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# State v. Morris Appellant's Brief Dckt. 41933

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	Supreme Court Case No. 41933
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR FE 2012
v.	)	13672
	)	
RICHARD GLENN MORRIS,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	

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**BRIEF OF APPELLANT**

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

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HONORABLE MELISSA MOODY  
District Judge

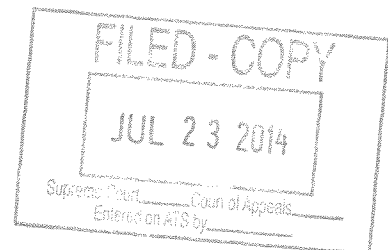
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ATTORNEY FOR  
PLAINTIFF-RESPONDENT



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**TABLE OF CONTENTS**

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	i
STATEMENT OF THE CASE .....	1
Nature of the Case .....	1
Statement of the Facts and Course of Proceedings .....	1
ISSUE PRESENTED ON APPEAL.....	2
ARGUMENT .....	3
I. The District Court Erred By Denying The Motion To Suppress.....	3
A. Introduction.....	3
B. Standard Of Review .....	3
C. The District Court Erred By Denying The Motion To Suppress .....	3
CONCLUSION.....	7
CERTIFICATE OF MAILING .....	9

**TABLE OF AUTHORITIES**

CASES

<u>State v. Atkinson</u> , 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996) .....	3
<u>State v. Emory</u> 19 Idaho 661, 809 P. 2d 522 (Ct. App. 1991) .....	4
<u>State v. Schevers</u> , 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).....	3
<u>Idaho v. Slater</u> , 135 Idaho 293, 32 P. 3d. 685, 689 (Ct. App. 2001).....	5
<u>State v. Valdez-Molina</u> , 127 Idaho 102, 106, 897 P.2d 993, 997 (1995) .....	3

STATUTES

Idaho Code Section 49-630.....	4,5
Idaho Code Section 49-637.....	4

## STATEMENT OF THE CASE

### Nature of the Case

Richard Glenn Morris (*hereinafter*, Richard) appeals from his judgment dated March 20, 2014. He asserts that the district court erred by denying his motion to suppress.

### Statement of the Facts and Course of Proceedings

On August 1, 2012, Officer James Cromwell, a police officer for the City of Boise initiated a traffic stop. Richard, the driver was stopped in the vicinity of Latah and Overland Streets. Officer Cromwell testified his vehicle's two right side tires crossed the white fog line. He suspected Richard was operating his vehicle while impaired. (Preliminary Hearing Transcript Page 7, Lines 17-18, Motion To Suppress Transcript Page 14, Lines 5-10).

A motion to suppress evidence was held on December 14, 2012. Officer Cromwell testified he was driving along when he first noticed Richard's vehicle. He stopped Richard at 1:37 a.m. (Motion To Suppress Transcript Page 30, Lines 3-5). He said he smelled marijuana from inside Richard's vehicle. An assist officer with a drug-sniffing dog arrived about 1:42 a.m. (Motion To Suppress Transcript Page 43, Lines 8-12). Officer Cromwell determined Richard was a probationer, so he contacted an on call probation officer to obtain authority to search.

A second police officer testified, Officer Plaisted. He was an assist officer with a dog. He said Officer Cromwell requested dispatch for an assist officer and a dog contemporaneously with Richard's traffic stop. (Motion To Suppress Transcript Page 56,

Lines 2-8). He provided precise information about times by referring to a printout used by law enforcement to track officer's whereabouts and duties.

A third witness testified at the motion to suppress hearing. She worked as a probation officer for the Idaho Department of Corrections. Ms. Lockner, said she was an on-call officer the night Richard was stopped. She entered information into a work database from Officer Cromwell's request to search. She said Cromwell had him pulled over and he had come from a known drug house. (Motion To Suppress Transcript Page 63, Lines 4-10). Officer Cromwell denied he saw him leave a known drug house, and that was not why he pulled him over. (Motion To Suppress Transcript Page 36, Lines 23-24).

Richard testified at the suppression hearing. He said his vehicle traveled in between the yellow line and the white line in the middle of the road only. (Motion To Suppress Transcript Page 75, Lines 19-22). Two exhibits were admitted that demonstrated differently configured roadways. The first was a road with a normal white fog line, and the other had an additional white line designated as a bike lane. Richard described the road where he was stopped was similar to the picture in exhibit "C", because there was a bike lane. (Motion To Suppress Transcript Page 71, Lines 18-24). Richard said Officer Cromwell told him he stopped him because his vehicle tires crossed over a white line. (Motion To Suppress Transcript Page 91, Lines 13-16).

#### ISSUE PRESENTED ON APPEAL

1. Did The District Court Err By Denying Richard's Motion To Suppress?

## ARGUMENT

### I.

#### The District Court Erred By Denying The Motion To Suppress

##### A. Introduction

Prior to trial, Richard filed a motion to suppress, asserting that his right to be free from warrantless searches and seizures had been violated. The district court denied his motion. It held that there was reasonable articulable suspicion supporting the traffic stop. (R., p. 119) Richard went to jury trial and was convicted of Possession of A Controlled Substance, Misdemeanor, a lesser-included offense. (R., p. 189)

##### B. Standard Of Review

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court will accept the trial court's findings of fact that are supported by substantial evidence, but there is free review of the application of constitutional principles to the facts as found. State v. Atkinson, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. State v. Valdez-Molina, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); State v. Schevers, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

##### C. The District Court Erred By Denying The Motion To Suppress

The district court stated in the order denying the motion to suppress, that it did not matter whether Richard's vehicle crossed over a line separating a road from a parking

space or a bike path. (R. p. 117) Either crossing would constitute reasonable articulable suspicion under two Idaho Code Sections: Idaho Code Section 49-630 or Idaho Code Section 49-637. Idaho Code Section 49-630 (1) reads as follows:

Upon all highways of sufficient width a vehicle shall be driven upon the right half of the roadway.

Section 49-637 (1) reads as follows:

Whenever any highway has been divided into two (2) or more clearly marked lanes for traffic the following, in addition to all else, shall apply: A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety.

Richard's trial counsel argued these statutes are in conflict, because the language of Idaho Code 49-637 (1) includes the phrase "as nearly as practicable entirely within a single lane". He questioned whether the crossing of a white line on the right hand side of the road represented a violation under Idaho Code Section 49-637(1). At the hearing he established the white line was an edge of a bike path as opposed to a fog line. He argued the "nearly as practicable" language widened the possible circumstances where a lane deviation may not amount to an infraction. He reasoned an ambiguity between the two statutes should be construed in favor of the accused.

Trial counsel also argued the crossing of a white line falls within a range of "normal driving activity". State v. Emory, 119 Idaho 661, 809 P. 2d 522 (Ct. App. 1991). The Emory case contemplated an officer's decision to stop a driver who on a Saturday night at around 3:00 a.m., was slow to respond to a traffic signal and whose vehicle came close to striking other parked vehicles. The stop was based upon suspicion of



impairment. Under the totality of the circumstances the Court held the officer lacked the objective facts necessary to legitimately stop the vehicle. The Court described the driver's conduct as falling within a broad range of what could be described as normal driving behavior. *Id.* at 525. The district court's denial of a motion to suppress was reversed.

Trial counsel implied Richard's two wheels crossing over a white line designating a bike lane did not provide a reasonable articulable suspicion of criminal activity to support a stop. It was not necessarily a violation of the law if Richard was maintaining his lane as nearly as practicable. The district court rejected this argument, by citing another Idaho case involving a different driver who was stopped for crossing over a white line. In that case the officer knew driver had a pending drug case. He suspected driver was engaged in drug manufacturing and distribution. The officer witnessed his vehicle tires pass over a white line while entering an on-ramp for a highway. The officer also noticed the driver was operating his vehicle at variable speeds below the posted limit. The Court reasoned the lane violation was a legitimate single reason to stop the driver; his vehicle had driven on the shoulder instead of the roadway as it entered the highway. Idaho v. Slater, 135 Idaho 293, 32 P. 3d. 685, 689 (Ct. App. 2001).<sup>1</sup>

Richard's response is crossing a white line designating a bike lane is not the same thing as crossing a fog line. A slight crossing of a bike lane does not represent leaving the roadway and entering a shoulder. Moreover, a single and slight deviation from the lane of travel falls within the normal range of driving behavior. This did not occur on an

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<sup>1</sup> The Court stated there was a violation Idaho Code Section 49-630.

on-ramp where a vehicle would be increasing its speed in the direction of travel. The district court erred when it denied Richard's motion to suppress.

Richard disagrees with the court's determination that there was substantial evidence upon which Officer Cromwell could be deemed a credible witness. The district court addressed his credibility in its Order Denying The Motion To Suppress. The court found Officer Cromwell to be credible on the issue of the white line violation, due to: 1) The court's observation of his demeanor as he testified; 2) his truthful testimony that he followed Richard looking for traffic violations beyond what he had witnessed and saw none, and; 3) He told Richard after he was stopped why he pulled him over and it was for a white line violation. (R. Page 118).

Richard disagrees with the court's conclusion regarding suppression. Ms. Lockner's testimony suggests Officer Cromwell's reason for stopping Richard was he left a known drug house. Richard believes the most important testimony was from Officer Plaisted. He said Officer Cromwell requested an assist officer with a drug dog at or near the time of the stop. Officer Cromwell testified the request for a dog was made after he smelled marijuana emanating from Richard's vehicle. The district court's concern in this close call case was the factual inaccuracy of Officer Cromwell's testimony. (R. 118) Regardless of the inaccuracy the court found him to be credible for the reasons stated above.

Richard believes it is unreasonable to believe an officer would ask for a drug dog on a simple lane violation infraction. It is more reasonable to infer there was another reason for the stop. The court recognized that if there were surveillance of the house coupled with a lane violation then there wouldn't be a problem. However, Officer

Cromwell said he was driving along when he first noticed Richard's driving. He said did not know where he was prior to seeing him in traffic. Richard testified he maintained his lane. He also testified he told a detective he had left a residence on Latah Street. (Motion To Suppress Transcript, Page 85, Lines 9-10).

The question before the Court is not whether the officer is being honest. The truth of the matter will always be subject to perspective. The question is whether there is substantial evidence to support the court's conclusion that the officer was credible. Richard argues there is not substantial evidence to support the district court's conclusion. Richard asks this Court to reverse the decision denying his motion to suppress.

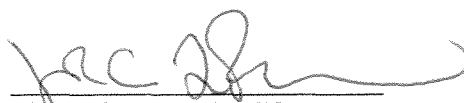
#### CONCLUSION

Richard argues his alleged lane violation was not reasonable articulable suspicion of criminal activity. Furthermore, it was behavior falling under a wide spectrum of normal driving. Richard argues there is not substantial evidence supporting the legal justification for the stop in this case. An officer's word is typically more than adequate to establish reasonable suspicion by the applicable preponderance of the evidence burden of proof. It is uncommon for a defense attorney to establish a record that creates such a close call on a lane violation case. The district court recognized the inherent power of the trial court to weigh the facts and decided to find the testimony regarding a lane violation credible. Richard is asking this Court to do the opposite.

The court cited a law review article during the motion to suppress hearing. (Motion To Suppress Transcript Page 112, Lines 6-7). Trial counsel cited a Ninth Circuit case in its briefing in support of its motion to suppress. There is debate over fog line violations being adequate cause as justification for a stop. They are easy to believe but

difficult to contest. This case is appropriate for relief. Richard asks this Court to overturn the district court's decision to deny the motion to suppress.

DATED this 23rd day of July, 2014.

A handwritten signature in black ink, appearing to read "John C. DeFranco", written over a horizontal line.

JOHN C. DEFRANCO  
Attorney for Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 23rd day of July, 2014, I served a true and correct copies of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JESSICA LORELLO  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION

PO BOX 83720

BOISE ID 83720-0010

Hand delivered to Attorney General's mailbox at Supreme Court.

A handwritten signature in black ink, appearing to read "John C. DeFranco", written over a horizontal line.

John C. DeFranco