

FILED _____

AT _____ O'clock _____ M
CLERK OF THE DISTRICT COURT

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.)
)
)
 CLINTON JENSEN,)
)
) *Defendant.*)
)
)
 _____)

Case No. **CRF 2006 5254**

**MEMORANDUM OPINION AND
ORDER ON MOTION TO SUPPRESS**

Defendant Barton's Motion to Suppress DENIED.
Betsy Black, Deputy Prosecuting Attorney, lawyer for the State.
Fred Loats, Coeur d'Alene, lawyer for Defendant Jensen.

I. FACTUAL BACKGROUND.

Defendant Clinton Jensen (Jensen) was stopped on October 3, 2008, when Coeur d'Alene Police Officer Wessel observed him driving a Ford Ranger pickup on which the rear license plate was partially obstructed by a trailer hitch ball. Jensen's Ford Ranger has a rear bumper in which there is a recessed portion for the license plate. At the bottom edge of that recessed portion is a horizontal plate to which a trailer hitch ball was mounted. Exhibit A-D. That partial obstruction is the focal point of this motion to suppress.

Jensen is on felony probation until November 1, 2009. Jensen was placed on probation on November 1, 2006, and was given a withheld judgment for the crime of possession of a controlled substance, methamphetamine or amphetamine, to which he pled guilty on September 12, 2006. The evidence obtained on October 3, 2008, forms the

basis for a probation violation that was dated October 23, 2008, and filed on October 27, 2008. Jensen seeks to suppress that evidence.

After Jensen was stopped by Officer Wessel on October 3, 2008, Wessel noted Jensen's slurred speech, a slight odor of alcohol, and Jensen's poor dexterity as he looked for his vehicle registration. Jensen admitted having two beers and then corrected himself, admitting he'd had two vodka drinks at the Corner Bar. Wessel then administered field sobriety tests which Jensen failed. After being read his *Miranda* rights, Jensen admitted drinking five vodka drinks and having smoked marijuana earlier.

Jensen filed his Motion to Suppress on January 5, 2009. That motion indicated a video tape of the traffic stop would be presented by Jensen. On February 10, 2009, the State filed its Brief in Opposition to Defendant's Motion to Suppress. Jensen filed a Brief in Support of Motion to Suppress on February 18, 2009. An evidentiary hearing and oral argument was held on February 19, 2009. No video tape was presented, but Jensen offered four photographs of the back end of his Ford Ranger pickup, showing the bumper, trailer hitch ball and license plate. Exhibit A-D.

Jensen argues his traffic stop was illegal, that this Court should reject the State's interpretation of I.C. § 49-428(2) and suppress Jensen's statements and other evidence obtained in the stop.

II, ANALYSIS.

The State argues Officer Wessel had a reasonable articulable suspicion to stop Jensen's vehicle based on his obscured license plate. Brief in Opposition to Defendant's Motion to Suppress, pp. 3-4, citing I.C. § 48-428(2). "Every license plate shall...be in a place and position to be clearly visible, and shall be maintained free from foreign materials and in a condition to be clearly legible..." I.C. § 49-428(2). That statute reads:

(2) Every license plate shall at all times be securely fastened to the vehicle to which it is assigned to prevent the plate from swinging, be at a height not less than twelve (12) inches from the ground, measuring from the bottom of the plate, be in a place and position to be clearly visible, and shall be maintained free from foreign materials and in a condition to be clearly legible, and shall be displayed as provided in section 49-443(4).

I.C. § 49-428(2).

Jensen argues the requirement a license plate be clearly visible is not the same thing as legible, and, because his plate was visible (no snow, mud, or debris obstructed the plate itself), he did not violate the statute. Brief in Support of Motion to Suppress, p. 2. At oral argument, Jensen clarified that argument by claiming that the word “legible” in I.C. § 49-428(2), refers only to the plate being “maintained free from foreign materials”, and that “legible” does not refer to the plate itself. This Court at oral argument found that to be a strained interpretation, and that the word “legible” refers to the plate itself.

Jensen goes on to argue that the numbers on his license plate being obscured by a trailer ball hitch means any trailer, boat, etc. he ever hauled would obscure his license plate so as to violate I.C. § 49-428(2). Brief in Support of Motion to Suppress, p. 2. At oral argument, Officer Wessel testified that towing a trailer would not be a violation of I.C. § 49-428(2), as trailers are to be licensed. While that is accurate (I.C. § 49-402A(2) “The department may register a utility trailer for a five(5) year period or for a ten(10) year period, and shall issue a license plate with the year of expiration designated by a validation sticker”), this Court finds whether towing a trailer would violate I.C. § 49-428(2) to be wholly irrelevant, as those are not the facts in this case.

This Court has reviewed the pictures of Jensen’s truck, offered by Jensen, and to which Officer Wessel testified were representative of what he witnessed as he followed Jensen October 3, 2008. Exhibit A-D. This Court finds as an established fact that especially Exhibit A (a photograph taken directly from behind Jensen’s truck, at

approximately eye-level for a driver of a car following Jensen), shows the hitch ball partially obscures one number on the plate such that one would have to guess at what that number might be. Officer Wessel testified the hitch ball obscured two numbers on Jensen's plate. While that could be possible depending on the angle from which one viewed Jensen's vehicle from behind, Exhibit A probably depicts most accurately what an officer would have viewed following Jensen's vehicle, and it shows one digit being partially obstructed. Again, the videotape of the stop was not offered by either party.

Jensen misreads the statute. First, as it was partially obscured by a trailer ball hitch, his license plate was in fact *not* in "a place and position to be clearly visible." This is true, even though this appears to be a stock bumper, and the plate is affixed where in the recessed portion of that bumper where the plate was intended to be affixed. But Jensen's bumper has a hitch ball partially obscuring a number on his plate. Second, maintaining a license plate to be "free from foreign materials and in a condition to be clearly legible" necessarily means that *all* numbers are clearly legible, not just some parts of the plate or some numbers are clearly legible. Third, the requirements that the plate be "clearly visible" and "clearly legible" are in the same sentence, and the use of the word "and" indicates they should be read in conjunction, not in the alternative. All sections of applicable statutes must be read together to determine the legislature's intent. *Umphrey v. Sprinkel*, 106 Idaho 700, 706, 682 P.2d 1247, 1253 (1983); *Magnuson v. Idaho State Tax Comm'n*, 97 Idaho 917, 920, 556 P.2d 1197, 1200 (1976). Thus, the requirement that license plates be visible and legible means they must be **both visible and legible**.

Jensen violated I.C. § 49-428(2) because his entire license plate was not visible and legible as required. Officer Wessel had reasonable, articulable suspicion to stop his vehicle, in I.C. § 49-428(2). That traffic stop in turn gave rise to reasonable suspicion that

Jensen was driving intoxicated due to Jensen's bloodshot, glassy eyes, slurred speech, odor of alcohol, and poor dexterity. Investigative detentions based on reasonable suspicion that an individual has been or will be engaged in criminal conduct is entirely proper. *Terry*, 392 U.S., 1. The detention of an individual who is reasonably suspected of driving under the influence of intoxicants constitutes such a permissible warrantless detention. *State v. Buell*, 145 Idaho 54, 56, 175 P.3d 216, 218 (Ct.App. 2008). The Idaho Court of Appeals has held field sobriety tests of motorists to be permissible on the basis of reasonable suspicion of DUI. *State v. Ferreira*, 133 Idaho 474, 480, 988 P.2d 700, 706 (Ct.App. 1999). "Field sobriety tests, although searches, are a reasonable and permissible component of an investigation where the officer has detained the individual on reasonable suspicion of DUI." 133 Idaho 474, 479-81, 988 P.2d 700, 705-07. Field sobriety test may be analogized to warrantless pat-down searches under *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S.Ct. 1868, 1879-80, 20 L.Ed.2d 889, 905-06 (1968). *State v. Henage*, 143 Idaho 655, 660, 152 P.3d 16, 21 (2007).

At oral argument, Jensen urged this Court to read *State v. McCarthy*, 133 Idaho 119, 982 P.2d 954 (1999). In that case, the arresting officer estimated McCarthy's speed to be 45 miles per hours, and the officer stopped him for speeding, mistakenly believing the speed limit at that area to be 25 miles per hour. After stopping McCarthy, he was arrested for driving under the influence. The Court of Appeals stated that a reasonable mistake of fact would justify a warrantless search or a stop, but a mistake of law might not (the Court of Appeals specifically did not reach that issue). 133 Idaho 119, 124-25, 982 P.2d 954, 959-60. The Idaho Court of Appeals found no evidence in the record supported an objectively reasonable basis for the officer's mistaken belief in the wrong speed limit (i.e., that the speed limit sign was recently moved or that the officer had been misinformed about

the applicable speed limit), and reversed the magistrate's decision denying McCarthy's motion to suppress. *Id.* In this case, this Court finds Officer Wessel did not operate under any mistaken set of facts (this Court finds the hitch ball partially obstructed at least one digit on Jensen's license plate), and Officer Wessel was correct in his interpretation of I.C. § 49-428(2). Because the traffic stop was proper, Officer Wessel's reasonable suspicion based on Jensen's actions once stopped supports the resulting sobriety tests.

Jensen next argues that his statements should be suppressed because his failure to waive his Sixth Amendment right to counsel in this case where he faces a probation violation (Kootenai County Case Number CV 2006 5254), does not constitute a waiver of that right in the DUI case. Brief in Support of Motion to Suppress, pp. 2-3. However, the case cited by Jensen, *State v. Anderson*, 140 Idaho 484, 488, 95 P.3d 635, 639 (2004) does not stand for that proposition. In fact, the Idaho Supreme Court states the Sixth Amendment right to counsel is offense-specific and cannot be invoked once for all future prosecutions, as it does not attach until a prosecution is commenced. *Id.*, citing *McNeil v. Wisconsin*, 501 U.S. 171, 175, 111 S.Ct. 2204, 2207, 115 L.Ed.2d 158, 166-67 (1991). "It does not apply to other offenses, even if they are closely related factually to the offense charged, unless those other offenses would be the same offense under the test in *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932)." *Id.* As in *Anderson*, there is no contention that this DUI offense Jensen was questioned about by Officer Jensen is the same as the possession of methamphetamine offense for which he was on probation. Thus, the Sixth Amendment would not prevent the State from using his statements in this case. See *Anderson*, 140 Idaho 484, 488, 95 P.3d 635, 639.

Additionally, although not addressed by Jensen, parolees and probationers have a diminished expectation of privacy and Courts uphold Fourth Amendment waivers as

conditions of parole or probation. *State v. Gawron*, 112 Idaho 841, 843, 736 P.2d 1295, 1297 (1987). In the absence of a warrantless search condition, a probation officer may conduct a search of a probationer and his or her residence of the officer has “reasonable grounds, to believe that he or she has violated a probation condition and the search is reasonably related to the disclosure or confirmation of that violation.” *State v. Klinger*, 143 Idaho 494, 497-98, 148 P.3d 1240, 1243-44 (2006). *Klinger* involved the Court’s upholding a warrantless search of an unsupervised probationer’s residence based on an unsubstantiated tip the defendant may have been dealing drugs coupled with his past drug use. 142 Idaho 494, 498, 148 P.3d 1240, 1244. As argued by the State, all Officer Wessel needed to search/sobriety test Jensen would be reasonable suspicion. That having been met here, Jensen’s Fourth Amendment rights were not violated.

III. ORDER

IT IS ORDERED that Jensen's Motion to Suppress is **DENIED**. This case will be set for an evidentiary hearing on Jensen’s alleged report of probation violation dated October 23, 2008.

Dated this 20th day of February, 2009.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of February, 2009 a true and correct copy of the foregoing was mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Betsy Black/Ann Wick 208 446-1840

Fred Loats 208 667-6424

By _____
Jeanne Clausen, Deputy Clerk