12-19-2017

State v. Cook Appellant's Brief Dckt. 45273

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 45273**
Plaintiff-Respondent,	)	
	)	**KOOTENAI COUNTY NO. CR-**
v.	)	**2016-20853**
	)	
SAMANTHA NICOLE COOK,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

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

HONORABLE RICH CHRISTENSEN
District Judge

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

JENNY C. SWINFORD
Deputy State Appellate Public Defender
I.S.B. #9263
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

ATTORNEYS FOR
DEFENDANT-APPELLANT

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEY FOR
PLAINTIFF-RESPONDENT

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

Additional Authorities

STATEMENT OF THE CASE

Nature of the Case

Samantha Nicole Cook entered a conditional guilty plea to two drug-related offenses, reserving her right to appeal the district court's order denying her motion to suppress. Ms. Cook had moved to suppress evidence following a traffic stop for an unregistered vehicle. Her vehicle, however, had a valid temporary permit, but condensation from rain on the vehicle had obscured the permit from the police officer's vision. The officer saw the permit once he got closer to Ms. Cook's vehicle. Despite seeing the permit, the officer continued with the traffic stop. On appeal, Ms. Cook asserts that the district court erred by denying her motion because the officer lacked reasonable suspicion to prolong the traffic stop upon seeing the properly displayed permit. She further contends that the traffic law regulating temporary permits is void for vagueness as applied to her conduct of driving in rainy weather.

Statement of Facts and Course of Proceedings

The State charged Ms. Cook with two counts of felony possession of a controlled substance, heroin and methamphetamine, in violation of I.C. § 37-2732(c)(1), one count of misdemeanor possession of a controlled substance, Suboxone, in violation of I.C. § 37-2732(c)(3), and one count of misdemeanor possession of drug paraphernalia, in violation of I.C. § 37-2734A(1). (R., pp.39–40 (Information), pp.50–51 (Amended Information).)

Ms. Cook moved to suppress the evidence due to an unconstitutional search and seizure. (R., pp.53–54.) Specifically, she argued that the police officer did not have a lawful basis to seize her because the officer did not have reasonable suspicion for a traffic stop. (R., pp.54, 77–80.) She also challenged the specific traffic law as unconstitutionally vague. (R., pp.80–81.) The State

responded. (R., pp.65–74, 108–17.) The district court held a hearing on her motion. (Tr. Vol. I,[1] p.5, L.1–p.48, L.22.) The police officer, Deputy Jacobsen, testified. (Tr. Vol. I, p.6, L.16–p.24, L.18.) In addition, the parties stipulated to the admission of the first four minutes and eight seconds of Deputy Jacobsen's dash cam video. (Tr. Vol. I, p.5, L.10–p.6, L.11; State's Ex. 1.)

The evidence showed that, on October 29, 2016, around 12:18 a.m., Deputy Jacobsen, with the Kootenai County Sheriff's Office, was driving westbound on Highway 53. (Tr. Vol. I, p.7, Ls.17–23.) It had been raining "kind of hard," there was "a drizzle maybe" at the time, and the roadway was wet. (Tr. Vol. I, p.16, Ls.11–24.) He observed a white Honda Accord traveling eastbound on the highway. (Tr. Vol. I, p.8, Ls.2–5.) The car caught his attention because it did not have a front license plate. (Tr. Vol. I, p.9, Ls.2–3.) As Deputy Jacobsen passed the car, he looked in his rearview mirror, and he did not see a rear license plate on the car either. (Tr. Vol. I, p.9, Ls.3–5.) He turned around to follow the car. (Tr. Vol. I, p.9, Ls.6–8.) He confirmed that he did not see a rear license plate. (Tr. Vol. I, p.9, Ls.9–12.) He also did not see a temporary permit on the front or back of the car. (Tr. Vol. I, p.9, Ls.13–15, p.9, L.22–p.10, L.1.) These permits are typically displayed on the back window and sometimes in the rear license plate area. (Tr. Vol. I, p.9, Ls.6–21.) Deputy Jacobsen also testified that he observed the car's passenger side tires cross over the white fog line once. (Tr. Vol. I, p.10, Ls.14–25.)

Deputy Jacobsen initiated a traffic stop. (Tr. Vol. I, p.12, Ls.18–24.) As the cars were "slowing down and almost stopped," Deputy Jacobsen saw a piece of paper in the back window of the car. (Tr. Vol. I, p.13, Ls.5–6.) Deputy Jacobsen approached the car and briefly shined his

[1] There are four transcripts on appeal. The first, cited as Volume I, contains the motion to suppress hearing and the district court's oral ruling. The second, cited as Volume II, contains the hearing on Ms. Cook's motion for reconsideration. The third, cited as Volume III, contains the entry of plea hearing. Finally, the fourth transcript, cited as Volume IV, contains the sentencing hearing.

flashlight on the paper, which was a temporary permit. (State's Ex. 1, 00:55–1:10.) Deputy Jacobsen could "could tell it was a registration," but could not read the expiration date. (Tr. Vol. I, p.13, L.17–p.14, L.4.) Deputy Jacobsen told the driver, Ms. Cook, that he stopped her because she crossed the fog line "for a minute over there" and he "couldn't see her temporary plate because of all the fog over the top of it." (State's Ex. 1, 01:15–01:26.) He asked her some questions, obtained her information, and then told her that he would "get you out of here in a couple of minutes." (State's Ex. 1, 1:26–3:57.) Deputy Jacobsen returned to his patrol car. (State's Ex. 1, 3:58–4:07.) As he walked back to his car, he leaned over the trunk of Ms. Cook's car to take a closer look at her temporary permit with his flashlight and wiped off the condensation. (State's Ex. 1, 3:58–4:04.) Once he wiped the condensation off the window, he could read the date. (Tr. Vol. I, p.14, Ls.5–7.) Deputy Jacobsen determined the registration was valid through the end of November of 2016. (Tr. Vol. I, p.15, Ls.16–18.)

After this evidence and further argument by the parties, the district court took the matter under advisement. (Tr. Vol. I, p.48, Ls.4–9.) A few weeks after the hearing, the district court issued an oral ruling on Ms. Cook's suppression motion. (Tr. Vol. I, p.50, L.1–p.60, L.15.)

First, the district court found that Ms. Cook's car did not cross over the fog line. (Tr. Vol. I, p.52, Ls.10–17.) As such, the district court held that Deputy Jacobsen's fog line basis for the traffic stop was unreasonable and in violation in the Fourth Amendment. (Tr. Vol. I, p.54, Ls.6–13.)

Second, the district court turned to the temporary permit basis for the stop. (Tr. Vol. I, p.54, L.14–p.60, L.5.) The district court found that Deputy Jacobsen did not see the temporary permit until "he came up on the vehicle after putting on his emergency lights." (Tr. Vol. I, p.54, Ls.17–18.) The district court further found that the temporary permit itself, but not the writing on

it, was visible from the dash cam video. (Tr. Vol. I, p.54, Ls.22–25.) The district court also noted that Deputy Jacobsen stated that he had to wipe off a heavy condensation outside the window to read the permit. (Tr. Vol. I, p.55, Ls.1–3.) The permit was valid. (Tr. Vol. I, p.55, Ls.4–5.) The district court determined that Ms. Cook complied with the law, which required a temporary permit to be in a "prominent place" and "readily legible": "[T]he temporary registration was placed on the left rear window where it could be readily legible. But for the condensation on the outside of the window, it was readily legible. And the condensation presumptively being caused by the atmospheric conditions of the drizzle on that night." (Tr. Vol. I, p.56, Ls.16–22.) Nonetheless, the district court "[r]eluctantly" ruled that the temporary permit, "though properly posted," was not actually "readily legible" as that phrase was interpreted by the Court of Appeals in *State v. Kinch*, 159 Idaho 96 (Ct. App. 2015). (Tr. Vol. I, p.59, Ls.8–13.) The district court emphasized its belief that *Kinch*'s interpretation of "readily legible" led to "unreasonable situations": "The Court finds it disturbing that a citizen, though in full compliance with the requirement posting a temporary registration, is subject to being pulled over by law enforcement due to an act of nature." (Tr. Vol. I, p.59, Ls.14–24.) But, because the district court believed *Kinch* controlled, the district court denied Ms. Cook's motion to suppress. (Tr. Vol. I, p.59, L.25–p.60, L.5; R., p.123.)

Ms. Cook moved for reconsideration of the district's decision on the vagueness of the temporary permit traffic law. (R., p.130–32.) The district court did not specifically address this argument during its oral ruling. (Tr. Vol. I, p.50, L.1–p.60, L.15.) The district court held another hearing and reasoned that *Kinch* addressed "the wording in the statute 'readily legible,' and therefore the Court denies the motion for reconsideration." (Tr. Vol. II, p.5, L.24–p.6, L.6.) The

district court then entered an order denying Ms. Cook's motion for reconsideration for the reasons stated on the record. (R., p.136.)

Pursuant to a plea agreement, Ms. Cook entered a conditional guilty plea to one count of felony possession of a controlled substance, methamphetamine, and misdemeanor possession of paraphernalia. (R., pp.141–42, 145–46; Tr. Vol. III, p.9, Ls.18–24, p.12, Ls.4–24.) The other charges were dismissed. (R., pp.148, 150.) Ms. Cook reserved her right to appeal the district court's denial of her motion to suppress. (R., pp.145–46, Tr. Vol. III, p.5, L.23–p.6, L.2, p.9, Ls.1–4.)

The district court withheld judgment and placed Ms. Cook on probation for two years. (R., pp.157–58.) She timely appealed. (R., pp.161–63.)

ISSUE

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

ARGUMENT

The District Court Erred When It Denied Ms. Cook's Motion To Suppress And Motion To Reconsider

A. Introduction

Ms. Cook contends the district court erred by denying her motion to suppress because Deputy Jacobsen did not have reasonable suspicion to continue the traffic stop once he saw a properly displayed temporary permit in her car's rear window. Alternatively, Ms. Cook argues the district court erred by denying her motion to suppress and motion to reconsider because the traffic law at issue, I.C. § 49-432(4), is unconstitutionally vague as applied to her conduct. Under either argument, the district court should have suppressed any evidence obtained from the unlawful traffic stop.

B. Standard Of Review

The Court uses a bifurcated standard to review a district court's order on a motion to suppress. *State v. Wulff*, 157 Idaho 416, 418 (2014); *State v. Ellis*, 155 Idaho 584, 587 (Ct. App. 2013). The Court will accept the trial court's findings of fact "unless they are clearly erroneous." *Wulff*, 157 Idaho at 418. Findings of fact are clearly erroneous if they are not supported by substantial and competent evidence. *State v. Danney*, 153 Idaho 405, 408 (2012); *see also Ellis*, 155 Idaho at 587. "At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court." *Ellis*, 155 Idaho at 587. The Court "exercises free review over the application and construction of statutes." *State v. Kinch*, 159 Idaho 96, 99 (Ct. App. 2015). Likewise, determinations of reasonable suspicion are reviewed de novo. *State v. Morgan*, 154 Idaho 109, 111 (2013). Constitutional questions are also reviewed de novo. *State v. Dunlap*, 155 Idaho 345, 377 (2013).

C. The District Court Should Have Granted Ms. Cook's Motion To Suppress Because Deputy Jacobsen Did Not Have Reasonable Suspicion For The Traffic Stop Once He Saw The Properly Displayed Temporary Permit

"The Fourth Amendment of the United States Constitution provides that '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.'" *State v. Linze*, 161 Idaho 605, 607 (2016) (quoting U.S. CONST. amend. IV)). "Traffic stops constitute seizures under the Fourth Amendment." *Morgan*, 154 Idaho at 112 (quoting *State v. Henage*, 143 Idaho 655, 658 (2007)). "Limited investigatory detentions are permissible when justified by an officer's reasonable articulable suspicion that a person has committed, or is about to commit, a crime." *Id.* "Under the Fourth Amendment, an officer may stop a vehicle to investigate if there is a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws." *State v. Edwards*, 158 Idaho 323, 324 (Ct. App. 2015) (citing *United States v. Cortez*, 449 U.S. 411, 417 (1981); *State v. Flowers*, 131 Idaho 205, 208 (Ct. App. 1998)).

"Reasonable suspicion must be based on specific, articulable facts and the rational inferences that can be drawn from those facts." *Morgan*, 154 Idaho at 112 (quoting *State v. Bishop*, 146 Idaho 804, 811 (2009)). "[A]n officer may take into account his experience and law enforcement training in drawing inferences from facts gathered," *Danney*, 153 Idaho at 410, but "[t]he officer, of course, must be able to articulate something more than an 'inchoate and unparticularized suspicion or 'hunch.'" *United States v. Sokolow*, 490 U.S. 1, 7 (1989); *see also Morgan*, 154 Idaho at 112 (same). "The test for reasonable suspicion is based on the totality of the circumstances known to the officer at or before the time of the stop." *Morgan*, 154 Idaho at 112.

The duration of a traffic stop is narrowly limited to the stop's purpose. "An investigative detention 'must be temporary and last no longer than necessary to effectuate the purpose of the stop.'" *Danney*, 153 Idaho at 409 (quoting *Henage*, 143 Idaho at 658). "The scope of the detention must be carefully tailored to its underlying justification." *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion). "Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Linze*, 161 Idaho at 608 (quoting *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015)). "It is the State's burden to demonstrate that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure." *Royer*, 460 U.S. at 500 (plurality opinion).

The traffic law at issue here regulates the display of temporary permits (also referred to as temporary registrations). "Idaho law requires that a motor vehicle be registered and display license plates when being operated on the highways of this state, subject to certain exceptions." *State v. Salois*, 144 Idaho 344, 348 (Ct. App. 2007) (citing I.C. § 49-456(1)).[2] One exception is for a temporary permit. Idaho Code § 49-432(4) states:

> 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, the district court found Ms. Cook displayed the permit in a "prominent place" in compliance with the statute. (Tr. Vol. I, p.55, L.24–p.56, L.19.) The district court also found that the permit was "readily legible" but for the condensation on the exterior of the rear

[2] Idaho Code § 49-456(1) states it "shall be unlawful for any person" to operate a motor vehicle on the highway "which is not registered and which does not have attached and displayed the license plates assigned to it for the current registration year, subject to the exemptions allowed in sections 49-426, 49-431 and 49-432, Idaho Code." This offense is an infraction. I.C. § 49-236(2).

window. (Tr. Vol. I, p.56, Ls.19–22.) Moreover, the district court found that condensation was "presumptively" caused by "the atmospheric conditions of the drizzle on that night." (Tr. Vol. I, p.56, Ls.20–22.) Due to the rainwater temporarily obscuring the permit, the district court reluctantly ruled that the permit was not truly "readily legible" as interpreted by *State v. Kinch*, 159 Idaho 96 (Ct. App. 2015). (Tr. Vol. I, p.59, Ls.8–13.)

Ms. Cook challenges the district court's application of "readily legible" to her temporary permit. She contends that the district court erred by relying on *Kinch* because *Kinch*'s interpretation of I.C. § 49-432(4) is inconsistent with the statute's plain language. *Kinch* should be overruled or rejected[3] by this Court or, alternatively, limited to its facts. Ms. Cook further asserts that she complied with I.C. § 49-432(4) because her temporary permit was in a prominent place and "readily legible." Her properly displayed permit dispelled any reasonable suspicion, similar to *State v. Salois*, 144 Idaho 344 (Ct. App. 2007), and therefore Deputy Jacobsen should have ended the traffic stop without any further investigation.

1. <u>*Kinch*'s Interpretation Of "Readily Legible" Is Inconsistent With Statute's Plain Language And, As Such, Should Be Overruled Or Rejected By This Court</u>

In *Kinch*, the Court of Appeals interpreted "readily legible" in a manner incompatible with the statute's plain language. Among other arguments, the defendant in *Kinch* argued that "readily legible" meant the permit must "only be readily legible upon closer inspection, such as when one is right next to the vehicle while it is stopped." 159 Idaho at 100. The Court of Appeals rejected this argument, stating:

> 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

[3] Ms. Cook recognizes that, if the Idaho Supreme Court retains this case, the Court does not overrule Court of Appeals' opinions, but can "agree with or reject that reasoning." *State v. Clinton*, 155 Idaho 271, 272 n.1 (2013).

> 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." *Id.* 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. Based on this discussion, the Court of Appeals interpreted "readily legible" to mean that the permit must "be visible while displayed on the vehicle" "from the vantage point of another vehicle on the road." *Id.* The Court of Appeals then equated "legible" with "readable." The Court of Appeals reasoned:

> Kinch further contends that, if the legislature had intended for a temporary permit to be readily legible from the vantage point of another vehicle, it would have used the word "readable" instead; however, "legible" is a synonym for "readable."[4] Moreover, the use of the adverb "readily" shows that the legislature intended for the information on temporary registration permits to not merely be visible, but easily readable—an addition only necessary if viewing the temporary registration permit from some distance away. *See* WEBSTER'S NEW INT'L DICT. 1889 (3d ed. 1993) (defining "readily" as "with a fair degree of ease," "without much difficulty," and "easily").

Id. at 100–01 (citations and footnote omitted). Readable and legible are therefore

[4] In support of this proposition, the *Kinch* Court provided the following citation:

> WEBSTER'S NEW INT'L DICT. 1889 (3d ed. 1993) (defining readable as "that can be read with ease," with "legible" as a subdefinition); *id.* at 1291 (defining legible as "capable of being read or deciphered" and "distinct to the eye"); *see also Legible*, Dictionary.com, http://dictionary.reference.com/ browse/legible (last visited July 24, 2015) (defining legible as "capable of being read or deciphered, especially with ease, as writing or printing; easily readable"); *Readable*, Dictionary.com, http://dictionary.reference.com/browse/readable (last visited July 24, 2015) (defining readable as "capable of being read; legible").

159 Idaho at 100–01.

indistinguishable, according to the Court of Appeals' interpretation. In sum, the *Kinch* interpretation of "readily legible" requires the permit to be both visible and easily readable at all times and from some distance away, which includes, but is not limited to, the vantage point of another vehicle at an undefined distance.[5]

This definition of "readily legible" goes well beyond the statute's plain language. "Statutory interpretation begins with the statute's plain language. That language is to be given its plain, obvious and rational meaning. If that language is clear and unambiguous, the Court need merely apply the statute without engaging in any statutory construction." *State v. Brand*, 162 Idaho 189, 191 (2017) (citation and quotation marks omitted). Here, two words at issue are "readily" and "legible." "Readily" means "in a ready manner" and "with readiness," such as "with a fair degree of ease," "without much difficulty," or "easily." WEBSTER'S THIRD NEW INT'L DICT. 1889 (1971); *see also* Merriam-Webster, *available at* https://www.merriam-webster.com/dictionary/readily (last visited December 18, 2017) ("in a ready manner: such as without hesitating [or] without much difficulty"). "Legible" means "capable of being read or deciphered," as well as "capable of being discovered or understood by apparent marks or indications." WEBSTER'S THIRD NEW INT'L DICT. at 1291; *see also* THE MERRIAM-WEBSTER DICT. 411 (2016) ("capable of being read"). Combining the two definitions, the phrase "readily legible" requires the permit to be capable of being read without much difficulty or hesitation. The capacity to be read does not include visibility or even readability. Legibility turns on the actual text on the permit—whether the numbers and letters are written or typed in a recognizable

[5] The Court of Appeals explicitly declined to set a specific distance. *Kinch*, 159 Idaho at 101 n.7. The Court of Appeals strongly suggested, however, that "the permit must be readily legible from the officer's vehicle, at least at some distance, otherwise a stop could never be initiated." *Id.* at 101 n.8.

manner. A permit can be "readily legible," meaning that the pertinent information (such as the expiration date) is typed in a large, familiar font, without the permit presently being visible or readable. In short, readily legible refers to the appearance and display of the information on the permit.

The Court of Appeals thus erred by equating legibility with readability and visibility. Although the words could be synonyms in certain circumstances, they have very different definitions. Those differences must be given significance when interpreting "the literal words of the statute." *State v. Garner*, 161 Idaho 708, 710 (2017) (quoting *State v. Burnight*, 132 Idaho 654, 659 (1999)). Legible denotes the capacity to be read, while readable means "that can be read with ease, [such as] legible . . . [or] pleasing, interesting, or offering no great difficulty to the reader" and "that can be read throughout." WEBSTER'S THIRD NEW INT'L DICT. at 1889; *see also* Merriam-Webster, *available at* https://www.merriam-webster.com/dictionary/readable (last visited December 18, 2017) ("able to be read easily: such as legible [or] interesting to read"). 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. Further, visibility and legibility represent different requirements. "Visible means 'capable of being seen,' 'perceptible by vision,' 'easily seen.'" *State v. Tregeagle*, 161 Idaho 763, 767 (Ct. App. 2017) (quoting WEBSTER'S THIRD NEW INT'L. DICT. 2557 (3d ed. 1993)); *see also* THE MERRIAM-WEBSTER DICT. at 808 ("capable of being seen"). Accordingly, visibility refers to the ability to see the permit in the windshield or other window, while legibility refers to the information on the permit. These words—legible, readable, and visible—have distinct meanings and cannot be interchanged in the statute's plain language interpretation.

Moreover, the *Kinch* interpretation did not consider the permissive, as opposed to mandatory, requirement of "readily legible." The Court "has interpreted the meaning of the word 'may' appearing in legislation, as having the meaning or expressing the right to exercise discretion." *State v. Guess*, 154 Idaho 521, 524 n.2 (2013) (quoting *Rife v. Long*, 127 Idaho 841, 848 (1995)). "When used in a statute, the word 'may' is permissive rather than the imperative or mandatory meaning of 'must' or 'shall.'" *Rife*, 127 Idaho at 848. Here, I.C. § 49-432(4) does not say that the permit "*shall* be readily legible" or "*must* be readily legible." It says that the permit "*may be* readily legible." I.C. § 49-432(4) (emphasis added). While the statute mandates that the driver display the permit at all times ("*shall* be displayed"), it does not mandate that the permit be readily legible at all times. *See* I.C. § 49-432(4). This permissive language is consistent with the plain language definition of readily legible—the statute only requires that the permit be placed in a location where it may be capable of being read. *Kinch*, however, imposed mandatory legibility. The Court of Appeals stated that the permit "*must* be readily legible from the vantage point of another vehicle on the road" and "temporary permits *must* be visible (indeed, readily legible) while displayed on a vehicle." 159 Idaho at 100 (emphasis added). This too goes beyond the statute's plain language.

The Court of Appeals' broad definition of "readily legible" in *Kinch* was contrary to the statute's plain language. The Court of Appeals read additional words in the statute to require the permit to be visible and readable at all times, rather than requiring the permit to be written or typed in a legible manner and displayed in a location where it could be capable of being read. "Stare decisis requires that th[e] 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 (2015). *Kinch*'s statutory interpretation is manifestly wrong because it expanded the temporary permit requirements beyond the statute's plain language. *See Owens*, 158 Idaho at 4–6 (overruling a case because it "incorrectly looked at legislative intent" and "overlooked the statute's plain language"). This Court should overrule or reject *Kinch*'s definition of "readily legible" and adhere to the plain language interpretation.

Applying the plain language, Ms. Cook complied with I.C. § 49-432(4). The district court found that Ms. Cook placed her permit "where it could be readily legible." (Tr. Vol. I, p.56, Ls.16–19.) The district court also found that, "[b]ut for the condensation on the outside of the window," the permit "was readily legible." (Tr. Vol. I, p.56, Ls.19–22.) The condensation, however, affected the permit's readability or visibility, not its legibility. There is no evidence that the permit was filled out with indecipherable handwriting or an unusual font. Ms. Cook's permit itself was capable of being read without much difficulty or hesitation. The rainwater temporarily hindered the permit's readability or visibility, but it did not alter the actual text on the permit. In accordance with the plain language, Ms. Cook's permit was displayed in a location where it could be "readily legible." The district court erred by ruling that Ms. Cook did not comply with I.C. § 49-432(4).

2. If This Court Declines To Overrule Or Reject *Kinch*, Ms. Cook's Temporary Permit Was Still "Readily Legible" In Compliance With The Statute Because *Kinch* Is Distinguishable From This Case

If this Court declines to overrule or reject *Kinch*, Ms. Cook asserts, in the alternative, that the district court erred by determining that *Kinch* resolved this case. The facts of *Kinch* are distinguishable, and *Kinch* does not determine the outcome here.

In *Kinch*, the defendant taped a temporary permit "in the top left corner of the vehicle's back window, but the officer could not read the permit because it was bent, somewhat crumpled,

and obscured by a layer of condensation on the window in the area where it was taped." 159 Idaho at 97. Even after the officer approached the vehicle, "the officer still could not read the permit due to the condensation and the bend in the paper." *Id.* The Court of Appeals also upheld the district court's factual findings "that the temporary permit was 'bent, crumpled, unreadable' and obscured by a 'fogged over' window." *Id* at 99. Further, the Court of Appeals noted, "[T]he officer testified that, even while right next to Kinch's vehicle, she was unable to read the contents of the temporary permit." *Id.* at 101 n.7. The traffic stop video showed the officer "illuminate[ ] with her flashlight the opaque condensation blocking view of the permit." *Id.* at 99. Ultimately, the Court of Appeals held:

> [A]n improperly displayed temporary permit, including one that is not readily legible, provides reasonable suspicion to perform a traffic stop. The inability to easily read the key information of a temporary registration permit (such as its expiration date), whether upon closer inspection or from the vantage point of a nearby vehicle, raises a reasonable and articulable suspicion beyond mere intuition or speculation that the temporary permit may be expired or invalid. Thus, the officer here had reasonable suspicion to stop Kinch's vehicle, and the district court did not err in denying Kinch's motion to suppress on that basis.

Id. at 102. Here, unlike *Kinch*, there was no evidence that Ms. Cook's permit was bent or crumpled. There was nothing about the condition of the permit itself that prevented Deputy Jacobsen from reading it. Indeed, the traffic stop video shows a flat, un-crumpled permit in Ms. Cook's rear window. (*See* State's Ex. 1.) Also, unlike *Kinch*, the district court found that Deputy Jacobsen could have read the permit but for the condensation on the exterior of the car. In *Kinch*, the Court of Appeals referenced a "fogged over" window and "opaque" condensation. 159 Idaho at 99. Although *Kinch* is unclear whether fog or condensation was on the inside or outside of the car, the district court here clearly found that the condensation was on the outside of the car and solely attributable to the rainy weather. (Tr. Vol. I, p.56, Ls.20–22.) The condensation only temporarily obstructed the permit. Once Deputy Jacobsen wiped the

condensation off Ms. Cook's rear window, he could read the permit. Therefore, even if *Kinch*'s interpretation of "readily legible" stands, the facts of this case and *Kinch* are distinguishable. The district court erred by relying on *Kinch* to rule that Ms. Cook did not comply with I.C. § 49-432(4).

3. Once Deputy Jacobsen Saw Ms. Cook's Properly Displayed Permit, He No Longer Had Authority For The Seizure Because His Reasonable Suspicion Was Dispelled

Under the plain language interpretation of I.C. § 49-432(4), Ms. Cook's permit was displayed in a prominent place where it could be "readily legible." *Kinch* should be overruled or rejected or, alternatively, distinguished from this case. Because *Kinch* does not control and Ms. Cook complied with the statute, Deputy Jacobsen no longer had a lawful basis to continue the traffic stop once he saw the properly displayed permit in Ms. Cook's rear window.

This outcome is dictated by *State v. Salois*, 144 Idaho 344 (Ct. App. 2007). In *Salois*, the Court of Appeals rejected the State's position that "a law enforcement officer may stop any vehicle being operated without license plates, even if the vehicle has a properly displayed temporary registration, to investigate whether the vehicle is being driven in contravention of traffic laws." *Id.* at 348. The *Salois* Court reasoned, "The State's position would allow law enforcement officers to presume that temporary permits are invalid per se, justifying an officer to stop a vehicle in order to conduct further inspection concerning the legitimacy of the temporary permit. We reject that position." *Id.* The Court of Appeals held:

> [T]he presence of a properly displayed temporary permit, subject to the discussion below, dispels any reasonable suspicion of a violation of I.C. § 49-456(1). To hold otherwise would allow law enforcement officers of this state unfettered discretion to stop each and every vehicle being operated with a temporary registration to "investigate" its validity. To the contrary, an officer must have a reasonable suspicion of criminal activity before a traffic stop is initiated, not after.

> A temporary permit displayed in compliance with I.C. § 49-432(3)[6] carries with it a presumption of validity, not of invalidity. The mere existence of the properly placed temporary permit cannot serve as the basis for reasonable suspicion to allow an officer to stop a vehicle to inspect the permit unless the invalidity of the permit, such as by improper alteration, is obvious and discernable by the officer prior to stopping the vehicle.

Id. Salois, therefore, holds that an officer may initiate a traffic stop due to the absence of a license plate or permit, but the basis for that stop dissipates once it is established that the permit is properly displayed. *Id.* Moreover, an officer may only initiate a traffic stop based on a properly displayed permit if the permit's invalidity is obvious and discernable to the officer before the stop. *Id. See also State v. Case*, 159 Idaho 546, 549–52 (Ct. App. 2015) (reaffirming the reasoning and holding from *Salois* for dealer plates).

Here, the presence of Ms. Cook's properly displayed temporary permit dispelled Deputy Jacobsen's reasonable suspicion for an invalid or absent registration. A traffic stop may "last no longer than necessary to effectuate" the stop's purpose. *Rodriguez*, 135 S. Ct. at 1614 (quoting *Royer*, 460 U.S. at 500 (plurality opinion)). Once Deputy Jacobsen shined his flashlight on Ms. Cook's rear window just prior to initiating contact with her, Deputy Jacobsen no longer had authority for the seizure.[7] *See Salois*, 144 Idaho at 348; *see also Rodriguez*, 135 S. Ct. at 1614

---

[6] Section (4) of I.C. § 49-432 was formerly codified at Section (3). *See* I.C. § 49-432(3) (West 2007).

[7] Before the United States Supreme Court decided *Rodriguez*, the Court of Appeals held in *State v. Reed*, 129 Idaho 503 (Ct. App. 1996), that the Fourth Amendment's reasonableness standard allowed a police officer to prolong the detention of an individual during a traffic stop, even though the officer's reasonable suspicion to justify the traffic stop was dispelled. *Id.* at 505–06. In *Reed*, the officer initiated a traffic stop for no license plates, but then saw a valid temporary registration sticker as he approached the vehicle. *Id.* at 504. Although the officer "no longer had reason to suspect that any unlawful act was being committed," the officer proceeded to talk to the driver and ask for his license and registration. *Id.* During their conversation, the officer noticed the odor of alcohol. *Id.* Eventually, the officer arrested the driver for driving under the influence of alcohol. *Id.* The Court of Appeals held that the officer was "entitled" to obtain the driver's identity and insurance information, "even though the reason for that stop had dissipated." *Id.* at 506. The Court of Appeals reasoned that the "slight prolongation of the traffic

("Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed."); *Linze*, 161 Idaho at 608 (same). Her permit was properly displayed, and it contained no "obvious and discernable" "improper alterations" to render it invalid, such as crumpled or bent paper like in *Kinch*. Deputy Jacobsen lacked reasonable suspicion to detain Ms. Cook once he saw the permit and therefore the prolonged seizure was unlawful under the Fourth Amendment. *See Rodriguez*, 135 S. Ct. at 1614; *Linze*, 161 Idaho at 608.

The evidence obtained from Deputy Jacobsen's search "would not have come to light but for the government's unconstitutional conduct" in prolonging the traffic stop without reasonable suspicion. *State v. Wigginton*, 142 Idaho 180, 184 (Ct. App. 2005). Due to the unlawfully prolonged stop, Ms. Cook submits that the district court erred by denying her motion to suppress. *See Wong Sun v. United States*, 371 U.S. 471, 488 (1963) (evidence obtained through unconstitutional police conduct subject to exclusion); *Bishop*, 146 Idaho at 810–11 (same).

D. Alternatively, The District Court Should Have Granted Ms. Cook's Motion To Suppress Or Motion To Reconsider Because I.C. § 49-432(4) Is Unconstitutionally Vague As Applied To Ms. Cook's Conduct

"The void-for-vagueness doctrine is premised upon the due process clause of the Fourteenth Amendment to the U.S. Constitution." *State v. Korsen*, 138 Idaho 706, 711 (2003), *abrogated on other grounds by Evans v. Michigan*, 568 U.S. 313 (2013). "A void for vagueness challenge is more favorably acknowledged and a more stringent vagueness test will be applied

---

stop was a minimal intrusion and was not so burdensome as to outweigh the public interests," relying on a balancing test from this Court in *State v. Godwin*, 121 Idaho 491 (1992). In light of *Rodriguez* and this Court's recent decision in *Linze*, the Court of Appeals' decision in *Reed* no longer has any precedential value on the legality of prolonged traffic stops. For this reason, Ms. Cook submits that *Reed* should not apply to her case.

where a statute imposes a criminal penalty . . . ." *State v. Cobb*, 132 Idaho 195, 198 (1998) (citation omitted).

> The void for vagueness doctrine is an aspect of due process requiring that the meaning of a criminal statute be determinable. Due process requires that all "be informed as to what the State commands or forbids" and that "men of common intelligence" not be forced to guess at the meaning of the criminal law.

Id. at 197 (citation omitted) (quoting *Smith v. Goguen*, 415 U.S. 566, 574 (1974)). "[A]s a matter of due process, no one may be required at the peril of loss of liberty to speculate as to the meaning of penal statutes." *Korsen*, 138 Idaho at 711 (citing *United States v. Smith*, 795 F.2d 841, 847 n.4 (9th Cir. 1986)). "A statute is void for vagueness if it fails to give adequate notice to people of ordinary intelligence concerning the conduct it proscribes, *see Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971), or if it invites arbitrary and discriminatory enforcement[,] *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972)." *Cobb*, 132 Idaho at 197.

"A statute may be challenged as unconstitutionally vague on its face or as applied to a defendant's conduct." *Korsen*, 138 Idaho at 712. "The party attacking a statute on constitutional grounds must overcome a strong presumption of validity. Appellate courts are obligated to seek an interpretation of a statute that upholds its constitutionality." *State v. Martin*, 148 Idaho 31, 34 (Ct. App. 2009) (citations omitted). "To succeed on an 'as applied' vagueness challenge, a complainant must show that the statute, as applied to the defendant's conduct, failed to provide fair notice that the defendant's conduct was proscribed or failed to provide sufficient guidelines such that the police had unbridled discretion in determining whether to arrest him." *Korsen*, 138 Idaho at 712.

Here, Ms. Cook asserts that I.C. § 49-432(4) is unconstitutionally vague as applied to her conduct. It is an infraction for any person to operate a vehicle on the highway that is not registered or in compliance with certain exemptions, including the temporary permits under

I.C. § 49-432(4). I.C. § 49-456(1); I.C. § 49-236(2); *see also* I.C. § 18-811 (defining infraction). Idaho Code § 49-432(4)'s requirement of a "readily legible" permit is unconstitutionally vague as applied. First, the statute failed to provide Ms. Cook with fair notice that her conduct was proscribed. Ms. Cook obtained a readily legible permit and placed it in a prominent location in her car, in full compliance with the statute. The statute provides no notice that an external factor, such as rain, would render the otherwise valid permit invalid. Owing solely to a temporary, external condition out of Ms. Cook's control, she was suddenly in violation of the law.[8] She had no way to prevent this violation (since she could not stop it from raining or remove the water from the roadway) or even to know the violation was occurring (since she would see the properly displayed permit in her rearview mirror and had no way to see her permit from another vantage point while driving). As applied to Ms. Cook's conduct of driving in rainy weather, I.C. § 49-432(4) is unconstitutionally vague because it does not give fair notice that an uncontrollable weather condition will render a valid permit invalid and cause the driver to violate a traffic law.

Second, I.C. § 49-432(4) failed to provide sufficient guidelines such that the police have unbridled discretion in determining whether to cite Ms. Cook for the traffic violation. As applied here, the police can detain a person and cite him or her for a violation of this traffic law based on the weather or any other external factor. "Anyone driving under less than optimal viewing conditions" with "an otherwise unremarkable" permit would risk violating the traffic laws. *United States v. Edgerton*, 438 F.3d 1043, 1050 (10th Cir. 2006); *see also id.* at 1051 ("We decline to require optimal viewing conditions before compliance with a statute requiring an otherwise unremarkable license plate to be 'clearly visible' is assured. Fourth Amendment

[8] This argument does not concede that Ms. Cook's permit was not "readily legible" under I.C. § 49-432(4), as argued in Part C.

reasonableness does not depend on external conditions, but on a reasonable suspicion that a driver has violated the law."). Rain, fog, glare, or even the officer's poor eyesight would transform a valid permit into an invalid one. *See id.* at 1050. One can imagine that a police officer, wanting to detain certain drivers, could simply wait for the right weather conditions and then initiate the traffic stop, especially in small towns where the police are familiar with the residents and their vehicles. 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. As applied, I.C. § 49-432(4) invites arbitrary and discriminatory enforcement.

In summary, I.C. § 49-432(4) is unconstitutionally vague as applied to Ms. Cook under either test—it failed to provide her with fair notice that driving in rainy weather on a wet roadway would be proscribed conduct, and it failed to provide any guidelines to restrain the police's discretion in determining whether a permit was "readily legible." Because I.C. § 49-432(4) is unconstitutionally vague as applied, the district court erred when it denied Ms. Cook's motion to suppress and motion to reconsider on void for vagueness grounds.

CONCLUSION

Ms. Cook respectfully requests that this Court reverse or vacate the district court's order denying her motion to suppress or its order denying her motion to reconsider, vacate the order withholding judgment, and remand her case for further proceedings.

DATED this 19th day of December, 2017.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19th day of December, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

SAMANTHA NICOLE COOK
3590 W VELA PLACE #A
POST FALLS ID 83854

RICH CHRISTENSEN
DISTRICT COURT JUDGE
E-MAILED BRIEF

JEANNE M HOWE
KOOTENAI COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCS/eas