STATE OF IDAHO)
County of KOOTENAI)ss

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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/Appellant,

vs.

NICHOLAS REED GUALDA,

Defendants/Respondents.

Case No. **CRF 2009 22433**

MEMORANDUM DECISION AND ORDER DENYING MOTION TO SUPPRESS

I. INTRODUCTION AND PROCEDURAL BACKGROUND.

On November 23, 2009, defendant Nicholas Gualda (Gualda) filed his Motion to Suppress. Gualda did not file his "Brief in Support of Motion to Suppress" until January 22, 2010. The State filed "Plaintiff's Reply to Defendant's Motion [to] Suppress" on February 24, 2010. Oral argument was initially scheduled for January 27, 2010. At that January 27, 2010, hearing, this Court found Gualda had not been complied with this Court's Order Holding filed November 27, 2008, because Gualda's Motion to Suppress was not filed within 42 days of that date, and because no memorandum had been filed by Gualda in support of his motion to suppress at the time the motion to suppress was filed. The Court also found the State was prejudiced because the issues raised in the Brief in Support of Motion to Suppress differed from those raised in the motion itself. The State moved to continue the hearing due to these reasons and due to the fact that the State's witnesses on the motion to suppress were testifying in another courtroom at the time of the hearing.

Gualda's counsel, Brandie Rouse (Rouse), then withdrew the motion to suppress and stated Gualda would proceed to trial. A two-day jury trial was scheduled to being on February 8, 2010 at 9:00 a.m.

On February 3, 2010, Gualda filed a Motion to Shorten Time and a Motion to Continue the jury trial, arguing "defense counsel was unable to have [the] Motion to Suppress fully heard prior to the trial date herein, as witnesses for the State were unavailable for testimony." Motion to Continue, p. 1. On February 4, 2010, this Court granted the motion to shorten time and heard Gualda's motion to continue. At that February 4, 2010, hearing, Rouse's co-counsel, Michael Palmer (Palmer), argued attorney Rouse's request to the Court on January 27, 2010, should have been to vacate the hearing on the Motion to Suppress, and not to vacate the Motion to Suppress itself. Palmer also stated Gualda was prepared to waive his right to a speedy trial if a continuance were granted. At that February 4, 2010, hearing, this Court stated it was surprised that Gualda's attorney withdrew Gualda's Motion to Suppress outright at that January 27, 2010, hearing, and that Gualda opted to proceed directly to trial at that time. At the conclusion of the February 4, 2010, hearing, the Court considered Gualda's Motion to Suppress to be "unwithdrawn" and granted the motion to continue the trial. Hearing on Gualda's Motion to Suppress was held on March 8, 2010, following which this Court took the motion under advisement. This matter is currently set for a jury trial commencing on May 3, 2010.

II. FACTUAL BACKGROUND.

On October 28, 2009, Gualda was a passenger in the automobile of Anthony Johnson (Johnson). Johnson was stopped by Kootenai County Sheriff's Deputies Clay Hilton (Hilton) and Jason Bates (Bates) for failing to signal a right-hand turn into a parking lot on Sixth Street in Post Falls, Idaho. Hilton activated his vehicle's lights and noted the rear passenger tire of the vehicle was flat. Both Johnson and Gualda attempted to exit the

vehicle but the officers ordered them back into their vehicle, and they remained there per the officers' instructions. Hilton states in his police report he observed the driver, Johnson, making "furtive movements" and seeming "highly agitated." Police Report, p. 1. Both passengers were identified by their driver's licenses and their information was checked through Central Dispatch. Because of the "furtive movements" and "highly agitated" behavior of Johnson, Hilton called to request a cover unit. As the cover unit (Officer Moss) arrived, Hilton observed Johnson "look toward Officer Moss' vehicle then quickly turn and say something to Gualda. Johnson then placed both of his hands over his face then quickly placed them in his lap." *Id.* Hilton found this behavior by Johnson to be suspicious and asked Johnson to step out of the vehicle. As Johnson exited, Hilton noticed a knife in the front pocket of Johnson's jeans. Hilton asked Johnson for permission to pat him down, and after receiving Johnson's consent to a pat-down search, Hilton located two additional folding pocket knives.

As Hilton issued Johnson a citation for failing to signal a turn in violation of I.C. § 49-808, he inquired where Johnson was traveling to and from. Johnson replied he was fixing a flat tire and returning from the Post Falls 7-Eleven. Hilton thereafter asked Johnson whether he had anything else in the car that would raise concern and Johnson, "stated he had several knives; however he did not have anything illegal. Johnson then gave me consent to 'Search' his vehicle." *Id.* Hilton then ordered Gualda out of the vehicle and "retriev[ed] a pocket knife from Gualda's person". *Id.* During his search of the vehicle, Hilton opened a tan backpack on the front passenger floorboard and located: a clear plastic bag containing what he believed to be psilocybin mushrooms; a canvas bag containing a clear baggie with what he believed to be cocaine; a digital scale with residue on it; two snort tubes with residue on them; and a tin box containing a mirror with residue on it and a metal object with a straight edge and residue on it. After locating these items, Hilton states

he then “detained” Johnson and Gualda.

Because of the numerous items discovered, Hilton contacted Officer Jovick to advise him of the situation and contacted Deputy Lyons to request his presence with his K-9 (drug detection dog). Lyons advised Hilton that the K-9 alerted on the areas of the vehicle where contraband had been found. When Hilton and Moss performed a NIK test, a positive presumptive reading for cocaine resulted. Both Gualda and Johnson were read *Miranda* rights and both agreed to speak with Hilton. While Gualda spoke with Hilton, Gualda admitted having bought $700 of cocaine from Johnson’s brother as well as having used cocaine earlier that day. During that conversation, Gualda’s cell phone received several text messages. Hilton and Gualda reviewed the text messages and read one stating, “I have sold two balls, but haven’t made any money.” *Id.,* p. 2. Gualda then admitted to Hilton that he had sold a “tenner” ($100.00 worth of cocaine) earlier that evening, but Hilton did not find any money on the person of either Gualda or Johnson. Both Gualda and Johnson were charged with possession of a controlled substance; possession of paraphernalia with the intent to use; and possession of a controlled substance with the intent to deliver.

Gualda now moves this Court to suppress any statements made and evidence gathered against him. Gualda argues: (1) Hilton did not have a reasonable suspicion sufficient to justify a warrantless search where the underlying basis for the stop was unrelated to the search; and (2) the seizure of Gualda violated the Fourth Amendment where the length and scope of the detention exceeded the underlying justification for the stop.

II. STANDARD OF REVIEW.

The standard of review of a suppression motion is bifurcated; the Court of Appeals accepts a trial court’s findings of fact supported by substantial evidence and freely reviews

the court's application of constitutional principles applied to the facts found. *State v. Atkinson,* 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct.App. 1996); *State v. Cruz,* 144 Idaho 906, 908, 174 P.3d 876, 878 (Ct. App. 2007).

III. ANALYSIS.

A. Warrantless Search of the Vehicle and Extension of Detention in Length and in Scope.

The Fourth Amendment guarantees every citizen the right to be free from unreasonable searches and seizures. *State v. Ramirez,* 145 Idaho 886, 888, 187 P.3d 1261, 1263 (Ct.App. 2008). The stop of a vehicle constitutes a seizure of its occupants and is therefore subject to Fourth Amendment restraints. *Id*. Because a traffic stop is limited in scope and duration, it is analogous to an investigative detention and is analyzed under *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868 (1968).

An investigative detention must be temporary and not last longer that necessary to effectuate the purpose of the stop. *Ramirez,* 145 Idaho 886, 889, 187 P.3d 1261, 1264. Because there is no rigid time limit, to evaluate whether a detention has lasted longer than necessary a court must consider the scope of the detention and the law enforcement purposes to be served along with the duration of the stop. *U.S. v. Sharpe,* 470 U.S. 675, 685-686, 105 S.Ct. 1568 (1985). When an individual is detained, the scope of detention must be carefully tailored to the underlying justification for the stop. *State v. Roe,* 140 Idaho 176, 181, 90 P.3d 926, 931 (Ct.App. 2004). Brief inquiries not related to the initial purpose of the stop do not necessarily violate a detainee's Fourth Amendment rights. *Id.* A routine traffic stop may turn up suspicious circumstances that could justify an officer asking further questions unrelated to the stop. *State v. Brumfield,* 136 Idaho 913, 916, 42 P.3d 706, 709 (Ct.App. 2001). The length and scope of the initial investigatory stop may lawfully be extended where there exist objective and specific articulable facts that justify suspicion

that the detained person is, was, or will be engaged in criminal activity. *Id.* During a lawful traffic stop, general questioning on topics unrelated to the purpose of the stop is permissible as long as it does not extend the duration of the stop. *State v. Parkinson,* 135 Idaho 357, 363, 17 P.3d 301, 307 (Ct.App. 2000). For example, brief, general questions about drugs and weapons do not extend an otherwise lawful detention. *Id*.

In *State v. Grantham,* the defendant argued that law enforcement impermissibly based its suspicion on a drug-user profile and that the traffic stop was therefore unlawfully extended in scope and length. ___P.3d ____, *6, 2008 WL 4737280 (Ct.App. 2008). The Court of Appeals upheld the district court's denial of defendant's motion to suppress, reasoning that the extension in the scope and length of the detention was "based on direct evidence of methamphetamine use which gave rise to a reasonable suspicion of drug possession." *Id.* The deputy had observed defendant's truck swerve over the fog line and noted during the traffic stop that defendant and his passenger were disheveled, unkempt, had pock-marked skin, were gaunt or underweight, and had missing or rotted-out teeth; these characteristics were cumulative evidence of methamphetamine use. *Id.* Similarly, in *State v. Pabillore,* the Court of Appeals concluded that the investigative stop did not develop into an unreasonable detention where police had a legitimate reason to initiate the traffic stop and found paraphernalia on a passenger. 133 Idaho 650, 654, 991 P.2d 375, 379 (Ct.App. 1999). It was the discovery of the paraphernalia, pursuant to a valid pat-down search, that expanded the investigative focus to include drug-related offenses; during the course of detention, suspicion of further criminal activity developed which also required investigation. *Id.*

Here, Johnson was asked for consent to a pat-down because Hilton saw a knife in his front pocket. A search conducted without a warrant is unreasonable *per se* unless it falls within recognized exceptions to the warrant requirement; one such exception is the

"narrowly drawn authority" of a police officer to conduct a pat-down search for weapons on a detainee for the officer's protection where the officer has "reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime." *Terry v. Ohio,* 392 U.S. 1, 27, 88 S.Ct. 1868, 1883 (1968). This type of weapons frisk is allowed so that police officers can interact with the individual without fear of violence. *State v. Henage,* 143 Idaho 655, 660, 152 P.3d 16, 21 (2007). "Whether an officer may reasonably justify such a search is evaluated in light of the 'facts known to the officers on the scene and the inference of the risk of danger reasonably drawn from the totality of the circumstances.'" *State v. Wright,* 134 Idaho 79, 82, 996 P.2d 298, 301 (2000). In the present case, Hilton was faced with an individual unknown to him when the nighttime stop occurred, who was carrying a knife. Therefore, a limited weapons frisk was reasonable given the circumstances. In addition, Hilton, after observing a knife on Johnson's person, requested and received consent to pat search Johnson. Motion to Suppress, p. 3. A common exception to the warrant requirement is a search conducted pursuant to properly given consent. *Harwood,* 94 Idaho 615, 618, 495 P.2d 160, 163. Hilton lawfully performed a frisk of Johnson's person and did not exceed the scope of the consent given. *Florida v. Jimeno,* 500 U.S. 248, 251, 111 S.Ct. 1801, 1803-1804 (1991). (The standard for determining the scope of a suspect's consent under the Fourth Amendment is that of objective reasonableness.)

Up to this point, Gualda's and Hilton's recitation of the facts at this point mirror one another. Hilton then issued Johnson the citation and asked Johnson questions about where he had been and where he was going. Brief in Support of Motion to Suppress, p. 3; Police Report, p. 1. After returning Johnson's belongings, Hilton asked whether Johnson had anything else of concern in his vehicle; to which Johnson responded there are more knives, but nothing illegal in the car. *Id.* It is at this point that consent to search the vehicle

was given by Johnson. *Id.* This, therefore, is the critical point in time which this Court must determine as either being the moment the seizure and detention were over (and whether Johnson's subsequent actions were consensual), or the moment the detention and seizure were illegally extended (and any consent was procured by exploitation of the illegally extended detention). Thus, the inquiry for this Court is two-fold: (1) was the detention unlawfully extended by a request for consent to search the automobile; and (2) if the detention was unlawfully extended by requesting such consent, did this police conduct precede the consent such that the consent was procured by exploitation of the previous illegality. *See Wong Sun v. United States,* 371 U.S. 471, 488, 83 S.Ct. 407, 417 (1963); *State v. Tietsort,* 145 Idaho 112, 117, 175 P.3d 801, 806 (Ct.App. 2007).

In the instant case, the automobile driven by Johnson, in which Gualda rode as a passenger, was lawfully stopped. Although no explicit argument that the stop was pretextual on the part of Hilton is made by Gualda, "a stop is not pretextual where there is some objective probable cause to believe a traffic infraction, however minor, has occurred." *State v. Dewbre,* 133 Idaho 663, 667, 991 P.2d 388, 392 (citing *United States v. Hudson,* 100 F.3d 1049, 1415 (9th Cir. 1996) (J. Schwartzman, concurring). Gualda makes no argument that Johnson did properly signal his turn or that the officers acted unlawfully in effecting the stop. Gualda argues that, after Johnson was issued the citation for having failed to properly signal, "the only indication of a crime having been or about to be committed did not arise until *after* the warrantless search of Mr. Johnson's Toyota by Deputies Hilton and Braughton." Brief in Support of Motion to Dismiss, p. 7. Gualda argues the warrantless search of the automobile by law enforcement was performed despite the deputies having not alleged any odor of alcohol or other indicia of possible crimes sufficient to amount to reasonable suspicion or probable cause. *Id.*

As argued by Gualda, when police conduct a search without a warrant, the State

bears the burden of showing the search fell within a recognized exception to the warrant requirement. *State v. Tucker,* 132 Idaho 841, 842, 979 P.2d 1199, 1200 (1999); *State v. Bower,* 135 Idaho 554, 557, 21 P.3d 491, 494 (Ct.App. 2001). The automobile exception to the warrant requirement permits an officer to search an automobile where probable cause exists to believe the vehicle contains contraband or evidence of criminal activity. *California v. Acevedo,* 500 U.S. 565, 572, 111 S.Ct. 1982, 1987 (1991). And while the officers here did not have probable cause to search the vehicle (and therewith containers in the vehicle), *what they did have in the present case was consent.*

Gualda focuses on the absence of reasonable suspicion or probable cause relating to evidence of possible crimes being located in Johnson's car, but does not properly analyze the effect of the consent given by Johnson to search the car. Gualda states:

> Deputy Hilton's request to search Mr. Johnson's vehicle was not justified by 'reasonable objective grounds'. That which the deputy states he observed [the furtive movements and seemingly agitated behavior] was neither related to the inception of the encounter (traffic stop for failure to signal), nor did it constitute evidence of a crime.

Brief in Support of Motion to Suppress, p. 9. Gualda continues:

> Mr. Johnson's consent to the search of his vehicle did not expunge the taint of unlawful police activity, as the events are inextricable… Specifically, the consent was derived from, and was the product of, an unlawfully prolonged detention, which included an unlawful risk, any of which alone are sufficient grounds for finding the taint of unlawful police conduct.

Id., p. 10.

However, Gualda is unable to find support for his contention that reasonably objective grounds must justify or support any request by law enforcement for a consent search. No such authority exists. Consent, expressed through words, gestures, or other conduct, provides an exception to the warrant requirement; the burden is upon the State to prove that consent was voluntary, and not the result of duress or coercion, direct or implied.

Schneckloth v. Bustamonte, 412 U.S. 218, 219, 93 S.Ct. 2041, 2043-44 (1973); *State v. Diaz,* 144 Idaho 300, 302, 160 P.3d 739, 741 (2007); *State v. Fleenor,* 133 Idaho 552, 555, 989 P.2d 784, 787 (Ct.App. 1999). There is no requirement that law enforcement must have objectively reasonable grounds to request consent for a search, only that consent be freely given.

Additionally, it appears that throughout his briefing and at oral argument on the motion to suppress, Gualda conflates the issues of the totality of the circumstances surrounding Johnson's detention and those surrounding his own. Gualda argued that the circumstances surrounding the traffic stop and subsequent detention of Johnson were: the lights on Hilton's marked vehicle were activated throughout the encounter; the vehicles on the scene blocked ingress and egress; Hilton and his trainee, along with the officers appearing on the scene later, were all armed and uniformed; there were at least four officers on the scene; the locale of the stop was somewhat remote; the stop occurred at night; Johnson's knives were seized; there was a frisk preformed; law enforcement gave orders to both Johnson and Gualda; law enforcement asked accusatory questions; and ultimately, the detention was unlawfully extended in large part by the request for consent to search the vehicle. Gualda argues that no specific articulable facts existed pursuant to which Hilton could properly extend the detention. At oral argument, the State responded that all documents were returned to both men; Gualda was told he was free to leave; the vehicles overhead lights were off; and despite the number of officers present at the scene, only Hilton interacted with the two men.

The initial reason for Hilton's asking Johnson to exit the vehicle was his perception of Johnson's nervousness. The Idaho Court of Appeals has stated, "courts have generally held that nervousness is of limited value in determining reasonable suspicion and must be treated with caution." *State v. Zuniga,* 143 Idaho 431, 435, 146 P.3d 697, 701 (Ct.App.

2006). "Because it is common for people to exhibit signs of nervousness when confronted with law enforcement regardless of criminal activity, a person's nervous demeanor during such an encounter is of limited significance in establishing the presence of reasonable suspicion." *State v. Gibson,* 141 Idaho 277, 285-286, 108 P.3d 424, 432-33 (Ct.App. 2005). Here, Johnson's nervousness led to Hilton asking him the step out of the vehicle and speak with him, leading to Hilton's observing a knife on Johnson and requesting consent for a pat-down search for weapons, which then turned up additional knives following the frisk. Knives having been located on Johnson's person and having been seen on Johnson's steering wheel resulted in Hilton's reasonable articulable suspicion that a possible threat of harm existed, justifying his asking additional questions about what a search of the vehicle may uncover. As stated above, brief inquiries not related to the initial purpose of the stop do not necessarily violate a detainee's Fourth Amendment rights. *State v. Roe,* 140 Idaho 176, 181, 90 P.3d 926, 931. And, a routine traffic stop may turn up suspicious circumstances that could justify an officer asking further questions unrelated to the stop. *State v. Brumfield,* 136 Idaho 913, 916, 42 P.3d 706, 709.

Further review of video of the stop demonstrates: the stop begins at 9:28:52 p.m.; two officers effectuate the stop; by 9:31:38 lights are no longer flashing; four officers are visible at the scene at 9:39:30; at 9:44:50 Hilton asks, "mind if I search your vehicle?"; Johnson responds "sure", looks back from the vehicle at the officer and appears to give one nod; Hilton continues to gather information for the citation until 9:46:50; Johnson banters with the other officers, recognizing one from a previous interaction in Spokane County; the citation is signed at 9:47:05; Hilton asks, "you sure you don't mind if I search your vehicle for weapons?" at 9:47:30; Gualda is asked to step out of the vehicle and frisked, Johnson has an ongoing conversation with another officer on the scene; Johnson provides specific instructions on how to open the trunk of the vehicle; contraband is located and the arrests

occur at 9:51:30. Thus, the time from initial encounter to request to search the trunk was only nineteen minutes, and the search located the contraband in just four minutes after consent.

It could be argued that Johnson's response to the question, "Mind if I search your vehicle?" with his reply of "sure", is ambiguous. It is possible Johnson intended to answer affirmatively, that he did, in fact, mind a search. Conversely it is possible that his intended response was: "Sure, you can search my vehicle." In normal parlance, this latter construction would be the ordinary construction. Additionally, a review of the video supports that latter construction. Here, the video shows Johnson not only apparently consenting to a search of the vehicle a second time, but going so far as to give the officers instructions on *how to open his trunk* in light of how some welding had been done. Given the totality of the circumstances, Johnson's consent was voluntary and valid. It cannot be said that asking for request to search the vehicle unlawfully extended the detention because Hilton's second request was merely a clarification or reiteration of the same question posed before he had completed gathering information for the citation and before he returned Johnson's documents to him.

However, this does not end the inquiry as to Gualda.

B. Gualda's Standing.

The State raises the issue of whether Gualda has standing as a third party to object to the search of Johnson's vehicle. Generally speaking, only the owner of a vehicle has standing to directly challenge an illegal search. *Rakas v. Illinois,* 439 Idaho 128, 99 S.Ct. 421, (1978); *State v. Bordeaux,* 148 Idaho 1, ___, 217 P.3d 1, 9 (Ct.App. 2009). Idaho Courts consistently hold passengers in a vehicle subject to an allegedly illegal search do not have standing to object to the search. *State v. Ryan,* 117 Idaho 504, 788 P.2d 1327 (1990); *State v. Luna,* 126 Idaho 235, 236-37, 880 P.2d 265, 266-67 (Ct.App. 1994)

(noting passengers have standing to challenge an illegal traffic stop, but not an illegal search absent some proprietary or other interest in the premises searched). "A passenger who has no proprietary interest in the vehicle lacks a reasonable expectation of privacy, and therefore, standing to challenge a search where a driver has consented." *Bordeaux,* 148 Idaho 1, ___, 217 P.3d 1, 9 (citing *State v. Guzman,* 126 Idaho 368, 373, 883 P.2d 726, 731 (Ct.App. 1994)). It is well settled that a person seeking to suppress evidence must have some proprietary interest in the premises searched, or have some other interest giving rise to a reasonable expectation of privacy, to assert standing. *State v. Ryan,* 117 Idaho 504, 506-07, 788 P.2d 1327, 1329-30. The rights must be that person's, one cannot assert vicariously that the government invaded a third party's privacy rights. *Id.* The State argues in its briefing and argued at hearing that, because Gualda had no reasonable expectation of privacy in Johnson's vehicle, did not object to the search, and did not remove his belongings and simply leave the scene, he has no standing to now object. Plaintiff's Reply to Defendant's Motion [to] Suppress, pp. 4-5.

Gualda's argument at hearing was that if the detention was unreasonable, he has standing to contest to the search because a stop of a vehicle is a seizure of all occupants. Indeed, the U.S. Supreme Court has stated:

> A traffic stop necessarily curtails the travel that a passenger has chosen just as much as it halts the driver, diverting both from the stream of traffic to the side of the road, and the police activity that normally amounts to intrusion on "privacy and personal security" does not normally (and did not here) distinguish between passenger and driver.

Brendlin v. California, 551 U.S. 249, 257, 127 S.Ct. 2400, 2407 (2007) (citing *United States v. Martinez-Fuerte,* 428 U.S. 543, 554, 96 S.Ct. 3074 (1976). However, as discussed *supra*, there was no illegal extension of detention of the driver, Johnson, because Hilton performed the following tasks in the following order: began gathering information to issue a citation; asked for consent to search the vehicle; issued the citation; and clarified consent

to search the vehicle. Therefore, the Court of Appeal's reasoning in *Luna* is applicable here: "If the evidence was seized as a result of an investigatory stop that became unreasonable due to the illegal detention of the driver, then the evidence was obtained unlawfully also as to the passengers, who had standing under *Haworth* to challenge the reasonableness of the derivative detention resulting from the investigatory stop." 126 Idaho 235, 238, 880 P.2d 265, 268 (Ct.App. 1994).

Haworth, an Idaho Supreme Court decision, involved the Court distinguishing between standing to contest a stop of a vehicle and standing to contest a search of a vehicle; the latter requiring the defendant to have demonstrated "some proprietary interest in the premises searched or some other interest giving [the defendant] a reasonable expectation of privacy." 106 Idaho 405, 407 fn. 2, 679 P.2d 1123, 1125 fn. 2 (1984) (quoting *State v. Cowan,* 104 Idaho 649, 651, 662 P.2d 230, 232 (1983)).

Gualda's argument finds support in *Luna* and *State v. Pallibore,* both decided subsequent to *Haworth*:

> *Luna* recognizes that an automobile passenger, who has no privacy rights in the vehicle, may challenge its search if the search is a product of an initially lawful detention of the passenger that has become unreasonably protracted.

State v. Pallibore, 133 Idaho 650, 654, 991 P.2d 375, 379 (Ct.App. 1999). Although Gualda has standing to challenge a traffic stop of a vehicle in which he was a passenger, which Gualda argues became unreasonable because of the length of time the driver was detained, those are not the facts of the instant matter. Because the traffic stop did not extend an unreasonable length of time, Gualda's having standing to challenge the instant search does not vitiate Johnson's valid consent to the search the vehicle.

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IV. CONCLUSION AND ORDER.

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

DATED this 18th day of April, 2010

_____
JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 18th day of April, 2010 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney – Michael Palmer/ Brandi Rouse
Prosecuting Attorney – Kootenai County Prosecutor

CLERK OF THE DISTRICT COURT KOOTENAI COUNTY

BY:_____
Deputy