

## SUMMARY STATEMENT

*State v. Popp*

Docket No. 51783

This appeal arises from James Mark Popp being detained for littering in violation of the city ordinance in the privately owned parking lot of the Iron Horse Bar for depositing cigarette ash onto the ground. Officers informed Popp that he was littering and obtained Popp's identification. During the detention, officers ran a drug-sniffing dog around the car in which Popp was a passenger. The dog alerted and Popp later consented to a search of his person, which resulted in the discovery of a dollar bill with cocaine residue. Popp was then arrested for possession of drug paraphernalia. After his arrest, he was searched again, and officers discovered a baggie of cocaine on his person. Popp was then charged with possession of a controlled substance.

Popp moved to suppress the evidence on the basis that the anti-littering ordinance did not include cigarette ash, and that his conduct was not prohibited because he was smoking in a private parking lot. He also maintained that the state statute, Idaho Code section 18-7031, did not prohibit his conduct. The district court denied the motion to suppress and concluded officers legally seized Popp. Popp entered a conditional guilty plea to the possession of a controlled substance, and the possession of paraphernalia charge was dismissed. Popp preserved his right to appeal the district court's decision on the motion to suppress and he timely appealed to the Court of Appeals. The Court of Appeals affirmed the district court's decision, and Popp filed a petition for review, which this Court granted.

On appeal, the State withdrew its argument based on the city ordinance and relied on Idaho Code section 18-7031. The Idaho Supreme Court reversed the district court's denial of Popp's motion to suppress, finding that the officers lacked reasonable articulable suspicion to detain Popp for littering under Idaho Code section 18-7031. Idaho Code section 18-7031 makes it an infraction to deposit any debris on private property "not authorized by . . . the owner of such property." The Idaho Supreme Court determined the State provided no evidence that the owners of the Iron Horse prohibited smoking in their parking lot. In other words, there was no evidence that Popp's conduct was "not authorized" by the bar's owners. The Idaho Supreme Court noted that smoking outside, including in a privately owned parking lot, is a common place activity. The Idaho Supreme Court explained that officer testimony did not point to any other conduct by Popp that would provide reasonable articulable suspicion to detain him.

***\*\*\*This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public\*\*\****