

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

STATE OF IDAHO,	)	
	)	<b>NO. 47695-2020</b>
Plaintiff-Respondent,	)	
	)	<b>BONNER COUNTY</b>
v.	)	<b>NO. CR09-19-307</b>
	)	
PATRICIA ANN AMSTUTZ,	)	
	)	
Defendant-Appellant.	)	

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**BRIEF OF APPELLANT**

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

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**HONORABLE BARBARA A. BUCHANAN  
District Judge**

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**TABLE OF CONTENTS**

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE .....	1
Nature of the Case .....	1
Statement of Facts and Course of Proceedings .....	1
ISSUES PRESENTED ON APPEAL.....	4
ARGUMENT.....	5
I. The District Court Erred In Denying Ms. Amstutz’s Motion to Suppress.....	5
A. Introduction .....	5
B. Standard Of Review.....	5
C. Officer White Violated Ms. Amstutz’s Rights Under The Idaho Constitution By Arresting Her, Without A Warrant, For A Completed Misdemeanor Offense That Occurred Outside His Presence, Even Though The Offense Was Ultimately Charged As A Felony .....	6
1. The District Court Erred In Concluding Ms. Amstutz’s Arrest Was Lawful Under Idaho Code § 49-1405 .....	7
2. The District Court Erred In Concluding Ms. Amstutz’s Arrest Was Lawful Under The Collective Knowledge Doctrine .....	7
3. The District Court Erred In Concluding Ms. Amstutz’ Arrest Was Lawful Under Idaho Code § 19-603(2).....	9
D. Officer White Could Have Lawfully Arrested Ms. Amstutz, But He Did Not Do So Here.....	9
CONCLUSION.....	10
CERTIFICATE OF MAILING .....	10

**TABLE OF AUTHORITIES**

Cases

*Carroll v. United States*, 267 U.S. 132 (1925) .....8

*State v. Clarke*, 165 Idaho 393 (2019) ..... 1, 2, 5

*State v. Julian*, 123 Idaho 133 (1996) .....8

*State v. Purdum*, 147 Idaho 206 (2009) .....5

*State v. Sutherland*, 130 Idaho 472 (Ct. App. 1997).....9

Statutes

Idaho Code § 19-603(2) .....3, 6, 9

Idaho Code §§ 19-604.....9

Idaho Code § 49-1405.....3, 6, 7

Rules

Idaho Criminal Rule 11(f) .....3

## STATEMENT OF THE CASE

### Nature of the Case

Patricia Ann Amstutz appeals from her conviction for felony driving under the influence of alcohol (“DUI”), challenging the district court’s denial of her motion to suppress. The district court erred in denying Ms. Amstutz’s motion to suppress because she was arrested, without a warrant, for a completed misdemeanor offense that occurred outside of the officer’s presence. Although the offense Ms. Amstutz allegedly committed is serious, and although the arresting officer had probable cause for the arrest, the arrest violated Ms. Amstutz’s rights under the Idaho Constitution under *State v. Clarke*, 165 Idaho 393 (2019).

### Statement of Facts and Course of Proceedings

Officer White was dispatched to Ms. Amstutz’s house on January 27, 2019, after a person called 911 to report a suspected drunk driver. (R., p.30, 102; Tr., p.9, L.19 – 10, L.2.) The reporting party provided the license plate number of the suspected drunk driver to dispatch, and dispatch ran the number and obtained a “vehicle return” from the Department of Motor Vehicles, which included the name and address of the registered owner, Ms. Amstutz. (R., p.102; Tr., p.14, Ls.5-13.)

Officer White parked at Ms. Amstutz’s house and “looked at her vehicle registration as well as a vehicle return” while waiting for a backup officer. (Tr., p.9, L.24 – p.10, L.10.) The information available to Officer White included, among other things, “a list of traffic infractions as well as previous DUIs.” (Tr., p.10, Ls.11-19.) The DUIs were listed as “a wall of texts ranging from oldest to newest” based on the dates of the convictions. (Tr., p.10, Ls.16-19.) Officer White testified Ms. Amstutz had prior DUI convictions from 2010 and 2016. (Tr., p.11, Ls.16-21.) The prosecutor asked Officer White at the suppression hearing, “And do you recall whether you

looked specifically at those DUI dates before you went into the house?” and he answered, “I don’t recall specifically if I looked at those dates, no.” (Tr., p.11, Ls.19-23.)

The first time Officer White saw Ms. Amstutz was “[w]hen she opened the door to her residence.” (Tr., p.17, Ls.4-7.) Officer White determined Ms. Amstutz was under the influence of alcohol, and arrested her “for driving under the influence.” (R., p.103; Tr., p.11, L.24 – p.12, L.14.) As found by the district court, “[h]e did not specify whether it was a ‘felony’ or ‘misdemeanor’ offense.” (R., p.103.) Officer White transported Ms. Amstutz to the police department, where her breath alcohol level was measured at .230 and .229. (R., p.103; Tr., p.17, L.21 – p.18, L.1.) At the police department, Officer White told Ms. Amstutz that if it was her first offense, she could bond out for \$500. (Tr., p.20, Ls.17-23.)

Officer White then transported Ms. Amstutz to county jail. (Tr., p.12, Ls.15-18.) As found by the district court, “Before exiting his patrol car at the jail, he looked at the driver return again, and verified Amstutz’s prior DUI convictions in 2010 and 2016. He then booked Amstutz into the jail on a felony DUI charge.” (R., 103.) Importantly, Officer White testified it was only *after* reviewing Ms. Amstutz’s prior DUI convictions at the jail that he “knew it was a felony.” (Tr., p.14, Ls.15-19.)

The State charged Ms. Amstutz with felony DUI. (R., pp.50-51.) Ms. Amstutz pled guilty, but then filed a motion to withdraw her guilty plea following the Idaho Supreme Court’s decision in *State v. Clarke*, 165 Idaho 393 (2019). (R., pp.66-75, 81-82.) The district court granted Ms. Amstutz’s motion, and allowed her to withdraw her guilty plea. (R., pp.87, 92.) Ms. Amstutz then filed a motion to suppress based on *Clarke*. (R., pp.93-94.) The district court held a hearing on Ms. Amstutz’s motion. (R., pp.99-100.) The parties submitted four video

recordings to the district court, and the district court heard testimony from Officer White. (Tr., p.7, Ls.8-23; p.8, L.16 – p.21, L.8; R., p.102.)

Counsel for Ms. Amstutz argued her arrest violated the Idaho Constitution because *Clarke* “does not say it’s okay to arrest someone on a misdemeanor if you later find out that they have priors and charge them with a felony.” (Tr., p.23, Ls.8-12.) The prosecutor argued the district court should not apply *Clarke* retroactively. (Tr., p.23, L.25 – p.24, L.5.) The prosecutor also argued “this wasn’t a misdemeanor, it ended up being a felony” and even if the officer did not know Ms. Amstutz had prior DUIs prior to her arrest, “dispatch certainly did.” (Tr., p.24, Ls.13-17.) The prosecutor argued “every DUI is potentially a felony,” and “every DUI investigation is potentially a felony investigation.” (Tr., p.25, L.24 – p.26, L.2.)

The district court denied Ms. Amstutz’s motion to suppress. (R., pp.101-09.) The district court concluded the arrest was lawful under Idaho Code § 49-1405; it was lawful under the collective knowledge doctrine; and it was lawful under Idaho Code § 19-603(2). (R., pp.104-08.)

Following the district court’s decision, Ms. Amstutz entered into an Idaho Criminal Rule 11(f) agreement with the State, pursuant to which she agreed to plead guilty, reserving her right to appeal from the denial of her motion to suppress. (Tr., p.34, Ls.11-17, p.36, Ls.10-21; R., pp.113-24.) The parties jointly recommended a unified sentence of three years, with one year fixed, suspended. (Tr., p.26, Ls.15-20; R., pp.113-24.) Ms. Amstutz pled guilty, and the district court accepted her plea. (Tr., p.37, L.21 – p.38, L.14.) The district court sentenced Ms. Amstutz, who was 71 years old at the time, to a unified term of three years, with one year fixed, and then suspended the sentence and placed her on probation. (Tr., p.50, Ls.5-10, Conf. Exs., p.3.) The judgment of conviction was entered on December 31, 2019, and Ms. Amstutz filed a timely notice of appeal. (R., pp.128-34, 139-41.)

ISSUE

Did the district court err in denying Ms. Amstutz's motion to suppress?

## ARGUMENT

### The District Court Erred In Denying Ms. Amstutz's Motion To Suppress

#### A. Introduction

The facts of this case are not in dispute. Officer White did not observe Ms. Amstutz driving or in actual physical control of a vehicle, and he arrested her, without a warrant, for driving under the influence of alcohol, without knowing the offense would ultimately be charged as a felony. In *State v. Clarke*, 165 Idaho 393 (2019), the Idaho Supreme Court held a police officer violates Article I, Section 17 of the Idaho Constitution by arresting a suspect for a misdemeanor offense that occurred outside his presence, even if the arrest is for a serious offense, and even if the arrest is supported by probable cause. Officer White arrested Ms. Amstutz, without a warrant, for a completed misdemeanor offense that occurred outside his presence. Although the offense was a serious one, and although the arrest was supported by probable cause, it violated Ms. Amstutz's rights under the Idaho Constitution, and the district court thus erred in denying her motion to suppress.

#### B. Standard Of Review

“In reviewing a district court order granting or denying a motion to suppress evidence, the standard of review is bifurcated.” *State v. Purdum*, 147 Idaho 206, 207 (2009) (citation omitted). “This Court will accept the trial court's findings of fact unless they are clearly erroneous. However, this Court may freely review the trial court's application of constitutional principles in light of the facts found.” *Id.* (citations omitted).



C. Officer White Violated Ms. Amstutz’s Rights Under The Idaho Constitution By Arresting Her, Without A Warrant, For A Completed Misdemeanor Offense That Occurred Outside His Presence, Even Though The Offense Was Ultimately Charged As A Felony

Article I, section 17, of the Idaho Constitution states:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or things to be seized.

In *State v. Clarke*, the Idaho Supreme Court concluded “the framers of the Idaho Constitution understood that Article I, section 17 prohibited warrantless arrests for completed misdemeanors.” 165 Idaho at 399. Thus, in *Clarke*, the Court held the defendant’s arrest for misdemeanor battery was unlawful even though it was supported by probable cause, because it occurred outside of the officer’s presence. *Id.* at 399-400. The Court thus held the district court should have suppressed the contraband obtained in a search incident to the defendant’s arrest as fruit of the poisonous tree, and vacated the defendant’s conviction. *See id.* at 400.

In the present case, it is undisputed that Officer White did not see Ms. Amstutz driving or in actual physical control of a vehicle, and did not obtain a warrant for her arrest. (R., p.103.) As found by the district court, Officer White did not “verify” that Ms. Amstutz would be charged with a felony until he booked her into jail, after arresting her, and after transporting her to the police department for breath alcohol testing. (R., p.103.) As properly framed by the district court, the issue in this case is whether Ms. Amstutz’s arrest was unlawful following *Clarke* because it was for a completed misdemeanor offense. (R., p.104.) The district court erred in concluding the arrest was lawful under Idaho Code § 49-1405; it was lawful under the collective knowledge doctrine; and it was lawful under Idaho Code § 19-603(2). (R., pp.104-08.)

1. The District Court Erred In Concluding Ms. Amstutz’s Arrest Was Lawful Under Idaho Code § 49-1405

The district court first concluded Ms. Amstutz’s arrest was lawful under Idaho Code § 49-1405. (R., pp.104-06.) The district court explained “the Idaho legislature has deemed a misdemeanor charge of driving under the influence as sufficiently serious to justify an arrest and to be treated like a felony for arrest purposes . . . which means that under the current Idaho Code § 49-1405(1)(b), an officer may arrest for a misdemeanor charge of driving under the influence, even if it was not committed in his presence . . . .” (R., p.106.) The district court’s reasoning would be correct absent *Clarke*, but *Clarke* changed the landscape for misdemeanor arrests in Idaho, and Idaho Code § 49-1405 does not grant an officer authority to make an arrest beyond what is permissible under the Idaho Constitution.

The *Clarke* Court was “fully mindful” of the significance of its conclusion that an officer cannot lawfully make a warrantless arrest for a completed misdemeanor that occurred outside the officer’s presence. The *Clarke* Court noted that domestic violence (the crime at issue in *Clarke*) has been characterized by the Idaho Legislature as a “serious offense” causing “substantial damage to victims and children, as well as the community,” but nonetheless held “the extremely powerfully public policy considerations which support upholding Idaho Code section 19-603(6) must yield to the requirements of the Idaho Constitution.” 165 Idaho at 399-400. The reasoning of *Clarke* does not permit an exception for arrests for the misdemeanor offense of driving under the influence notwithstanding the language of § 49-1405.

2. The District Court Erred In Concluding Ms. Amstutz’s Arrest Was Lawful Under The Collective Knowledge Doctrine

The district court also concluded Ms. Amstutz’s arrest was lawful under the collective knowledge doctrine. (R., pp.107-08.) The district court explained:

The fact that White did not look at or verify the prior convictions, and thus, did not realize at the time he arrested Amstutz that she could be charged with a felony is not dispositive. The knowledge of the prior convictions by dispatch personnel, together with White's own observations of Amstutz prior to her arrest, her admission about consuming alcohol, and inability and/or refusal to perform the FSTs, are sufficient to support a finding by the Court that probable cause existed to arrest Amstutz for felony DUI and that she was in fact arrested for felony DUI.

(R., p.108.) The district court's reasoning might be correct if the State had presented evidence that dispatch personnel had actual knowledge of Ms. Amstutz's prior convictions, and communicated that knowledge to Officer White, prior to Ms. Amstutz's arrest. However, absent such evidence, the district court's logic is flawed.

In essence, the district court found that Officer White had probable cause to arrest Ms. Amstutz for felony DUI despite lacking knowledge at the time of the arrest that the DUI would ultimately be charged as a felony. But the arresting officer must possess actual knowledge of the facts supporting an arrest in order for probable cause to exist. *See State v. Julian*, 123 Idaho 133 (1996). An officer cannot have probable cause to arrest a suspect for a crime based on facts of which the officer is not aware at the time of the arrest. *See id.*; *see also Carroll v. United States*, 267 U.S. 132, 161-62 (1925) (citing cases from as far back as the early 19<sup>th</sup> century for the proposition that probable cause requires knowledge). The idea that an officer can decide there is probable cause to make an arrest based on facts not within his knowledge defies logic. An officer cannot hope that later-discovered facts will provide an ex post facto justification for a felony arrest. The mere fact that information about Ms. Amstutz's prior convictions was available to Officer White (and also to dispatch personnel) prior to Ms. Amstutz's arrest does not affect the analysis.

3. The District Court Erred In Concluding Ms. Amstutz's Arrest Was Lawful Under Idaho Code § 19-603(2)

The district court also concluded Ms. Amstutz's arrest was lawful under Idaho Code § 19-603(2). (R., p.108.) It explained:

Alternatively, the Court finds that, similar to the analysis in [*State v. Carr*, 123 Idaho 127 (Ct. App.1992)], driving under the influence can be charged as either a felony or a misdemeanor. White told Amstutz that she was being arrested for "driving under the influence." He did not specify whether it was a felony or a misdemeanor charge. However, based upon her two prior DUI convictions, the offense which she had committed was a felony DUI offense; and thus, it was lawful for White to arrest her for having "committed a felony, although not in his presence," under Idaho Code § 19-603(2).

(R., p.108.) Idaho Code §19-603(2) was held unconstitutional in *Clarke* and the district court's reliance on *Carr*, which preceded *Clarke* by 27 years, is misplaced. *See Clarke*, 165 Idaho at 399-400.

D. Officer White Could Have Lawfully Arrested Ms. Amstutz, But He Did Not Do So Here

Officer White could have lawfully arrested Ms. Amstutz by taking any of the following actions. First, he could have asked the complaining witness to perform a citizen's arrest pursuant to Idaho Code §§ 19-604 and 19-608, making this a lawful misdemeanor arrest. *See State v. Sutherland*, 130 Idaho 472 (Ct. App. 1997). Second, he could have obtained a warrant from a magistrate prior to arresting Ms. Amstutz, making this a lawful misdemeanor arrest. Third, he could have reviewed Ms. Amstutz's criminal history prior to arresting her, making this a lawful felony arrest. Officer White did not take any of these actions. Instead, he arrested Ms. Amstutz for a completed misdemeanor offense committed outside of his presence, without actual knowledge of the facts that allowed the State to ultimately charge the offense as a felony. The arrest thus violated Ms. Amstutz's rights under Article I, Section 17 of the Idaho Constitution, and the district court erred in denying her motion to suppress.

CONCLUSION

Ms. Amstutz respectfully requests that this Court vacate her judgment of conviction, reverse the district court's order denying her motion to suppress, and remand this case to the district court for further proceedings.

DATED this 23<sup>rd</sup> day of September, 2020.

/s/ Andrea W. Reynolds  
ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23<sup>rd</sup> day of September, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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AWR/tmv