

**BOISE, TUESDAY, SEPTEMBER 19, 2017, AT 9:00 A.M.**

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

**Docket No. 44546**

<b>STATE OF IDAHO,</b>	)
	)
<b>Plaintiff-Appellant,</b>	)
	)
<b>v.</b>	)
	)
<b>LARRY GLENN FENTON JR.,</b>	)
	)
<b>Defendant-Respondent.</b>	)
_____	)

Appeal from the District Court of the Second Judicial District, State of Idaho, Nez Perce County. Hon. Jay P. Gaskill, District Judge.

Hon. Lawrence G. Wasden, Attorney General; Russell J. Spencer, Deputy Attorney General, Boise, for appellant.

Eric D. Fredericksen, State Appellate Public Defender; Reed P. Anderson, Deputy Appellate Public Defender, Boise, for respondent.

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Larry Glenn Fenton Jr. was stopped by a police officer who mistakenly believed Fenton's registration was invalid. During the stop, Fenton revealed that he was on probation. The police officer then contacted Fenton's probation officer, who subsequently joined the police officer at the site of the traffic stop and conducted a probation search of Fenton's vehicle. The police officer, who was assisting the probation officer with the search, found methamphetamine in the vehicle. The State charged Fenton with trafficking in methamphetamine. Fenton moved to suppress the evidence acquired during the probation search, asserting that both his traffic stop and probation search were unlawful. The district court held a hearing on the suppression motion, granting Fenton's suppression motion on the basis that the officer lacked reasonable suspicion to conduct the traffic stop. The State moved the district court to reconsider on the basis of the doctrine of attenuation. After the district court denied the State's motion to reconsider, the State appealed.

**BOISE, TUESDAY, SEPTEMBER 19, 2017, AT 10:30 A.M.**

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

**Docket No. 43967**

<b>STATE OF IDAHO,</b>	)
	)
<b>Plaintiff-Respondent,</b>	)
	)
<b>v.</b>	)
	)
<b>JAMES PATRICK STELL JR.,</b>	)
	)
<b>Defendant-Appellant.</b>	)

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Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Christopher S. Nye, District Judge.

Eric D. Fredericksen, State Appellate Public Defender; Jenevieve C. Swinford, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

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A jury found James Patrick Stell guilty of aggravated assault with a deadly weapon, malicious injury to property, possession of drug paraphernalia, and carrying a concealed weapon while under the influence. Stell filed a motion for judgment of acquittal on the charge of carrying a concealed weapon while intoxicated. The district court denied the motion.

Stell appeals from the district court's judgment of conviction on all four offenses. Stell argues the district court erred by admitting an audio recording of his arrest where he invoked his right to counsel following *Miranda* warnings because: (1) the audio recording of the right to counsel was irrelevant and prejudicial; and (2) the audio recording of his invocation of the right to counsel violated his constitutional right to remain silent, guaranteed by both the Fifth Amendment of the United States Constitution and Article I, § 13 of the Idaho Constitution. Stell also argues the district court erred by denying his motion for judgment of acquittal on the charge of carrying a concealed weapon while intoxicated because the State failed to present sufficient evidence of his intoxication.

**BOISE, TUESDAY, SEPTEMBER 19, 2017, AT 1:30 P.M.**

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

**Docket No. 44504**

<b>STATE OF IDAHO,</b>	)
	)
<b>Plaintiff-Respondent,</b>	)
	)
<b>v.</b>	)
	)
<b>GUSTAVO CHAVEZ 2ND,</b>	)
	)
<b>Defendant-Appellant.</b>	)

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Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Joel E. Tingey, District Judge. Hon. Stephen J. Clark and Penny Stanford, Magistrates.

Hon. Lawrence G. Wasden, Attorney General; Russell J. Spencer, Deputy Attorney General, Boise, for appellant.

Eric D. Fredericksen, State Appellate Public Defender; Jordan S. Crane, Bonneville County Public Defender, Boise, for respondent.

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Gustavo Chavez 2nd was traveling home from a social gathering when his truck slid off the road and ran out of gas. Chavez claimed a friend was driving his truck. Chavez walked to a nearby house to use a phone and, while inside, the homeowner called the police because he suspected Chavez was intoxicated. Police arrived at the house and arrested Chavez for driving under the influence.

The Idaho Department of Transportation suspended Chavez's driver's license and Chavez opposed the suspension at an Administrative License Suspension hearing. Chavez's friend appeared at the hearing and testified he had been driving Chavez's truck on the night of the arrest. The hearing officer nonetheless upheld the suspension of Chavez's license.

The State charged Chavez with misdemeanor driving under the influence. At trial, Chavez attempted to call his friend to testify, but Chavez's friend was unavailable. Chavez then moved to admit into evidence the transcript from the ALS hearing, but the magistrate excluded the transcript. The magistrate also precluded Chavez from testifying that his friend was present at the ALS hearing. After a jury convicted Chavez of driving under the influence, Chavez appealed the decision to the district court. The district court ruled the magistrate erred in excluding the ALS hearing transcript and precluding evidence that Chavez's friend was present at the hearing. The district court reversed the magistrate's decisions, vacated the judgment of conviction, and remanded the case. The State appeals, arguing the district court erred in reversing the magistrate's rulings.