

**FEBRUARY 10, 2025, AT 8:50 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

<b>STATE OF IDAHO,</b>	)	
	)	
<b>Plaintiff-Respondent,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. 51783</b>
	)	
<b>JAMES MARK POPP,</b>	)	
	)	
<b>Defendant-Appellant.</b>	)	

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Appeal from the District Court of the First Judicial District of the State of Idaho, Kootenai County. Lansing L. Haynes, District Judge.

Erik R. Lehtinen, State Appellate Public Defender, Boise, for Appellant.

Raúl R. Labrador, Idaho Attorney General, Boise, for Respondent.

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This appeal asks whether cigarette ash is considered “litter” under Coeur d’Alene Municipal Code Section 8.36.100. James Popp was cited for violating section 8.36.100, a municipal littering ordinance, when an officer observed him tap the burnt ash from his cigarette onto the ground while in the parking lot of a private bar. When Popp subsequently consented to a search, officers located a rolled-up bill in his pants pocket which had trace amounts of cocaine on it. Popp was then arrested and a search incident to arrest revealed Popp had in his possession a small bag of cocaine. The State charged Popp with possession of cocaine and possession of drug paraphernalia in addition to the littering offense. Popp filed a motion to suppress, arguing the discovery of the cocaine and paraphernalia in his possession was the fruit of an unlawful seizure since cigarette ash is not litter. When the district court denied his motion to suppress, Popp entered a conditional guilty plea to the possession charge, preserving his right to challenge the denial of his motion to suppress.

On appeal, the Idaho Court of Appeals affirmed Popp’s conviction. The Court of Appeals disagreed that Popp had violated the municipal ordinance but instead concluded that he had violated Idaho Code section 18-7031, a state littering statute which includes “lighted material” amongst other debris that cannot be deposited on public or private property absent the owner’s

permission. Popp filed a Petition for Review to the Idaho Supreme Court. Popp argues the district court erred in denying his motion to suppress for three reasons: (1) burnt cigarette is not “litter” under the city ordinance; (2) even if cigarette ash is “litter,” the ordinance only applies to “public park[s], grounds, parking facilit[ies], or thoroughfare[s]”; (3) or alternatively, that the municipal ordinance is void for vagueness as applied to Popp. Popp requests the Idaho Supreme Court to reverse the district court’s order denying his motion to suppress and vacate his judgment of conviction.