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3/30/2020 1:18 PM
Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 47372-2019**
Plaintiff-Appellant,	)	
	)	**Ada County Case No.**
v.	)	**CR01-19-1763**
	)	
SUNNY DAWN RILEY,	)	
	)	
Defendant-Respondent.	)	
	)	

BRIEF OF APPELLANT

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

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's order granting Sunny Dawn Riley's motion to suppress evidence.

Statement Of The Facts And Course Of The Proceedings

On January 12, 2018, at 8:55 p.m., Officer Kingland of the Boise Police Department stopped Riley for driving with an expired registration. (Tr., p.11, L.25 – p.12, L.10; Kingland OBV[1], 00:00-00:55.) Officer Kingland asked for Riley's driver's license. (Kingland OBV, 00:59-01:01.) After rummaging around to find it, Riley told the officer she did not have her license and that it was expired. (Kingland OBV, 01:02-01:36.) Riley additionally admitted she did not have insurance. (Kingland OBV, 02:11-2:16.)

Riley was nervous. Officer Kingland had to instruct her to calm down. (Kingland OBV, 01:22-01:23.) Her responses to him were peppered with nervous laughter. (Kingland OBV, 01:17-01:23; 01:42-01:43; 02:50-02:55; 04:08-04:15.) The officer later testified that, "based on [Riley's] voice trembling and [her] speaking quickly," he suspected "possible drug usage," though he did not think "she was under the influence" "at that moment." (Tr., p.25, Ls.12-21.) Specifically, his "observations … were consistent with somebody that was either hiding illicit substances in the vehicle or trying to hide something else inside the car." (Tr., p.23, Ls.14-20.)

[1] Four officer videos were admitted into evidence at the hearing on Riley's motion to suppress. (Tr., p.10, Ls.10-17.) Based on the record below it is unclear which video corresponds to which exhibit number. (See Tr., p.7; p.10, Ls.13-16.) This brief will therefore refer those videos by "[Officer Name] OBV."

Officer Kingland asked if Riley had "anything on [her] that shows who you are"; Riley provided her dental insurance card. (Kingland OBV, 02:43-02:59.) The officer pulled a notebook out of his pocket and started writing Riley's information down while asking her about prior arrest history, potential probation and parole status, and insurance. (Kingland OBV, 02:59-4:00.) As the officer put the notebook back in his pocket, he asked Riley: "Nothing illegal in the car I need to worry about?"; and "No marijuana, drugs, pipes, anything crazy like that?", which Riley laughed at and denied. (Kingland OBV, 04:03-04:11.)

Officer Kingland explained to Riley that "Obviously, we gotta have insurance on a vehicle." (Kingland OBV, 04:26-04:29.) He asked Riley to "hang out for me," and told her she was "most likely" going to get "a couple citations." (Kingland OBV, 5:06-05:12.) Officer Kingland later testified that he was planning on citing Riley for "no proof of insurance, failure to purchase, or invalid driver's license, and expired registration." (Tr., p.15, Ls.20-24.) Kingland returned to his vehicle to "complete[] records checks and citations." (Tr., p.15, Ls.1-16.) He entered his vehicle at 15 seconds after 9:00 p.m. (Kingland OBV, 05:42.)

While Kingland was working on the citations Officers Miles and Ellison arrived. (Tr., p.15, L.25 – p.16, L.4.) At 9:01:22 p.m. Officer Miles got out of his car and walked over to have a conversation with Officer Kingland, who was still sitting in his patrol car. (Miles OBV, 00:1-00:30.) Officer Kingland later testified that he "stop[ped] what [he] was doing"—that is, "writing the ticket"—to explain his concerns about Riley's possible drug use to Officers Miles and Ellison. (Tr., p.22, Ls.8-23.) As Officer Kingland put it, it was "important to inform my approaching officers for officer safety purposes what's going on and what they're walking into and not walk into there blindly." (Tr., p.22, Ls.12-15.) Officer Kingland also testified that he asked Officers Miles and Ellison "to try to get" Riley's "consent to search" her vehicle. (Tr.,

p.25, L.22 – p.26, L.1.) None of the officers' on-body videos recorded audio during this conversation; however, Officer Miles's video shows[2] that the officers' conversation lasted approximately 20 seconds. (Miles OBV, 00:10-00:30.)

While Kingland wrote citations, Officers Miles and Ellison proceeded to have a conversation with Riley, who eventually stepped out of her car at the officers' request. (Kingland OBV, 07:09-10:55; Miles OBV, 00:30-04:15.) Officer Lane arrived with a drug detection K-9. (Tr., p.15, Ls.5-10.) At 9:09:52 a.m., while Officer Kingland was still writing Riley's citations, the K-9 alerted on Riley's vehicle. (Kingland OBV, 15:19; Lane OBV, 01:41.) Officer Kingland did "not complete writing information on" Riley's citations until after the K-9 alerted, at 9:10:40 p.m. (R., p.79.)

The officers searched Riley's vehicle and found a "baggie of methamphetamine and two … snort straws with suspected methamphetamine residue." (R., p.57.) Riley was subsequently charged with possession of methamphetamine and possession of drug paraphernalia. (R., pp.26-27.)

Riley moved to suppress the evidence that was found in her car. (R., pp.36, 42-53.) She argued that "Officer Kingland unreasonably extended an otherwise-completed traffic stop, to conduct a dog sniff, without reasonable articulable suspicion." (R., p.44.) The state contended that "Officer Kingland diligently worked on his citation during the time Officer Lane's canine alerted on Defendant's vehicle," and as such, "did not abandon the purpose of the stop." (R., p.61 (boldface omitted).) The state additionally argued that Officer Kingland "did not abandon

[2] The district court found that it could not determine the length of the officers' conversation. (R., p.82.) This was clearly erroneous as shown by Miles's on-body video, as explained in section I.B *infra*.

the purpose of the stop by asking" Riley "about her probation status, prior arrests, or whether there was anything illegal in the vehicle." (R., p.62 (boldface omitted).) The state argued that Officer Kingland's questions "did not deviate from the original mission to investigate a traffic violation" and were "ordinary inquiries related to safety concerns." (R., p.65.) Alternatively, the state claimed that the questions "did not measurably extend the length of the traffic stop." (Id.)

The district court held a hearing on Riley's motion. (See generally Tr.) The parties stipulated to admit all four officers' on-body videos into evidence (Tr., p.10, Ls.7-17), and the state called Officers Kingland and Lane to testify (Tr., pp.10-33).

The district court granted Riley's motion to suppress. (R., pp.75-86.) In its order granting dismissal, the court noted that the "evidence consisted largely" of the officers' on-body videos, which it found "speak for themselves." (R., p.75.) The district court also "articulate[d] additional findings of fact" to describe the arguments "and the reasons for" the court's decisions. (Id.) Those factual findings included the court's "agree[ment] with the State's argument that the dog alerted at [09:09:52 p.m.]" (R., p.79.)[3] The court also "agree[d] with the State's assertion in its briefing that" Officer Kingland did "not complete writing information on the citation until [9:10:40 p.m.]" (Id.)

Turning to the merits, the district court agreed with the state that Officer Kingland's questions about probation and prior arrests were proper—it found "those questions were reasonably related to simply confirming [Riley's] identity" and, in any event, were asked "while Ms. Riley was looking for some proof of her identity." (R., p.76.) "Thus," the court concluded,

[3] As the district court explained in footnote 1 of its opinion, the time codes shown in the on-body videos are all "expressed in Coordinated Universal Time (UTC)," as opposed to local time. (R., p.79, n.1.) For clarity this brief will refer to the timestamps converted to local time.

"even if unrelated to the purpose of the stop," these questions "did not extend the duration of the detention." (Id.)

However, the court agreed with Riley that the questions about illegal items in the car were "clearly unrelated to the traffic stop." (R., p.77.) And it rejected the state's argument that these questions "did not extend the duration of the stop because the officer was putting away his notepad" when he asked them. (R., p.78.) The court nevertheless found that because the officer finished writing Riley's citations 48 seconds after the K-9 alerted, "the 8 second delay the officer caused by asking Ms. Riley questions about illegal items in the car did not extend the duration of her detention." (R., p.79.)

Turning to whether the conversation between Officers Kingland and Miles measurably extended the traffic stop, the court first found the officer conversation was "not related to the traffic stop itself." (R., p.81.) Based on that, the court set out what it thought was the relevant inquiry:

> As discussed above, [Officer Kingland] abandons the traffic stop 48 seconds after the dog alerts. Eight of those seconds were used when he asked [Ms.] Riley the questions about illegal items in her car. Did his conversation with the other officers take longer than 40 seconds? If so, then that conversation, along with his questions about illegal items, extended the duration of her seizure.

(R., p.81.)

The district court concluded it could not determine how long the officer conversation lasted:

> [Officer Kingland] was asked several questions about the duration of his conversation with the other officers who arrived. Defense counsel asked if it would surprise him that the conversation took about 2 minutes. The officer said he had no idea; he'd have to review his video. The prosecutor asked him if that conversation lasted longer than two minutes; he said he didn't know; only that he'd characterize it as "brief."

(R., p.82.) Based on this, the court found it could not "determine if the conversations" between Kingland and Riley, and Kingland and the other officers, "'measurably extended' the duration" of Riley's seizure. (Id.) "Because they might have," the court concluded that Riley was unlawfully seized:

> Here the officer asked Ms. Riley questions about items in her car that were unrelated to the purpose of the traffic stop; a *de [minimis]* delay certainly, but also measurable one. He also delayed his traffic investigation to engage in a conversation with other officers about his suspicions that she had used illegal drugs recently and about them getting consent to search her car. That conversation was not related to the purpose of the traffic stop. The State bears the burden of persuading this court that those deviations from the purpose of the stop did not measurably extend the duration of Ms. Riley's seizure; the State has failed to do so here.

(R., p.84.)

"For [those] reasons," the district court granted Riley's motion to suppress evidence. (R., p.85.) The state timely appealed. (R., pp.97-100.)

ISSUE

Did the district court err by granting Riley's motion to suppress based on a clearly erroneous factual finding and an incorrect conclusion that the traffic stop was unlawfully extended?

ARGUMENT

The District Court Erred By Granting Riley's Motion To Suppress Based On A Clearly Erroneous Factual Finding And An Incorrect Conclusion That The Traffic Stop Was Unlawfully Extended

A. Introduction

The district court granted suppression after concluding the state failed to show that Officer Kingland's purported "deviations from the purpose of the stop did not measurably extend the duration of Ms. Riley's seizure." (R., p.84.) This was reversible error for two reasons.

First, the court's order was premised on a clearly erroneous factual finding it could "only guess" how long the conversation between Officers Kingland and Miles lasted. (R., p.82.) To the contrary, that conversation can be seen on the officers' on-body video and no longer than 20 seconds. (Miles OBV, 00:10-00:30.)

Second, the district court erred when it concluded that Officer Kingland unlawfully prolonged the traffic stop by 1) asking Riley if she had any illegal items while putting his citation notebook away; and 2) having the 20-second conversation with Officer Miles. (See R., p.84.) Neither action impermissibly extended or abandoned the traffic stop. To conclude otherwise is an exercise in pause-counting, which is "inimical to the Fourth Amendment's reasonableness requirement and is contrary to United State Supreme Court precedent." State v. Still, No. 45792, 2019 WL 4050018, at *5 (Ct. App. 2019); State v. McGraw, 163 Idaho 736, 741, 418 P.3d 1245, 1250 (2018). Because Officer Kingland did not impermissibly extend or abandon the traffic stop the district court erred in granting suppression.

B. Standard Of Review

The appellate court reviews the grant of a motion to suppress using a bifurcated standard. State v. Linze, 161 Idaho 605, 607, 389 P.3d 150, 152 (2016) (citing State v. Purdum, 147 Idaho 206, 207, 207 P.3d 182, 183 (2009)). The appellate court will accept the trial court's findings of fact unless they are clearly erroneous. Id. (citing Purdum, 147 Idaho at 207, 207 P.3d at 183). However, the appellate court freely reviews the trial court's application of constitutional principles in light of the facts found. Id. (citing Purdum, 147 Idaho at 207, 207 P.3d at 183).

C. The District Court Clearly Erred When It Determined The Length Of An Officer Conversation, Which Is Shown On Video, Could Not Be Determined

The district court's order was premised on the timing of two events involving Officer Kingland: his questions to Riley about illegal items, and his conversation with Officer Miles. The district court correctly found that the Riley questioning took eight seconds. (R., p.78; Kingland OBV, 04:03-04:11.) But the court mistakenly concluded it could "only guess" how long the Officer Miles conversation lasted because it was "not contained on any of the videos":

> The evidence regarding the length of that conversation between the officers is sparse. As stated earlier, it is not contained on any of the videos. The only testimony given about how long that conversation took is the testimony described above: the officer could not estimate the time but said it was "brief."
>
> ...
>
> So how long did it take? The court can only guess.
>
> The State has failed to persuade the court that the officer's conversation with the responding officers did not measurably extend the duration of Mr. Riley's seizure. The officer who conducted the stop was asked several questions about the duration of his conversation with other officers who arrived. Defense counsel asked if it would surprise him that the conversation took about 2 minutes. The officer said he had no idea; he'd have to review his video. The prosecutor asked him if that conversation lasted longer than two minutes; he said he didn't know[,] only that he'd characterize it as "brief."

(R., pp.81-82 (footnote omitted).)

This was a clear error. The conversation in question can be seen on Officer Miles's on-body video and it lasts—at most—20 seconds. (Miles OBV, 00:10-00:30.) This Court simply needs to review the video to see the conversation in question and see the district court clearly erred. (Id.)

The district court mistakenly found otherwise, concluding that the officer conversation was "not captured in any of the videos admitted." (R., p.79.) It is true that the *audio* of the officer conversation is not captured in the exhibit, because neither officer was recording audio at that time. But the *video* of the officer conversation can still be clearly seen. Officer Kingland affirmed that the conversation between himself and Officers Miles and Ellison occurred while he was writing citations, prior to the K-9 officer arrived. (Tr., p.15, L.25 – p.16, L.7.) This can only be a reference to 00:10 through 00:30 of Officer Miles's on-body video, which shows Officers Miles and Ellison arriving and walking over to Kingland's car. Officer Kingland is sitting in his car and Officer Lane (the K-9 officer) has yet to arrive. (Miles OBV, 00:14-16; Lane OBV, 00:45.) Even without audio we know a conversation occurs here because we can see Officer Miles walk over to Kingland's car and lean into the open window to talk to him. (Miles OBV, 00:14-00:28.) Watch the video frame[4] by frame; you can see Officer Kingland's mouth moving as he starts to talk to Officer Miles. (Miles OBV, 00:16-00:17.)

Moreover, by coordinating the UTC timestamps on the upper right-hand corner of the officers' videos, we can see that Officer Kingland's video matches up perfectly with this being

[4] To watch a video frame by frame in VLC Media Player "e" is the default hotkey.

the conversation. Kingland testified that he "stopped writing" the citation when he spoke with Officer Miles. (Tr., p.25, L.22 – p.26, L.1.) This is precisely what Kingland's video shows when you synchronize the UTC timestamps. (Kingland OBV, 06:50-07:10; Miles OBV, 00:10-00:30.) And a comparison of all the videos, synchronized by UTC timestamp, likewise shows no other point where the conversation could have occurred. During the rest of the time that Officer Kingland is writing citations before the K-9 alerts (Kingland OBV, 07:11-16:07), neither Officer Miles nor Officer Ellison had a conversation with Officer Kingland (Miles OBV, 00:31-09:24; Ellison OBV, 00:01-05:32 (showing a conversation between Ellison and a Detective Forbes, but not with Officer Kingland)).

The officers' videos plainly show that the officer conversation at issue could only be one thing: the approximately 20-second conversation that is seen on Officer Miles's on-body video. (Miles OBV, 00:10-00:30.) The district court accordingly clearly erred when it concluded it could not determine how long that conversation lasted. (See R., p.82.)

D. The District Court Erred When It Concluded Officer Kingland Impermissibly Extended Or Abandoned The Traffic Stop Prior To The K-9 Sniff

Pursuant to the Fourth Amendment of the United States Constitution "[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." U.S. Const. amend. IV. A police officer may detain a person for the purpose of investigating possible criminal behavior "if there is an articulable suspicion that the person has committed or is about to commit a crime." State v. Wright, 134 Idaho 73, 76, 996 P.2d 292, 295 (2000) (quoting State v. Rawlings, 121 Idaho 930, 932, 829 P.2d 520, 522 (1992)). Such a detention "is permissible if it is based upon specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal

activity." State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003) (citing Terry v. Ohio, 392 U.S. 1, 21 (1968); United States v. Cortez, 449 U.S. 411, 417 (1981)).

"Because a routine traffic stop is normally limited in scope and of short duration, it is more analogous to an investigative detention than a custodial arrest and therefore is analyzed under the principles set forth in *Terry v. Ohio,* 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968)." Sheldon, 139 Idaho at 983, 88 P.3d at 1223. "Under the Fourth Amendment, an officer may stop a vehicle to investigate possible criminal behavior if there is a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws." State v. Roe, 140 Idaho 176, 180, 90 P.3d 926, 930 (Ct. App. 2004).

"An investigative detention must be temporary and last no longer than necessary to effectuate the purpose of the stop." State v. Ramirez, 145 Idaho 886, 889, 187 P.3d 1261, 1264 (Ct. App. 2008). "Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose." Rodriguez v. United States, 575 U.S. 348, 354, 135 S. Ct. 1609, 1614 (2015) (internal quotes, brackets and citations omitted). "[A]s a matter of course in a valid traffic stop, a police officer may order the occupants of a vehicle to exit or to remain inside." State v. Irwin, 143 Idaho 102, 105, 137 P.3d 1024, 1027 (Ct. App. 2006). "The stop remains a reasonable seizure while the officer diligently pursues the purpose of the stop, to which that reasonable suspicion is related. However, should the officer abandon the purpose of the stop, the officer no longer has that original reasonable suspicion supporting his actions." State v. Linze, 161 Idaho 605, 609, 389 P.3d 150, 154 (2016).

The United States Supreme Court has held that, "[b]eyond determining whether to issue a traffic ticket, an officer's mission includes 'ordinary inquiries incident to [the traffic] stop.'" Rodriguez, 575 U.S. at 355 (quoting Illinois v. Caballes, 543 U.S. 405, 408 (2005)). "Typically

such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." Id. "These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly." Id.

The Idaho Supreme Court analyzed the United States Supreme Court holding in Rodriguez and held that a traffic stop, supported by reasonable suspicion, "remains a reasonable seizure while the officer diligently pursues the purpose of the stop, to which that reasonable suspicion is related." Linze, 161 Idaho at 609, 389 P.3d at 154. But the Linze Court cautioned that,

> should the officer abandon the purpose of the stop, the officer no longer has that original reasonable suspicion supporting his actions. Indeed, when an officer abandons his or her original purpose, the officer has for all intents and purposes initiated a new seizure with a new purpose; one which requires its own reasonableness under the Fourth Amendment. This new seizure cannot piggy-back on the reasonableness of the original seizure. In other words, unless some new reasonable suspicion or probable cause arises to justify the seizure's new purpose, a seized party's Fourth Amendment rights are violated when the original purpose of the stop is abandoned (unless that abandonment falls within some established exception).

Linze, 161 Idaho at 609, 389 P.3d at 154. In cases in which it is alleged that a dog sniff unreasonably prolongs a traffic stop, the critical question is not whether the dog sniff occurs before or after the traffic ticket is issued, but whether the dog sniff adds time to the traffic stop. Linze, 161 Idaho at 609, 389 P.3d at 154 (citing Rodriguez, 135 S. Ct. at 1616).

There is no dispute here that Riley was properly pulled over for her expired vehicle registration. (R., p.75.) Moreover, the K-9 alerted while Officer Kingland was writing Riley's traffic citations. (R., pp.78-79.) Thus, this case is already distinguishable from Rodriguez and Linze. McGraw, 163 Idaho 736, 740-41, 418 P.3d 1245, 1249-50 (Ct. App. 2018) ("Unlike

Rodriguez, the dog sniff in this case did not occur after the traffic stop was complete; it occurred during the traffic stop. Thus, the dog sniff did not 'add time' to the stop in the way the dog sniff did in *Rodriguez*. And, unlike *Linze*, the stop in this case was not suspended while the dog sniff occurred, so it did not add time to the stop in the way the sniff did in *Linze*. Because of the factual differences, Rodriguez and Linze are distinguishable.")

Moreover, the district court's repeated invocation that Officer Kingland "*abandon[ed]* the traffic stop" by finishing writing traffic citations is irrelevant. (R., pp.79, 81 (emphasis added).) By the time Officer Kingland finished Riley's citations the K-9 had already alerted and the officers had probable cause to search her car. State v. Yeoumans, 144 Idaho 871, 873, 172 P.3d 1146, 1148 (Ct. App. 2007) ("When a reliable drug-detection dog indicates that a lawfully stopped automobile contains the odor of controlled substances, the officer has probable cause to believe that there are drugs in the automobile and may search it without a warrant.") As a result, whether the traffic stop was "abandoned" *after* the K-9 alerted is of no moment.

The only consequential question is whether Officer Kingland abandoned the traffic stop *prior* to the K-9 sniff. The district court found two pre-alert points at which Officer Kingland "measurably extended the duration of Ms. Riley's seizure" by engaging in conversations "not related to the purpose of the traffic stop": 1) when he asked Riley "questions about items in her car"[5] and 2) when he talked to Officers Miles and Ellison "about his suspicions that [Riley] had used illegal drugs recently and about [the officers] getting consent to search her car." (R., p.84.)

[5] The district court's analysis was not entirely clear on this point; earlier in its order it concluded that the questions to Riley did not measurably extend the stop. (R., p.79.) However, in its conclusion, it concluded that the questions to Riley was a "deviation[]" that *did* "measurably extend the duration" of the stop. (R., p.84.) In any event, the questions to Riley did not measurably extend the stop as explained herein.

This was an error. Since Rodriguez and Linze, the Idaho Court of Appeals has clarified State v. Renteria, 163 Idaho 545, 415 P.3d 954 (Ct. App. 2018); Still, No. 45792, 2019 WL 4050018; McGraw, 163 Idaho 736, 418 P.3d 1245. And, time and time again, the Court has made clear that "[c]ounting every pause taken while writing a citation as conduct that unlawfully adds time to the stop is inimical to the Fourth Amendment's reasonableness requirement and is contrary to United States Supreme Court precedent." Still, No. 45792, 2019 WL 4050018 at *5; McGraw, 163 Idaho at 741, 418 P.3d at 1250.

For example, in Renteria, the Court of Appeals held that asking Renteria about drugs did not extend the length of the stop because Renteria was still searching for proof of insurance during the questions. 163 Idaho at 549, 415 P.3d at 958. Nor did the officer extend the stop when he made the request for a drug-detection dog; the officer was walking back to his patrol car when he made the request. See id. Finally, the officer did not extend the stop by discussing his suspicions with Renteria because, at that point, dispatch had not responded. See id.

The Court of Appeals arrived at a similar conclusion in McGraw. There, during a traffic stop, a drug dog alerted on the defendants' car, the officers found drugs, and the defendants were charged with drug related crimes. McGraw, 163 Idaho at 737-738, 418 P.3d at 1246-1247. The defendants filed motions to suppress arguing, in part, that the officers impermissibly extended the length of the traffic stop because one officer "directed" a second officer to issue a citation while the first officer deployed his K-9. See id. at 738, 418 P.3d at 1247. The district court granted the defendants' motion, holding that the first officer abandoned the purpose of the stop and unlawfully extended the length of the stop. See id. The state appealed, and the Idaho Court of Appeals reversed. See id. at 737, 418 P.3d at 1246.

The Court of Appeals distinguished Rodriguez and Linze, explaining that the purpose of the stop was not abandoned simply because it took a few seconds to transfer the duties related to the stop:

> The question, instead, is whether the dog sniff occurred during the course of the traffic stop or whether the stop was unlawfully prolonged as a result of the sniff. While it is clear that Officer One was not pursuing the purpose of the traffic stop when he was conducting the dog sniff, it is equally clear that the purpose of the stop was not abandoned because the duties related thereto, which included the issuance of a citation, were transferred from Officer One to Officer Two before the sniff occurred. For this reason, this case is distinguishable from *Rodriguez* and *Linze*, upon which the district court relied.

Id. at 740, 418 P.3d at 1249. The Court, denying suppression, further explained why district courts should not "count every pause" to determine whether a stop was impermissibly extended:

> We see no principled basis for holding, as a matter of Fourth Amendment law, that the dog sniff would pass constitutional muster if only Officer One would have continued writing the citation instead of transferring that task to Officer Two. We also see no principled basis for holding that the Fourth Amendment precludes one officer from pursuing the purpose of a stop while providing cover to another officer on-scene or for holding that the Fourth Amendment requires an officer to "continuously" write a citation without ever pausing for any reason. If anything, United States Supreme Court cases recognizing that inquiries unrelated to the purpose of the stop do not convert the stop into an unlawful detention so long as those inquiries do not measurably extend the duration of the stop support the opposite conclusion.

Id. at 741, 418 P.3d at 1250.

Most recently, in State v. Still, the Court of Appeals reiterated that "*Rodriguez* does not prohibit all conduct that in any way slows the officer from completing the stop as fast as humanly possible." No. 45792, 2019 WL 4050018 at *5. The officer there "engaged in a lawful traffic stop, and while acquiring Still's documentation, radioed to request a drug-dog unit." Id. at *4. "After not receiving a response to his initial radio call," the officer "walked back to his patrol vehicle, sat down, and took ten seconds to make a second radio call to a drug-dog officer." Id.

The Court of Appeals found that the "sole question" before it was "whether a radio call to inquire if a drug-dog unit is available constitutes an abandonment of the traffic mission so as to amount to an unlawful extension of Still's traffic stop." Id.

The Still Court "conclude[d] that a radio call to inquire if a drug dog is available does not constitute a *Rodriguez* abandonment," and that the case before it, like Renteria and McGraw, was "distinguishable from *Rodriguez* and *Linze*." Id. at *5. The Court first pointed out that, by making the ten-second radio call, the officer "did not abandon the purpose of the traffic stop to engage in a separate criminal investigation." Rodriguez and Linze, on the other hand, were cases in which officers "converted the traffic stops into drug investigations by engaging in drug-dog sniffs unsupported by reasonable suspicion." Id.

The Still Court went on to explain why the radio call did not rise to the level of a Rodriguez abandonment:

> … *Rodriguez* does not prohibit all conduct that in any way slows the officer from completing the stop as fast as humanly possible. It prohibits abandoning the stop to investigate other crimes. The *Rodriguez* Court took issue with the investigation (i.e. the drug-dog sniff) itself. Here, Officer Clark was not conducting a drug-dog sniff, taking safety measures aimed at conducting a drug-dog sniff, or engaging in any other alternate investigation. *At most, a radio call to inquire if a drug-dog unit is available is a precursor to an alternate investigation.* Although the call may (or may not) result in an alternate investigation which may or may not pass constitutional muster, the call *itself* does not amount to a Fourth Amendment violation.

Id. (emphasis added).

The Court of Appeals, stressing that reasonableness is at the heart of a Rodriguez abandonment inquiry, affirmed the district court's denial of suppression:

> We cannot conclude that any pause during a traffic stop requires a conclusion under *Rodriguez* and *Linze* that the officers abandoned the purpose of the traffic stop. In fact, such a conclusion is inimical to the Fourth Amendment's reasonableness requirement and is contrary to United States Supreme Court

> precedent. Our conclusion, that no Fourth Amendment violation occurred, comports with *Rodriguez*, *Linze*, and this Court's previous precedent, and gives meaning to the Fourth Amendment's reasonableness requirement. Accordingly, the district court did not err in denying Still's motion to suppress.

Id. (internal citations and footnotes omitted).

Renteria, McGraw, and Still control the outcome here. Under the standards set forth in those cases neither Officer Kingland's questions to Riley, nor the officer conversation, impermissibly extended the traffic stop or constituted a Rodriguez abandonment.

As for Officer Kingland's 8-seconds of questions to Riley about illegal drugs, the Court of Appeals has already held that, while "inquiries about the presence of marijuana, methamphetamine and open containers of alcohol" are "unrelated to the subject matter" of a traffic stop, "such brief, general questioning, in and of itself," does not "extend the scope of … detention beyond that necessary to effectuate the purposes of a legitimate traffic stop." State v. Parkinson, 135 Idaho 357, 363, 17 P.3d 301, 307 (Ct. App. 2000). Moreover, we know from Renteria, Linze, and Rodriguez itself that even scope-exceeding actions are proper if they occur *concurrently* with the traffic stop. Renteria, 163 Idaho at 549, 415 P.3d at 958; Linze, 161 Idaho at 609, 389 P.3d at 154, n.1; Rodriguez, 575 U.S. at 357. That was exactly what happened here: Officer Kingland wrote Riley's identifying information in his notebook, and as he was putting the notebook in his pocket, he asked her about illegal drugs. (R., p.76; Kingland OBV, 04:03-04:11.) So even assuming the questions were beyond the scope of the traffic stop they did not add time to it.

The district court disagreed, finding that there "was no evidence that it was necessary for the officer to put his pad away before he walked back to the car." (R., p.78.) In the court's view Officer Kingland "could have simply turned and walked back to his car without putting his

notebook away," and, as such, the court found "the officer was not simultaneously completing some other task related to the traffic stop." (Id.)

This is the height of pause-counting. The Fourth Amendment does not require that an officer must march back to his car while holding his notebook aloft, like an Olympic torch, to keep a lawful traffic stop from flipping over into an unlawful drug investigation. And simply because the officer *could have* kept a death grip on his notebook through the duration of the traffic stop does not mean he reasonably should have. It is obviously within the scope of a reasonable traffic stop for an officer to put his notebook away and free up his other hand; otherwise, the officer would need to hold his notebook *and* hold the citation book *and* type the information into dispatch. Unless the officer has three hands this would only take more time to finish the citation. These facts exemplify why nitpicking every incidental action during a traffic stop is bound to be "inimical to the Fourth Amendment's reasonableness requirement"—precisely why the Court of Appeals has repeatedly rejected such an unforgiving mode of analysis. Still, 2019 WL 4050018 at *5; McGraw, 163 Idaho at 741, 418 P.3d at 1250. Because putting away a notebook is self-evidently within the scope of a traffic stop, the officer did not impermissibly extend the stop by asking Riley about illegal items while putting his notebook away.

Likewise, the conversation between the officers did not impermissibly extend the stop. For about 20 seconds, Officer Kingland stopped writing traffic citations to speak with Officers Miles and Ellison, who had just arrived, to explain his "concerns with respect to [Riley's] potential drug use." (Tr., p.22, Ls.8-23; Miles OBV, 00:10 – 00:30.) Officer Kingland correctly explained that it was "important to inform my approaching officers for officer safety purposes what's going on and what they're walking into and not walk into there blindly." (Tr., p.22,

Ls.12-15.) This was not an extension of the traffic stop, insofar as "Highway and officer safety are interests different in kind from the Government's endeavor to detect crime in general or drug trafficking in particular." Rodriguez, 575 U.S. at 357. Thus, "an officer may take certain precautions to ensure officer safety because 'the government's officer safety interest stems from the mission of the stop itself.'" McGraw, 163 Idaho at 742, 418 P.3d at 1251 (quoting Rodriguez, 575 U.S. at 356). And while it is true that "safety precautions taken in order to facilitate … detours" such as K-9 sniffs add time to a stop (see Rodriguez, 575 U.S. at 356), it does not "facilitate" an investigative detour to alert newly-arriving officers as to what they are walking into. It is simply a reasonable safety precaution—for both the arriving officers and the individual in the vehicle—to not require officers to blindly rush up to a vehicle, without any heads-up as to who or what they might find there.

As to the second part of the officer conversation, Officer Kingland testified that he asked Officers Miles and Ellison "to try to get" Riley's "consent to search" her vehicle. (Tr., p.25, L.22 – p.26, L.1.) This was likewise proper. The Idaho Court of Appeals has already held that "[a] mere brief request for consent to a search during or at the conclusion of an otherwise valid detention does not impermissibly extend a traffic stop." State v. Ramirez, 145 Idaho 886, 891, 187 P.3d 1261, 1266 (Ct. App. 2008) (citing State v. Silva, 134 Idaho 848, 853, 11 P.3d 44, 49 (Ct. App. 2000) ("The additional second or two that [the officer] took to ask for consent and in which Silva replied in the affirmative was objectively reasonable.")). If a brief request for consent does not impermissibly extend a traffic stop then a brief conversation about seeking consent would not impermissibly extend it either.

Moreover, the Still Court, examining "a situation in which nothing but [a] ten-second call is occurring," "squarely address[ed] the constitutionality of [a] radio call to inquire if a drug-dog

unit is available." 2019 WL 4050018 at *5, n.3. And the Court there explained that the 10-second call was "not conducting a drug-dog sniff, taking safety measures aimed at conducting a drug-dog sniff, or engaging in any other alternate investigation":

> At most, a radio call to inquire if a drug-dog unit is available is a *precursor* to an alternate investigation. Although the call may (or may not) result in an alternate investigation which may or may not pass constitutional muster, the call itself does not amount to a Fourth Amendment violation.

Id. at *5 (emphasis added).

This is precisely what the other half of the officer conversation was. Officer Kingland asked the other officers to obtain Riley's consent to search her car. This was not a K-9 sniff, a safety measure aimed at conducting a K-9 sniff, or itself an alternate investigation. At most, it was a precursor to an alternate investigation, which may or may not have led to a consent-based search of Riley's car. We know from Still that this alone did not impermissibly extend the stop.

To find that the 20-second long officer conversation impermissibly extended the traffic stop requires concluding "that the Fourth Amendment requires an officer to 'continuously' write a citation without ever pausing for any reason," which the Court of Appeals has rejected. McGraw, 163 Idaho at 741, 418 P.3d at 1250. The district court acknowledged this holding from McGraw, but appeared to simply decide not to follow it. (R., pp.109-10.) The district court, lumping in the Court of Appeals with an Idaho federal district court, explained why it concluded it had "to follow the rule in *Rodriguez*" as opposed to the "valid … criticism[]" in McGraw:

> The state argues that it is absurd that this court must engage in the parsing of seconds during a traffic stop to determine if the duration of the entire stop was extended by those seconds. The State cites to a decision by Chief Judge Winmill in which Chief Judge Winmill articulately expresses some of the difficulties for trial courts, and the seeming unreasonableness of the rule announced in *Rodriguez*, if taken to its logical extreme. The State similarly cites this court to a

> decision by the Idaho Court of Appeals in which two of the judges appeared to be critical of that portion of the holding in *Rodriguez* that rejected the Eighth Circuit's *de [minimis]* rule, or to be at least critical of the idea that the trial courts who have to decide such motions must "count every pause taken while writing a citation." *See State v. McGraw*, 163 Idaho 736, 741, 418 P.3d 1245, 1250 (Ct. App. 2018). However valid those criticisms may be, this court is bound to follow the rule announced in *Rodriguez.*

(R., p.84.)

This was fundamentally mistaken. The Idaho Court of Appeals is not a sister-jurisdiction district court churning out "criticisms" to be taken under advisement. "[A]ll tribunals inferior to the Court of Appeals are obligated to abide by decisions issued by the Court of Appeals." State v. Mann, 162 Idaho 36, 42, 394 P.3d 79, 85 (2017) (citing State v. Guzman, 122 Idaho 981, 986, 842 P.2d 660, 665 (1992)). Idaho district courts are therefore bound by United States Supreme Court *and* Idaho Court of Appeals decisions, and may not jettison the latter in light of their own parsing of the former. Of course, the Idaho Supreme Court and United States Supreme Court have the final say on the law that will bind lower courts. State v. Rawlings, 159 Idaho 498, 505, 363 P.3d 339, 346 (2015) ("[W]e simply expect lower courts, including the Court of Appeals, to follow decisions of this Court when there is a conflict between our decisions on an issue of law and those of the Court of Appeals."). But Idaho district courts do not simply get to opt out of Court of Appeals' decisions based on their own interpretation of federal law. To allow otherwise would upend stare decisis, and would give district courts carte blanche to ignore binding state-court precedent in light of their own takes on federal law.

The district court below, like every Idaho district court, was bound by the Court of Appeals' decisions in Renteria and McGraw. Those cases, and now Still, make it clear: counting every pause of a traffic stop is "inimical to the Fourth Amendment's reasonableness requirement and is contrary to United State Supreme Court precedent." Still, 2019 WL 4050018, at *5;

McGraw, 163 Idaho at 741, 418 P.3d at 1250. Here, neither the questions to Riley nor the officer nor the officer conversation impermissibly extended the traffic stop.

CONCLUSION

The state respectfully requests this Court reverse the district court's order granting Riley's suppression motion and remand this case for further proceedings.

DATED this 30th day of March, 2020.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of March, 2020, served a true and correct copy of the foregoing BRIEF OF APPELLANT to the attorney listed below by means of iCourt File and Serve:

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