

SUMMARY STATEMENT

State of Idaho v. Scott Robert Hensley

Docket No. 45470

Scott Robert Hensley was charged with felony possession of methamphetamine and misdemeanor possession of drug paraphernalia. Hensley filed a motion to suppress and argued the search warrant was invalid because it failed to comply with the requirements of Idaho Criminal Rule 41. Specifically, Hensley argued I.C.R. 41(c) requires a court to record *all* proceedings in which a judge issues a warrant, and in this case, there was no audio recording of the proceedings. The district court denied Hensley's motion to suppress and explained I.C.R. 41(c) only requires a recording in cases where there is oral testimony of facts that the court used in considering probable cause, which did not occur in this case. Hensley timely appealed.

On appeal, the Idaho Court of Appeals explained the district court did not err in its interpretation of I.C.R. 41(c) due to the plain language of the rule and precedent set forth by *State v. Slater*, 133 Idaho 882, 994 P.2d 625 (Ct. App. 1999). First, the plain language of I.C.R. 41(c) does not require a recording of the interaction between law enforcement and a judge if there is probable cause submitted by a properly sworn written affidavit. While I.C.R. 41(c) requires a recording when there is oral testimony of facts used to determine probable cause, the rule does not require a recording if there is no oral testimony. Second, the Court in *Slater* similarly held that I.C.R. 41(c) does not require a recording when a warrant is issued on a written affidavit. Because the warrant in the present case was issued on a written affidavit, and because the plain language of I.C.R. 41(c) and Idaho case law does not require an audio recording in such a case, the Court of Appeals affirmed the district court's order denying Hensley's motion to suppress and judgment of conviction.