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AT _____ O'clock ____ M
CLERK, 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.

RONALD DAVID LLOYD,

Defendant.

Case No. **CRF 2010 10160**

**MEMORANDUM DECISION AND
ORDER ON DEFENDANT'S MOTION
TO SUPPRESS**

Amy Borgman, Deputy Prosecuting Attorney, lawyer for the Plaintiff.
Gary I. Amendola, Coeur d'Alene, lawyer for Defendant Lloyd.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY.

Defendant Ronald David Lloyd (Lloyd) was stopped by Kootenai County Sheriff Deputy Clay Hilton (Hilton) while driving on Ramsey Road in Kootenai County on May 28, 2010, at approximately 10:00 a.m. Hilton observed Lloyd enter the left lane of traffic to pass another vehicle while in a no-passing-zone. After contacting Lloyd and requesting his license, registration and proof of insurance, Hilton noted the odor of alcohol coming from the vehicle and observed an open can of beer next to Lloyd's seat, along with both open and empty beer cans inside the vehicle. Hilton states in his police report that Lloyd was unable to locate his current insurance card and informed Hilton he had consumed three beers after completing his graveyard shift. Police Report, pp. 1-2. Lloyd agreed to Hilton's

request that he step out of the vehicle and perform field sobriety tests (FSTs); Lloyd showed signs of nystagmus, was unable to properly perform the walk-and-turn, and unsuccessfully performed the one-leg-stand. Hilton placed Lloyd under arrest for driving under the influence and located a pill bottle, later determined to contain oxycodone and hydromorphone, while performing a search incident to arrest.

On July 2, 2010, Lloyd filed his motion to suppress, stating Hilton lacked probable cause to stop Lloyd's vehicle. Motion to Suppress, p. 1. Lloyd filed his Memorandum of Law in Support of the Motion to Suppress on August 16, 2010. The State filed its Brief in Opposition to Defendant's Motion to Suppress on August 19, 2010. Lloyd's June 17, 2010, Order Holding (bind-over order) requires Lloyd to file all pretrial motions no later than 42 days after the date of that Order Holding, and requires all motions to be accompanied by a brief in support and a notice of hearing. While Lloyd timely filed his motion to suppress and notice of hearing, his July 2, 2010, motion was unaccompanied by a brief in support. The State has not raised any objection to the late filing of Lloyd's Memorandum of Law in Support of the Motion to Suppress.

A hearing was held on August 25, 2010. At that hearing, the State conceded this was a warrantless arrest, and the burden shifted. The State called Hilton to testify at the hearing. Lloyd testified for the defense. Photographs of the roadway were taken by both the State and Lloyd's daughter, and the Court reviewed Exhibit D, the DVD of the last few seconds of Hilton pulling Lloyd over and Hilton's beginning his discussion with Lloyd. The motion was taken under advisement.

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). 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.

A. Reasonable Suspicion Lloyd Violated Idaho Code § 49-634 or 49-635(3).

Lloyd argues Hilton stopped and seized his vehicle without the requisite probable cause to believe any violation of law had been committed. Memorandum in Support of Motion to Suppress, p. 1. "Since the initial stop of the Defendant's vehicle was illegal, the evidence obtained in the subsequent search of Defendant's car and person and the subsequent statements made by the Defendant must be suppressed." *Id.*, p. 2. It is Lloyd's contention that he began passing another vehicle before the beginning of the no passing zone Hilton observed him in. *Id.* As discussed further, it is not a probable cause

determination, but rather, Hilton simply had to have a reasonable suspicion to believe Lloyd violated a traffic law. *State v. Rader*, 135 Idaho 273, 276, 16 P.3d 949, 952 (Ct.App. 2000) (citing *State v. Waldie*, 126 Idaho 864, 867 n. 1, 893 P.2d 811, 814 n. 1 (Ct.App. 1995)).

The State responds that Hilton observed Lloyd cross a solid yellow line, indicating a no passing zone, to pass another vehicle. State's Brief in Opposition to Defendant's Motion to Suppress, p. 3. The State argued Lloyd was approaching the crest of a grade in the highway and his view of oncoming traffic would have been obstructed, thereby creating a hazard. *Id.*, p. 4. Although Lloyd claims to have initiated the passing maneuver before the no passing zone, "Deputy Hilton will explain that Mr. Lloyd both started and completed the entire passing motion in the "No Passing" zone, whereas [I.C.] §49-635(3) only authorizes a driver to be on the left side of the highway when the driver is already attempting to pass another driver at the moment he *enters* the "No Passing" zone." *Id.* (emphasis in original). Indeed, that was Hilton's testimony. The State goes on to argue Lloyd's continued detention to perform field sobriety tests (FST) was lawful in light of his admission that he had consumed alcohol before and during his drive, that Lloyd's arrest was proper given his failure of the FSTs and his statement regarding his consumption, and that the searches of Lloyd and his vehicle were proper as they amounted to a search incident to arrest and an impound inventory search. *Id.*, pp. 5-6. At oral argument, counsel for Lloyd made it clear that it was only the stop that was being contested in the motion to suppress.

Here, the Court is confronted with conflicting claims as to when Lloyd began his passing maneuver. Witness credibility, the weight to be given their testimony, and the inferences to be drawn from the evidence are all matter solely within the province of the district court. *Larkin v. State*, 115 Idaho 72, 73, 764 P.2d 439, 440 (Ct.App. 1988). At issue is whether Lloyd complied with the Idaho Code with regard to his passing a vehicle in

the left lane while approaching the crest of a grade or curve in the highway. On page one of his brief, Lloyd argues Hilton did not have *probable cause* to believe Lloyd had violated the law; on page four of the same brief, Lloyd states, “Law enforcement in this case has no *reasonable suspicion* to believe that Mr. Lloyd was operating his car in violation of any traffic laws...” Memorandum of Law in Support of Motion to Suppress, pp. 1-4. Lloyd’s latter characterization of the standard is correct. In fact, “[r]easonable suspicion that will justify a stop of a vehicle does not require direct observation of a traffic violation.” *State v. Rader*, 135 Idaho 273, 276, 16 P.3d 949, 952 (Ct.App. 2000) (citing *State v. Waldie*, 126 Idaho 864, 867 n. 1, 893 P.2d 811, 814 n. 1 (Ct.App. 1995)). Here, the State in its brief alleges Hilton observed Lloyd enter into the no passing zone and thereafter pass another vehicle. State’s Brief in Opposition to Defendant’s Motion to Suppress, pp. 1-2. Hilton testified as to that direct observation by Hilton of Lloyd’s traffic violation. Lloyd testified he began his passing maneuver when he was still in the area where he was allowed to pass.

The Idaho Code permits the driving of a vehicle to the left of the center of a highway to pass another vehicle only where the left side is clearly visible, free of oncoming traffic, and passing can be completed without interfering with the vehicle being passed or vehicles approaching from the other direction. I.C. § 49-634. A vehicle may not be driven on the left side of a highway when “approaching or upon the crest of a grade or a curve in the highway where the driver’s view is obstructed within a distance as to create a hazard in the event another vehicle might approach from the opposite direction”. I.C. § 49-635(1)(a). However, if the conditions in I.C. § 49-634 are met, a driver may drive to the left of no passing pavement markers (a solid yellow center line) to complete a passing maneuver begun before the no passing zone. I.C. § 49-635(3). The parties arguments regarding the propriety of Lloyd’s passing maneuver are conflicting. Lloyd argues he began the

maneuver before the no passing zone and merely completed it in the manner contemplated by I.C. § 49-635(3). Memorandum of Law in Support of Motion to Suppress, p. 2. The State argues Hilton observed Lloyd begin the passing maneuver while already in a no passing zone. State's Brief in Opposition to Defendant's Motion to Suppress, p. 4. That was Hilton's testimony. Lloyd also states no vehicles were approaching and he was able to see "quite a distance ahead of him". Memorandum of Law in Support of Motion to Suppress, p. 2. Indeed, that was Lloyd's testimony at the August 25, 2010, hearing. As to I.C. § 49-634, the parties are in dispute as to whether the highway was clearly visible ahead, as argued by Lloyd, or whether the highway was approaching the crest of a hill on North Ramsey Road.

The Court watched Exhibit "D", the DVD of Hilton's dash camera video, during the August 25, 2010, hearing, and several times after the hearing. Lloyd's counsel stressed the importance of that video, and argued it shows where Lloyd was pulled over and stopped by Hilton, he was still on the uphill stretch of North Ramsey Road. That uphill stretch is where Lloyd testified he stopped his vehicle as shown in Exhibit "A" and "B". Hilton's testimony is that he pulled Lloyd over and Lloyd stopped at or after the crest of the hill, as Hilton marked on Exhibit 3. According to Lloyd's counsel's argument, where Lloyd stopped his car is important, because, as he argues, if Lloyd were pulled over and stopped prior to the top of the hill, then it would be nearly impossible for Lloyd to have begun his passing maneuver in the no passing area, completed the pass of a truck and trailer towing a large pontoon boat, have Hilton catch up to Lloyd, activate his overhead lights, pull Lloyd over and have Lloyd stop. In other words, Lloyd would have had to have begun his passing maneuver earlier. That argument is logical. However, that argument is not supported by the DVD of the stop. The DVD video taken from Hilton's dash shows the stop occurred on

what appears to be level ground, not on a hill. Thus, the DVD corroborates Hilton's testimony and discredits Lloyd's testimony as to where the stop occurred. Thus, using Lloyd's own argument relating the location of the stop to the start of the passing maneuver, the DVD video taken from Hilton's dash corroborates Hilton's recollection of where Lloyd began his passing maneuver and discredits Lloyd's version. Also impacting Lloyd's credibility is the fact that Lloyd admitted drinking the morning in question and was drinking at the time he was stopped. The Court is to make witness credibility and weight of the evidence determinations. *Larkin*, 115 Idaho 72, 73, 764 P.2d 439, 440. The Court finds Hilton's account of where the passing maneuver began to be more credible than Lloyd's version.

B. Reasonable Suspicion Lloyd Violated Idaho Code § 49-638.

The State did not discuss in its memorandum, but Hilton testified to a basis for stopping Lloyd in addition to Lloyd's beginning his passing maneuver while in a no passing area. That basis was following too closely, a violation of Idaho Code § 49-638. Hilton testified that at the speed limit on this highway (50 miles per hour), Lloyd should have been following the truck and boat/trailer by about three car lengths, and that when he first observed Lloyd, Lloyd was following the trailer by about one car length. That observation was mentioned in the first paragraph of Hilton's police report. That observation was entirely uncontradicted by Lloyd. Thus, Hilton's observation about Lloyd's following too closely is credible and an established fact. Lloyd's attorney made the argument that when one passes another slower moving vehicle, one moves up as closely as possible to that vehicle:

...and I think it is undisputed in everyone's experience and even at least partially conceded by Deputy Hilton that when you get ready to pass somebody you move up close to them in order to make the pass as efficient as possible. You don't want to start four or five, six car lengths

behind a person and be in the opposite lane for a much longer period of time.

The Court does not find such to be “undisputed”. In fact, if it were “everyone’s experience” that one stayed in the lane of travel approaching the vehicle directly in front to be passed and got within a car length before going into the passing lane to see if it is safe to pass, we would have an incredible amount of head on collisions. Hilton’s testimony about Lloyd following too closely is uncontradicted, is credible, and supported by Idaho Statutes.

While conceded by Lloyd at the August 25, 2010, hearing, to the extent Hilton’s traffic stop was proper, reviewing courts in Idaho hold the Fourth Amendment only requires a reasonable suspicion that a driver is driving under the influence before an officer may request the driver to perform field sobriety tests. *State v. Nelson*, 134 Idaho 675, 680, 8 P.3d 670, 675 (Ct.App. 2000). The Court finds Hilton had a reasonable suspicion that Lloyd was driving under the influence in light of Lloyd’s statements regarding alcohol consumption before driving and the open container of beer in Lloyd’s vehicle. Following Lloyd’s unsuccessful completion of the FSTs, he was placed under arrest. A search incident to arrest is a well-established exception to the warrant requirement of the Fourth Amendment. *State v. Cantrell*, 149 Idaho 247, ___, 233 P.3d 178, 180 (Ct.App. 2010) (citing *Chimel v. California*, 395 U.S. 752, 753, 89 S.Ct. 2034, 2035 (1969) (police officers may conduct a warrantless search incident to a lawful arrest for preservation of evidence and officer safety purposes.)).

IV. CONCLUSION AND ORDER.

For the reasons stated above, the Court must deny the motion to suppress.

IT IS HERBY ORDERED THAT RONALD DAVID LLOYD’s Motion to Suppress is DENIED.

DATED this 25th day of August, 2010

JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

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

Defense Attorney - Gary I. Amendola
Prosecuting Attorney – Amy Borgman

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____
Deputy