

Search and seizure, open fields doctrine



**ASSIGN
BUSTER**

MEMORANDUM ON DEFENDANT’S MOTION TO SUPPRESS STATEMENT OF

FACTS Owyhee County is located in the south west corner of Idaho. The Owyhee Mountains fill the west portion of Owyhee County. Mud Flat Field and Marmaduke Spring are located in the Owyhee Mountains, in the west central portion of Owyhee County, south of South Mountain and north of Juniper Mountain. The Mud Flat Field is approximately two miles long from North to South. The south end of the Mud Flat Field borders the Mud Flat road. Over this road one can travel to Jordan Valley, Oregon, from Grandview, Idaho.

From the Mud Flat road, a person enters the Mud Flat through the locked gate or through another, unlocked, gate. The unlocked gate is approximately 25 yards east of the locked gate. In July 1995, a number of persons, including *** Bennett, had keys to the locked gate. Near the south end of the field is a set of corrals. Defendant *** Tobias’ cabin is approximately a quarter mile east of the corrals. The cabin is not visible from the corrals. In the summer of 1995 the defendants Tobias and *** Black, were running cattle in the Mud Flat field and adjoining fields.

Marmaduke Spring is located about a quarter mile west of the northwest end of the Mud Flat Field, over a saddle from the field. On July 21, 1995, an Idaho Air National Guard helicopter pilot, *** Brummett, flew a mission over the Owyhee Mountains. While flying over Marmaduke Spring, Brummett saw a number of dead cows. Brummett initially observed the cows from the air; he then landed his helicopter and inspected the cows on foot. Brummett found *** Bennett’s truck parked near the north end of the Mud Flat Field. The truck was approximately a quarter mile east and over a ridge from the dead cows and the spring. Bennett was not at his truck.

Brummett left a note on *** Bennett's truck after he inspected the cows. The note identified the location of the massacred cows. When Bennett came back to his truck and read the note he walked over the hill to examine the cows. Because Bennett ran cattle on the ranch adjacent to and west of the Mud Flat Field, and had cattle in the area, he was afraid that the cows might have been his own. He found a number of swollen dead cows. What he saw caused him to leave and contact the Owyhee County Sheriff's Office (OCSO). At approximately 6: 00 p. m. on July 21, 1995 Bennett returned to the Mud Flat Field and Marmaduke Spring.

He brought the Owyhee County Sheriff, Tim Nettleton, Owyhee County Sheriff's Deputy Jim Bish and an Idaho Deputy Brand Inspector, Chuck Hall, with him. They got onto the Mud Flat field through the locked gate using Bennett's key. They inspected the dead cows. The cattle had been shot through the head and were lying on their left sides or were on their bellies. Each had at least one ear removed and each had an 11 inch by 11 inch (approximate) patch of hide missing from the right shoulder; The significance of the removal of the ear is that a numbered (" Bangs") tag is attached to the ear.

The owner of cattle can be determined by the tag even if the brand is destroyed Some of the cows had bled. The cows were tentatively identified as *** King's. Gordon King's brand is a " Heart-K" on the right shoulder; exactly where the hide had been cut from the cows. The cows appeared to have had calves nurse them after they had been killed. After inspecting the cows, Bennett, Nettleton and Hall went to the Mud Flat Corral and found

Tobias. They told him what they were doing and asked him whether he had seen anyone in the area during the past few days.

He denied that he had. The following day, July 22, 1995, law enforcement officers, lab technicians and citizens returned to the Marmaduke Spring area to try to figure out what happened. During that day *** King found a Charolais cross calf in the Mud Flat Field. This calf had an open wound on its right shoulder from where a "Heart-K" brand had been skinned. The calf had a new "T-cross" brand on its left hip. Officers and cowboys found 12 skinned and rebranded calves during the next few days. Two calves were found in Tobias' and Black's Mud Flat Field.

The remainder of the calves were found in an allotment Tobias and Black shared with their neighbors, the Colletts. Each calf had a chunk of hide missing from its right shoulder, some had new ear marks, and each had a new "T-cross" brand. Skin, hair and blood samples were taken from the skinned calves and the dead cows. The samples were sent to the Stormont Laboratory for DNA testing. The tests established that at least eight of the calves came from eight of the dead cows. An Idaho brand officer, Chuck Hall, was near the corrals and saw saddles in the back of Tobias' pickup.

On one saddle's horn wrap Hall saw what appeared to be a fairly fresh spot of blood pressed into the wrap. Hall is an experienced cowboy and his opinion was that blood may have come from one of the cows or calves. Hall cut a small piece of leather containing the spot of blood off the saddlehorn wrap. Later, *** Black claimed that saddle. When asked at the preliminary hearing why he took the piece of leather, Hall said, "I saw it as evidence,

and if I hadn't taken it at that time I may not have ever seen it again. " (PH, p. 572.) The leather and blood were sent to the Stormont lab.

The lab determined that the spot was blood and that it came from one of the stolen calves. On July 21, when Nettleton first saw the dead cows and told Tobias about them, he saw the blood on Tobias' pants. The following day Tobias was wearing the same pants. Nettleton decided, based on his experience as a cowboy and a hunter, that the blood pattern on the pants was unusual. It was not the pattern of blood as it usually appears on the pants of a cowboy, or a hunter. Blood on the pants of a hunter or cowboy will be wiped on from wiping off either hands or knives or as specks from the spray of cut small arteries.

The blood in this instance was smeared and soaked onto the thigh area of the pants and had dripped down onto the cuff area. Nettleton believed that the blood may have come from the cows and calves. He believed that the blood pattern came from Tobias' having laid the skinned patches of cow and/or calf hide on his pants. The patches of hide from the cows and calves were never recovered. Near the end of the day of July 22, Nettleton approached Tobias and told him that he had probable cause, but did not want, to arrest him. Nettleton asked Tobias for his pants.

Tobias asked Sheriff Nettleton what would happen if he did not give Sheriff Nettleton the pants and Nettleton replied that he would have to arrest him. Tobias consented to give up the pants. The pants were sent to the Stormont lab and DNA tests were performed on them. The tests showed that blood on the pants matched that from one of the dead cows. DEFENSE ARGUMENTS

The arguments are set out in Tobias' " Memorandum in Support of

Defendant's Pretrial Motions. " I. THE THRESHOLD MATTER BECAUSE TOBIAS HAS MADE NO SHOWING THAT HIS UNITED STATES CONSTITUTIONAL FOURTH AMENDMENT RIGHTS HAVE BEEN VIOLATED, THIS COURT SHOULD NOT CONSIDER HIS ARGUMENTS.

As a threshold matter, this court must determine whether Tobias has standing to assert a violation of the 4th Amendment to the United States Constitution. In order to show standing Tobias must show that the search or seizure violated his own privacy, liberty or possessor interests. *Rakas v. Illinois* 439 U. S. 128, nt. 1, (1978); *Smith v. Maryland*, 442 U. S. 736, 740, 99 S. Ct. 2577, 2580, 61 L. Ed. 2d 220 (1979). Tobias has an obligation to demonstrate, by affidavit or testimony, that any of his privacy, liberty or possessor interests have been violated. Tobias has not shown either a subjective or objective expectation of privacy.

The facts demonstrate that Tobias and Black had little, if any, expectation of privacy in the Marmaduke Spring kill site, in the Mud Flat field, in the Mud Flat field corrals, in the open back of Tobias' pickup truck, in the federal allotment that Tobias and Black shared with the Colletts, in the dead cows found near Marmaduke Spring, in King's calf found in the Mud Flat field, in the running irons found at the Mud Flat field corrals, in the running irons and blood spot found on the saddle which was located in the open back of Tobias' pickup truck at the Mud Flat field corrals, in the bloody pants that Tobias was wearing, in the calves found on the federal allotment that Tobias and Black shared with the Colletts, the Marmaduke Spring, the Mud Flat corral, the Mud Flat Field, or his pickup. Tobias has shown no ownership interest Marmaduke Spring. He has shown no violated privacy interest in the Mud Flat Field, or

the Collett/Tobias/Black allotment. Tobias has not claimed an ownership interest in the evidence seized from the deceased cows, the calves or the saddle leather.

Therefore, the court should not consider his arguments nor grant his motion to suppress regarding this evidence. II. THE MUD FLAT CORRAL SEARCH ARGUMENT THE MUD FLAT CORRALS WERE OUTSIDE THE AREA OF FOURTH AMENDMENT PROTECTION BECAUSE TOBIAS HAD NO REASONABLE EXPECTATION OF PRIVACY IN THEM. The state will first analyze Tobias' reasonable expectation of privacy in the corral area. The analysis of his interest in the Mud Flat field, the federal allotment that Tobias shared with the Colletts, and the Marmaduke Spring kill site, will be substantially the same. If the court finds that Tobias had no reasonable expectation of privacy in the corral area, then it should find that he had no reasonable expectation of privacy in the other areas.

In order to determine if the Fourth Amendment applies, the court has to determine if the person objecting to the search or seizure has a reasonable expectation of privacy in the place searched or the thing seized (because if there is no reasonable expectation of privacy violated there is no search or seizure), if there was a search or seizure, if the state was involved, and, finally, if an exception applies. Should this court consider Tobias' search and seizure claims it should consider that the facts show diminished and missing subjective and objective expectations of privacy. The Fourth Amendment prohibits only those searches and seizures that are " unreasonable. While the appellate courts presume that warrantless searches are unreasonable, the state rebuts this presumption when it demonstrates, by a preponderance

of the evidence based on the totality of the circumstances, that the search was reasonable. The state can also rebut the presumption when it shows that the search came under one of the exceptions to the warrant requirement. In other words Tobias must show that he had a reasonable expectation of privacy which was violated. A. Open Fields The Fourth Amendment “ protects people, not places. What a person knowingly exposes to the public, even in his home or office, is not a subject of Fourth Amendment protection. ” Katz, 389 U. S. at 351.

The person must have an actual, or subjective, expectation of privacy, and the expectation must be one that society will recognize as reasonable. Katz, 389 U. S. at 361. Federal courts have consistently held that there is no constitutionally protected privacy interest in the area outside of the curtilage a home. In *Hester v. United States*, 265 U. S. 57 (1924), federal agents entered onto Hester’s lands looking for, and finding, his illegal still. The court held that the Fourth Amendment did not protect open fields. The Court reiterated that holding in *Oliver v. United States*, 466 U. S. 170 (1984), and *United States v. Dunn*, 480 U. S. 294 (1987).

In *Oliver*, the officers acted on anonymous tips, ignored “ no trespassing” signs, and found secluded marijuana fields on private land. The Supreme Court again held that open fields do not provide the setting for those intimate activities that the Fourth Amendment is intended to shelter from government interference or surveillance. Therefore, there is no reasonable expectation of privacy, even though the police are trespassers in the unprotected areas. In *Dunn* narcotics officers trespassed onto *Dunn*’s farm. They climbed over fences and crossed open fields. They avoided the house

but went to the barn and other outlying structures. They crossed over more fences and looked inside, but did not go inside, the barn.

The Supreme Court said there was no Fourth Amendment protection in the area where the trespass occurred. The Court discussed curtilage concepts and factors such as distance from the residence, enclosures surrounding the residence, the uses to which the area was being put, and owner's efforts at concealment. It then ruled that the open fields doctrine applied. Although the Idaho appellate courts have found the federal definition of curtilage unduly restrictive, they nevertheless analyze curtilage similarly. In *State v. Kelly*, 106 Idaho 268 (Ct. App. 1984) and *State v. Young*, 107 Idaho 671 (Ct. App. 1984), the appellants asked the court to examine *Oliver*'s effect on *Katz* and *Hester*. The court of appeals declined to do so.

The court did not agree with the appellants that the evidence should have been suppressed. The court also examined the federal cases in relation to Idaho's constitutional law. It decided the cases by determining that the defendants had exhibited no reasonable expectation of privacy. In *Kelly*, the court commented that the officers seized the marijuana after going over the defendant's insubstantial barbed wire fence. The court also noted there was no evidence of "no trespassing" signs. In *Young*, the court said that while the officers had initially encountered a gate, a fence and "no trespassing" signs, they had walked around them to an area where there were no signs, gates or fences.

The officers then entered *Young*'s land and saw the marijuana. *Tobias*, in his brief, implies that under no "stretch of the imagination" can the search at the Mud Flat corrals be justified. He suggests that the Mud Flat corrals are

within the curtilage of his cabin and are immediately adjacent to his cabin. (Deft's Mem. , p. 7.) To support the argument, he cites a number of other state courts as having held that corrals " are within the constitutionally protected ' curtilage' of a farmhouse. " (Deft's Mem. , p. 8.) To suggest that corrals are by definition within the curtilage of a house is to expand the definition of curtilage beyond Idaho law.

Curtilage: encompasses the area, including domestic buildings, immediately adjacent to a home which a reasonable person may expect to remain private even though it is accessible to the public. *State v. Cada, supra*; *State v. Clark*, 124 Idaho 308 (Ct. App. 1993); *State v. Rigoulot*, 123 Idaho 267 (Ct. App. 1992), emphasis added. It is clear from the photographs and from the preliminary hearing testimony that the corrals are not " immediately adjacent to a home. " Clearly, the corrals are not located within " a small piece of land" around the cabin. (See attached photograph.) Tobias' cabin is concealed from the corrals. There is a tree-covered ridge isolating the cabin from the corrals.

Tobias' cabin sits below the ridge. His cabin is approximately a quarter mile from the corrals. The corrals are not part of a barnyard immediately adjacent to a home. Their association with the cabin is that they are along the road leading to the cabin. The road ends and the path to the cabin begins, near the corrals. While the corrals are not clearly visible from the Mud Flat Road, they are easily seen from the road that goes through the Mud Flat field and on to Bennett's ranch. There are no special fences that set the corrals and the cabin apart from the rest of the Mud Flat field. The corrals are within sight of, and on the edge of, the Mud Flat field.

The corrals are presumably used for the livestock within the Mud Flat field. As can be seen in the attached photograph, many paths lead to the corrals. Both in use and location, the corrals are more closely associated with the Mud Flat field than with Tobias' cabin. It is fair to characterize the corrals as outside the area that " a reasonable person may expect to remain private," therefore outside the area included in the cabin's curtilage, and therefore outside the area of Fourth Amendment protection. B. Plain View However, if the court includes the Mud Flat corrals within the curtilage of Tobias' cabin, that does not mean that the corrals are protected by the Fourth Amendment.

In *Rigoulot* the court concluded that observations made by persons " restricting their movements to places ordinary visitors could be expected to go were not protected by the Fourth Amendment. " *Rigoulot* at 272. The Mud Flat corrals are located near the south end of the Mud Flat Field. They are approximately one-half mile north of the Mud Flat Road, out of sight, to the west, and over a ridge (or around a draw) from Tobias' cabin. A person driving along Mud Flat Road cannot see either the Mud Flat Corrals or Tobias' cabin. A person who enters the main gate at the Mud Flat Field follows a dirt road north to where it splits. One fork continues in a north, north-west direction. This fork continues off Tobias' property and onto Bennett's property.

The other fork continues north for a way then it curves east around a hill toward the corrals. This fork ends just beyond the corrals. In order to get to Tobias' cabin, a person has to travel along the road to the corrals, then the remainder of the way on foot. The state's position is that if the corrals are included within the cabin's curtilage , then they are in an area that visitors

would normally go. These visitors include police officers coming onto the property to “ conduct an investigation or for some other legitimate purpose.

” Id. In summary, because the officers were not in a place protected by the

Fourth Amendment, their search was not improper. III. THE MUD FLAT FIELD

SEARCH ARGUMENT

TOBIAS HAD NO REASONABLE EXPECTATION OF PRIVACY IN THE MUD FLAT

FIELD BECAUSE THE FIELD IS OUTSIDE THE AREA OF FOURTH AMENDMENT

PROTECTION. The governing law is set out above under the argument

regarding Tobias’ expectation of privacy in the Mud Flat Field corrals. On July

22, after the officers were finished or nearly finished gathering evidence

from King’s dead cows, Gil King was heading away from the Marmaduke

Spring area. He was going to load his motorcycle into a truck and leave. As

he was leaving and while near Bennett’s truck near the Johnson Reservoir,

he saw the Charolais calf that “ had a big ol’ patch of hide missing off its

side. ” (PH, p. 389. The calf was herded to the Mud Flat Field corrals and

examined. This calf had skin removed off its right shoulder, where a “ Heart-

K” brand had been, and a new “ T-cross” brand on its left hip. Tobias claimed

the calf. Based on the above law and arguments regarding Tobias’

expectation of privacy in the Mud Flat Field corrals, and the fact there should

be a progressively decreasing reasonable expectation of privacy as one gets

further away from the cabin, the state respectfully requests that this court

deny the defendant’s motion to suppress the evidence gathered in the Mud

Flat Field (the Charolais calf). IV. THE MARMADUKE SPRING KILL SITE SEARCH

ARGUMENT

TOBIAS HAD NO REASONABLE EXPECTATION OF PRIVACY IN THE MARMADUKE SPRING BECAUSE IT IS OUTSIDE THE AREA OF FOURTH AMENDMENT PROTECTION. The governing law is set out above under the argument regarding Tobias' expectation of privacy in the Mud Flat Field corrals. Considering the facts, and the above stated law and argument, the state respectfully requests that this court deny the defendant's motion to suppress the evidence gathered at the Marmaduke Spring. V. THE COLLETT/TOBIAS & BLACK ALLOTMENT SEARCH ARGUMENT TOBIAS HAD NO REASONABLE EXPECTATION OF PRIVACY IN THE COLLETT/TOBIAS ALLOTMENT BECAUSE THE ALLOTMENT IS OUTSIDE THE AREA OF FOURTH AMENDMENT PROTECTION.

The law governing this area of search and seizure is set out above in the argument regarding the Mud Flat corrals search. On July 23rd, a number of cowboys and officers road through the Collett/Tobias allotment and found 11 calves. The calves were found in the area of the allotment furthest from Tobias' cabin. The calves had new " T cross" brands, new ear marks and had a chunk of hide skinned off their right shoulders. Subsequent DNA tests showed that most of the calves came from the dead cows. The Collett/Tobias allotment is a section of land lying adjacent to and east of the Mud Flat field. The allotment is also adjacent to and east of Collett's private land. It is adjacent to and south of land on which the Kings ran cattle.

In July 1995 two ranchers (Tobias and the Collettfamily) leased the grazing rights from the Bureau of Land Management; on July 22nd both had cattle on the land. Each would ride the allotment to check their cattle. There were fences to keep the cattle in, there were no " no trespassing" signs. There is

no indication that intimate family activities such as those protected by curtilage concepts occurred on the land. Because Tobias had no reasonable expectation of privacy in the Collett/Tobias allotment, the state respectfully requests that this court deny the defendant's motion to suppress the evidence regarding the calves found in the allotment. VI.

THE CONSENT TO SEARCH ARGUMENT TOBIAS HAD NO REASONABLE EXPECTATION OF PRIVACY IN THE MUD FLAT CORRAL, THE MUD FLAT FIELD, MARMADUKE SPRING OR THE FEDERAL ALLOTMENT BECAUSE THE OFFICERS HAD EITHER REAL OR APPARENT PERMISSION TO BE ON THE PROPERTIES. The officers had reason to believe that either Bennett or Tobias had consented to their presence at the Mud Flat corrals search and that either Bennett or Tobias had the authority to consent to their presence. Consent must be shown to be free and voluntary and not a result of duress or coercion, either direct or implied. *State v. Aitken*, 121 Idaho 783 (Ct. App. 1992), citing *Schneckloth v. Bustamonte*, 412 U. S. 18 (1973): As long as the police officer reasonably believes that the person giving consent to a warrantless search has the authority to consent, the search is valid and the defendant's right against unreasonable searches and seizures pursuant to the Fourth Amendment to the United States Constitution and art. 1, § 17 of the Idaho Constitution is not violated, even though the consenter has no actual authority to consent. *State v. McCaughey*, 127 Idaho 669, 904 P. 2d 939, (1995). The state must show the voluntariness of consent by a preponderance of the evidence; and the voluntariness of consent is to be determined in light of all of the circumstances. *State v. Aitken*, supra; *State v. Rusho*, 110 Idaho 556 (Ct. App. 1986). A number of people had access to

the Mud Flat field and the Mud Flat corrals. Tobias allowed local people access to his fields. Tobias provided an access key to Bennett.

Bennett notified OCSO of the dead cows and brought officers to look at the cows. Bennett used his key to unlock the gate on July 21st when he brought officers to look at the cows. Bennett gave the officers his key so that they could return to the field the following day. Tobias talked to state officers at his corrals and made no objection to their presence on July 21st. He knew on July 21st that state officers were going to return July 22nd and made no objection. Tobias was present at the Marmaduke Spring when officers returned July 22nd and he watched the work that they were doing and he did not object to their presence. Tobias watched them while they gathered evidence from the cows.

He was present when the Charolais calf was found in the Mud Flat field and knew that the calf was going to be driven to the Mud Flat field corrals. He was present at the corrals when the officers were looking at the Charolais calf and when they seized the piece of leather from the saddle in his pickup. Officers talked to Tobias at Marmaduke Spring and at the Mud Flat corrals. Tobias only questioned the officers about their authority to seize his pants. Officers only seized his pants after gathering evidence from the dead cows, after finding the Charolais calf with a patch of hide missing from its shoulder and with new ear marks and a new " T cross" brand, which Tobias claimed as his own.

Tobias & Black may not have been present when the calves were found in the Collett/Tobias & Black allotment. Tobias and Black had a diminished expectation of privacy as they shared the allotment with the Colletts and the

Colletts allowed cowboys and state officers to search the allotment. At no time did Tobias, the alleged owner of the property, object to the officers' presence and the only time he questioned their actions was when they seized his pants. Considering all of the circumstances, including custom in the area, it is fair to say that the officers thought they had Tobias' permission to be at the corrals when he knew that they were going to be there, he accompanied them, and expressed absolutely no disapproval to their presence.

The law of consent is clear that, "[w]here two persons have equal rights to the use or occupation of premises, either may give consent to a search, and the evidence thus disclosed can be used against either." *State v. Huskey*, 106 Idaho 91 (Ct. App. 1984), citing *United States v. Sferas*, 210 F. 2d 69, 74 (7th Cir.). The co-tenants, the Colletts, could give the officers permission to search the allotment for King's calves. The officers searched the allotment with the permission of the co-tenants, the Colletts. The state respectfully requests that this court deny the defendant's motion to suppress the evidence regarding the calves found in the allotment. VII.

THE MUD FLAT CORRAL SEIZURES ARGUMENT IT WAS PERMISSIBLE FOR HALL TO SEIZE THE LEATHER CONTAINING THE BLOOD SPOT AND THE CINCH RINGS (RUNNING IRONS) THAT HE SAW ON BLACK'S SADDLE IN THE OPEN BACK OF TOBIAS' PICKUP TRUCK Assuming, without conceding, that Tobias has standing to challenge the seizure from Tobias' pickup truck, the state's position is that Hall could seize the thumbnail sized piece of leather and the running irons under either the plain view doctrine or the moving target doctrine. Hall seized the cinch rings and piece of leather because he was

investigating the killing of the cows and rebranding of the calf and believed that both items were evidence.

On Saturday, July 22, 1995, while the officers were at the Mud Flat corrals trying to figure out the situation with the Charolais calf, Hall observed a saddle in the uncovered back of Tobias' pickup truck. The saddle belonged to *** Black. Black was not present at the corrals. On the saddle there were two blackened cinch rings and a spot of blood on a piece of leather. Anyone present could have looked into the back of the pickup and seen the saddle, the cinch rings and the blood spot. The overall circumstances indicated that large chunks of hide were cut from cows and at least one calf. The calves were alive when their hide was cut off their shoulders. It is reasonable to infer that the calf would have bled.

Chuck Hall, from the state Brand Inspector's office and an experienced cowboy, observed Black's saddle and saw the blood spot on the saddle horn wrap. It was apparent to Hall that the blood spot was unusual both in the location and how it was pressed into the wrap. Hall cut the thumbnail sized piece of leather off the saddle horn wrap. Hall seized the rings. It was apparent to Hall that the cinch rings had illegally been used as running irons.

A. The Plain View Doctrine. Hall's seizure of evidence from the pickup truck was permissible under the plain view doctrine. The court in *State v. Clark*, 124, Idaho 308, 311 (Ct. App. 1993), (citing *Horton v. California*, 496 U. S. 28 (1990)), set out the standard: (1) The officer must lawfully make an initial intrusion or otherwise properly be in a position to observe a particular area, and (2) it must be immediately apparent that the items observed are evidence of a crime or otherwise subject to seizure. The " immediately

apparent” requirement is “ met when an officer has probable cause to believe that the item in question is associated with criminal activity. ” State v. Claiborne, 120 Idaho 581 (1991), citing Texas v. Brown, 460 U. S. 730 (1983). An officer is allowed to “ draw reasonable inferences based on his training and experience. ” State v. Tamez, 116 Idaho 945 (Ct. App. 1989). Multiple officers at a scene may make reasonable inferences based on their collective knowledge. United States v.

Newton, 788 F. 2d 1392 (8th Cir. 1986). Here, Hall was properly on the property either because of actual or implied consent, or because he was in an “ open view” area at the corrals. When Hall saw the blood spot on the saddle horn he recognized it to be evidence. (PH, p. 572.) He then seized a small section by cutting it off the saddle horn. Because the cinch rings and the blood spot were open to public view and because Hall had probable cause to believe that they were contraband and prima facie evidence of a crime, the state respectfully requests that this court deny the defendant’s motion to suppress these items. B. The Moving Target Doctrine

Further supporting Hall’s decision to seize the cinch rings and the leather piece is the fact that they were located in a motor vehicle: The guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment [recognizes] a necessary difference between a search of a store, dwelling house or other structure... and a search of a ship, motor boat, wagon or automobile... [since] it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought. Carroll v. United States, 267 U. S. 132, 152 (1925). The United States Supreme Court explained this doctrine in

Chambers v. Maroney, 399 U. S. 2, 52 (1970): For constitutional purposes, we see no difference between, on the one hand, seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out the immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment. When Hall seized the running irons, he believed they had been used as running irons to draw on brands. He knew that it was illegal to possess running irons and, as such, they were contraband. It appeared that someone had drawn the “ T-cross” brand on the Charolais calf with a running iron. He also knew that someone had killed 11 cows and that someone had cut a patch of hide off their right shoulders.

He knew that someone had cut a patch of hide off the Charolais calf’s right shoulder and that someone had changed its ear mark by cutting the ear. From his experiences as a cowboy he knew that the cows and calf would have bled. He knew from his experience as a cowboy that the blood on the saddle wrap was unusual in the location and in the manner that it was pressed into the wrap. He recognized the blood as evidence and was afraid that he would not see it again if he did not seize it then. The seizure of the blood spot from the saddle horn wrap is similar to the seizure that occurred in Cardwell v. Lewis, 417 U. S. 583 (1974). In Cardwell, officers investigating a murder examined a tire and took paint scrapings from the defendant’s car. The car was located in a public parking lot.

In the court’s opinion the officers did not infringe on any reasonable expectation of privacy. A similar case is New York v. Class, where an officer reached into a motor vehicle to move papers on the dashboard. The papers

were covering a VIN. When the officer moved the papers he saw and seized a gun. The court upheld the search as the defendant did not have a reasonable expectation of privacy in the VIN, the officer had a right to see the VIN, therefore, he had a right to move the papers. In *United States v. Ferri*, 778 F. 2d 985 (3rd Cir. 1985), the court held that a person had no reasonable expectation of privacy in his shoes (and their soles).

The above cases are based on the Katz reasoning that the Fourth Amendment does not apply to the exteriors or interiors of items open to the public view. Because the cinch rings and the blood spot were located within a mobile vehicle and because Hall had probable cause to believe that they were contraband and evidence of a crime, the state respectfully requests that this court deny the defendant's motion to suppress these items. CONCLUSION For the above stated reasons the state respectfully requests that this court deny Tobias' motion to suppress.

----- [1]. The access to *** Bennett's ranch is by a road that goes through the Mud Flat Field.

The Bennett family has used the road through the Mud Flat Field to get to their property to the north and west since at least 1948 when Mud Flat was owned by Elmer Johnston. Since then the property has been owned by *** Steiner, *** Steiner and *** Tobias. (see Preliminary Hearing (PH) Tr. , p. 12.) [2]. Near a water hole, *** King's son, *** King, had fed potato chips to one of the cows on July 13, 1995. [3]. The " T-cross" brand was the registered brand of Tobias' partner, *** Black. Tobias has two brands registered in Idaho, one is a " 46," the other is an "' F' hanging ' J. '" [4]. Other Tobias

and Black cow/calf pairs were in the fields where the newly branded “ T-cross” calves with the chunks of hide missing were found.

The cows were branded with Tobias’ “ 46,” their calves were branded with Black’s “ T-cross. ” [5]. The cows’ ears were never found. [6]. The court in *State v. Cada*, 129 Idaho 224 (Ct. App. 1996), established that Idaho will not follow the *Dunn* analysis regarding enclosure and visibility to passersby. [7]. “ Curtilage” refers to a small piece of land not necessarily enclosed, around a dwelling house, generally including buildings used for domestic purposes in the conduct of family affairs. *Ferrel v. Allstate Insurance Co.* , 106 Idaho 696 (Ct. App. 1984). [8]. Approximately one quarter mile. [9]. Approximately 2 miles from Tobias’ cabin. [10]. The brand was actually registered to his partner, *** Black. [11].

This point does not even examine the question of whether one can have a reasonable expectation of privacy in someone else’s cows. [12]. The Collett/Tobias allotment is approximately five miles long and varies from approximately one mile wide to over two miles wide, so it cannot equate to a premises. [13]. Also known as the Carroll Doctrine. [14]. Idaho Code sec. 25-1903 states that, “ any person who uses, or has, or keeps in his possession, any running branding iron, tool, or instrument used by him for running a brand on any livestock... is guilty of grand larceny.... [T]he possession of such iron or instrument is prima facie evidence of guilt. ” [15]. The seizure of the pants is also similar, as both were items held out to public view.