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Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 47695-2020**
Plaintiff-Respondent,	)	
	)	**Bonner County Case No.**
v.	)	**CR09-19-307**
	)	
PATRICIA ANN AMSTUTZ,	)	
	)	
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 BONNER

HONORABLE BARBARA A. BUCHANAN
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Patricia Ann Amstutz appeals from her judgment of conviction for felony DUI. She challenges the legality of her arrest for the DUI charge.

Statement Of The Facts And Course Of The Proceedings

According to Sandpoint Police Officer Kale White, in the afternoon of January 27, 2019, he responded to a dispatch report that a named citizen said he had followed a "drunk lady" who handed an open beer to a convenience store clerk and then drove to a residence where she "pulled into the garage and closed the door." (PSI, p.4.[1]) The citizen gave a description of the vehicle, its license plate number, and the address where it parked. (Id.) Officer White drove to that residence, where, according to his summary report, the following events occurred:

> I contacted Patricia Amstutz at the front door of the residence. She identified herself to me verbally and I later confirmed her identity through in house records. During my contact with her, I could smell the odor of an alcoholic beverage coming from her breath and observed her to have slurred speech and impaired memory. She also admitted to consuming alcohol prior to driving. I requested she submit to field sobriety evaluations but she refused. I placed handcuffs on her, checked for proper fit and double locked them. I transported her to the Sandpoint Police Department and checked her mouth for foreign objects. . . . At the conclusion of the observation period, she provided two valid breath samples of 230/229 . . . . She had two prior DUI convictions on 11/30/2016 and 1/26/2010 making this her 3rd offense in 10 years.

(PSI, p.4.) The state charged Amstutz with felony DUI and Amstutz pled guilty to that charge. (R., pp.50-51, 63, 66-75.) Prior to being sentenced, Amstutz, through counsel, filed a motion to withdraw her guilty plea based on the June 12, 2019 decision by the Idaho Supreme Court in State v. Clarke, 165 Idaho 393, 446 P.3d 451 (2019), which held "it is unconstitutional to arrest a

[1] The Presentence Report ("PSI") is located in the continuously paginated electronic file labeled "Appeal Vol 1 - Confidential Exhibits.pdf."

Defendant for a misdemeanor that did not occur in the officer's presence." (R., pp.81-82.) The district court granted Amstutz's motion. (R., pp.87, 92.)

Amstutz filed a motion to suppress, again contending "the warrantless arrest by the officers was unlawful and in violation" of Clarke. (R., pp.93-94.) At a hearing on that motion, Officer White testified that, before he arrested Amstutz for DUI, he received a police dispatch indicating she had been convicted of DUI in 2010 and 2016 – although he could not "recall specifically" if he looked at those dates. (Tr., p.11, L.4 - p.12, L.23.) The district court subsequently entered a Memorandum Decision and Order denying Defendant's Motion to Suppress, ruling, *inter alia*, that, under the "collective knowledge doctrine," the information contained in the dispatch could be considered in determining whether the officer had probable to arrest Amstutz for *felony* DUI. (R., pp.99-109.)

Pursuant to a plea agreement, Amstutz entered a conditional guilty plea to felony DUI. (R., pp.112-124.) The court sentenced Amstutz to three years, with one year fixed, all suspended, and placed her on supervised probation for three years. (R., pp.128-134.) Amstutz filed a timely notice of appeal. (R., pp. 139-141, 152-156.)

ISSUE

Amstutz states the issue on appeal as:

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

(Appellant's brief, p.4.)

The state rephrases the issue as:

Has Amstutz failed to establish the district court erred in denying her motion to suppress?

ARGUMENT

Amstutz Has Failed To Establish That The District Court Erred In Denying Her Motion To Suppress

A. Introduction

In denying Amstutz's Clarke-based motion to suppress, the district court held: (1) her arrest was lawful under Idaho Code § 49-1405, (2) her arrest did not run counter to State v. Clarke, 165 Idaho 393, 446 P.3d 451 (2019), because, under the "collective knowledge doctrine," Officer White had probable cause to arrest her for felony DUI based on his receipt of a police dispatch showing she had two prior DUI convictions within ten years, and (3) her arrest was lawful under Idaho Code § 19-603(2), and because the officer did not "specify whether it was a felony or misdemeanor," and "the offense which she had committed was a felony DUI offense[.]" (R., pp.104-08.) Amstutz contends the court erred in denying her suppression motion. (Appellant's brief, pp.5-10.) Amstutz's argument fails.

B. Standard Of Review

In reviewing an order granting or denying a motion to suppress evidence, the appellate court applies a bifurcated standard of review. 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 in light of the facts found. Purdum, 147 Idaho at 207, 207 P.3d at 183.

C. Amstutz Has Failed To Show The District Court Erred In Denying Her Motion To Suppress

In response to Amstutz's challenge to the district court's denial of her suppression motion, the state incorporates, and relies upon, the court's Memorandum Decision and Order Denying

Defendant's Motion to Suppress as if fully set forth herein. (R., pp.101-109 (attached as Appendix A).) The state presents the following additional argument in support of the court's determination that Amstutz's arrest was lawful under Clarke.

During the suppression motion hearing, Officer White presented the following testimony:

> Q. When you got to the house, did you run her specific return prior to going inside[?]
>
> A. Yes. I had parked alongside the curb, waited for my cover officer to arrive. And during that time, I looked at her vehicle registration as well as a vehicle return as a way to identify her. There's a picture of her on the driver return.
>
> Q. So there's a picture of her on the driver return. What other information is [in] that driver's return?
>
> A. There's a list of traffic infractions as well as previous DUI's on the driver's return.
>
> Q. How are they listed out?
>
> A. It's a wall of texts ranging from oldest to newest. The dates of the convictions are on that return.
>
> Q. And so the dates of conviction – I'm trying to see if we have a copy of it.
>
> So you said it has – it goes oldest to newest – does it say DUI and then a conviction date or a charging date?
>
> A. Yes, it will say DUI ALS, then either .08 or .20 depending on if it was excessive or regular along with a "C" specifying the conviction date on there. For the conviction date, there's a "C" on that.
>
> Q. Is there also a bunch of other information in there?
>
> A. Yes, there's height, weight, physical description.
>
> Q. Traffic tickets?
>
> A. Yes, those are in there as well.
>
> Q. So anything traffic related is going to be on that sheet?
>
> A. Correct.
>
> Q. As well as DUI's?
>
> A. In the State of Idaho or even traffic tickets from other states will be in there.
>
> Q. What were the dates of conviction on that for her prior DUI's?

A. There was one in 2010, one in 2016.

Q. And do you recall whether you looked specifically at those DUI dates before you went into the house?

A. I don't recall specifically if I looked at those dates, no.

(Tr., p.11, L.4 - p.12, L.23 (punctuation modified).)

The officer's testimony that he did not recall if he had specifically looked at the dates of Amstutz's prior DUI convictions is not relevant to the probable cause inquiry. "Probable cause is the *possession* of information that would lead a person of ordinary care and prudence to believe or entertain an honest and strong presumption that such person is guilty." State v. Gibson, 141 Idaho 277, 282, 108 P.3d 424, 429 (Ct. App. 2005) (emphasis added). Whether the officer specifically relied on any particular bit of information in his possession is not controlling. State v. Julian, 129 Idaho 133, 137-38, 922 P.2d 1059, 1063-64 (1996).[2] Thus, for example, where an officer arrests for a misdemeanor under circumstances that would, in the first instance, make the arrest illegal, but the information possessed by the officer would allow for a felony arrest, the arrest is still lawful. Id. As explained further in Julian,

> When reviewing an officer's actions the court must judge the facts against an objective standard. That is, "would the facts *available* to the officer at the moment of the seizure or search 'warrant a [person] of reasonable caution in the belief' that the action taken was appropriate." *State v. Hobson*, 95 Idaho 920, 925, 523 P.2d 523, 528 (1974) (quoting *Terry v. Ohio,* 392 U.S. 1, 22, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889 (1968)).

Julian, 129 Idaho at 136, 922 p.2d at 1062 (emphasis added). Here the officer possessed, and had available to him, information about Amstutz's prior DUI arrests giving rise to probable cause that he had committed a felony. As in Julian, whether the officer actually subjectively relied on that

[2] Amstutz cites Julian for the proposition that an officer must possess "knowledge of the facts" constituting probable cause. (Appellant's brief, p. 8.) The word "knowledge" does not appear in the opinion.

information is not controlling; the fact the officer possessed information giving rise to probable cause is controlling.

Furthermore, under the collective knowledge doctrine, the officer had probable cause to arrest Amstutz for felony DUI because the "driver's return" he received from police dispatch personnel prior to her arrest showed she had been convicted for DUI in 2010 and 2016.[3]

The underlying basis for Amstutz's challenge to the district court's denial of her suppression motion is Clarke, 165 Idaho 393, 446 P.3d 451. In State v. Jay, 167 Idaho 592, ___, 473 P.3d 861, 868 (Ct. App. 2020), the Court succinctly summarized Clarke as follows:

> In *Clarke*, a woman contacted an officer and explained she was harassed and groped by Clarke. *State v. Clarke*, 165 Idaho 393, 394, 446 P.3d 451, 452 (2019). The woman informed the officer that Clarke made unwanted sexual advances and sent a harassing text message, and the woman provided a description of Clarke. *Id.* at 394-95, 446 P.3d at 452-53. Shortly thereafter, the officer located Clarke and Clarke admitted talking to and touching the woman, but claimed the touching was consensual. *Id.* at 395, 446 P.3d at 453. Based upon the complaint and Clarke's admission, the officer arrested Clarke and discovered drugs and paraphernalia during the search incident to the arrest. *Id.*
>
> After reviewing principles of statutory interpretation and relevant legislative history, *the Idaho Supreme Court held an officer violates Article I, Section 17 of the Idaho Constitution by making a warrantless arrest for a completed misdemeanor offense that occurred outside his presence even if probable cause exists*. *Id.* at 399, 446 P.3d at 457.

(Emphasis added.) Relevant here, the holding in Clarke applies only if there was an arrest for a "completed misdemeanor offense that occurred outside [an officer's] presence even if probable cause exists." Id. Conversely, Clarke does not apply to a valid felony arrest.

The district court analogized Amstutz's case with State v. Carr, 123 Idaho 127, 844 P.2d 1377 (Ct. App. 1992), where the arresting officer "had not personally and directly learned or been

[3] Idaho Code § 18-8005(6) makes it a felony if a person convicted of DUI "previously has been found guilty of or has pled guilty to two (2) or more violations of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code" within ten years.

notified of Carr's license suspension," but had learned about that suspension from a teletype received from dispatch prior to arresting Carr. Carr, 123 Idaho at 129-130, 844 P.2d at 1379-1380. The Court explained that "[a]n officer in the field may rely on information supplied by other officers, and the collective knowledge of police officers involved in the investigation – including dispatch personnel – may support a finding of probable cause." (R., p.108 (quoting Carr, 123 Idaho at 130, 844 P.2d at 1380).) Here, in contrast to the officer in Carr having actually read the relevant parts (if not all) of the teletype, Officer White did not remember looking specifically at the dates of the prior DUIs in the driver's return. Nonetheless, the district court ruled that the collective knowledge doctrine covered the situation, to wit:

> Here, the driver return, which included the dates of Amstutz's two prior DUI convictions, was transmitted to Officer White by dispatch before White made initial contact with Amstutz. 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 should 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 this Court that probable cause existed to arrest Amstutz for felony DUI and that she was in fact arrested for felony DUI.

(R., p.108.)

On appeal, Amstutz argues that "the arresting officer must possess actual knowledge of the facts supporting an arrest in order for probable cause to exist[,]" "[a]n 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[,]" and "[t]he idea that an officer can decide there is probable cause to make an arrest based on facts not within his knowledge defies logic." (Appellant's brief, p.8.) Those statements fail to recognize the validity and scope of the collective knowledge doctrine.

It is well-settled that an officer may rely on information provided by another officer to justify a stop. United States v. Hensley, 469 U.S. 221, 231 (1985) ("if a flyer or bulletin has been

issued on the basis of articulable facts supporting a reasonable suspicion that the wanted person committed an offense, then reliance on that flyer or bulletin justifies a stop"); State v. Van Dorne, 139 Idaho 961, 963-64, 88 P.3d 780, 782-83 (Ct. App. 2004) ("We conclude that under the collective knowledge doctrine, knowledge obtained by dispatch from Hill was imputed to Sherfick for purposes of determining whether there was reasonable suspicion to issue the ATL."). "[A]n official police communication does provide probable cause [for arrest or issuance of a search warrant] so long as the communication itself is based upon sufficient information to constitute probable cause." State v. DesChamps, 94 Idaho 612, 613, 495 P.2d 18, 19 (1971). "An officer in the field may rely on information supplied by other officers, and the collective knowledge of police officers involved in the investigation—including dispatch personnel—may support a finding of probable cause." State v. Carr, 123 Idaho 127, 130, 844 P.2d 1377, 1380 (Ct. App. 1992) (citing State v. Cooper, 119 Idaho 654, 659, 809 P.2d 515, 520 (Ct. App. 1991)). See also State v. Baxter, 144 Idaho 672, 677-78, 168 P.3d 1019, 1024-25 (Ct. App. 2007) (referencing the "collective knowledge doctrine").

It is undisputed that Officer White's observations provided ample evidence that Amstutz was under the influence, and that, based on the named citizen's complaint, there was probable cause to believe she had committed the crime of DUI. The only question is whether the driver's return from police dispatch personnel, which showed Amstutz had DUI convictions in 2010 and 2016, could be used under the collective knowledge doctrine as a factor in determining whether Officer White had probable cause to arrest her for *felony* DUI. Even assuming the officer did not know the dates of Amstutz's prior DUI convictions before he arrested her, because police dispatch personnel clearly knew about the dates of her prior DUI convictions, such knowledge is imputed to Officer White in deciding whether he had probable cause to arrest her for felony DUI.

Amstutz argues that "[t]he 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." (Appellant's brief, p.8.) Amstutz theorizes that police dispatch personnel sent Officer White a communication without having "actual knowledge" of its contents. However, common sense and experience strongly suggests otherwise. Persons who send information in response to requests typically know what they are sending, and that the information fulfills the requests. Here, Officer White testified that he "ran [Amstutz's] driver's return prior to going in her residence, and there would be the previous DUI's on that." (Tr., p.18, Ls.14-16.)

Moreover, the state did in fact "present[] evidence that dispatch personnel had actual knowledge of Ms. Amstutz's prior conviction[.]" (See Appellant's brief, p.8.) When asked how he obtains driver's returns, Officer White testified, "dispatch runs it through the computer system and it returns from DMV to dispatch, who in turn sends it to me. So they would look at it and then send it to me." (Tr., p.14, Ls.10-13 (emphasis added).) Officer White's testimony established that police dispatch personnel did not blindly forward him the DMV results of Amstutz's driver's record; instead they "would look at it and then send it to [him]." (Id.) If police dispatch personnel looked at Amstutz's driver's record, plainly they had knowledge of what was contained in it – including her two prior DUIs (and dates). That knowledge, obtained by law enforcement personnel before Amstutz's arrest, is imputed to Officer White under the collective knowledge doctrine, and gave him probable cause to arrest Amstutz for felony DUI.

Based on the above argument and analysis, as well as the district court's Memorandum Decision and Order Denying Defendant's Motion to Suppress (R., pp.101-109; Appendix A), Amstutz has failed to demonstrate that the district court erred in denying her motion to suppress.

CONCLUSION

The state respectfully requests this Court to affirm Amstutz's judgment of conviction.

DATED this 8th day of January, 2021.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th day of January, 2021, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ John C. McKinney
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Deputy Attorney General

JCM/dd

APPENDIX A

Filed:10/21/2019 13:52:22
First Judicial District, Bonner County
Michael W Rosedale, Clerk of the Court
By: Deputy Clerk -Rasor, Sandra

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

STATE OF IDAHO,	**CASE NO. CR09-19-0307**
Plaintiff,	
vs.	**MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS**
PATRICIA A. AMSTUTZ,	
Defendant.	

THIS MATTER came before the Court on October 11, 2019, for a hearing on Defendant's Motion to Suppress. Defendant Patricia A. Amstutz is represented by Bonner County Deputy Public Defender Luke A. Hagelberg. The State of Idaho is represented by Bonner County Deputy Prosecuting Attorney Katie M. Sherritt Edburg. Both counsel and the defendant were present in the courtroom.

I. STANDARD OF REVIEW

The Idaho Supreme Court has stated that: "When reviewing a motion to suppress, the standard of review is bifurcated. This Court defers to the trial court's findings of fact unless the findings are clearly erroneous. This Court freely reviews the trial court's application of constitutional principles to the facts as found." *State v. Willoughby*, 147 Idaho 482, 485-486, 211 P.3d 91, 94-95 (2009) (internal and end citations omitted).

II. FINDINGS OF FACT

At the suppression hearing, the Court heard sworn testimony from the arresting officer Kale White, of the City of Sandpoint Police Department; and the parties stipulated to the admission into evidence, as State's Exhibit No. 1, four audio-visual DVD recordings, depicting the contact between Officer White and the defendant, including the officer's body camera footage. WHEREFORE, upon consideration of Officer White's sworn testimony and the DVD recordings admitted into evidence, this Court makes the following factual findings:

*****

In the afternoon of January 27, 2019, Officer Kale White ("White") was dispatched to a report of a drunk driver. A citizen (hereafter, "reporting party") had called in to dispatch to report the drunk driver. The reporting party had relayed the license plate number of the suspect vehicle to dispatch, followed the driver to her house, and watched her park inside the garage. Dispatch ran the plate number and obtained a "vehicle return," which included the name and address of the driver of the vehicle. Dispatch transmitted the vehicle return to White's in-car computer, and the information displayed on his computer screen. The driver of the suspect vehicle was the defendant, Patricia Amstutz ("Amstutz"). Using the address provided on the vehicle return, White drove to Amstutz's house. He remained in his patrol car and waited for a cover officer to arrive. While waiting, he looked at the vehicle return sent to him by dispatch, and he also ran a "driver return." The driver return – also transmitted to him by dispatch – displayed on White's computer screen: Amstutz's photograph; her height, weight, and physical description; traffic infractions; and prior convictions for driving under the influence (DUI). The driver return displayed the dates of Amstutz's two prior DUI convictions as 2010 and 2016. White testified that he did not recall if he looked at the dates of Amstutz's prior convictions before exiting his

patrol car to make contact with her.

At approximately 3:13 p.m., White approached the front door of Amstutz's home and knocked. (White's body camera footage begins here). Amstutz opened the door. As White explained to Amstutz the purpose of the contact, he was joined by Sergeant Hutter. Amstutz allowed both officers to enter her home. Once inside, White conducted a DUI investigation. Based upon the information from the reporting party, his own observations of Amstutz's slurred speech, impaired memory, the smell of alcohol on her breath, her admission that she had consumed a couple cans of beer that day, as well as her inability and/or refusal to perform the different field sobriety tests (FSTs), White, believing he had probable cause, handcuffed Amstutz and placed her under arrest. White told Amstutz that she was being arrested for "driving under the influence." He did not specify whether it was a "felony" or "misdemeanor" offense.

White placed Amstutz in his patrol car and transported her to the Sandpoint Police Department, where he administered a breath test, which came back .230/.229. White then transported Amstutz to the Bonner County Jail. Before exiting his patrol car at the jail, he looked at the driver return again,[1] and verified Amstutz's prior DUI convictions in 2010 and 2016. He then booked Amstutz into the jail on a felony DUI charge. About an hour elapsed between White's initial contact with Amstutz and him verifying that this DUI would be her third, and thus, a felony charge. It is undisputed that White did not see Amstutz driving or in a car; that he first made contact when she opened the door, and that he did not obtain an arrest warrant.

III. ISSUE PRESENTED

The defendant has moved to suppress any and all evidence gathered against her, including all statements she made and observations made by the officers involved with her during and after

[1] He also ran a full criminal history check.

the arrest, and any evidence obtained subsequent to the arrest. The motion is made on the grounds that Amstutz's warrantless arrest by the officer was unlawful and in violation of the Idaho Supreme Court's decision in *State v. Clarke*, 165 Idaho 393, 446 P.3d 451 (2019). The *Clarke* decision was issued on June 12, 2019, several months after the events in this case.

IV. PARTIES ARGUMENTS

In *Clarke*, the Idaho Supreme Court "conclude[d] that the framers of the Idaho Constitution understood that Article I, section 17 prohibited warrantless arrests for completed misdemeanors." 446 P.3d at 457. "A completed misdemeanor is one which is no longer in progress when the officer arrives on the scene." 446 P.3d at 454. The dispositive issue in *Clarke*, which was answered in the affirmative by the Idaho Supreme Court, "is whether a police officer violates Article I, Section 17 of the Idaho Constitution by making an arrest for a misdemeanor offense that occurred outside his presence but for which probable cause exists." *Id.*

Here, the existence of probable cause is not disputed. The narrow issue before this Court is the application of *Clarke* to the facts of this case, i.e., whether, as the defendant argues, her arrest was unlawful because it was for a completed misdemeanor. The State argues that *Clarke* should not be applied to this case because of the doctrine of collective knowledge, and because the seriousness of a felony DUI charge dictates against retroactive application of *Clarke*.

V. DISCUSSION

Upon consideration, this Court finds the defendant's warrantless arrest in this case to be lawful based upon three alternative grounds. The Court shall address each ground in turn.

A. The warrantless arrest was lawful under Idaho Code § 49-1405.

Clarke involved an arrest for a misdemeanor battery committed outside the presence of the officer, which the trial court had found was permissible under both the United States and

Idaho Constitutions and under Idaho Code § 19-603(6). In vacating Clarke's conviction, the Idaho Supreme Court held that Idaho Code § 19-603(6) was unconstitutional, to-wit:

> In light of the foregoing, based upon the state of the common law in 1889, we conclude that the framers of the Idaho Constitution understood that Article I, section 17 prohibited warrantless arrests for completed misdemeanors.
>
> We are fully mindful of the significance of this conclusion. "Domestic violence is a serious crime that causes substantial damage to victims and children, as well as to the community." I.C. § 32-1408(1). **Idaho Code section 19-603(6) permits peace officers to use their arrest powers to intervene in domestic violence situations, even though they have not personally observed the commission of a crime, and to thereby defuse potentially violent circumstances. Nevertheless, the extremely powerful policy considerations which support upholding Idaho Code section 19-603(6) must yield to the requirements of the Idaho Constitution.** ...

Clarke, 446 P.3d at 457-458 (emphasis supplied). The Court did not, however, address how its ruling affects other statutes, such as Idaho Code § 49-1405, which is implicated in this case.

Idaho Code § 49-1405, titled "Arrests for serious offenses" provides, in part:

> (1) **The authority to make an arrest is the same as upon an arrest for a felony when any person is charged with any of the following offenses**:
> ...
> (b) Driving, or being in actual physical control, of a vehicle or operating a vessel while under the influence of alcohol or other intoxicating beverage.
> ...

I.C. § 49-1405 (emphasis supplied).

State v. Jones, 151 Idaho 943, 265 P.3d 1155 (Ct. App. 2011), provides that "arresting authority is granted in section 49–1405 in relation to seven listed offenses **the State legislature finds sufficiently serious to justify an arrest**; hence, the statute is titled 'Arrests for serious offenses.' ... **section 49–1405 focuses on what the legislature considers serious offenses and elevates certain traffic misdemeanors to treatment like felonies for arrest purposes**; ..." *Id.* at 946-947, 265 P.3d at 1158-1159 (footnote omitted) (emphasis supplied).

The prior version of Idaho Code § 49-1405 is Idaho Code § 49-1109 (repealed). In *State v. Moore*, 111 Idaho 854, 727 P.2d 1282 (Ct App. 2011), the Idaho Court of Appeals stated:

> However, another statute—I.C. § 49–1109—provides guidance. It authorizes an officer to make an arrest "the same as upon an arrest for a felony" for specifically listed offenses. Notably, the second listed offense is for driving "under the influence of intoxicating liquor." **An officer may arrest for a felony without a warrant, even if it was not committed in his presence. I.C. § 19–603. Consequently, the significance of I.C. § 49–1109 is that an officer likewise may arrest for driving under the influence, even if it was not committed in his presence.**

Id. at 856, 727 P.2d at 1284 (emphasis supplied). *See also State v. Ruhter*, 107 Idaho 282, 688 P.2d 1187 (1984), in which the Idaho Supreme Court stated: "I.C. § 19–603(4) provides that a peace officer may make a warrantless arrest '[o]n a charge made, upon a reasonable cause, of the commission of a felony by the party arrested.' Driving while under the influence of alcohol is treated as a felony for the purpose of arrest. I.C. § 49–1109(a)(2)." *Id.* at 283, 688 P.2d at 1188.

It is clear from the foregoing case law that 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 (*see Jones*, 151 Idaho at 946-947, 265 P.3d at 1158-1159), 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 (*see Moore*, 111 Idaho at 856, 727 P.2d at 1284).

Clarke provides no guidance as to the continuing constitutionality of Idaho Code § 49-1405. As it stands, the statute has not been expressly held unconstitutional, and is directly applicable to this case. As such, it shall be applied. Accordingly, this Court finds that Officer White's arrest of Amstutz was lawful under Idaho Code § 49-1405(1)(b), which provides that "[t]he authority to make an arrest [for driving under the influence] is the same as upon an arrest

for a felony," which means that Officer White had the authority to arrest Amstutz for driving under the influence, even if not committed in his presence.

B. The warrantless arrest was lawful under the collective knowledge doctrine.

Alternatively, this Court finds that the arrest of Amstutz was lawful under the collective knowledge doctrine. The Idaho Court of Appeals in *State v. Carr,* 123 Idaho 127, 844 P.2d 1377 (Ct. App. 1992), discussed Idaho Code § 49-1405, as well as the collective knowledge doctrine:

> There is no conflict between the statutes. Code section 19-603(1) states that a peace officer may make a warrantless arrest for a public offense committed or attempted in his presence. An arrest for a public offense, whether a felony or misdemeanor, may be made upon probable cause. *State v. Montague,* 114 Idaho 319, 756 P.2d 1083 (Ct.App.1988). **Driving without privileges is a public offense and can be charged as either a felony or misdemeanor. I.C. § 18-8001(3)-(5).** Briefly stated, one is guilty of driving without privileges when one drives his vehicle in this state knowing that his driving privileges have been revoked, disqualified, or suspended in this or any other state. I.C. § 18-8001(1). **Merely because driving without privileges is not included in the list of vehicular offenses in I.C. § 49-1405 does not negate an officer's ability to arrest, based on probable cause, for a violation of I.C. § 18-8001(1).**
>
> **Carr also maintains that he was not shown to have committed an offense in Officer Martin's presence, as required in I.C. § 19-603(1), because the officer did not know of the suspension.** Essentially, Carr's assertion is that he had to affirmatively tell Officer Martin of the license suspension, or the officer had to know of the suspension by prescience or forewarning by the California court. After being stopped, Carr did not directly tell Officer Martin that he knew that his license was suspended. However, the magistrate found it sufficient that Officer Martin saw Carr driving, inferred a license suspension from Carr's inability to produce a driver's license, and confirmed that inference sufficiently to establish probable cause with the teletype information relayed from dispatch. We find the magistrate's conclusion to be correct.
>
> Probable cause to arrest deals with probabilities that a crime has been committed, not absolute certainty, and an officer is allowed to use all his senses and information from reliable sources to determine whether a crime has been committed. *See State v. Rubio,* 115 Idaho 873, 771 P.2d 537 (Ct.App.1989). Presence is also determined by the officer's use of all of his senses combined with the officer's knowledge of the violation. *See State v. Bergeron,* 326 N.W.2d 684 (N.D.1982) (presence is determined by all of the officer's senses, including the observation of a car being driven by a person whose license is later learned by the officer to be suspended). **The fact that the officer in this case had not personally and directly learned or been notified of Carr's license suspension**

> **when he arrested Carr is not dispositive. An officer in the field may rely on information supplied by other officers, and the collective knowledge of police officers involved in the investigation-including dispatch personnel-may support a finding of probable cause.** *State v. Cooper,* 119 Idaho 654, 659, 809 P.2d 515 (Ct.App.1991); *State v. Rubio,* 115 Idaho 873, 771 P.2d 537 (Ct.App.1989).

Id. at 130, 844 P.2d at 1380 (emphasis supplied).

Here, the driver return, which included the dates of Amstutz's two prior DUI convictions, was transmitted to Officer White by dispatch before White made initial contact with Amstutz. 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 should 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 this Court that probable cause existed to arrest Amstutz for felony DUI and that she was in fact arrested for felony DUI.

C. The warrantless arrest was lawful under Idaho Code § 19-603(2).

Alternatively, the Court finds that, similar to the analysis in *Carr, supra,* driving under the influence can be charged as either a felony or misdemeanor. White told Amstutz that she was being arrested for "driving under the influence." He did not specify whether it was a felony or 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).

VI. CONCLUSION AND ORDER

NOW, THEREFORE, this Court having found that the defendant's warrantless arrest was lawful, IT IS HEREBY ORDERED THAT Defendant's Motion to Suppress is DENIED.

IT IS SO ORDERED.

DATED this 21 day of October, 2019.

Barbara Buchanan
District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail on Signed: 10/21/2019 01:52 PM, to:

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