

STATE OF IDAHO)
 County of KOOTENAI)
 FILED 8/26/2020)
 AT 9:50 O'clock A 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

<p>STATE OF IDAHO,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p>vs.</p> <p>CHANCE HUNTER MASSEY,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No. CR28-20-5243</p> <p>MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS</p>
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Defendant CHANCE HUNTER MASSEY's Motion to Suppress is **DENIED**.
 Stanley Mortensen, Dep. Prosecuting Attorney, lawyer for the Plaintiff.
 John Erick Redal Coeur d'Alene, lawyer for Defendant Massey.

I. FACTUAL BACKGROUND.

On April 1, 2020, at approximately 11:51 p.m., Idaho State Police Sergeant Klitch conducted a traffic stop for speeding (I.C. § 49-654) and failing to signal (I.C. § 49-808) on a vehicle operated by defendant Chance H. Massey (Massey). Aff. in Supp. of Warrantless Arrest 1. Sergeant Klitch observed that Massey, "had bloodshot eyes, as well as dilated pupils"[,] as well as "other indicators of being under the influence of a controlled substance." *Id.* during the course of the traffic stop, Sergeant Klitch, "observed a plastic container at the driver's feet, which was open and had a plant like residue consistent with marijuana." *Id.* Sergeant Klitch "recognized this container as a commercial marijuana packaging." *Id.* Sergeant Klitch, "had MASSEY exit the vehicle and questioned him about the container... MASSEY indicated the container was years old and hadn't contained marijuana for two to three years." *Id.* at 1-2. Additionally, "MASSEY denied having any marijuana in the vehicle." *Id.* at 2. Sergeant Klitch then asked several times for the keys to Massey's vehicle in order to conduct a probable

cause search of the vehicle, Massey refused and Sergeant Klitch arrested him for “resisting and obstructing”. *Id.* Sergeant Klitch searched Massey and removed the keys to the vehicle from Massey’s cargo pocket. *Id.* Sergeant Klitch read Massey his Miranda rights and “MASSEY admitted to having a jar of marijuana in the vehicle, which he referred to as personal use.” *Id.* Sergeant Klitch and Corporal Mohr searched the vehicle and using Massey’s keys opened the top cargo container of Massey’s vehicle. *Id.* The cargo container contained “a large amount of Marijuana”, cocaine, and psilocybin mushrooms. *Id.* A search of the rest of the vehicle turned up additional containers of marijuana, a smoking pipe, two digital scales, and a large amount of U.S. currency. *Id.* The plastic container, which had been initially seen by Sergeant Klitch, “contained plant like residue consistent with marijuana.” *Id.*

Massey filed his Motion to Suppress on July 24, 2020. This was untimely under I.C.R. 12(d) and 12(f), relative to the date Massey pled not guilty, May 6, 2020. Under I.C.R. 12(d), he had 28 days after May 6, 2020, to file a motion to suppress. Instead, Massey filed his motion 79 days after May 6, 2020. Counsel for plaintiff noted this defect, and filed an Objection to Timeliness of Motion to Suppress on July 29, 2020. On August 12, 2020, this Court heard oral argument on the objection. At the conclusion of that hearing, the Court overruled the objection by plaintiff, and found that counsel for Massey had shown good cause for delay in filing the Motion to Suppress, and that there was no prejudice to the plaintiff. The Court ordered counsel for defendant to file an amended Motion to Suppress as the existing Motion to Suppress filed on July 24, 2020, gave the plaintiff and the Court absolutely no notice as to what the issues might be on defendant’s Motion to Suppress. On August 13, 2020, defendant filed an Amended Motion to Suppress. On August 17, 2020, defendant filed a Memorandum in Support of

Motion to Suppress Evidence. On August 21, 2020, plaintiff filed its Memorandum in Opposition to Motion to Suppress. Oral argument was held on August 25, 2020. At the conclusion of oral argument, the Court denied the defendant's Motion to Suppress and indicated that it would file a written decision detailing the Court's reasoning.

II. STANDARD OF REVIEW.

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). 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). "[T]he power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court." *State v. Dreier*, 139 Idaho 246, 250, 76 P.3d 990, 994 (Ct. App. 2003) (citing *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)).

III. ANALYSIS.

A. The traffic stop was lawfully extended.

Massey argues that:

Here, Sgt. Klitch departed from the original purpose of the traffic stop by ordering Mr. Massey from the vehicle, telling him he would be

frisking him for weapons, and asking questions about the item on the floorboard. Sgt. Klitch asserts that he recognized the container on Mr. Massey's floorboard as commercial marijuana packaging and could see plant residue consistent with marijuana. However, media furnished to defense counsel in discovery demonstrates that the container was not distinguishable as marijuana packaging and that the likelihood of being able to see inside that container was minimal. Specifically, the container is black, unmarked, and approximately the size of film canister. Indeed, it appears to be film canister. The opening of the container is angled towards the back, left portion of the vehicle, and the lid is partially closed. The item is shadowed, nestled behind Mr. Massey's boots. The bottom of the container was facing the passenger window, where Sgt. Klitch made contact. Finally, it is telling that, despite the assertion that the container held marijuana, this item is omitted from his charging document.

As this plain, black container was not enough to suggest that Mr. Massey's vehicle contained contraband or evidence of crime, Sgt. Klitch did not have reasonable, articulable suspicion to elevate the traffic stop into drug investigation. Further, Sgt. Klitch did not present specific and articulable facts to demonstrate that a pat search of Mr. Massey was necessary for his safety. As both this line of questioning and the pat search unreasonably extended Mr. Massey's stop for minor traffic violations, this detention was unlawful.

Mem. in Supp. of Mot. to Suppress Evidence. 5-6. At the August 25, 2020, hearing, the Court examined defendant's Exhibit A, the container seized from Massey. The Court makes the following findings which are inconsistent with Massey's arguments about the container. First of all, the container is not black. The Court finds that the container is light to medium gray, and that the container itself is very transparent. The lid is opaque gray. A photograph of the container, plaintiff's Exhibit 4 was also admitted. That photograph is misleading when compared to actual container. First, the photograph looks a lot like a film canister, but the photograph has no other object to depict scale of the container. Second, the photograph looks darker than the actual container. The Court finds that the actual container (Exhibit A) is not at all the size of a film canister (the Court assumes counsel for defendant was comparing to a 35 mm film canister), instead, it is about twice the size of a film canister. Finally, the container does not appear to be angled toward the back.

The State argues that:

In the case at hand, Sergeant Klitch was standing alongside the Defendant's vehicle after conducting a lawful traffic stop of the vehicle the Defendant was driving. From this vantage point, Sergeant Klitch observed a plastic container in the vehicle at the Defendant's feet. From this same vantage point, Sergeant Klitch observed that this plastic container was open and contained a plant like residue that Sergeant Klitch recognized, through his training and experience, to be consistent with marijuana. Sergeant Klitch additionally observed that, although it was void of a label, the container was consistent with what Sergeant Klitch believed to be, according to his training and experience, to be commercial marijuana packaging. Sergeant Klitch made these observations while standing along the side of the vehicle; lawful police activity. Any portion of the interior of the vehicle Sergeant Klitch could view from this vantage point was outside of any cognizable privacy right possessed by the Defendant. As Sergeant Klitch's observations were made while he was engaged in lawful police activity and within public view, they are not subject to Fourth Amendment scrutiny.

Mem. in Opp'n to Mot. to Suppress 4. At the August 25, 2020, hearing, the Court also reviewed plaintiff's Exhibit 2 and 3, which were photographs taken of the interior of Massey's vehicle after Massey had exited the vehicle. Those photographs clearly show the light grey tint of the container, and the very transparent nature of the container. The Court specifically finds that Sergeant Klitch could easily have seen marijuana residue in the container located on the floorboard of Massey's Toyota 4Runner, near Massey's feet, from Sergeant Klitch's vantage point at the passenger side window, which Sergeant Klitch testified was about four to four and a half feet away from the container.

State v. Linze lays out the Fourth Amendment analysis regarding the stop of a vehicle by law enforcement for a traffic violation.

The Fourth Amendment of the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. The stop of a vehicle by law enforcement constitutes a seizure of its occupants to which the Fourth Amendment applies. *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S.Ct. 1391, 1395–96, 59 L.Ed.2d 660, 667 (1979). The seizure of a vehicle's occupants in order to investigate a traffic violation is a "reasonable

seizure” under the Fourth Amendment so long as the seizing officer had reasonable suspicion that a violation had occurred. See *Rodriguez v. U.S.*, 135 S.Ct. 1609, 1614, 191 L.Ed.2d 492, 498–99 (2015) (“A seizure for a traffic violation justifies a police investigation of that violation.”). However, “[b]ecause addressing the infraction is the purpose of the stop, it may ‘last no longer than is necessary to effectuate that purpose.’” *Id.* (quoting *Illinois v. Caballes*, 543 U.S. 405, 407, 125 S.Ct. 834, 836–37, 160 L.Ed.2d 842, 846 (2005)). “Authority for the seizure thus ends when tasks tied to the traffic infraction are... or reasonably should have been... completed.” *Id.*

State v. Linze, 161 Idaho 605, 607–08, 389 P.3d 150, 152–53 (2016). The Court in *Linze* goes on to outline what happens once an officer abandons his original purpose for a traffic stop to investigate other criminality.

The stop remains a reasonable seizure while the officer diligently pursues the purpose of the stop, to which that reasonable suspicion is related. However, should the officer abandon the purpose of the stop, the officer no longer has that original reasonable suspicion supporting his actions. Indeed, when an officer abandons his or her original purpose, the officer has for all intents and purposes initiated a new seizure with a new purpose; one which requires its own reasonableness under the Fourth Amendment. This new seizure cannot piggy-back on the reasonableness of the original seizure. In other words, unless some new reasonable suspicion or probable cause arises to justify the seizure’s new purpose, a seized party’s Fourth Amendment rights are violated when the original purpose of the stop is abandoned (unless that abandonment falls within some established exception).

161 Idaho at 609, 389 P.3d at 154.

State v. Stewart provides the analysis for evaluating the Fourth Amendment constitutionality of investigating additional criminality during the course of a stop for a traffic violation.

...[U]nder current United States Supreme Court interpretation, when a suspect is otherwise being reasonably detained, the Fourth Amendment is not infringed by the officer’s interrogating the suspect about possible criminal activity unrelated to the justification for the detention. This is consistent with our prior decisions holding that general questioning on topics unrelated to the purpose of the stop is permissible so long as it does not expand the duration of the stop.

State v. Stewart, 145 Idaho 641, 647, 181 P.3d 1249, 1255 (Ct. App. 2008) (citing *State v. Parkinson*, 135 Idaho 357, 362, 17 P.3d 301, 306 (Ct. App. 2000); *State v. Silva*, 134 Idaho 848, 853, 11 P.3d 44, 49 (Ct. App. 2000)).

In the present case, it is undisputed that Sergeant Klitch had reasonable suspicion to lawfully affect the traffic stop upon Massey. At the August 25, 2020, hearing on Massey's Motion to Suppress, a portion of the video of the stop was shown to the Court as Exhibit 1 was admitted and published. After watching that video, this Court finds that Sergeant Klitch's inquiry of Massey about the presence of marijuana, upon immediately observing the container at Massey's feet, is not a violation of Fourth Amendment protections because such brief questioning about possible criminality unrelated to the reason for detention is allowed under the current interpretation of the Fourth Amendment by the Supreme Court. *State v. Stewart*, 145 Idaho at 647, 181 P.3d at 1255, (citing *Parkinson*, 135 Idaho at 362, 17 P.3d at 306; *State v. Silva*, 134 Idaho 848, 853, 11 P.3d 44, 49 (Ct. App. 2000)). Because this discussion about the container occurred immediately at the beginning of the encounter, it "did not expand the duration of the stop" as set forth in *Stewart*, 145 Idaho at 647, 181 P.3d at 1255. Massey's admission that the container at his feet had once contained marijuana, but had not contained marijuana for two to three years, may not be enough on its own to form the probable cause necessary for the search of Massey's vehicle, but this Court finds that Sergeant Klitch's plain view observation of the container as commercial packaging for marijuana, and his observation of a marijuana like substance within the open container, is sufficient probable cause to perform a warrantless search of Massey's vehicle. But Sergeant Klitch had even more evidence than that. Sergeant Klitch testified that he observed Massey had blood shot glassy eyes and dilated pupils

consistent with a person who had been using cannabis or a central nervous system stimulant. Sergeant Klitch testified that Massey's high and raspy speech was consistent with a person who had recently used marijuana.

The plain view doctrine is one exception to the warrant requirement. See *State v. Tamez*, 116 Idaho 945, 782 P.2d 353 (Ct. App. 1989). "For the plain view doctrine to apply two conditions must be met: 1) there must be a lawful intrusion or the officer must otherwise properly be in position to view a particular area, and 2) it must be immediately apparent that items viewed are contraband or evidence of a crime." *State v. Buterbaugh*, 138 Idaho 96, 99, 57 P.3d 807, 810 (Ct. App. 2002). As referenced above, it is undisputed that the initial traffic stop was lawful, and therefore, Sergeant Klitch was properly in position to view items at Massey's feet while conducting the traffic stop. This Court specifically finds that Sergeant Klitch observed a marijuana like substance in the container, Exhibit A, and that this container was consistent with commercial marijuana packaging. Sergeant Klitch testified that in his training and experience, he had seen similar containers many times in marijuana dispensaries and manufacturing facilities in California and Nevada. He testified that in his experience on patrol he had seen such containers many times (hundreds of times) and he could not recall one instance where such a container held anything other than marijuana. He testified that usually the container has a label from the dispensary attached to it, and a tax stamp (this container did not), but that such labels can be removed from the container and that he had seen such containers with no label before. Sergeant Klitch testified that the lid is unique to the marijuana industry, that while not a child-proof lid, the lid must be squeezed and manipulated a certain way in order to open the container. This Court finds Sergeant Klitch credible in all of his testimony, and specifically his

testimony of what he observed immediately upon the floorboard of Massey's vehicle, immediately adjacent to Massey's feet, and that Sergeant Klitch immediately knew such to be marijuana paraphernalia. The proof of this is the fact that Sergeant Klitch told Massey what he was seeing and what he suspected that it was. Less than sixty seconds after asking Massey to roll down his window, at the inception of his encounter with Massey, Sergeant Klitch can be heard to say, "Down by your feet, looks like a container with marijuana in it, and you are showing signs of using marijuana at some point during the day." Three minutes later, before he arrested Massey, Sergeant Klitch told Massey, "I've got probable cause, I've got paraphernalia, an open container, you can't have paraphernalia, you said it is an old container for weed." Even Massey confirmed that Exhibit A is paraphernalia.

Because the container was immediately observed by Sergeant Klitch and because the conversation about that observation of paraphernalia occurred at the beginning of Sergeant Klitch's encounter with Massey, the Court specifically finds that the purpose of the original traffic stop (speeding) was not unlawfully extended.

B. Massey's arrest and subsequent search of his vehicle was lawful.

Next Massey argues that:

Here, Sgt. Klitch arrested Mr. Massey for not turning over his keys for search of his automobile. However, Sgt. Klitch did not have probable cause to search Mr. Massey's vehicle, because the item he described as drug paraphernalia was not immediately apparent as such, and Mr. Massey's statements did not support probable cause that the item was presently used as drug paraphernalia. Given that Sgt. Klitch did not actually have probable cause to search Mr. Massey's vehicle, Mr. Massey's passive resistance to the illegal search cannot amount to resisting lawful discharge of Sgt. Klitch's duties. For the foregoing reasons, the evidence procured from Mr. Massey's unlawful arrest and subsequent unlawful search of his vehicle should be suppressed.

Mem. in Supp. of Mot. to Suppress 7-8. As mentioned above, this Court finds that the container, Exhibit A, was and is drug paraphernalia, Sergeant Klitch immediately identified it as such and told Massey that it was paraphernalia, and shortly thereafter, Massey confirmed it was paraphernalia because he had used it to store two or three year old weed.

The State argues that the probable cause for a search of Massey's vehicle was met because:

In the case at hand, Sergeant Klitch observed a plastic container in the Defendant's vehicle. Sergeant Klitch observed that this plastic container was open and contained plant like residue that Sergeant Klitch recognized, through his training and experience, to be consistent with marijuana. Sergeant Klitch additionally observed that, although it was void of a label, the container was consistent with what Sergeant Klitch believed to be, according to his training and experience, to be commercial marijuana packaging. As the Ramirez Court found the lighter and spoon containing residue, coupled with the officer's experience, satisfied the probable cause requirement of the vehicle exception, so too should this Court find the container with residue inside, coupled with Sergeant Klitch's training and experience, satisfies the probable cause requirement of the vehicle exception.

Mem. in Opp'n. to Mot. to Suppress 6-7. This Court agrees.

Additionally, the State argues that the arrest of Massey for resisting and obstructing officers, and the search of Massey's vehicle incident to the arrest, was lawful because Sergeant Klitch was attempting to discharge a duty of his office in affecting the lawful search of Massey's vehicle, and Massey's refusal to relinquish his vehicle keys was in violation of Idaho Code § 18-705. *Id.* at 8-9. Idaho Code § 18-705 reads:

Every person who willfully resists, delays or obstructs any public officer, in the discharge, or attempt to discharge, of any duty of his office or who knowingly gives a false report to any peace officer, when no other punishment is prescribed, is punishable by a fine not exceeding one thousand dollars (\$1,000), and imprisonment in the county jail not exceeding one (1) year.

The Idaho Court of Appeals has found that:

The word “duty,” as used in I.C. § 18–705, “encompass[es] only those lawful and authorized acts of a public officer.” *State v. Wilkerson*, 114 Idaho 174, 180, 755 P.2d 471, 477 (Ct.App.1988). Therefore, “where an individual refuses to obey an order or obstructs an act of a public officer which is contrary to the law, be it statute or constitution, that individual does not violate I.C. § 18–705.” *Id.*

State v. Wiedenheft, 136 Idaho 14, 16, 27 P.3d 873, 875 (Ct. App. 2001).

The State concedes, “that the answer to the specific question of ‘whether or not an officer may lawfully arrest an individual for violating Idaho Code § 18-705 for refusing to relinquish vehicle keys so the officer can lawfully search the vehicle’ has yet to be answered.” Mem. in Opp’n. to Mot. to Suppress 8. The State argues that this Court should find Massey’s arrest lawful due to analogous holdings justifying arrests under I.C. § 18-705 “for refusing to allow an officer into a residence during a domestic violence investigation (*Wiedenheft*) or refusing to produce a driver’s license, registration and proof of insurance during a traffic stop (*State v. George*, 127 Idaho 693 (1995)).” *Id.* at 8-9.

The Court in *Wiedenheft* found that the officer rightly arrested the defendant for refusing to allow entry into her home due to exigent circumstances, and the Court held “that a prompt and limited search of the scene should be strictly circumscribed by the exigency, to assist an injured party or deal with the perpetrator, and cannot be used to support a general exploratory search.” *State v. Wiedenheft*, 136 Idaho 14, 17, 27 P.3d 873, 876 (Ct. App. 2001). In the present case, no exigent circumstances to assist an injured party exists. However, in the present case, the exigent circumstance is a traffic stop, so *Wiedenheft* is analogous.

State v. George is much more on point, although also by analogy. In *State v. George*, the Idaho Supreme Court dealt with the issue of an arrest performed under Idaho Code § 18-705 for a refusal to provide license, registration and proof of insurance during a lawfully conducted traffic stop. 127 Idaho 693, 699, 905 P.2d 626, 632 (1995). The Court found that, "because we hold that the stop was valid, the officer's request for George's license, registration and proof of insurance was a lawful and authorized act, and George's refusal to produce those documents therefore constituted obstructing and delaying an officer in the performance of a duty of his office." *Id.* While not directly on point (Massey refused to give Sergeant Klitch his key, where George refused to give the officer his license, registration and insurance proof), *State v. George* is analogous and useful to the case at hand. The duty in question in the present case is Sergeant Klitch's duty to execute a warrantless probable cause search of Massey's vehicle for drugs and evidence of being under the influence while driving.

Sergeant Klitch testified that when Massey exited his vehicle, he rolled his windows up and locked the doors of that vehicle. As shown above, this Court has found that when Sergeant Klitch had Massey exit his vehicle, Sergeant Klitch possessed the required probable cause to search Massey's vehicle, both for the immediately observed presence of marijuana, and to investigate possible driving under the influence and possession of drugs, therefore, Sergeant Klitch's request for Massey's vehicle keys was a lawful and authorized act. Before asking Massey for the keys to his vehicle, Sergeant Klitch told Massey several times that he had probable cause to search his vehicle and exactly why he had probable cause to search his vehicle. Sergeant Klitch told Massey more than once that he was in fact going to be searching his vehicle and on one occasion stated, "When I search the vehicle I think I'm

going to find something significant in the vehicle.” Sergeant Klitch clearly had probable cause to search Massey’s vehicle at the time. Massey had the keys to the locked vehicle on his person. Sergeant Klitch’s request and then order to Massey to give him the keys to his vehicle was a “lawful act” under *Wiedenheft*, and by his refusal to turn over the keys, Massey “willfully resists, delays or obstructs any public officer, in the discharge, or attempt to discharge, of any duty of his office” under Code § 18-705. Massey’s refusal to relinquish the keys therefore constituted obstructing and delaying an officer in performance of a duty of his office under Idaho Code § 18-705. For these reasons, this Court finds that the arrest of Massey under Idaho Code § 18-705, and the subsequent search of Massey’s vehicle incident to arrest, was lawful.

IV. CONCLUSION AND ORDER.

For the Reasons described above, defendant Massey’s Motion to Suppress must be denied.

IT IS HEREBY ORDERED defendant Massey’s Motion to Suppress is DENIED.

DATED this 26th day of August, 2020


JOHN T. MITCHELL, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 26th day of August, 2020 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney - John Erick Redal redallaw@gmail.com
Prosecuting Attorney – Stanley Mortensen
kcpa1courts@kcgov.us

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY: 
Deputy