

**BOISE, MAY 19, 2022, at 10:30 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 48588**

<b>STATE OF IDAHO,</b>	)
	)
<b>Plaintiff-Respondent,</b>	)
	)
<b>v.</b>	)
	)
<b>DAVID KARL KIRKEMO,</b>	)
	)
<b>Defendant-Appellant.</b>	)

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Appeal from the District Court of the Third Judicial District, State of Idaho, Washington County. Hon. Susan E. Wiebe, District Judge.

Eric D. Fredericksen, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Mark W. Olson, Deputy Attorney General, Boise, for respondent.

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Around three a.m., Officer Jakich noticed Kirkemo sitting in his car slumped over the steering wheel in a gas station parking lot. When Kirkemo drove away, Officer Jakich followed. Based on Kirkemo's driving pattern, Officer Jakich believed Kirkemo was lost. Once Kirkemo parked, Officer Jakich approached him. Officer Jakich noticed Kirkemo's pupils were constricted, which Officer Jakich believed was unusual given the early morning time. Officer Jakich stated he was investigating Kirkemo because of his constricted pupils, and Officer Jakich asked for Kirkemo's identification. When Kirkemo opened his car door to look for his identification, Officer Jakich saw a container with a marijuana leaf on it, which he recognized as being from a marijuana dispensary. A subsequent search of Kirkemo's car resulted in the discovery of controlled substances.

The State charged Kirkemo with felony possession of a controlled substance (methamphetamine) and misdemeanor charges of possession of a controlled substance (marijuana), possession of drug paraphernalia, and possession of a legend drug without a prescription. Kirkemo filed a motion to suppress which the district court denied. Pursuant to a plea agreement, Kirkemo entered a conditional guilty plea to felony possession of a controlled substance, reserving his right to appeal the denial of his motion to suppress.

On appeal, Kirkemo alleges the district court erred in denying his motion to suppress because his detention was not supported by a reasonable, articulable suspicion of criminal activity. In response, the State alleges that the district court did not err.