IN THE COURT OF APPEALS OF THE STATE OF IDAHO

STATE OF IDAHO,	)	**Docket No. 41724**
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	
BEATRICE COLEMAN,	)	
	)	
Defendant-Respondent.	)	
	)	
STATE OF IDAHO,	)	**Docket No. 41725**
	)	
Plaintiff-Appellant,	)	**2015 Unpublished Opinion No. 419**
	)	
v.	)	**Filed: March 17, 2015**
	)	
ERNEST McGHEE,	)	**Stephen W. Kenyon, Clerk**
	)	
Defendant-Respondent.	)	**THIS IS AN UNPUBLISHED**
	)	**OPINION AND SHALL NOT**
	)	**BE CITED AS AUTHORITY**
	)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Gooding County. Hon. Eric J. Wildman, District Judge.

Judgment of dismissal vacated, and cases remanded.

Hon. Lawrence G. Wasden, Attorney General; Daphne J. Huang, Lori A. Fleming, Deputy Attorneys General, Boise, for appellant.

Sara B. Thomas, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for respondent.

GUTIERREZ, Judge

In this consolidated appeal, the State appeals from the district court's judgment dismissing the charges against Beatrice Coleman and Ernest McGhee. For the reasons that follow, we vacate the judgment dismissing the charges and remand.

I.
FACTS AND PROCEDURE

An Idaho State Police trooper was on patrol, driving in the left lane of two eastbound lanes on Interstate 84, approaching a vehicle driven by Coleman. Coleman's vehicle, which was also in the left lane, was in the process of passing a semi-truck in the right lane. As the trooper's patrol car was closing in on Coleman's vehicle, which had passed the semi-truck, the trooper asserts she observed Coleman's vehicle's right turn signal engage for approximately three seconds before the vehicle moved from the left lane to the right lane. After Coleman's vehicle changed lanes, the trooper pulled behind Coleman's vehicle and initiated a traffic stop. The trooper believed that Coleman had violated Idaho Code § 49-808(2), which the trooper understood to require the driver to signal for five continuous seconds prior to changing lanes. At the vehicle, the trooper interacted with both Coleman, who was driving the vehicle, and McGhee, who was a passenger in the vehicle.

At some point during the stop, McGhee informed the trooper that Coleman had one-and-one-half pounds of marijuana in the vehicle's trunk. Coleman then presented the trooper an Oregon medical marijuana card, and McGhee provided the trooper an Oregon marijuana grower's card. A subsequent search of the vehicle revealed four zipper-sealed plastic bags containing marijuana inside a duffel bag in the trunk.

Coleman and McGhee were each charged by criminal complaint with trafficking in marijuana, I.C. § 37-2732B(a)(1)(A). Following a preliminary hearing, Coleman and McGhee were bound over to the district court, and an information was filed in each case. Coleman and McGhee, who were represented by the same attorney, each filed a motion to dismiss, arguing "that there was no articulable suspicion and/or probable cause to stop the Defendant for a violation of I.C. § 49-808(2)." In the alternative, both Coleman and McGhee contended that I.C. § 49-808(2) was void for vagueness, and thus the stop of the vehicle was unlawful. Following a hearing on the motions, the district court issued an order granting the motions to dismiss, finding that the officer lacked reasonable suspicion to stop Coleman's vehicle based on the court's interpretation of I.C. § 49-808(2). The State appeals.

II.

ANALYSIS

On appeal, the State argues that the district court erred by granting the motions to dismiss.[1] Specifically, in its reply brief, the State contends that the district court's interpretation of I.C. § 49-808(2) is contrary to the interpretation of that statute that we espoused in *State v. Brooks*, 157 Idaho 890, 341 P.3d 1259 (Ct. App. 2014), a case released during the pendency of this appeal and after Coleman and McGhee filed their respondent's brief.

A. Idaho Code § 49-808(2)

The district court interpreted I.C. § 49-808(2) to require Coleman to engage the vehicle's turn signal for not less than one hundred feet before making the lane change, but not to require Coleman to signal for five seconds prior to leaving her lane. Because the State offered no evidence regarding the distance traveled by Coleman's vehicle, the court determined that the trooper lacked reasonable suspicion to stop the vehicle.

Recently, this Court interpreted I.C. § 49-808(2), in conjunction with I.C. § 49-808(1), to require a vehicle to signal for at least five continuous seconds before turning or moving left or right on a controlled-access highway:

> [T]he plain, obvious, and rational meaning of the language of I.C. § 49-808(2) requires that a vehicle signal for at least five continuous seconds [before turning or moving left or right] (1) when traveling on a controlled-access highway and (2) when turning from a parked position (regardless of the type of roadway on which the vehicle is parked); in all other circumstances, a vehicle must signal for at least the last 100 feet traveled before turning [or moving left or right].

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[1] Even though Coleman and McGhee were seeking to ultimately have the trafficking charges dismissed, the arguments asserted by them in their motions to dismiss concerned whether the trooper had reasonable suspicion to stop Coleman's vehicle under the Fourth Amendment and whether the trooper had probable cause to search Coleman's vehicle. These arguments are typically raised in a motion to suppress. Most likely, Coleman and McGhee intended for their motions to serve not only as motions to suppress, but also as motions to dismiss the charges if the motions to suppress were granted. *See* Idaho Criminal Rule 48(a)(2) (permitting a court to dismiss a case if the dismissal "will serve the ends of justice and the effective administration of the court's business").

The district court seemingly approached the motions in this manner, determining that the evidence need be suppressed and then determining that the cases should be dismissed. Although the State points out that the district court did not articulate exactly why it was dismissing the cases after suppressing the evidence, the State concedes in its appellate brief that if the district court properly granted the motions to suppress, the State would have been "compelled to dismiss the case[s] for lack of evidence."

Brooks, 157 Idaho at 894, 341 P.3d at 1263; *see also* I.C. § 49-808(1) (requiring that an appropriate signal be given, as delineated in I.C. § 49-808(2)). Because there was no dispute that Coleman's vehicle was being operated on a controlled-access highway and was making a lane change on the controlled-access highway, Coleman was required to signal for at least five continuous seconds before moving from the left lane to the right lane on the interstate highway. Thus, the interpretation of I.C. § 49-808(2) relied upon by the district court in its order dismissing the charges is incorrect in light of our plain language interpretation in *Brooks*.

B. Void for Vagueness

Coleman and McGhee argue that "should this Court find that the statute is ambiguous, it necessarily must find the statute void for vagueness as applied to the defendants in this case." However, because we determined in *Brooks* that the plain language of I.C. § 49-808(2) requires a driver to signal for five seconds before moving left or right on a controlled-access highway and apply that interpretation here, we need not consider the void-for-vagueness argument based on Coleman and McGhee's own qualifier.[2]

III.
CONCLUSION

The district court's interpretation of I.C. § 49-808(2) in its order dismissing the charges is inconsistent with our recent interpretation of the plain language of the statute in *Brooks*. Accordingly, we vacate the judgment dismissing the charges and remand the cases for further proceedings consistent with this opinion.

Judge LANSING and Judge GRATTON **CONCUR**.

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[2] Although we do not rely upon this argument in disposing of this issue, the State correctly asserts that the United States Supreme Court has held that a constitutionally valid seizure is not rendered invalid by a subsequent determination that the law on which the seizure was based is unconstitutionally vague. *Michigan v. DeFillippo*, 443 U.S. 31, 40 (1979).