of the poor video quality it was hard to tell when the car crossed the white fog lines. (1/20/17 Tr., p. 22, Ls. 13-22.) The district court took the matter under advisement. (R., pp. 118-121.)

The district court issued its decision on the record. (R., p. 122.) The district court denied Cook's motion to suppress. (R., pp. 123-124; 1/24/17 Tr., p. 51, L. 14 – p. 60, L. 7.) The court first determined that the state did not prove by a preponderance of the evidence that Cook's vehicle crossed the white fog line. (1/24/17 Tr., p. 52, Ls. 2-17.)

The court also found that even if Cook had driven over the fog line it would not constitute a reasonable basis for a traffic stop. (See 1/24/17 Tr., p. 52, L. 18 – p. 54, L. 13) (the court "finds that a stop predicated on the defendant's alleged driving over the line by a couple of inches would, by itself, be an unreasonable seizure of the defendant and violative of the Fourth Amendment.")

The district court then turned to the issue of the lack of license plate and the temporary registration. (See 1/24/17 Tr., p. 54, L. 14 – p. 60, L. 5.) The district court found that Deputy Jacobson did not see the temporary registration until after his emergency lights were on. (1/24/17 Tr., p. 54, L. 14 – p. 55, L. 5.) Further, Deputy Jacobson could not read the temporary registration until he wiped the heavy condensation off of the window. (Id.)

> That takes us to the other reason for the stop, the lack of license plate or the lack – seeing the temporary registration. The Court finds the following facts: That the deputy did not see the temporary registration on the white Honda Accord until he came up on the vehicle after putting on his emergency lights. As he – he states as he was slowing down almost stopped, he saw the temporary registration.
>
> The square of the temporary plate/paper, temporary registration, is visible from the video and is – what is printed on the temporary plate or the temporary registration form is not visible.
>
> The deputy stated that he had to wipe off a heavy condensation off the outside of the window in order to read the registration which was found to be valid until the end of November, the stop having taken place October 29, 2016.

(1/24/17 Tr., p. 54, L. 14 – p. 55, L. 5.) The district court reviewed the holdings in both State v. Salois, 144 Idaho 344, 160 P.3d 1279 (Ct. App. 2007), and State v. Kinch, 159 Idaho 96, 356 P.3d 389 (Ct. App. 2015), and the language of Idaho Code § 49-432(4). (See 1/24/17 Tr., p. 54, L. 14 – p. 60, L. 5.) Idaho Code § 49-432(4) requires, among other things, that a temporary permit must be "readily legible." (See id.) The district court found that Cook's temporary registration was not "readily legible" as required by

the applicable law and thus the stop was based upon reasonable articulable suspicion. (See id.)

Cook filed a motion to reconsider arguing the statute was unconstitutionally vague. (R., pp. 130-132.) The district court denied the motion to reconsider. (R., pp. 135-137; See 3/10/17 Tr., p. 5, L. 24 – p. 6, L. 7.) Cook pled guilty to possession of heroin and possession of drug paraphernalia, and in exchange the state dismissed the two remaining counts. (R., pp. 138-139, 141-143, 145-146.) Cook reserved her right to appeal. (R., pp. 145-146.) The district court entered a withheld judgment and placed Cook on supervised probation for two years. (R., pp. 153-160.) Cook timely appealed. (R., pp. 161-164.)

ISSUE

Cook states the issue on appeal as:

> Did the district court err when it denied Ms. Cook's motion to suppress and motion to reconsider?

(Appellant's brief, p. 6.)

The state rephrases the issue as:

Has Cook failed to show the district court erred when it denied her motion to suppress and motion to reconsider?

ARGUMENT

The District Court Did Not Err When It Denied Cook's Motion To Suppress And Motion To Reconsider

A. Introduction

The district court found that Cook's temporary permit was not "readily legible" as required by Idaho Code § 49-432(4) and denied Cook's motion to suppress. (See 1/24/17 Tr., p. 54, L. 14 – p. 60, L. 5.) On appeal Cook argues the district court erred when it relied upon the Court of Appeals' decision in State v. Kinch, 159 Idaho 96, 356 P.3d 389 (Ct. App. 2015). (Appellant's brief, pp. 8-15.) Cook argues that Kinch should be overruled because she claims, contrary to the holding in Kinch, that "readily legible" does not mean "readily legible" from the vantage point of another vehicle. (See id.) Cook's argument fails. Kinch is supported by the plain language of Idaho Code § 49-432(4). The plain language of Idaho Code § 49-432(4) requires a temporary permit to be readily legible while the vehicle is being operated on the highways of the state of Idaho. See I.C. § 49-432(4). Cook fails to show Kinch was manifestly wrong.

B. Standard Of Review

In reviewing an order denying a motion to suppress evidence, the appellate court applies a bifurcated standard of review. State v. Anderson, 154 Idaho 703, 302 P.3d 328 (2012) (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 but will freely review the trial court's application of constitutional principles to the facts found. Id.

C. The District Court Properly Found That Cook's Temporary Permit Was Not "Readily Legible" As Required By Idaho Code § 49-432(4)

"A traffic stop by an officer constitutes a seizure of the vehicle's occupants and implicates the Fourth Amendment's prohibition against unreasonable searches and seizures." State v. Young, 144 Idaho 646, 648, 167 P.3d 783, 785 (Ct. App. 2006) (citing Delaware v. Prouse, 440 U.S. 648, 653 (1979)). Ordinarily, a warrantless seizure must be based on probable cause to be reasonable. Florida v. Royer, 460 U.S. 491, 499-500 (1983); State v. Bishop, 146 Idaho 804, 811, 203 P.3d 1203, 1210 (2009).

However, limited investigatory detentions, based on less than probable cause, are permissible when justified by an officer's reasonable, articulable suspicion that a person has committed, or is about to commit, a crime. Royer, 460 U.S. at 498; Bishop, 146 Idaho at 811, 203 P.3d at 1210. "An officer may also stop a vehicle to investigate possible criminal behavior if there is reasonable articulable suspicion that the vehicle is being driven contrary to traffic laws." Young, 144 Idaho at 648, 167 P.3d at 785 (citing United States v. Cortez, 449 U.S. 411 (1981)). 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. Bishop, 146 Idaho at 811, 203 P.3d at 1210; State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003).

Idaho law requires that a motor vehicle be registered and display license plates when it is being operated on the highways of the state. See I.C. § 49-456(1). One exception to the license plate requirement is a display of a temporary permit which has to be displayed "at all times while the vehicle is being operated on the highway." I.C. § 49-432(4).

> (4) A temporary permit shall be in a form, and issued under rules adopted by the board, and shall be displayed at all times while the vehicle is being operated on the highways by posting the permit upon the windshield of each vehicle or in another prominent place, where it may be readily legible.

I.C. § 49-432(4). Here, Cook did not have a front or rear license plate. (See 1/20/17 Tr., p. 7, L. 17 – p. 10, L. 11.) Nor could Deputy Jacobson see a temporary permit. (See 1/20/17 Tr., p. 12, L. 18 – p. 14, L. 12.) Only after the stop had been initiated could Deputy Jacobson see a piece of paper in the back window. (See id.) Even after upon approaching Cook's car on foot, Deputy Jacobson could not read the temporary permit. (See id.) Deputy Jacobson had to wipe Cook's windshield in order to actually read the temporary permit. (See id.)

The district court found that Cook's temporary permit failed to comply with Idaho Code § 49-432(4) because it was not "readily legible" and thus Deputy Jacobson had reasonable articulable suspicion for the traffic stop. (See 1/24/17 Tr., p. 54, L. 14 – p. 60, L. 5.) The district court properly denied Cook's motion to suppress.

1. Cook Has Failed To Show That Kinch Was Wrongly Decided And Should Be Overruled

In Kinch, the Idaho Court of Appeals analyzed the plain language and the context of Idaho Code § 49-432(4) and held that a temporary permit must be "readily legible from the vantage point of another vehicle on the road[.]" Kinch, 159 Idaho at 100, 356 P.3d at 393. Cook argues for the first time on appeal that Kinch should be overruled. (See Appellant's brief, pp. 10-15.) Cook has failed to show Kinch was manifestly wrong and has to be overturned.

"Stare decisis requires that this Court follows controlling precedent unless that precedent is manifestly wrong, has proven over time to be unjust or unwise, or overruling

that precedent is necessary to vindicate plain, obvious principles of law and remedy continued injustice." State v. Owens, 158 Idaho 1, 4-5, 343 P.3d 30, 33-34 (2015) (citing State v. Grant, 154 Idaho 281, 287, 297 P.3d 244, 250 (2013)). The Court "will ordinarily not overrule one of [its] prior opinions unless it is shown to have been manifestly wrong, or the holding in the case has proven over time to be unwise or unjust." State v. Koivu, 152 Idaho 511, 518, 272 P.3d 483, 490 (2012) (citations omitted); see also State v. Guzman, 122 Idaho 981, 1001, 842 P.2d 660, 680 (1992) ("[P]rior decisions of this Court should govern unless they are manifestly wrong or have proven over time to be unjust or unwise."). Cook fails to show Kinch was manifestly wrong and should be overturned.

An officer stopped Kinch after observing that Kinch's vehicle did not have any license plates. Kinch, 159 Idaho at 97, 356 P.3d at 390. Kinch had posted a temporary permit in the top left corner of the vehicle's back window, however the officer could not read the permit. Id. The permit was bent, somewhat crumbled, and covered by a layer of condensation. Id.

The officer asked Kinch if he had anything illegal in the vehicle and Kinch admitted to having a pipe. Id. at 97-98, 356 P.3d at 390-391. The officer seized the pipe. Id. Subsequent testing showed the presence of methamphetamine in the pipe and the state charged Kinch with possession of methamphetamine. Id. Kinch filed a motion to suppress arguing that the permit was readily legible and thus the officer did not have reasonable articulable suspicion for the traffic stop. See id. The district court denied the motion to suppress. Id. The district court also denied Kinch's motion for reconsideration. Id. After a conditional guilty plea, Kinch appealed. Id. On appeal

Kinch argued, in part, that Idaho Code § 49-432(4) only required that a temporary permit be "readily legible" upon a "closer inspection" and that it need not be legible from the vantage point of another vehicle. Id. at 99-100, 356 P.3d at 392-393.

The Idaho Court of Appeals examined the plain language of Idaho Code § 49-432(4), construed the statute as a whole, and rejected Kinch's argument. See id. at 100, 356 P.3d at 393. The Idaho Court of Appeals used the correct analytical framework to examine the statute. "The interpretation of a statute 'must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole.'" Verska v. St. Alphonsus Regional Medical Center, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011) (quoting State v. Schwartz, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003)). "'If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.'" Id.

Idaho Code § 49-432(4) applies "at all times while the vehicle is being operated on the highways." Id. Thus the plain language of the statute requires the permit be readily legible while the vehicle is being driven. Id. The Idaho Court of Appeals reasoned:

> Conversely, I.C. § 49–432(4) provides that the temporary permit must be displayed in a prominent place so as to be "readily legible." This shows an intent by the legislature that, unlike applications for specialty plates, temporary permits must be visible (indeed, readily legible) while displayed on a vehicle. Moreover, as noted by the state, the readily legible requirement for posting a temporary permit applies "at all times while the vehicle is being operated on the highways."
>
> Kinch's argument that a temporary permit need only be readily legible upon closer inspection, such as when one is right next to the vehicle while it is stopped, ignores the plain language of the statute requiring that the permit be readily legible while the vehicle is being driven. Thus, although the statute does not explicitly provide that the temporary permit must be readily legible from the

> vantage point of another vehicle on the road, the context of the statute and its plain language make that implication clear.

Id. (internal citation omitted). In addition to the plain language and context of the statute, the Idaho Court of Appeals also supported its conclusion by comparing Idaho Code § 49-432(4) to other statutes. See id. at 100-101, 356 P.3d at 393-394.

Kinch also argued that if the Idaho legislature wanted the temporary permit to be readily legible from the vantage point of another vehicle the legislature would have use the word "readable" instead of "legible." See id. The Idaho Court of Appeals analyzed the dictionary definition of "legible" and found that "legible" is a synonym for "readable." See id. In addition, the Court recognized that the statute's use of the adverb "readily" shows that the temporary permit must "not merely be visible, but easily readable—an addition only necessary if viewing the temporary registration permit from some distance away." Id. Thus, based upon the plain language of the statute, the entirety of the statute, and the dictionary definition of the words used in the statute, the Idaho Court of Appeals rejected Kinch's argument. See id.

Now, on this appeal, Cook essentially reiterates Kinch's arguments and argues that the statutory requirement that the temporary permit be "readily legible" does not include being "readily legible" from the vantage point of another vehicle. (See Appellant's brief, pp. 10-15.) Cook argues that Kinch is manifestly wrong. (See id.) Cook fails to show the Court of Appeals decision in Kinch is manifestly wrong.

Cook's argument fails to adequately address the plain language of the entire statute which requires that the temporary permit be displayed at all times while the vehicle is being operated on the highways. See I.C. § 49-432(4). The Idaho Court of

Appeals correctly noted that the context and plain language of the statute put the "readily legible" requirement during the time when the vehicle is being operated on the highways. See Kinch, 159 Idaho at 100, 356 P.3d at 393. Thus, "readily legible" has to apply from the vantage point of another vehicle, because it would be impossible to read the temporary permit from a closer vantage point while the vehicle is in motion on the highway. Cook's interpretation of "readily legible" ignores the "operated on the highways" language.

Instead of directly addressing the vehicle operation language, Cook instead argues that there actually is no requirement that the temporary permit be "readily legible" at any time. (See Appellant's brief, p. 14 ("While the statute mandates that the driver display the permit at all times ('shall be displayed'), it does not mandate the permit be readily legible at all times.") Cook's "may" argument is misplaced. Here, "may" does not mean the "readily legible" requirement is optional. The plain language of the statute requires that the temporary permit "shall be displayed at all times while the vehicle is being operated on the highways by posting the permit upon the windshield of each vehicle or in another prominent place, where it may be readily legible." I.C. § 49-432(4). The "may" language does not refer to permissiveness of the legibility, but rather to the possibility of another person reading the temporary permit. The plain language of the statute recognizes that the temporary permit must be readily legible to anyone who *may* decide to read it.

Cook's definitional argument likewise fails. Cook argues that Kinch is manifestly wrong because "legibility", "readability" and "visibility" can have slightly different meanings. (See Appellant's brief, pp. 10-15.) Cook argues, "Readable demands that the

text is not only legible, but also immediately able to be interpreted and understood. In contrast, legibility demands only the capacity or possibility of being read. It is not a guarantee of readability at all times." (Appellant's brief, p. 13.) Cook's definitional argument fails to show that Kinch is manifestly wrong because it fails to show any error in any of the Court of Appeals' definitional citations. (See id.) A disagreement about which dictionary definition to use does not rise to a manifest error. Further, Cook's definitional argument is not an interpretation of the plain language of the statute. Instead it is an interpretation of words the legislature could have used. Cook's argument also fails because, the adverb "readily" modifies the term "legible" which is a guarantee that the permit has to be readable at all times, which would include while the vehicle is in operation. Cook has failed to show that Kinch was manifestly wrong and should be overturned.

2. Cook's Temporary Permit Was Not Readily Legible And She Fails To Distinguish Kinch

Cook argues that the district court erred because her permit was actually "readily legible." (See Appellant's brief, pp. 15-17.) Cook argues that the permit in Kinch was "bent, somewhat crumpled, and obscured by a layer of condensation" whereas her permit was only obscured by a layer of condensation. (See id.) Cook's argument fails because a layer of condensation still prevents the temporary permit from being "readily legible" regardless whether the permit is also bent.

The district court's factual findings show that Cook's temporary permit was not "readily legible." The district court found that Deputy Jacobson could not see the temporary permit until the emergency lights were activated, and Deputy Jacobson could

not read what was on the permit. (1/24/17 Tr., p. 54, L. 14 – p. 55, L. 5.) It was only after Deputy Jacobson was out of his car, and wiped away the condensation did the permit become legible. (See id.)

> That takes us to the other reason for the stop, the lack of license plate or the lack – seeing the temporary registration. The Court finds the following facts: That the deputy did not see the temporary registration on the white Honda Accord until he came up on the vehicle after putting on his emergency lights. As he – he states as he was slowing down almost stopped, he saw the temporary registration.
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> The deputy stated that he had to wipe off a heavy condensation off the outside of the window in order to read the registration which was found to be valid until the end of November, the stop having taken place October 29, 2016.

(1/24/17 Tr., p. 54, L. 14 – p. 55, L. 5.) Cook has failed to show the district court erred when it determined that her temporary permit was not "readily legible."

3. Cook Fails To Show The Stop Was Unconstitutionally Prolonged

Cook argues that the stop was unconstitutionally prolonged because once Deputy Jacobson saw the permit in the window there was no longer any legal justification for the stop and Deputy Jacobson had to immediately cease the traffic stop. (See Appellant's brief, pp. 17-19.) Cook did not raise this issue regarding an unconstitutionally prolonged stop before the district court. (See R., pp. 53-54, 75-81, 130-132; 1/20/17 Tr., p. 39, L. 7 – p. 47, L. 6.) Since this issue was not raised below it is not preserved for appeal. State v. Garcia-Rodriguez, 162 Idaho 271, ___, 396 P.3d 700, 704 (2017) (citations omitted) ("Issues not raised below will not be considered by this court on appeal, and the parties will be held to the theory upon which the case was presented to the lower court.") Even if this Court address the merits of this argument on appeal, Cook's argument fails.

Cook argues that "[o]nce Deputy Jacobsen shined his flashlight on Ms. Cook's rear window just prior to initiating contact with her, Deputy Jacobsen no longer had any authority for the seizure." (Appellant's brief, p. 18.) Cook's argument is unsupported by the record in this matter and the applicable law.

Cook relies, in part, upon State v. Salois, 144 Idaho 344, 160 P.3d 1279 (Ct. App. 2007). (Appellant's brief, pp. 17-19.) Salois does not control the outcome here. The Idaho Court of Appeals clarified Salois, and held that the reasoning in Salois is not applicable when there is an "obvious and discernable" violation of the statute prior to the stop. See State v. Martin, 148 Idaho 31, 38 n.1, 218 P.3d 10, 17 n .1 (Ct. App. 2009). Here, there was an "obvious and discernable" violation of the statute prior to the stop because Deputy Jacobson could not even see the permit until after the stop had been initiated, and could not read the writing on the permit until after he had wiped away the condensation from the windshield.

Contrary to Cook's argument, the record in this case shows that the temporary permit was not "readily legible" until after Deputy Jacobson wiped away the condensation – which occurred *after* he made initial contact with Cook. (See 1/24/17 Tr., p. 54, L. 14 – p. 55, L. 5; see also Ex. 1 at approximately 1:05 – 4:05.) Only after wiping away the condensation was Deputy Jacobson able to read the temporary permit and check its validity. (See id.) Thus, the record does not support Cook's argument that the temporary permit was readily legible before Deputy Jacobson made initial contact with Cook.

Further, if an officer stops a vehicle for failing to have a license plate, but upon effectuating the stop, sees the temporary permit, the officer can still make lawful contact

with the driver. See State v. Reed, 129 Idaho 503, 927 P.2d 893 (Ct. App. 1996) ("After having made a lawful stop to determine whether Reed's vehicle was registered, Officer Rouse was entitled to ascertain the driver's identity even though the reason for that stop had dissipated."); see also State v. Haldane, 300 P.3d 657, 664 (Mont. 2013) (traffic stop because driver's license plate was obscured by snow and a ball hitch, and Court held, that "even if the officers could see the license plate when they approached the vehicle and changed their vantage point, the officers still had the right to speak to the driver and request certain documentation.") Contrary to Cook's argument on appeal, the holding in Reed does not run afoul of Rodriguez v. United States, 135 S. Ct. 1609, 1614–15 (2015). (See Appellant's brief, pp. 18-19.) In Rodriguez the United States Supreme Court held "the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop, and attend to related safety concerns[.]" Rodriguez, 135 S. Ct. at 1614 (citations omitted). "Because addressing the infraction is the purpose of the stop, it may "last no longer than is necessary to effectuate th[at] purpose." Id. (citation omitted). "Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." Id. (citations omitted). "Beyond determining whether to issue a traffic ticket, an officer's mission includes "'ordinary inquiries incident to [the traffic] stop.'" Id. at 1615. "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. (citations omitted). "These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly." Id. (citations omitted).

Here, the purpose of the stop was to investigate Cook's failure to have a license plate or readily legible temporary permit. The district court found that Deputy Jacobson could not even see the existence of the temporary permit until the traffic stop had already been initiated and could not read it until he had removed a layer of condensation from the windshield. (1/24/17 Tr., p. 54, L. 14 – p. 55, L. 5.) Deputy Jacobson got out of his car and made contact with Cook. (See Ex. 1 at approximately 1:05 – 4:05.) During this initial encounter Deputy Jacobson engaged in the ordinary inquiries incident to the traffic stop, such as inquiring about Cook's license and registration. (See id.) Nothing in Rodriguez holds that this type of ordinary inquiry is unconstitutional. Rodriquez holds the opposite, during a traffic stop these are the type of contact and questions that an officer is supposed to perform. The holding in Rodriguez is not incompatible with the holding in Reed.

In addition to the record and the law not supporting Cook's argument, public policy also does not support Cook's argument. If Cook's argument is accepted, it would lead to bizarre and confusing interactions between the police and the public. If a driver is pulled over by a police officer, but then the police officer, inexplicably, and without explanation or contact, simply left, the driver would be left confused and bewildered. Likely the driver would believe they are being needlessly harassed by the police. Rather it is far better practice that, even if the investigation shows no offense before the officer makes contact with the driver, the officer, like the officer in Reed, should still make contact, explain the situation and engage in the constitutionally permissible inquiries regarding driver's license, etc. Cook has failed to show the stop was unconstitutionally prolonged.

4. Cook Has Failed To Show The District Court Erred When It Declined To Rule Idaho Code § 49-432(4) Unconstitutionally Vague

Cook fails to show that § 49-432(4) is unconstitutionally vague. Whether a statute is unconstitutional is purely a question of law, therefore, the appellate court considers the trial court's ruling *de novo*. State v. Cobb, 132 Idaho 195, 969 P.2d 244 (1998) (citing State v. Hansen, 125 Idaho 927, 930, 877 P.2d 898, 901 (1994); Sun Valley Co. v. City of Sun Valley, 109 Idaho 424, 428, 708 P.2d 147, 151 (1985)). "There is a strong presumption of the validity of an ordinance, and an appellate court is obligated to seek an interpretation of a statute that upholds its constitutionality." Id. (citations omitted). A statute should not be held void for uncertainty if any practical interpretation can be given it. Id. (citing City of Lewiston v. Mathewson, 78 Idaho 347, 351, 303 P.2d 680, 682 (1956)).

Here, the district court did not explicitly rule on Cook's motion that Idaho Code § 49-432(4) is unconstitutionally vague. (See R., pp. 53-54, 75-81, 130-132; 1/24/17 Tr., p. 51, L. 14 – p. 60, L. 5; 3/10/17 Tr., p. 4, L. 4 – p. 6, L. 7.) Where a district court fails to rule on a motion, the appellate court presumes the district court denied the motion. State v. Wolfe, 158 Idaho 55, 61, 343 P.3d 497, 503 (2015). Idaho Code § 49-432(4) is not void for vagueness.

In determining whether a statute is void for vagueness the court must first ask whether it regulates constitutionally protected conduct. State v. Bitt, 118 Idaho 584, 587-588, 798 P.2d 43, 46-47 (1990). Cook does not argue, nor could she establish, that Idaho Code § 49-432(4) regulates constitutionally protected conduct. (See Appellant's brief, pp. 19-22.) Since the statute does not regulate constitutionally protected conduct the

"next and last step is to ask whether (a) the ordinance gives notice to those who are subject to it, and (b) whether the ordinance contains guidelines and imposes sufficient discretion on those who must enforce the ordinance." Bitt, 118 Idaho at 588, 798 P.2d at 47.

The United States Supreme Court has explained that "[a] conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained 'fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.'" F.C.C. v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012) (quoting United States v. Williams, 553 U.S. 285, 304 (2008)). Statutes have a "strong presumption of validity" and the court must, if it can, "construe, not condemn" them. Skilling v. United States, 561 U.S. 358, 403 (2010) (internal quotes and cites omitted). That "close cases can be envisioned" is insufficient to "render[] a statute vague" because the state must still prove its case beyond a reasonable doubt. United States v. Williams, 553 U.S. 285, 305-306 (2008). Even if a statute's "outermost boundaries" are "imprecise," such uncertainty has "little relevance" if the "appellant's conduct falls squarely within the 'hard core' of the statute's proscriptions." Broadrick v. Oklahoma, 413 U.S. 601, 608 (1973); see also Skilling, 561 U.S. at 411 (citing Broadrick). Furthermore, sufficient clarity "may be supplied by judicial gloss on an otherwise uncertain statute." United States v. Lanier, 520 U.S. 259, 266 (1997). "'One to whose conduct a statute clearly applies may not successfully challenge it for vagueness.'" Alcohol Beverage Control v. Boyd, 148 Idaho 944, 949, 231 P.3d 1041, 1046 (2010)

(quoting Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 495 n. 7 (1982) (internal quote omitted)).

"In order to determine whether a statute is unconstitutionally vague, the statute should not be evaluated in the abstract, but should be considered in reference to the particular conduct of the defendant challenging the statute." State v. Hansen, 125 Idaho 927, 932, 877 P.2d 898, 903 (1994) (citing State v. Marek, 112 Idaho 860, 866, 736 P.2d 1314, 1320 (1987); State v. Carringer, 95 Idaho 929, 930, 523 P.2d 532, 533 (1974)). Thus, "the void-for-vagueness doctrine addresses concerns about (1) fair notice and (2) arbitrary and discriminatory prosecutions." Skilling, 561 U.S. at 412 (2010) (citing Kolender v. Lawson, 461 U.S. 352, 357 (1983)). Here, Cook fails to establish that I.C. § 49-432(4) is unconstitutionally vague because she has failed to show either that: 1) the statute did not give her fair notice of the prohibited conduct; or 2) the statute grants unlimited discretion to police.

Cook argues that Idaho Code § 49-432(4) does not give her fair notice "because it does not give fair notice that an uncontrollable weather condition will render a valid permit invalid and cause the driver to violate the law." (Appellant's brief, pp. 19-21.) Cook's argument is misplaced because it actually does not address the language of the statute. Idaho Code § 49-432(4) requires that while a vehicle is being operated on a highway that the temporary permit be "displayed at all times" where it may be "readily legible." See I.C. § 49-432(4).

> (4) A temporary permit shall be in a form, and issued under rules adopted by the board, and shall be displayed at all times while the vehicle is being operated on the highways by posting the permit upon the windshield of each vehicle or in another prominent place, where it may be readily legible.

I.C. § 49-432(4).

Thus, a driver is on fair notice that a temporary permit must be readily legible while the vehicle is being operated. The statute gives fair notice that anything, even weather conditions, that may render a permit not readily legible may be a violation of the statute. Contrary to Cook's argument, external weather conditions do not render the language of a statute void for vagueness.

Contrary to Cook's argument, weather conditions often make a driving behavior, that would be legal in different weather conditions, illegal. For example, it is not uncommon for what would be legal speed or driving behavior to be illegal depending on external weather conditions. See e.g. I.C. § 49-654 (1) ("No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing."); I.C. § 49-141(3) ("Inattentive driving shall be considered a lesser offense than reckless driving and shall be applicable in those circumstances where the conduct of the operator has been inattentive, careless or imprudent, in light of the circumstances then existing[.]") More precisely, external weather events, like snow, which block the legibility of license plates can create reasonable articulable suspicion that a violation regarding the legibility of license plates has occurred. See Haldane, 300 P.3d at 664 (holding that a license plate obscured by snow and a ball hitch can provide reasonable suspicion for an investigatory stop); Commonwealth v. Wilbert, 858 A.2d 1247, 1249 (Pa. Super. Ct. 2004) (a license plate that is obscured by mud such that an officer can read the numbers when close to the car, but not when following approximately four lengths behind, provides probable cause to suspect a violation); see also State v. Yeoumans, 144 Idaho 871, 872, 172 P.3d 1146,

1147 (Ct. App. 2007) (officers initiated a traffic stop because driver's windshield was cracked and his license plate was covered with snow; however issue on appeal did not address basis for traffic stop).

While intervening weather events may have rendered illegible what Cook thought was a legible permit, Cook still had notice that she was required to post a readily legible permit.

Nor does Idaho Code § 49-432(4) grant unlimited discretion to police. Cook argues that a "violation of this traffic law is vested solely in the officer's discretion and whether he or she, subjectively at the time, could see the permit in the rain." (See Appellant's brief, pp. 21-22.) It is not clear how an officer's inability to readily read a temporary permit gives the officer unlimited discretion. Either the officer can readily read the permit, in which case it is legal, or the officer cannot, in which case he has reasonable suspicion that the permit is not legal. This is the same with any traffic violation. Either the officer sees the violation or does not. This statute does not provide unlimited discretion to the police. Cook has failed to show this statute is unconstitutionally vague.

CONCLUSION

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

DATED this 8th day of March, 2018.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th day of March, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

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

TST/dd