STATE OF IDAHO)
County of KOOTENAI)ss

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AT_____ O'clock _____M
CLERK, DISTRICT COURT

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Deputy

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

STATE OF IDAHO,

Plaintiff,

vs.

RAYMOND DONALD SPEZZI,

Defendant.

Case No. **CRF 2009 9399**

MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

I. FACTUAL BACKGROUND.

On June 10, 2009, defendant filed his Motion to Suppress. Both parties submitted briefs. An evidentiary hearing was held August 5, 2009. At that hearing, Ellis, Cantrell and Spezzi testified. At the conclusion of the evidentiary hearing, both parties agreed to submit the issue to the Court on the filed brief.

On May 5, 2009, defendant Raymond Donald Spezzi (Spezzi) was stopped by Officers Ellis and Cantrell, as a result of an anonymous caller's concern about an individual opening the trunk of a dark-colored BMW, removing tin foil, and smoking something from the tin foil. The green BMW Spezzi was driving, pulled out of a parking lot as the officers arrived. Spezzi's car matched the description given by the anonymous caller. After observing the BMW had Texas plates which had no registration stickers, and after observing Spezzi failed to signal for a turn, Ellis initiated a traffic stop. Cantrell contacted the passengers of the BMW while Ellis contacted Spezzi. Spezzi told Ellis the car was not

his, Spezzi provided his driver's license to Ellis, and in response to Ellis' questions, Spezzi stated he had never had been arrested or cited for drug violations. Ellis ran Spezzi's information and learned he had been cited or arrested for drug violation in the past year. Ellis performed field sobriety tests on Spezzi and questioned him as to whether there was any contraband in the car, in part because of the inordinately large number of air fresheners (thirty) hanging or lying in the interior. Spezzi denied having any contraband in the car. Ellis testified that his training has told him that air fresheners are often used to mask the smell of narcotics from an officer or from a drug dog.

Ellis testified that he had his patrol car's overhead lights on, but that at no time were Cantrell's overhead lights on, nor did the K-9 officer's vehicle which arrived later have its overhead lights on. According to the police report, Spezzi was pulled over pursuant to a traffic stop at approximately 7:30 p.m. On May 5, 2009, it was still daylight at that time.

Ellis testified that when he contacted Spezzi, he was very lethargic, but shaking. Ellis testified Spezzi's pupils were very constricted. Spezzi told Ellis he had no registration or proof of insurance in the car. When asked about weapons in the car, Spezzi denied having any weapons other than one located in the door, yet Ellis could see a knife on the center console. Ellis testified that because of the suspicious activity and lying, he decided to have Spezzi get out of the car. Ellis then asked Spezzi for permission to pat search Spezzi, and Spezzi gave that permission. Spezzi had no weapons on him. Ellis requested Spezzi's consent to search the vehicle and "Spezzi asked why." Police Report, p. 2. Ellis told Spezzi of the field sobriety test indicators, his lies about having never been cited or arrested for drug violations, and Ellis' belief Spezzi was operating a vehicle under the influence of a narcotic. Ellis again asked for consent to search and "Spezzi stalled to give me a firm answer." *Id.* Ellis testified that the first time he asked Spezzi for consent to

search the vehicle, Spezzi responded “Why does this always happen to me when I come into town?” Not getting an answer to his question, Ellis again asked Spezzi for consent to search the vehicle, to which Spezzi responded: “Come on.” Ellis then testified he told Spezzi why he wanted to search the vehicle, and told him to turn around and place his hands behind his back. Spezzi began to turn around, and then gave consent to search the vehicle. Ellis testified he had not yet touched Spezzi when Spezzi gave his consent. Even though Spezzi had consented to the search of the vehicle, Ellis placed Spezzi in handcuffs for officer safety because he had lied to him and because Ellis “wasn’t sure what was going on.” At this point, Ellis could not recall if he had given Spezzi back his driver’s license, but thinks he had not as he was convinced Spezzi was under the influence. Ellis testified that up to this point, he had been there about five to ten minutes. Ellis requested Cantrell call a K-9 unit, and that officer arrived less than five minutes later. Ellis testified he looked inside Spezzi’s car as Spezzi’s driver’s door was left opened after he exited his vehicle. However, Ellis testified he did not search Spezzi’s vehicle until after the K-9 officer arrived and the dog alerted. Ellis testified that after the dog went around the car and alerted, Ellis searched the car and found a digital scale, a pill bottle in a tennis shoe with about seven blue pills, a wallet, and $2,575 in cash. Ellis testified that when the K-9 officer began his walk around of Spezzi’s vehicle, Spezzi began to cry.

Cantrell testified he arrived shortly after Ellis had stopped Spezzi. While Ellis was talking with Spezzi, Cantrell spoke with the two passengers. Cantrell was asked by Ellis to watch Spezzi while Ellis searched Spezzi’s vehicle, after Spezzi gave consent. Cantrell did not hear the words exchanged between Spezzi and Ellis regarding consent, because Cantrell was engaged with the other two passengers. Cantrell recalled Ellis telling Cantrell that Ellis had gained Spezzi’s consent, and Ellis asked Cantrell to wait with Spezzi while he

searched Spezzi's car. Cantrell testified that while Ellis searched Spezzi's car, Spezzi was crying and said "I'm going to jail", then repeatedly asked Cantrell if he was going to jail.

Spezzi's recollection of the events are quite different from the officers. Spezzi testified he was only asked once for permission to search the vehicle, and he said "No". Spezzi testified the officer then told him to turn around, and as Spezzi began to turn around Spezzi dropped his lit cigarette on the ground, then the officer immediately grabbed Spezzi's hands, said "What's that?" (referring to the cigarette) and handcuffed him. Spezzi testified that after he was handcuffed, as Spezzi and the officer walked to the front of the car, Spezzi told the officer he could search the vehicle, but did so because he was under the impression if he cooperated he would not be arrested. Spezzi said it was about twenty seconds after he was handcuffed that he gave consent to search the vehicle. Spezzi testified the officer searched his vehicle before the drug dog arrived. Spezzi admitted smoking Oxycontin affects him physically, that it makes you tired if you do enough of it. Spezzi testified that the entire event took "a few hours", that it went from daytime to nighttime at the scene.

Spezzi's testimony is not credible for several reasons. First, there is a plethora of evidence that Spezzi was under the influence of Oxycontin: Spezzi's constricted pupils, his results on HGN (horizontal gaze nystagumus as testified to by Ellis), his extreme nervousness, his tearfulness, the extreme number of air fresheners in the car, and what the reporting party saw (an individual opening the trunk of a dark-colored BMW, removing tin foil, and smoking something from the tin foil), Spezzi admitted smoking a pill about an hour before the stop (police report, pp. 1-2), and the presence of drugs in Spezzi's car. A person under the influence of Oxycontin is not likely to be as accurate in perception, or the ability to remember and recollect, as compared to the consistent testimony of two on duty

police officers. The witnesses were sequestered at the hearing. Second, Spezzi has every reason to fabricate his testimony regarding when the handcuffs were applied relative to his consent to search his vehicle. Third, Spezzi lied to the officer about a lack of prior drug arrests, calling into question his credibility. Fourth, Spezzi's testimony that what happed at the scene to a few hours, is simply preposterous. According to the police report, the report from dispatch to which Ellis and Cantrell responded came at 19:24 hours, and the inventory of the car was completed an hour later at 20:30 hours. Even at 20:30 (8:30 p.m.), it is still light out that time of year. There is simply no way this took a "few hours" or took so long that it "went from light to dark".

II. STANDARD OF REVIEW.

In an appeal from an order denying a motion to suppress, the Court of Appeals will not disturb findings of fact supported by substantial evidence, but will freely review whether the trial court's determination as to whether constitutional requirements were satisfied in light of the facts. *State v. Whiteley,* 124 Idaho 261, 264, 858 P.2d 800, 803 (Ct.App. 1993). When evaluating the trial court's determination of voluntariness of consent given, reviewing courts will not disturb such a decision on appeal if the trial court's finding is based on reasonable inferences to be drawn from the record. *State v. Post,* 98 Idaho 834, 837, 573 P.2d 153, 156 (1978). Whether consent to a search was voluntary is a question of fact and reviewing courts accept the factual findings of a trial court unless they are clearly erroneous. *State v. McCall,* 135 Idaho 885, 886, 26 P.3d 1222, 1223 (2001). Findings are not deemed clearly erroneous when supported by substantial evidence in the record. *State v. Benson,* 133 Idaho 152, 155, 983 P.2d 225, 228 (Ct.App. 1999).

III. ANALYSIS.

Spezzi argues his consent to search the vehicle was procured by coercive police

conduct and moves to suppress any and all evidence gathered and statements made because the officer's conduct in procuring Spezzi's consent to search was unlawful and without legal justification, and therefore in violation of the U.S. Constitution and Idaho and U.S. laws. Motion to Suppress, p. 1. Spezzi also moves to suppress his statement made pursuant to the *Miranda* warnings he received as "fruits" of the poisonous tree. Memorandum in Support of Motion to Suppress, pp. 4-5.

A. Voluntariness of the Search.

Spezzi argues the search of the vehicle was unlawful because his consent was not given voluntarily. Memorandum in Support of Motion to Suppress, pp. 3- 4. Spezzi states he repeatedly refused to give affirmative consent for the search and was placed in handcuffs when he refused to give consent. *Id.,* p. 4. Spezzi argues he was not handcuffed because he threatened the officers or because he might have destroyed evidence, but because of his "attitude." *Id.,* p. 4.

It is well settled that, absent specifically established exceptions, a search conducted without a warrant based on probable cause is *per se* unreasonable. *Katz v. United States,* 389 U.S. 347, 357 (1967). One of the recognized, established exceptions to the warrant and probable cause requirements is a search conducted pursuant to consent. *Davis v. United States,* 328 U.S. 582, 593-594 (1946). *Schneckloth v. Bustamante* stands for the proposition that voluntariness of consent must be proven by the State by a preponderance of evidence and is a determination that does not turn "on the presence or absence of a single controlling criterion." *Schneckloth,* 412 U.S. 218, 226, 93 S.Ct. 2041, 2047 (1973). A voluntary decision is one that is the product of "essentially free and unconstrained choice by its maker" *Id.* at 225, 93 S.Ct. at 2046. An involuntary decision, on the other hand, is the result of duress or coercion, direct or implied. *Id.* at 218, 93 S.Ct. at 2041. To determine

whether an individual's will has been "overborne and his capacity for self-determination has been critically impaired," a court must assess the totality of the circumstances. *Id.* at 225-26, 93 S.Ct. 2046-47

The voluntariness of the consent given is a question of fact to be determined by all surrounding circumstances. *State v. Hansen,* 138 Idaho 791, 796, 69 P.3d 1052, 1057 (2003). In a suppression hearing where voluntariness is an issue, the power to assess the credibility of witnesses, resolve conflicts in testimony, weigh the evidence, and draw factual inferences is vested in the trial court. *State v. Abeyta,* 131 Idaho 704, 708, 963 P.2d 387, 391 (Ct. App. 1998). In determining the voluntariness of a consensual search, the Ninth Circuit Court of Appeals considers five factors: (1) whether the Defendant was is custody, (2) whether the arresting officers had their guns drawn, (3) whether *Miranda* rights were given, (4) whether the defendant was notified that s/he had a right not to consent, and (5) whether the defendant had been told that a search warrant could be obtained. *U.S. v. Jones,* 286 F.3d 1146, 1152 (9th Cir. 2002). *State v. Garcia,* 143 Idaho 774, 748, 152 P.3d 645, 649 (Ct. App. 2006), identifies other factors to consider: whether there were numerous officers involved in the confrontation, *Castellon v. U.S.,* 864 A.2d 141, 155 (D.C. 2004), the location and conditions of the consent, including whether it was at night, *U.S. v. Mapp,* 476 F.2d 67, 77-78 (2nd Cir. 1973), whether the police retained the individual's identification, *U.S. v. Chemaly,* 741 F. 2d 1346, 1353 (11th Cir. 1984), and whether the individual was free to leave, *Ohio v. Robinette,* 519 U.S. 33, 39-40 (1996). An additional factor for the Court to consider in this regard is whether the individual knew of his or her right to refuse consent. *State v. Stewart,* 145 Idaho 641, 648, 181 P.3d 1249, 1256 (Ct.App. 2008).

In *State v. Jaborra,* 143 Idaho 94, 137 P.3d 481 (Ct.App. 2006), the Idaho Court of Appeals agreed with District Court and found that a defendant's consent was the result of

coercive circumstances and not voluntary where:

> A citizen is surrounded by three policemen who have come to the scene in three different police cars. It is late at night (or more precisely in the wee hours of the morning). One or two of the cars have their overhead lights flashing. The officers are in uniform an armed. The citizen is grabbed by the arm, knocked off balance and told to put his hands on his head. His driver's license, which he gave to one of the deputies, has never been returned. He is not free to leave… He has not been afforded a *Miranda* warning.

Jaborra, 143 Idaho at 98, 137 P.3d at 485. Similarly, in *State v. Stewart,* the Idaho Court of Appeals upheld the District Court's determination that the State had not met its burden of proving voluntary consent. 145 Idaho 641, 648, 181 P.3d 1249, 1257 (Ct.App. 2008). In *Stewart,* the defendant gave consent to a search of his vehicle, but first asked if he could remove some garbage from the interior; he was allowed to do so and his probation officer, at the scene of the traffic stop along with four other law enforcement officers, offered to throw the garbage into a trash bag in her car. 145 Idaho 641, 643, 181 P.3d 1249, 1251. The search of Stewart's car turned up a methamphetamine pipe under the driver's seat and his probation officer found methamphetamine in the garbage. *Id.* Stewart was arrested and subsequently admitted the contraband belonged to him. *Id.* The District Court granted Stewart's motion to suppress because the presence of five police officers in four cars for a mere traffic stop, Stewart's being informed that he was a target of a narcotics investigation, and questioning of Stewart unrelated to the traffic stop was found to be "intended to disconcert Stewart as a prelude to seeking his consent to search the vehicle." 145 Idaho 641, 644, 181 P.3d 1249, 1252. The District Court had also noted that Stewart was not free to go and that his license and registration had been taken by one of the officers. 145 Idaho 641, 648, 181 P.3d 1249, 1256. In upholding the District Court, the Idaho Court of Appeals stated:

> Here, the district court's findings note the presence of many of the factors

> identified in *Jaborra* as bearing upon the determination of voluntariness, including the excessive number of officers who converged at the scene, the fact that Stewart's license and registration had been taken and he was not free to leave, and the facts that Stewart was not informed of his right to refuse consent. The court also found that the police questioned Stewart about matters unrelated to the traffic stop, including the no contact order [forbidding contact with his ex-wife], in a manner that was intended to be and was unsettling and disconcerting, as a prelude to seeking his consent to search the vehicle. Although the evidence of police coercion here is equivocal and the coercive conduct subtle, they are sufficient to support the trial court's findings.

Stewart, 145 Idaho 641, 649, 181 P.3d 1249, 1257.

According to the police report, Spezzi was pulled over pursuant to a traffic stop at approximately 7:30 p.m. On May 5, 2009, it is still daylight at that time. The police report readily identifies two separate officers on the scene each in their own patrol cars. Once Spezzi gave what Ellis describes as "consent" to search the vehicle, a third officer and his K-9 were called to the scene to assist in the search. There has been no argument by Spezzi questioning the propriety of the traffic stop itself, and Spezzi has not raised any issue relating to his having been questioned about matters unrelated to the stop. Spezzi also states he was never told he had the right to refuse to consent to a search. Memorandum in Support of Motion to Suppress, p. 4. Additionally, neither Spezzi nor the officer's report address whether Ellis retained Spezzi's identification, and although not addressed by Ellis' report, it is clear that, as argued by Spezzi, he "was certainly not free to leave." *Id.*

It must be noted that the presence of multiple officers alone does not establish coercion and there is no requirement that the police inform individuals of their right to refuse consent or that they are free to leave. However, "these factors are nevertheless relevant when reviewing the totality of the circumstances." *Stewart,* 145 Idaho 641, 648, 181 P.3d 1249, 1256 (citations omitted). Additionally, "bowing to events, even if one is not

happy about them, is not equivalent to being coerced." *State v. Garcia,* 143 Idaho 774, 779, 152 P.3d 645, 650 (Ct.App. 2007), citing *United States v. Miller,* 589 F.2d 1117, 1132 n.13 (1st Cir. 1978). In *Garcia,* the Idaho Court of Appeals was faced with Garcia's argument that his consent to a search of his vehicle was not consensual because the officers told the group (in which Garcia was in) that if they handed over the marijuana the officers believed they had, they would be cited and released, but if not, they would be arrested. *Id.* The Court stated:

> Initially, it should be noted that bowing to events, even if one is not happy about them, is not equivalent to being coerced. *United States v. Miller, 589 F.2d 117, 1132, n.13 (1st Cir. 1978).* The voluntariness of consent is not impaired simply because one is faced with two unpleasant choices-which here, Garcia argues, was choosing between consenting to the search and allowing the marijuana in his truck to be discovered and not consenting and risking arrest of himself and his companions.

Id. In *Garcia* the Idaho Court of Appeals went on to discuss *State v. Abeyta*, 131 Idaho 704, 963 P.2d 387 (Ct.App. 1998). *Id.* The Court of Appeals in *Garcia* noted that in *Abeyta,* "the appellant's choice boiled down to consenting to a search or having his premises searched pursuant to a warrant—two unappealing options for one who knew incriminating evidence would be found." *Id.*

The State argues Spezzi knew of his option not to consent to the search as evidenced by his taking his time to answer and that the number of occupants in the car outnumbered the officers on the scene. Brief in Opposition to Defendant's Motion to Suppress, p. 4. Additionally, the State argues any contraband would have been inevitably discovered subject to an administrative or inventory search performed subsequent to Spezzi's arrest (presumably for driving under the influence.) *Id.,* p. 5, citing *State v. Francher,* 145 Idaho 832, 839, 186 P.3d 688, 696 (Ct.App. 2008).

In the instant matter, Spezzi was arguably taken into custody even before he

consented to a search of the vehicle. Ellis states in his report that Spezzi was told to turn around and place his hands behind his back after he failed to give consent. As he turned, Spezzi gave the requested consent, but was nonetheless detained in handcuffs because of his "attitude." Police Report, p. 2. Spezzi makes no argument that the officers' guns were drawn or that there were more than two officers present prior to his consent having been given (a K-9 unit arrived to assist in the search after he gave consent). Spezzi was not notified that he had a right not to consent, nor was he told that a search warrant could be obtained. He was pulled over on a May evening, when it was daylight, at the intersection of Appleway and Fruitland in Coeur d'Alene, Idaho, a busy intersection. There is no indication Ellis returned Spezzi's identification, no indication that he was ever told he could leave, and Spezzi has not set forth whether he knew of his right to refuse consent.

On balance, many of the *Jaborra* factors weigh in favor of Spezzi's argument or are neutral. At the time he gave consent, Spezzi was being placed in handcuffs, had not been advised of his right to refuse consent, had not been given *Miranda* warnings, and was not free to leave. Neutral factors appear to be: the time of the stop (daylight), whether Spezzi knew of the right to refuse consent, the fact that the number of officers confronting Spezzi was one less than the number of occupants in the car (until the K-9 unit arrived), and (because it was not addressed by the State or Spezzi) the officers' retaining (or not) his driver's license. Finally, factors weighing against Spezzi are: no guns were drawn on him, the location of the stop was not isolated…it was a busy intersection, and he was not told a search warrant could be obtained if he did not consent. While they are factors for the Court to consider, there is no requirement that officers inform a defendant of his right to refuse consent or that he is free to leave. *Stewart,* 145 Idaho 641, 648, 181 P.3d 1249, 1256. Therefore, Spezzi's being in custody and not having been given proper warnings should

likely be given lesser weight than the fact the officers did not have their guns drawn, did not threaten Spezzi with a search warrant and effected the traffic stop in a well-populated area during daylight hours or shortly before dusk. The factors weighing in favor of Spezzi's argument, although outnumbering those weighing against it, are nevertheless given lesser weight by this Court. It is likely that Spezzi's consent was voluntary, albeit given begrudgingly, in light of Idaho (*Garcia*) and federal case law (*Miller*). However, the clearest way to analyze this search and this motion to suppress is the uncontroverted fact that Ellis had probable cause to arrest Spezzi for a misdemeanor (driving under the influence) committed in his presence.

Additionally, as argued by the State, following Spezzi's having failed the field sobriety tests, Ellis had probable cause to arrest Spezzi for driving under the influence and an inventory search of the vehicle would have turned up the contraband regardless of Spezzis consent to a search or lack thereof. "An arrest is lawful when based upon probable cause." *State v. Veneroso,* 138 Idaho 925, 928, 71 P.3d 1072, 1075 (Ct.App. 2003); *State v. Kerley,* 134 Idaho 870, 874, 11 P.3d 489, 493 (Ct.App. 2000). Facts underlying a probable cause determination are viewed from an objective standpoint; that is, whether the information an officer has would lead an ordinarily prudent person to believe a person is guilty. *State v. Julian,* 129 Idaho 133, 127, 922 P.2d 1059, 1063 (1996). Again, neither party contests the validity of the stop (violations of I.C. §§ 49- 428(1) (not displaying registration tags); 49-808 (inadequate signaling)). Ellis had reasonable suspicion to request the field sobriety tests, which Spezzi failed. Field sobriety tests may be conducted without consent when justified by an officer's reasonable suspicion of driving under the influence. *State v. Ferreira,* 133 Idaho 474, 480, 988 P.2d 700, 706 (Ct.App. 1999); *State v. Buell,* 145 Idaho 54, 56-57, 175 P.3d 126, 218-19 (Ct.App. 2008). Here, Ellis noted

Spezzi's pupils being constricted and his eyes being glazed over, his lethargic demeanor, visible shaking, his having forgotten that a knife was visible in the center console of the vehicle, and his having lied about having no previous drug violation arrests or citations. In turn, Spezzi's performance in the field sobriety tests, lies, and condition of his eyes likely provided Ellis with probable cause to arrest him for driving under the influence. Thus, to the extent there was any threat of arrest, such threat of arrest is not improper where an officer's intention is to do that which is within the officer's authority based upon the circumstances. *State v. Garcia,* 143 Idaho 774, 779, 80, 152 P.3d 645, 650-51 (Ct.App. 2006) quoting *State v. Medenbach,* 48 Or.App. 133, 616 P.2d 543, 545 (1980). Failure of some or all field sobriety tests providing probable cause for arrest has been consistently upheld by Idaho Courts. See e.g., *State v. Leslie,* 146 Idaho 390, 195 P.3d 749 (Ct.App. 2008); *Martinez v. State,* 143 Idaho 789, 152 P.3d 1237 (Ct.App. 2007); *State v. DeFranco,* 143 Idaho 335, 144 P.3d 40 (Ct.App. 2006); *State v. Thornley,* 141 Idaho 898, 120 P.3d 286 (Ct.App. 2005); *State v. Shearer,* 136 Idaho 217, 30 P.3d 995 (Ct.App. 2001). Following an arrest, the United States Supreme Court has stated:

> When vehicles are impounded, local police departments generally follow a routine practice of securing and inventorying the automobiles' contents. The decisions of this Court point unmistakably to the conclusion reached by both federal and state courts that inventories pursuant to standard police procedures are reasonable.

South Dakota v. Opperman, 428 U.S. 364, 369-72, 96 S.CT. 3092, 3097-99 (1976); see also *State v. Smith,* 120 Idaho 77, 80, 813 P.2d 888, 891 (1991) (holding custodial inventory searched permissible under the Fourth Amendment when performed according to standardized police procedures and where a valid arrest is a condition precedent to the inventory search.) Even absent Spezzi's consent, Ellis had reasonable suspicion to demand field sobriety tests, followed by probable cause to arrest, and the authority to have

the vehicle inventoried, which would have led to the discovery of the contraband in the trunk.

It should be noted that the search incident to arrest exception extends only to the immediate area in which the arrestee is found, and likely doesn't extend to items in the trunk. See *New York v. Belton,* 453 U.S. 454, 460, 101 S.Ct. 2860, 2864 (1981). And the automobile exception requires probable cause that a stopped automobile contains contraband. *Carroll v. United States,* 267 U.S. 132, 45 S.Ct 280 (1925). Here, the probable cause was that Spezzi was under the influence, not necessarily that the vehicle contained contraband.

Finally, Ellis could have arrested Spezzi pursuant to I.C. § 19-603, having observed Spezzi commit a public offense. Ellis' observation of Spezzi operating a vehicle without the proper registration stickers in place and failure to signal a turn, Ellis would have been permitted, without a warrant, to arrest Spezzi "for a public offense committed or attempted in his presence." I.C. § 19-603(1). Again, upon such an arrest, Ellis would have inevitably discovered the contraband in Spezzi's trunk upon completing an inventory search subsequent to such arrest.

B. Miranda Warnings.

Spezzi argues that his statements to Ellis made after *Miranda* warnings were given amount to "simply 'fruits' of the earlier coerced confession elicited from Mr. Spezzi." Memorandum in Support of Motion to Suppress, p. 5.

> There was no intervening act of free will present here to dissipate the taint from the illegally obtained consent. Mr. Spezzi was questioned, after having been read his *Miranda* rights, by the same law enforcement officer who coerced his consent for a search of the vehicle in question. Furthermore, the interrogating officer confronted him with evidence obtained as a result of the unlawful search.

Id. In *Miranda,* the U.S. Supreme Court held that police must inform individuals of their

right to remain silent and their right to counsel before undertaking custodial interrogation in order to protect the Fifth-Amendment privilege against self-incrimination. *Miranda v. Arizona,* 384 U.S. 436, 467, 86 S.Ct. 1602, 1624 (1966). The *Miranda* rule applies where an individual is "in custody", or where their "freedom of action is curtailed to a degree associated with formal arrest." *Berkemer v. McCarthy,* 468 U.S. 420, 440, 104 S.Ct. 3138, 3150 (1984) (quoting *California v. Behler,* 463 U.S. 1121, 1125, 103 S.Ct 3517, 3520 (1983)). Interrogation includes not only express questioning, but also its functional equivalent; interrogation under *Miranda* refers to "any words or actions on the part of the police… that the police should know are reasonably likely to elicit an incriminating response from the suspect." *State v. Person,* 140 Idaho 934, 939-40, 104 P.3d 976, 981- 82 (Ct.App. 2004) (quoting *Rhode Island v. Innis,* 446 U.S. 291, 300-02, 100 S.Ct. 1682, 1689-90 (1980)).

In *Berkemer,* the Court held that roadside questioning is generally a routine traffic stop that does not amount to a "custodial interrogation." *Id.* at 437, 104 S.Ct. at 3149. The core inquiry is "whether a traffic stop exerts upon a detained person pressures that sufficiently impair his free exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights." *Id.* The totality of the circumstances must be evaluated to determine whether such pressures were present, factors to consider include: the location of the interrogation, the conduct of the officer(s), the nature and manner of the questioning, the time of the interrogation, and other persons present. *State v. Medrano,* 123 Idaho 114, 117-8, 844 P.2d 1364, 1367-68 (Ct.App. 1992).

This Court must determine whether the officers' alleged coercion of Spezzi's consent to search tainted any subsequent interaction between Spezzi and the officers such that statements made after *Miranda* warnings were properly administered should also be

suppressed. The State readily admits, “the record is clear that the defendant was in custody and [as] such, *Miranda* was applicable. Brief in Opposition to Defendant’s Motion to Suppress, p. 6. The State argues police questioning before *Miranda* does not necessarily preclude the admissibility of statements made to police post-*Miranda.* Brief in Opposition to Defendant’s Motion to Suppress, p. 5. Here, Spezzi does not allege questioning took place prior to Ellis administering *Miranda* warnings, but rather that Spezzi’s statements were made as a result of being confronted with the fruits of an illegal search and are therefore inadmissible. Memorandum in Support of Motion to Suppress, pp. 5-6, citing *State v. Luna,* 126 Idaho 235, 239, 880 P.2d 265, 269 (Ct.App. 1994). However, Spezzi’s reliance on *Luna* is misplaced. *Luna* involved an officer stopping a car with four occupants on the suspicion the driver was intoxicated. After discovering the driver was neither intoxicated nor had any outstanding warrants, the officer did not allow the driver to leave. 126 Idaho 235, 236, 880 P.2d 265, 266. Rather he continued to converse with the driver and asked for consent to search the car despite having no articulable basis for a search. *Id.* Luna, a passenger, was held by the Court of Appeals to have standing to seek suppression and the Court reasoned the evidence was gained as a result of an investigative stop which became unreasonable when the officer continued to detain the driver and passengers after the suspicion which justified the stop was dispelled. 126 Idaho 235, 238-39, 880 P.2d 265, 268-69. Statements made as a result of being confronted by police with the fruits of an illegal search are inadmissible. 126 Idaho 235, 239, 880 P.2d 265, 269. But here, Spezzi made statements following his being given *Miranda* warnings and after he gave consent to the search of his vehicle. *See supra.* Unlike the facts in *Luna,* Spezzi did nothing to dispel Ellis’ suspicion which justified the stop initially. Spezzi has pointed this Court to nothing that would amount to the stop or detention being

improper, or that the request for consent to search was made absent any articulable suspicion for such a request. Spezzi made statements after being advised of his rights and his statements were likely properly obtained.

Additionally, as argued by the State, the fruit of the poisonous tree doctrine does not apply to the suppression of Spezzi's statement as argued by him. A *Miranda* violation is a factor to be considered in determining whether a statement was involuntary and therefore a due process violation, but there is no such thing as a "Fruit of the poisonous *Miranda* violation." *U.S. v. Patane,* 542 U.S. 630, 639, 124 S.Ct. 2620, 2628 (2004). There has been nothing provided to this Court indicating Spezzi's statement was involuntary; he had been given *Miranda* warnings and volunteered statements about the contraband itself, his use, and his dealer in order to secure a "deal".

IV. ORDER.

IT IS HEREBY ORDERED defendant's Motion to Suppress is DENIED.

DATED this 7th day of August, 2009.

_____
JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of August, 2009 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney - Martin Neils
Prosecuting Attorney -

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY:_____
Deputy