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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

NICOLE CANNON,

Defendant.

Case No. CR-MD-2012-5979

**MEMORANDUM IN SUPPORT
OF MOTION TO SUPPRESS**

Defendant NICOLE CANNON, by and through her attorney of record, Douglas Nelson of the Roark Law Firm, and hereby submits the following Memorandum in support of her Motion to Suppress, pursuant to Rule 12(b) of the Idaho Criminal Rules.

1. FACTS

On April 19, 2012 at approximately 11:00 PM Officer Furniss of the Boise City Police Department noticed a vehicle traveling westbound on 184 go around a corner. In so doing, the vehicles passenger side tires crossed over the white painted line on the right side of the road.. This line is sometimes referred to as the "fog" line. After traveling some distance, officer Furniss again noticed the vehicle cross over the fog line in approximately the same manner as the first time. Officer Furniss stopped the vehicle and identified Nicole Cannon as the driver. After

conducting field sobriety tests Ms. Cannon was arrested for driving under the influence of alcohol.

2. LAW

"A defendant attempting to suppress evidence obtained from a search must come forward with evidence sufficient to show there was a Fourth Amendment search, he has standing to challenge the search, and the search was illegal. See *State v. Bottelton*, 102 Idaho 90, 92, 625, P.2d 1093, 1095 (1981). When the defendant challenges the legality of a search based upon the absence of a search warrant, the burden then shifts to the State to prove the legality of the search. *Id.* ("once the search is shown to have been made without a warrant, the search is deemed to be 'per se unreasonable,' and the burden shifts to the state to show that the search was pursuant to one of the exceptions to the warrant requirement"); *State v. Cook*, 106 Idaho 209, 214, 677 P.2d 522, 527 (Ct. App. 1984)."

State v. Holland, 135 Idaho 159, 162 15 P.3d 1167, 1170 (2000).

A traffic stop by an officer constitutes a seizure of the vehicle's occupants and implicates the Fourth Amendment's prohibition against unreasonable searches and seizures. *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S.Ct. 1391, 1395, 59 L.Ed.2d 660, 667 (1979); *State v. Brumfield*, 136 Idaho 913 (Ct. App. 2002); *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). Under the Fourth Amendment, an officer may stop a vehicle to investigate possible criminal behavior if there is a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws. *United States v. Cortez*, 449 U.S. 411, 417 (1981); *State v. Flowers*, 131 Idaho 205, 208, 953 P.2d 645, 648 (Ct. App. 1998). The reasonableness of the suspicion must be evaluated upon the totality of the circumstances at the time of the stop. *State v. Ferreira*, 133 Idaho 474, 483, 988 P.2d 700, 709 (Ct. App. 1999). The reasonable suspicion standard requires less than probable cause but more than mere speculation or instinct on the part of the officer. *Id.* An officer may draw reasonable inferences from the facts in his or her possession, and those inferences may be

drawn from the officer's experience and law enforcement training. *State v. Montague*, 114 Idaho 319, 321, 756 P.2d 1083, 1085 (Ct. App. 1988).

The police officer's suspicion must be premised upon specific articulable facts and the rational inferences drawn from those facts. *Terry v. Ohio*, 392 U.S. 1, 30, 88 S.Ct. 1868, 1884; 20 L.Ed.2d 889, 911 (1968); *State v. Gallegos*, 120 Idaho 894, 896-97, 821 P.2d 949, 951-52 (1991).

Suspicion will not be found to be justified if the conduct observed by the officer fell within the broad range of what can be described as normal driving behavior. *Atkinson*, 128 Idaho at 561, 916 P.2d at 1286.

3. DISCUSSION

The traffic stop in this case was conducted without the presence or existence of a warrant. This arrest constituted a warrantless "seizure" under Fourth Amendment law.

The burden automatically shifts to the government, to prove that the seizure and arrest were legal and made pursuant to an exception to the warrant requirement. Therefore, the government must prove that Nicole violated the law when she crossed over a solid white line.

In the recent case of *State v. Gregory Harris*, Ada County Case #CR-MD-2011-0008584 (decided March 14th, 2012), Judge Thomas P. Watkins discusses, in an opinion granting the defendant's motion to suppress evidence, whether there is any prohibition against crossing white lines on roadways. There he concluded that Idaho has chosen not to make crossing over the fog line unlawful. See page 3 and 4 of the opinion, which is attached hereto for the Court's convenience.

Accordingly, Nicole violated no clear "rule of the road" with her driving. Therefore, the police officer lacked reasonable articulable suspicion that Nicole violated traffic laws or committed a driving offense of any type. Under clear Fourth Amendment jurisprudence, discussed herein

above, this lack of reasonable articulable suspicion renders the warrantless stop and seizure unconstitutional. Any evidence or information obtained as a result thereof should be held inadmissible.

Doctrine of Lenity

Additionally, in situations where the law is relatively unclear, Courts are required to apply the doctrine of lenity, which requires courts to construe criminal statutes in favor of the accused. *State v. Wees*, 138 Idaho 119, 124, 58 P.3d 103, 108 (Ct. App.2002); *State v. Dewey*, 131 Idaho 846, 848, 965 P.2d 206, 208 (Ct. App.1998). In this situation, the doctrine of lenity lends further support to the Defendant's Motion to Suppress.

4. CONCLUSION

Based upon the above and foregoing, Defendant Nicole Cannon's Motion to Suppress should be granted. All evidence and information obtained as the result of the unconstitutional stop and seizure of the Defendant's Vehicle on April 19, 2012 should be suppressed and ruled inadmissible at the trial of this matter.

DATED this 18 day of May, 2012.

THE ROARK LAW FIRM, LLP


DOUGLAS NELSON

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 18 day of May, 2012, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Boise City Prosecuting Attorney
P.O. Box 500
Boise, Idaho 83701-0050

_____ By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

_____ By hand delivering copies of the same to the office of the attorney(s).

✓ By telecopying copies of same to said attorney(s) at the telecopier number(s): 208-384-4454

Doug Nelson

DOUGLAS NELSON

NO. _____ FILED _____
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MAR 14 2012

CHRISTOPHER D. RICH, Clerk
By HEIDI BELL
DEPUTY

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

STATE OF IDAHO,

Plaintiff,

Vs.

GREGORY HARRIS,

Defendant.

CASE NO. CR-MD-2011-0008584

MEMORANDUM OPINION

ON MOTION TO SUPPRESS

INTRODUCTION

This matter came before the court on defendant Harris's motion to suppress evidence obtained after a Meridian Police officer stopped his car for an alleged traffic violation. The court heard testimony from witnesses and arguments from counsel, and the matter was taken under advisement.

FINDINGS OF FACT

The facts are not in dispute. In the early morning hours of June 4, 2011, Officer Urie was on patrol in the city of Meridian, travelling northbound on Main Street. She observed a red Pontiac also travelling northbound. There were no other vehicles in the area. The Pontiac was in a designated left-hand turn lane, indicated by white turn arrows, and a solid white line on the right-hand side of the lane. As the Pontiac approached the intersection at Broadway, it signaled a turn to the right, and then changed lanes, approximately 20-30 yards from the intersection. The car then proceeded northbound on Main, in a lane designated for such travel. Upon seeing the Pontiac change lanes, Off. Urie made a traffic stop. Harris was the driver of the Pontiac. He was eventually run through a battery of field sobriety tests, and later submitted to a breath test that was above the legal limit. Harris was then arrested for Driving Under the Influence, in violation of Idaho Code Section 18-8004.

ANALYSIS

Harris argues that Off. Urie lacked the legal basis upon which a traffic stop could be lawfully made, and therefore any evidence obtained after that stop must be suppressed. Specifically, Harris claims that no law prohibits him from changing lanes when the lanes are marked with a solid white line.

Under the Fourth Amendment, an officer may stop a vehicle to investigate possible criminal behavior if there is a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws. United States v. Cortez, 449 U.S. 411, 417, 101 S.Ct. 690, 694-95, 66 L.Ed.2d 621, 628-29, (1981); State v. Flowers, 131 Idaho 205, 208, 953 P.2d 645, 648 (Ct.App. 1998). The reasonableness of the suspicion must be evaluated upon the totality of the circumstances at the time of the stop. State v. Ferreira, 133 Idaho 474, 483, 988 P.2d 700, 709

(Cl.App. 1999). The reasonable suspicion standard requires less than probable cause but more than mere speculation or instinct on the part of the officer. *Id.* An officer may draw reasonable inferences from the facts in his or her possession, and those inferences may be drawn from the officer's experience and law enforcement training. State v. Montague, 114 Idaho 319, 321, 756 P.2d 1083, 1085 (Cl.App. 1988). Suspicion will not be found to be justified if the conduct observed by the officer fell within the broad range of what can be described as normal driving behavior. Atkinson, 128 Idaho at 561, 916 P.2d at 1286. The commission of a traffic offense gives law enforcement the legal cause to stop a vehicle. State v. Schmidt, 121 Idaho 381, 383, 825 P.2d 104, 106 (Cl.App.1992).

The state argues that the stop was lawful, and points to several statutes for support. First, the state claims that Harris violated Idaho Code Section 49-801 by failing to obey a traffic control device, namely the left-turn only arrows that were painted on the roadway. Next, the state argues that by changing lanes so close to the intersection, Harris violated I.C. 49-808, which requires that all turns on a highway be made with reasonable safety. Lastly, the state argues that one cannot cross a solid white line, even if a proper signal is made. It is this last argument which directs the court's analysis.

Nothing in the Idaho Code addresses what a solid white line truly designates. For guidance, the court looks to the Federal Highway Administration's "Manual on Uniform Traffic Control Devices," or MUTCD. Section 3B.04 of MUTCD says the highway department should use a single white line to "discourage" crossing the lane line and a double white line to prohibit crossing it. The manual explains that a single solid white line is used for a variety of lines that drivers should be discouraged from crossing in "normal" situations but which drivers do need to cross in some situations. An example is the "edge line" – the line that separates the rightmost

travel lane from the shoulder. The single solid white line discourages crossing onto the shoulder but does not prohibit it because it is obviously desirable and/or necessary to cross it in some situations, such as an emergency stop. The manual notes, however, that individual states may choose to make the crossing of such lines unlawful. Idaho has not done so.

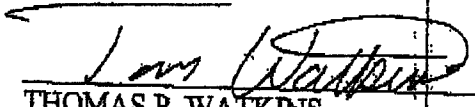
With this background, the court will examine each of the state's arguments. First, did Harris violate 49-801(1), which provides in pertinent part, "The driver of any vehicle shall obey the instructions of any traffic-control device placed or held in accordance with the provisions of this title, unless otherwise directed by a peace officer?" The state argues that once a driver enters a designated turn lane which is bounded by a solid white line, that driver cannot change lanes, and must proceed to make the designated turn. The court can find no support for this proposition. The Idaho legislature has not provided a statute to that effect, nor is support found in the MUTCD. Nor does this proposition find support in common sense. Often times, a designated turn lane is the lane that a driver is required to enter when making a turn because it is the closest lane of travel available. It would make little sense to find that a driver could not lawfully signal a lane change to get out of that lane, and instead require the driver to make this turn. The court finds that Harris did not violate I.C. 49-801.

The state's next argument is that Harris violated I.C. 49-808(1), which provides that no person shall turn a vehicle onto a highway or move a vehicle right or left upon a highway or merge onto or exit from a highway unless and until the movement can be made with reasonable safety nor without giving an appropriate signal. The state claims that Harris, in making the lane change so close to the intersection, made a turning movement without reasonable safety. However, this argument ignores the circumstances that existed at the time Harris made this lane change. It was nearly 1:30 in the morning, and Off. Urie testified that there was no other traffic

in the area. She also testified that she did not recall that Harris failed to signal this turn. Given the time of day and the lack of any other traffic, the court finds that Harris made the lane change in a reasonably safe manner, and with the appropriate turn signal, and therefore he did not violate I.C. 49-808.

The state also urges the court to review the relevant standard applicable to this traffic stop; that the officer had reasonable, articulable suspicion of criminal behavior, rather than "probable cause." The court is mindful of this standard, and believes that it is the legal standard that is to be applied, but this does not help the state's position. Off. Urie witnessed no violation of state or local law, nor does this single instance of a lawful lane change provide the basis of reasonable suspicion that criminal activity was afoot. Off. Urie did not observe a pattern of lawful, yet suspicious activity, such as a series of weaving within a lane or the like, that would provide the lawful basis for the stop. Given the above, the court finds that Off. Urie lacked the necessary reasonable suspicion upon which to stop Harris's car, and therefore all evidence obtained after that stop must be suppressed. Accordingly, Harris's motion to suppress is hereby GRANTED.

DATED This 11th day of March, 2012.


THOMAS P. WATKINS
Magistrate Judge