

SUMMARY STATEMENT

State v. Lee
No. 44932

The Idaho Supreme Court reversed the Payette County district court's denial of Trevor Glenn Lee's motion to suppress. After an officer observed Lee driving without privileges, the officer approached Lee on the sidewalk, and subsequently frisked Lee looking for weapons. The officer found small containers of marijuana and methamphetamine in Lee's pockets. Lee filed a motion to suppress, arguing he was searched in violation of the Fourth Amendment of the United States Constitution. Lee argued that the frisk exceeded the scope of a permissible *Terry* frisk because the officer opened the containers which could not contain weapons. Lee also argued that the search could not be justified as a search incident to arrest because the officer who searched Lee told him prior to the search that he would only get a citation for driving without privileges.

The district court concluded the pat-down frisk was reasonable under *Terry v. Ohio*, 392 U.S. 1 (1968), but the officer exceeded the scope of the frisk by opening the containers found in Lee's pocket. However, the district court concluded the search of the containers was permissible as a search incident to Lee's arrest because, prior to the search, the officer had probable cause to arrest Lee for driving without privileges and the search was substantially contemporaneous with the arrest. The Supreme Court agreed that the frisk was justified under *Terry* but exceeded the permissible scope. However, the Supreme Court held that the search of the containers was not a valid search incident to arrest because no arrest had occurred or was going to occur. Because the warrantless search could not be justified as a search incident to arrest, it was unlawful, and the evidence seized had to be suppressed. Therefore, the Court reversed the district court's denial of Lee's motion to suppress.