

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF BONNER**

STATE OF IDAHO,

Plaintiff,

vs.

JOSHUA MICHAEL INGMIRE,

Defendant.

Case No. CR-10-0008

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

The parties presented oral argument and evidence in the above-entitled case on defendant's Motion to Suppress between April 26, 2010 and April 30, 2010. The defendant, Joshua Michael Ingmire, is charged with Possession of a Controlled Substance with Intent to Deliver and Possession of Marijuana in Excess of 3 Ounces. The defendant is seeking suppression of physical evidence obtained during a warrantless search of his backpack and statements made by him at the time of the search, as well as further statements made by him after being transported to the Bonner County Police Booking Station.

**I.
FACTS**

On December 31, 2009 Mr. Ingmire was snowboarding at Schweitzer Mountain resort near Sandpoint, Idaho. Late in the evening on that day Schweitzer security director Nate Windgren was approached by Mr. Ingmire and another individual, later believed to be a Mr.

Gurney, who had either locked their keys in their Dodge Durango or lost them and requested assistance from Mr. Windgren to unlock the vehicle. Mr. Windgren radioed to one of his security officers, Mr. Bennett, to assist Mr. Ingmire. Mr. Bennett then accompanied Mr. Ingmire to the Dodge Durango. Mr. Ingmire provided Mr. Bennett with verbal authorization to open the vehicle. Mr. Bennett then proceeded over to the vehicle and assessed the situation. According to Mr. Bennett's testimony, he first went to the passenger side window, dusted off the accumulated snow so that he could peer in to the vehicle, and perceived a large quantity of what appeared to be an illegal substance. The substance was contained in a glass jar in the center console of the vehicle. At this point, Mr. Bennett, called a second security officer to the car to verify his observations. After conferring with the second officer, Mr. Bennett then notified the Bonner County Sheriff's Department and also alerted Mr. Windgren. Mr. Windgren and a fourth security officer, Mr. Decker, then arrived at the scene. Mr. Windgren testified at the suppression hearing that he instructed the other security officers to detain Mr. Ingmire in handcuffs, because he looked fidgety as if he might try and flee the scene. The second individual, the alleged Mr. Gurney believed to be associated with the defendant, was also in the parking lot at the time that the defendant was placed in handcuffs; he began to flee the scene on foot. A Schweitzer security officer pursued the individual, but was later instructed by Mr. Windgren to cease pursuit for the officer's own safety. After Mr. Ingmire was handcuffed as instructed by Mr. Windgren, he was placed inside the security vehicle with the door ajar. The security officers and defendant then waited for approximately thirty minutes for the arrival of Deputy Darren Osborne of the Bonner County Sheriff's Office. During this period of time, the security officers had one direct conversation with Deputy Osborne over the phone, but the conversation was limited to directions in regards to their location. The testimony of both the security officers, as well as Deputy

Osborne, makes clear that Deputy Osborne never instructed the security officers to handcuff the defendant.

Upon arrival, Deputy Osborne met with Mr. Windgren, who explained what the security officials had observed through the passenger window of the vehicle. Deputy Osborne testified that he saw the defendant in the back of the security vehicle with the door open; however he could not see that the defendant was handcuffed at this time. Deputy Osborne then walked over to the vehicle, looked in the window, and perceived what he believed to be a large jar containing marijuana in the center console. Deputy Osborne then made his way back to his vehicle. While he was walking back to his vehicle, the defendant made statements to the effect that he had a medical marijuana card and could possess up to a pound and a half of marijuana in his car at a time. Deputy Osborne testified that these statements were directed at him but were not in response to questioning.

Deputy Osborne then called his sergeant and requested the use of a tow truck to seize the vehicle. Deputy Osborne also ran the defendant's identification through dispatch as well as the subject vehicle's license plate.¹ Dispatch relayed back to Deputy Osborne that the vehicle was registered to a Mr. Gurney. At this point, Deputy Osborne engaged in a short conversation with the defendant without the benefit of *Miranda* warnings. Osborne asked several questions, including who the owner of the vehicle was, how the defendant was associated with Mr. Gurney, where he was planning on staying that evening, where they were going, and how much marijuana was in the car. The defendant stated that Mr. Gurney was his friend, that they drove

¹ Deputy Osborne does not recall from where he obtained the identification, but believes that one of the security officers gave it to him. He does testify that he had not engaged the defendant in a conversation at this point. In the taped interview back at the jail, Deputy Osborne states that he still has never seen the Defendant's "identification". Whether this means his Driver's License or his Medical Marijuana card is unclear.

up in the car together to go snowboarding, that they planned on getting a hotel in town that night, that the marijuana was theirs collectively and that there was about 2.5 ounces in the car.

Deputy Osborne waited until a second officer arrived on scene, Deputy Wiens, and then instructed the security officers to unlock the vehicle. Deputy Osborne seized the jar of marijuana in the center console. He and Deputy Wiens then made a further search of the entire passenger compartment of the vehicle, including all closed containers. At the suppression hearing, Deputy Osborne testified that he also discovered a pipe in the center console, as well as a water bong sitting on the floorboard of the back seat of the vehicle. He further testified that he searched the vehicle as part of a standard inventory search that the Bonner County Sheriff's department performs every time it impounds a vehicle. The officer testified that he performed a search for two reasons 1) searching for additional fruits of the crime at the scene and, 2) conducting an inventory search for purposes of seizing the vehicle to protect the defendant's property and to protect against liability for damage or loss, as well as for security measures.

While conducting a search of the vehicle, in addition to the pipe, bong and jar of marijuana, the officer discovered plastic bindles located in the seat pocket behind the passenger seat of the vehicle, a marijuana cookie located in the glove compartment, and finally, a scale as well as another jar of marijuana located in a backpack in the back seat of the vehicle. Deputy Osborne seized the backpack containing the marijuana and scale and removed it from the vehicle. Deputy Osborne testified that in response to him carrying the backpack from the subject vehicle to his patrol vehicle, the defendant blurted out that the backpack was his.

After completing the search, Deputy Osborne informed the defendant that he was under arrest. At this time, the security officers' handcuffs were removed and the defendant was placed in another set of handcuffs by Deputy Osborne. Deputy Wiens then transported the defendant to

the jail for booking. At the jail, the defendant was *Mirandized* and interviewed by Deputy Osborne. In the interview Deputy Osborne, in reference to Mr. Gurney, asked the defendant “That’s his car, right?” to which the defendant stated “mmhmm”. At the suppression hearing, Deputy Osborne took this as a denial of ownership in the vehicle on the part of the defendant. It was later discovered, that although the vehicle was registered in Mr. Gurney’s name, the defendant had recently purchased the vehicle from Mr. Gurney. In the interview, the defendant then made many incriminating statements including claiming ownership over all of the marijuana and paraphernalia found in the vehicle.

II.

PROCEDURAL POSTURE

The Defendant, Joshua Ingmire, now moves this Court for an order suppressing all evidence seized as a result of a warrantless search of the backpack found in the vehicle. This includes the second jar of marijuana, the scale and the bindles. Further, defendant seeks suppression of all statements made by the defendant at the scene in response to police interrogation, as well as statements made back at the jail as being tainted by a prior unlawful interrogation. Specifically, the defendant has focused his challenge on the warrantless search of the remaining passenger compartment, including all closed containers, after seizure of the jar of marijuana in the center console.

III.

DISCUSSION

A. Standing

Even if a search is improper, only an individual with a privacy interest that was invaded by the search may obtain suppression of evidence found. This is true because the Fourth Amendment protects people-not places-against governmental intrusions, and the exclusion of evidence gathered in violation of the Fourth Amendment is a “means for making effective the protection of privacy.” Thus, “[i]t is proper to permit only defendants whose Fourth Amendment rights have

been violated to benefit from the [exclusionary] rule's protections.” Toward this end, when a search is challenged, the burden is placed on the defendant to make a threshold showing that he had a legitimate expectation of privacy in the place or thing searched. (citations omitted)

State v. Hanson, 142 Idaho 711, 716-17 (Ct. App. 2006). Generally, only the owner of a vehicle has standing to directly challenge the validity of a search. *Rakas v. Illinois*, 439 U.S. 128 (1978); *State v. Bordeaux*, _____ Idaho _____, 217 P.3d 1 (Ct. App. 2009). Although lack of ownership is a significant factor, it does not, standing alone establish the absence of a privacy interest. *Hanson*, at 419. The rule is well established, that in order to assert standing to suppress evidence, the individual seeking suppression must demonstrate some proprietary interest in the premises searched, or some other interest giving a reasonable expectation of privacy. *State v. Ryan*, 117 Idaho 504, 506-07 (1990). The individual's rights must have been infringed. *Id.* These rights are personal and a claim may not be asserted vicariously that the government has invaded a third party's privacy rights. *Id.* Where a non-owner fails to make a showing of a legitimate expectation of privacy, his Fourth Amendment rights have not been violated. *Bordeaux, supra.* Typically, control of the vehicle is a factor that courts look at to determine whether a non-owner has an expectation of privacy in a vehicle. *Id.*

Along those same lines, a privacy interest does not exist in property that has been abandoned. *U.S. v. Nordling*, 804 F.2d 1466 (9th Cir. 1986); *State v. Zaitseva*, 135 Idaho 11 (2000). A determination of abandonment is a factual finding by the Court. *Nordling*, 804 F.2d at 1469. “The inquiry should focus on whether, through words, acts or other objective indications, a person has relinquished a reasonable expectation of privacy in the property at the time of the search or seizure. This determination is to be made in light of the totality of circumstances, and two important factors are denial of ownership and physical relinquishment of the property.” (citations omitted) *Id.* at 1469-70.

In this case, the defendant has come forth with no evidence to show that he had a proprietary interest in the vehicle. In fact the only evidence presented at the hearing which would seem to show that the defendant had an expectation of privacy in the vehicle was Deputy Osborne's testimony regarding a subsequent investigation. Deputy Osborne testified that the defendant denied ownership of the vehicle during the interview at the jail, but that later investigation revealed the defendant had in fact purchased the car from Mr. Gurney prior to the date in question. It is undisputed that the vehicle was registered to Mr. Gurney at the time of the incident. The issues then are 1) whether Deputy Osborne's testimony is sufficient evidence to demonstrate a proprietary interest in the vehicle to carry Defendant's burden, and 2) whether the defendant nevertheless abandoned any interest in the vehicle by denying ownership.

The only evidence presented at the suppression hearing related to the defendant's proprietary interest in the vehicle was the State's witness on direct examination by the State. No supporting physical evidence was presented to corroborate the testimony, nor was the officer's basis of knowledge formulated by direct or cross examination. The source of the information is unknown to the Court, and the testimony is not credible for establishing ownership in the vehicle. Nor was this testimony presented for that purpose. The Court therefore finds that the defendant has failed to conclusively establish a proprietary interest in the vehicle.

Moreover, even if the defendant had met his burden, he likely abandoned any interest he had in the vehicle. The general premise of the abandonment doctrine is that a defendant may not later assert a proprietary interest in an object for the purposes of challenging a government search, where he earlier denied such interests prior to the search. In all of the cases dealing with the abandonment issue, the denial of ownership has been asserted prior to the search of the premises

or object. In this case there was some testimony that the officer asked the defendant questions concerning ownership of the vehicle prior to conducting the search.² Osborne stated

A. Again, I can't remember the exact first thing that came out of my mouth. I know that I asked him questions about who Mr. Gurney was in relation to him, who the owner of the vehicle was, where they were staying for the night, where they had come from, where they were headed and kind of what their plans were.

(See Tr. p. 74 l.4-9). The defendant's exact response to this questioning at the scene is unclear. However, Deputy Osborne went on to state the following:

Q. Were you aware of what—at this point when you were talking with Mr. Ingmire, were you aware of his association with that vehicle? What did you know about his association with that vehicle and Mr. Gurney's association?

A. Well, I knew that he wasn't the registered owner at that point—

Q. He being the defendant?

A. Yeah, he being the defendant, Mr. Ingmire. I knew he wasn't the registered owner, and by his admission he was associated with the vehicle. He had said he and his friend had come up from Washington together in that vehicle.

(Tr. p. 74 l. 18-25 p.75 l.1-5).

It is clear that after the search, back at the jail, the defendant denied ownership in the vehicle by his admission that the vehicle belonged to Mr. Gurney. But the inquiry is focused on the totality of the circumstances prior to the search. In this case, although there was no testimony that the defendant affirmatively denied ownership during the initial questioning prior to the search, it is objectively reasonable to believe that the defendant had no interest in the vehicle other than being a passenger. He did not assert ownership in the vehicle when directly asked and did not contradict the officer's assertion that Mr. Gurney was in fact the registered owner of the

² The Court recognizes that this line of questioning and subsequent responses at the scene is challenged by the defense based on a *Miranda* violation. However, these statements need not be excluded for purposes of establishing standing. *Miranda* only protects against the admissibility of statements at trial. A *Miranda* violation is not in and of itself a constitutional violation, but merely a prophylactic employed to protect against violations of the self-incrimination clause. *State v. Garcia*, 143 Idaho 774 (2006). Thus, the Court may consider these statements in deciding whether the defendant has standing.

vehicle. Under the totality of the circumstances, it is objectively reasonable to believe that the defendant had relinquished any privacy interests he had in the vehicle prior to the search. This is certainly corroborated by his denial of ownership in the interview back at the jail. Thus, the defendant has no standing to challenge the search of the vehicle, and this Court will not engage in the laborious analysis regarding a search of the vehicle itself.

The defendant however, unequivocally has a proprietary interest in the backpack which was found in the vehicle. He affirmatively acknowledged ownership of the backpack at the time of the search, and no evidence was presented to contradict the defendant's ownership assertion. Thus the focal point of the Motion to Suppress is the search of the defendant's backpack. All evidence procured from the vehicle, but not as a result of the search of the backpack, is not subject to challenge; including the first jar of marijuana, the pipe, the bong, the bindles and the cookie.

B. Burden of Proof For Warrantless Search

The Court first starts as it always does in cases addressing the reasonableness of a warrantless search, with the basic rule "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment-subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967). When a warrantless search or seizure occurs, the government bears the burden of proving facts necessary to establish an exception to the warrant requirement. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *State v. Yeoumans*, 144 Idaho 871, 873, 172 P.3d 1146, 1148 (Ct.App.2007). Evidence obtained in violation of the Fourth Amendment must be excluded from evidence in a criminal prosecution of the person whose rights were violated.

Mapp v. Ohio, 367 U.S. 643 (1961); *State v. Jenkins*, 143 Idaho 918, 920, 155 P.3d 1157, 1159 (2007).

Here, the State appears to be arguing that the search of the defendant's backpack was proper under the automobile exception, and alternatively as a valid inventory search following legal impoundment of the vehicle.³

C. Automobile Exception

The automobile exception to the warrant requirement allows law enforcement officers to conduct warrantless searches of automobiles if they have probable cause to believe that the automobile contains contraband or evidence of a crime. *Carroll v. United States*, 267 U.S. 132 (1925). These searches may include the search of any container within the car if the container could reasonably contain the suspected contraband or evidence. *United States v. Ross*, 456 U.S. 798, 825 (1982). Probable cause is the possession of information that would lead a person of ordinary care and prudence to believe or entertain an honest and strong presumption that such person is guilty. *State v. Julian*, 129 Idaho 133, 137 (1996). When analyzing the existence of probable cause, this Court must determine whether the facts available to the officers at the moment of the search warranted a person of reasonable caution to believe that the action taken was appropriate. *Julian*, 129 Idaho at 136; *State v. Hobson*, 95 Idaho 920, 925 (1974). The facts making up the probability are viewed from an objective standpoint. *Julian*, 129 Idaho at 136-37. Additionally, in passing on the question of probable cause, the expertise and experience of the officer may be taken into account. *State v. Ramirez*, 121 Idaho 319, 323 (Ct.App.1991). The automobile exception is based both upon the automobile's ready mobility-an exigency sufficient to excuse the warrant requirement where there is probable cause for a search-and upon the lesser

³ The Court will not address the search incident to arrest exception because the defendant in this case was locked out of the vehicle prior to the search and arrest. Thus, he was not a "recent occupant" for purposes of the rule.

expectation of privacy in an automobile as compared to the privacy interest in a home. *State v. Braendle*, 134 Idaho 173, 175, 997 P.2d 634, 636 (Ct.App.2000). The permissible scope of a warrantless automobile search “is defined by the object of the search and the places in which there is probable cause to believe it will be found.” *United States v. Ross*, 456 U.S. 798, 824, 102 S.Ct. 2157, 2172, 72 L.Ed.2d 572, 593 (1982), *quoted in Braendle*, 134 Idaho at 175, 997 P.2d at 636. *See State v. Schmadeka*, 136 Idaho 595, 600 (Ct. App. 2001).

In *California v. Acevedo*, 500 U.S. 565 (1991) the U.S. Supreme Court delineated the scope of the automobile exception. Relying on *Carroll* and *Ross* the Court stated:

The interpretation of the *Carroll* doctrine set forth in *Ross* now applies to all searches of containers found in an automobile. In other words, the police may search without a warrant if their search is supported by probable cause. The Court in *Ross* put it this way: ‘The scope of a warrantless search of an automobile ... is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found.’ It went on to note: ‘Probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab.’ We reaffirm that principle. In the case before us, the police had probable cause to believe that the paper bag in the automobile's trunk contained marijuana. That probable cause now allows a warrantless search of the paper bag. The facts in the record reveal that the police did not have probable cause to believe that contraband was hidden in any other part of the automobile and a search of the entire vehicle would have been without probable cause and unreasonable under the Fourth Amendment.

Similarly, Idaho has adopted the doctrine as set forth in *Ross* and *Acevedo*. Specifically, defendant cites to *State v. Schmadeka*, 136 Idaho 595 (Ct. App. 2001) to support his argument that the officer needed independent probable cause to believe that further contraband would be found in the backpack located in the back seat of the vehicle. Defendant contends that under the analysis in *Schmadeka*, merely discovering a jar full of marijuana in plain view does not provide probable cause to search the remaining containers in the passenger compartment, and that the

officer had no other reasonably articulable facts that would lead him to believe that the backpack contained additional marijuana or other paraphernalia.

In *Schmadeka*, the defendant was pulled over for a cracked windshield and a seatbelt violation. The officer, upon contacting the driver, observed an “M-800” firecracker that he believed to be illegal in the state of Idaho. The officer also observed an odor of burnt marijuana emanating from the vehicle. The officer then ordered the defendant out of the vehicle, and conducted a search of the passenger compartment where he located a jacket in the back seat as the source of the odor of marijuana. However, no marijuana was found in the jacket or passenger compartment. The officer then conducted a search of the trunk of the vehicle, and discovered evidence of an active methamphetamine lab. The Court of Appeals analyzed independently whether 1) the firecracker provided probable cause to search the trunk and 2) the slight odor of marijuana provided probable cause to search the trunk. The Court held that neither provided such justification and therefore the evidence found in the trunk should be excluded. The Court reasoned that:

even if the M-800 was an illegal firework, its lone presence in the passenger compartment would not justify a search of the trunk any more than would a burning cigarette in the passenger compartment of an automobile occupied by a single minor, or an open container in the passenger compartment of a vehicle being operated on a public roadway. In none of these cases is there a fair probability that more of the same contraband will be found in the trunk.

Schmadeka, 136 Idaho at 599.

The Court went on to analyze probable cause based on the slight odor of burnt marijuana. In doing so, the Court relied on the tenth circuit’s distinction between the odor of burnt marijuana in the passenger compartment alone as being insufficient to establish probable cause to search the trunk, compared with the odor of raw marijuana being sufficient to establish probable cause

for a search of the trunk of the vehicle. Quoting *United States v. Wald*, 216 F.3d 1222, 1226 (10th Cir. 1998) the Court of Appeals stated:

[The distinction] is premised on the common sense proposition that the smell of burnt marijuana is indicative of drug usage, rather than drug trafficking, and because it is unreasonable to believe people smoke marijuana in the trunks of cars, the mere smell of burnt marijuana does not create the fair probability that the trunk contains marijuana.

Schmadeka, 136 Idaho at 600.

While the instant case does not involve the smell of burnt marijuana, or the presence of a firecracker for purposes of probable cause to search the trunk, nor does it even involve the search of a trunk, the analysis in *Schmadeka* is nevertheless dispositive in the instant case. Moreover, the case of *State v. Shepherd*, 118 Idaho 121 (Ct. App. 1990), which was cited in *Schmadeka* for comparative purposes, provides further guidance to the Court here.

In *Shepherd*, the defendant (Shepherd) was a passenger in a vehicle that was subjected to a traffic stop. In that case, the officer noticed the smell of “raw marijuana” and observed a pipe on the passenger side of the front seat. When questioned, Shepherd admitted that the pipe was used to smoke marijuana. He was arrested, and the officer searched the passenger compartment incident to that arrest, including the defendant’s backpack. The officer found marijuana located in the backpack, then conducted a search of the vehicle’s trunk and located more marijuana in a cooler in the trunk. The Court held the marijuana found in the trunk admissible. It reasoned that once the officer discovered the marijuana in the backpack of the passenger compartment, he had probable cause to then search the trunk of the vehicle for further contraband. *Shepherd*, 118 Idaho at 124 (Citing *United States v. Shecter*, 717 F.2d 864 (3rd Cir. 1983)).

Here, the officer undoubtedly had probable cause to search for and seize the marijuana located in plain view in the center console of the vehicle. The question is whether under the

totality of the circumstances, the officer had probable cause to believe that the backpack in the back seat of the vehicle contained further evidence of wrong doing. The defendant urges this Court to adopt a narrow view of probable cause. Essentially, the defendant represents that when an officer perceives a rather substantial quantity of marijuana located in plain view in a jar in the middle console of a vehicle, that the officer then only has probable cause to seize that jar of marijuana, and may not further search the passenger compartment or the containers therein for evidence of drug use or drug trafficking. It is conceded by the defendant, that if the officer did not know the location of the marijuana in the vehicle, but had probable cause to believe that the passenger compartment contained marijuana, he would then have probable cause to search the entire passenger compartment including all closed containers. The Court does not believe that merely because the marijuana was conspicuous rather than concealed would change the scope of the search of the passenger compartment. Neither *Shepherd* nor *Schmadeka* supports the defendant's argument. Certainly, like in *Shepherd*, if the discovery of marijuana in a backpack in the back seat provides probable cause to search the trunk of the vehicle, then discovery of a significant amount of raw marijuana in the center console of the vehicle would provide probable cause to search the defendant's backpack located in the back seat of that same vehicle.

The analysis in *Schmadeka* provides further support for a finding of probable cause. The distinction between evidence of casual drug use and evidence of drug trafficking articulated by the Court in that case is important here, simply for the purposes of showing that the officer in this case had probable cause under either distinction. One of the primary reasons for finding that the officer lacked probable cause in *Schmadeka* to search the trunk was that the smell of burnt marijuana is only evidence of casual drug use and simply put, "it is unreasonable to believe people smoke marijuana in the trunks of cars". 136 Idaho at 600 (quoting *Wald*, 216 F.3d at

1226). The converse then would be that it is reasonable to believe people smoke marijuana in the passenger compartment of their vehicle. To that extent, the fact that the search of the backpack was conducted in the passenger compartment and not a trunk is important in this case. Even if the discovery of a fairly significant amount of marijuana, a glass smoking pipe, and a water bong in plain view is only considered evidence of “casual drug use” it would still be reasonable to believe that the remainder of the passenger compartment and the containers therein harbored further evidence of such casual drug use. The officer was under no obligation by law to cease searching for evidence related to the perceived crime. More likely, in this case, the amount of raw marijuana discovered in the center console would reasonably be perceived as evidence that the remainder of the vehicle might contain evidence of drug trafficking, rather than casual drug use. But the Court need not make the distinction here, since either would provide probable cause to search the defendant’s backpack in this case.

The Court therefore finds that under the Automobile Exception articulated in *Ross*, Deputy Osborne had probable cause to search for further evidence of drug usage or drug trafficking in the defendant’s backpack located in the back seat of the vehicle. The State has met its burden of showing a valid exception to the warrant requirement.

D. Inventory Search Following Impoundment

One additional lawful means by which police may uncover evidence is through an inventory search following a proper impoundment of a vehicle. A warrantless inventory search occurring after impoundment does not violate the Constitutional rights of the defendant when conducted in compliance with standard and established police procedures. *State v. Foster*, 127 Idaho 723, 726-27 (Ct. App. 1995).

While the officer in this case testified that the search of the vehicle was conducted as an inventory search following impoundment of the vehicle, the Court is not limited solely to consideration of that exception. “Whether a Fourth Amendment violation has occurred ‘turns on an objective assessment of the officer’s actions in light of the facts and circumstances confronting him at the time,’ ...and not on the officer’s actual state of mind at the time [of the search]...” *Shepherd*, 118 Idaho at 124 (quoting *Maryland v. Macon*, 472 U.S. 463, 470-71 (1985)). Thus, the officer’s justification for the search is simply irrelevant for purposes of this suppression motion. Because the Court has found that probable cause existed to search the backpack under the automobile exception, it need not decide whether the search was also proper under the “inventory search” exception.

E. *Miranda* violations

The defendant in this case is seeking suppression of statements made by him prior to and after *Miranda* warnings. Because each set of statements involves a different analysis, the Court will separate them.

1. Statements made at the scene prior to *Miranda* warnings.

Miranda v. Arizona requires that a person be informed of his or her Fifth Amendment privilege against self-incrimination prior to custodial interrogation; otherwise, incriminating statements are inadmissible. (citation omitted). A person is in custody whenever subjected to a restraint on his or her liberty in any degree similar to a formal arrest. (citation omitted). A person is interrogated whenever subjected to express questioning or its functional equivalent [any words or actions on the part of the police other than those normally attendant to arrest and custody], i.e. anything reasonably likely to elicit an incriminating response. (citation omitted).

State v. Hansen, 138 Idaho 791, 795, 69 P.3d 1052, 1056 (2003); *see also State v. Salato*, 137 Idaho 260, 267, 47 P.3d 763, 770 (Ct. App. 2001). Two inquiries are essential in determining whether a suspect being interrogated is in custody, 1) what are the circumstances surrounding the

interrogation, and 2) given those circumstances, would a reasonable person feel that he or she is not at liberty to terminate the interrogation and leave. *Thompson v. Keohane*, 516 U.S. 99 (1995).

In this case, Deputy Osborne testified that he did not give *Miranda* warnings to the defendant until he was transported back to the jail and interviewed. The audio recording of the interview confirms Deputy Osborne's testimony in that regard. Deputy Osborne also testified that he asked the defendant various questions at the scene prior to giving him *Miranda* warnings. Moreover, the testimony at the suppression hearing indicates that the defendant allegedly made certain incriminating statements that were not in response to the questioning by Deputy Osborne. In terms of whether the defendant was in custody, he was handcuffed by security officers prior to the arrival of Deputy Osborne. This is typically the quintessential action associated with formal arrest. However, the testimony indicates that the security officers were not acting under State authority, and thus no State action was present sufficient to give rise to "custody" for purposes of *Miranda* at the time he was handcuffed. Nevertheless, upon the arrival of Deputy Osborne, the defendant remained handcuffed and detained in the back of the security vehicle during the officer's initial observation of the vehicle and subsequent interrogation. Deputy Osborne indicated in testimony that based on his experience, he believed the defendant was handcuffed and further that the defendant was not free to leave as soon as he first observed the marijuana through the vehicle window. Although the subjective belief of the officer is neither conclusive nor relevant for purposes of determining whether a reasonable person feels free to terminate the interaction and leave, it is relevant for purposes of determining when the custody amounted to a "state action". Certainly, by the time the officer initiated questioning, the custody had transformed into a state action for purposes of *Miranda*. The officer perceived the defendant as being handcuffed and not free to leave and treated him as such. Certainly a reasonable person

handcuffed in the back seat with an officer present and several security officials would not feel free to leave. Moreover, there is testimony from Deputy Osborne whereby he admits to direct interrogation of the defendant while handcuffed in the back seat of the security vehicle.

Therefore, any incriminating statements that resulted from this direct questioning by Deputy Osborne at the scene are inadmissible at trial.

While certain statements were undoubtedly a result of questioning, the Court finds that two statements in particular were not a result of interrogation. The statement by the defendant that he has “a medical marijuana card from the state of Washington and can legally carry up to a pound and a half of marijuana in his car”, by all indications, was not in response to any statement or action of the officer which would normally illicit such an incriminating response. He made the statement after the officer looked into the vehicle. Certainly, the act of merely peering into a vehicle is not an action that one would believe would illicit an incriminating response.

Therefore, that statement is not suppressible under *Miranda*.

The second statement which the Court finds was wholly voluntarily made and not in response to questioning or other action by the officer that would illicit such an incriminating response, is the exclamation by the defendant that he was the owner of the backpack in question. From the testimony at the suppression hearing, this remark was made in response to the officer’s act of merely carrying the backpack from the subject vehicle to his patrol car. Although he carried it in front of the defendant, it does not appear that he made any suggestive motions or other actions that would warrant an incriminating response. It is simply the type of action that is “normally attendant to arrest and custody”. Therefore, this statement is also not subject to suppression for purposes of *Miranda*.

2. Statements made at the jail after *Miranda* warnings.

The defendant also challenges the statements made by the defendant while at the jail, after *Miranda* warnings had been given. Defendant argues that the second set of statements made at the jail should be suppressed as being tainted by the initial *Miranda* violation. This argument has been addressed by the United States Supreme Court in *Missouri v. Seibert*, 542 U.S. 600 (2004) as well as in *Oregon v. Elstad*, 470 U.S. 298 (1985). The Idaho Court of Appeals also dealt with this issue in *State v. Cardenas*, 143 Idaho 903 (Ct. App. 2006). In *Seibert* the U.S. Supreme Court held the second statements to be inadmissible. In both *Elstad* and *Cardenas* the statements were held to be admissible by the courts. The question then is whether the instant case is more comparable to *Seibert* or *Elstad* and *Cardenas*.

In *Seibert*, the interrogating officer testified that it was the policy of the police department to engage in a two-step interview process whereby the officers would interrogate a suspect, obtain a confession, then read *Miranda* warnings after a brief break, obtain a waiver and illicit a second confession. The Court found this type of “question first, warn later” tactic to be a method of merely circumventing the functionality of *Miranda*. The Court stated:

The threshold issue when interrogators question first and warn later is thus whether it would be reasonable to find that in these circumstances the warnings could function “effectively” as *Miranda* requires. Could the warnings effectively advise the suspect that he had a real choice about giving an admissible statement at that juncture? Could they reasonably convey that he could choose to stop talking even if he had talked earlier? For unless the warnings could place a suspect who has just been interrogated in a position to make such an informed choice, there is no practical justification for accepting the formal warnings as compliance with *Miranda*, or for treating the second stage of interrogation as distinct from the first, unwarned and inadmissible segment.

Seibert, 542 U.S. at 611-12. The Court was not establishing a *per se* rule, that suppression is warranted anytime an officer questions first and warns later; rather the Court was focusing on prohibiting the implementation of police practice and policy to “question first” as a method to

circumvent *Miranda*. The Court makes significant reference in *Seibert* to the increased number of jurisdictions that employed such a tactic, thus the Court was mindful of the current affairs in law enforcement at the time.

In *Elstad* the Court found that the police merely failed to administer warnings, not in an attempt to coerce or compel a subsequent confession, but simply as a product of officer oversight or neglect. The Court there stated:

...absent deliberately coercive or improper tactics in obtaining the initial statement, the mere fact that a suspect has made an unwarned admission does not warrant a presumption of compulsion. A subsequent administration of *Miranda* warnings to a suspect who has given a voluntary but unwarned statement ordinarily should suffice to remove the conditions that precluded admission of the earlier statement...It is an unwarranted extension of *Miranda* to hold that a simple failure to administer the warnings, unaccompanied by an actual coercion or other circumstances calculated to undermine the suspect's ability to exercise his free will, so taints the investigatory process that a subsequent voluntary informed waiver is ineffective for some indeterminate period.

Elstad, 470 U.S. at 309. Likewise, in *Cardenas* the Idaho Court of Appeals distinguished *Seibert* and *Elstad*, and found that “because *Miranda* warnings were not ‘inserted in the midst of coordinated and continuing interrogation,’ or ‘in two spates of integrated and proximately conducted interrogations’ punctuated by *Miranda* warnings in the middle, we conclude that *Elstad* controls here and *Seibert* does not apply.” *State v. Cardenas*, 143 Idaho 903, 910 (Ct. App. 2006).

The *Seibert* Court set forth a series of facts which would help courts determine whether *Miranda* warnings given midstream could be effective enough to accomplish their objective. These facts are 1) the completeness and detail of the questions and answers in the first round of interrogation, 2) the overlapping content of the two statements, 3) the timing and setting of the first and the second, 4) the continuity of police personnel, 5) the degree to which the

interrogator's questions treated the second round as continuous with the first, 6) whether additional warnings were given that the previous confession could not be used against the suspect, and 7) whether the second interrogation references back to the confession already given. *Seibert*, at 615-16.

While these facts appear to be helpful, they are not dispositive. The *Seibert* opinion setting forth these facts is a plurality opinion of the U.S. Supreme Court, and the application of these factors is hardly uniform. In the Court's view, *Elstad* provides a more workable doctrine, and is sufficient for disposition of defendant's motion. The instant case is not a situation that warrants application of *Seibert*. There was nothing presented that indicates that the failure to warn was anything more than mere negligence on the part of the officer. This was not a coordinated and continuing interrogation or two spates of interrogations integrated and proximately conducted. The Deputy testified that the interrogation at the jail was conducted somewhere between one and three hours after the initial questioning at the scene. It was conducted in a separate location under different circumstances. The defendant even testified that his conversations with the Deputy at the scene were "limited". Moreover, in listening to the recording of the interview at the jail, the officer made little to no reference of the prior questioning and/or confessions. While there is likely some overlap between the lines of questioning, it is insufficient to invoke *Seibert*. The Court finds that the instant case is similar to *Elstad* and *Cardenas*, and absent a showing of specific coercive or compulsive behavior, the statements are admissible so long as they were preceded by valid *Miranda* warnings. Defendant's motion to suppress on these grounds should be denied.

IV.

CONCLUSION AND ORDER

The Defendant has failed to meet his burden of showing a privacy interest in the car for purposes of standing to challenge the government search. The Defendant however, does have standing to challenge the search of the backpack found in the backseat of the vehicle. The State however, has met its burden of showing that the search of the backpack was validly conducted under the automobile exception to the warrant requirement. The statements of the defendant made at the scene, in response to direct questioning by Deputy Osborne, should be suppressed because they were made without the benefit of valid *Miranda* warnings. The two voluntary statements made at the scene, that were not in response to questioning or other actions by the officer which would illicit such incriminating responses, are admissible. The subsequent statements by the defendant made at the jail following *Miranda* warnings are also admissible, and are not tainted by the first series of statements made at the scene.

IT IS HEREBY ORDERED that the Defendant's Motion to Suppress is granted in part and denied in part in accordance with this memorandum opinion.

Dated this _____ day of June, 2010.

The Honorable Benjamin R. Simpson, District Judge

CLERK'S CERTIFICATE OF MAILING/DELIVERY

I hereby certify that on this _____ day of June, 2010, a true and correct copy of the foregoing was mailed / delivered by regular U.S. Mail, postage prepaid, interoffice mail, hand delivered, or faxed to:

Daniel Sheckler, Attorney for Defendant
Fax (208) 263-4438

Bonner County Prosecutor
Fax (208) 263-6726

CLERK OF THE DISTRICT COURT

By _____
Deputy Clerk