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intentions. If any discrepancy exists between the statement of the minimum limit of the sentence and the statement of parole eligibility or between the statement of the maximum limit of the sentence and the statement of mandatory release, the statements of the minimum limit and maximum limit shall control the calculation of the offender's term. See § 29-2204(1).

CONCLUSION

For the reasons set forth, we find no merit to any of Castillas' assignments of error. We therefore affirm the judgments of conviction and the sentences imposed.

AFFIRMED.

CASSEL, J., not participating.

STATE OF NEBRASKA, APPELLEE, V.
RANDALL J. BROMM, APPELLANT.
826 N.W.2d 270

Filed February 8, 2013. No. S-11-718.

1. **Constitutional Law: Search and Seizure: Motions to Suppress: Appeal and Error.** In reviewing a trial court's ruling on a motion to suppress based on a claimed violation of the Fourth Amendment, an appellate court applies a two-part standard of review. Regarding historical facts, an appellate court reviews the trial court's findings for clear error. But whether those facts trigger or violate Fourth Amendment protections is a question of law that an appellate court reviews independently of the trial court's determination.
2. **Criminal Law: Courts: Appeal and Error.** In an appeal of a criminal case from the county court, the district court acts as an intermediate court of appeal.
3. **Motions to Suppress: Trial: Pretrial Procedure: Appeal and Error.** When a motion to suppress is denied pretrial and again during trial on renewed objection, an appellate court considers all the evidence, both from trial and from the hearings on the motion to suppress.
4. **Evidence: Proof: Words and Phrases.** Direct evidence is that evidence which proves the fact in dispute directly without inference or presumption.
5. **Evidence.** Direct evidence encompasses not just testimonial evidence, but the admission of documents and other tangible items.
6. **Search and Seizure: Police Officers and Sheriffs.** The purpose of the exclusionary rule is to deter police misconduct.
7. **Constitutional Law: Search and Seizure: Police Officers and Sheriffs: Negligence.** The exclusionary rule should not apply when police mistakes are the result of negligence rather than systemic error or reckless disregard of constitutional requirements.

Petition for further review from the Court of Appeals, INBODY, Chief Judge, and IRWIN and SIEVERS, Judges, on appeal thereto from the District Court for Washington County, JOHN E. SAMSON, Judge, on appeal thereto from the County Court for Washington County, C. MATTHEW SAMUELSON, Judge. Judgment of Court of Appeals reversed, and cause remanded for further proceedings.

John A. Svoboda, of Gross & Welch, P.C., L.L.O., for appellant.

Jon Bruning, Attorney General, and Kimberly A. Klein for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, MILLER-LERMAN, and CASSEL, JJ.

CASSEL, J.

INTRODUCTION

The arresting officer stopped Randall J. Bromm's dark-colored vehicle in reliance upon incorrect information from the vehicle's registration, which stated that the vehicle was white. In the subsequent prosecution for driving under the influence, Bromm sought to suppress evidence of the traffic stop. After he failed to obtain suppression at the county court and district court levels, the Nebraska Court of Appeals reversed, and remanded. On further review, we first decide that a copy of the county treasurer's certificate of registration provided direct evidence that the error in the vehicle's color stemmed from the registration. We also determine that the good faith exception to the exclusionary rule applies, because the county treasurer is not an adjunct of law enforcement. We reverse the decision of the Court of Appeals and remand the cause for further proceedings.

BACKGROUND

The facts are set forth in greater detail in the Court of Appeals' published decision.[1]

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[1] *State v. Bromm*, 20 Neb. App. 76, 819 N.W.2d 231 (2012).

County Court Proceedings

Bromm moved to suppress all evidence obtained as a result of the traffic stop, alleging that law enforcement did not have a reasonable, articulable suspicion to stop his vehicle. There was no issue of bad driving, but the arresting officer relied upon a discrepancy between the actual color of Bromm's vehicle as compared to the color of the vehicle from the State's motor vehicle registration records as relayed by the officer's dispatcher.

According to the arresting officer's testimony at the suppression hearing, the vehicle was a "dark color," which the officer thought was "like maroon or red or something like that." However, the officer testified that he "ran" the plate through dispatch, which reported that the license plate belonged to a "white vehicle." The stop was based solely upon an error in the registration of the vehicle, an error which the officer conceded was made by someone other than Bromm. The record of the suppression hearing did not include a copy of the vehicle's registration certificate.

The county court overruled Bromm's motion to suppress, finding that the officer had probable cause to stop Bromm based upon "observed violations of law, to wit: Fictitious Plates."

The matter proceeded to trial before the county court upon a written stipulation. Among the attachments to the written stipulation was a copy of the vehicle's registration certificate from the Burt County treasurer. In the "Description" section of the certificate, the information about the vehicle appeared in this format:

> 2009 CHEVROLET
> K1500 SUBURBAN LT 4 DR SPT UTIL
> WHI FLEXIBLE

The county court convicted Bromm of driving under the influence.

District Court's Decision

Bromm appealed to the district court, which observed that the information from the dispatcher's database was erroneous as to the color of Bromm's vehicle. The court noted that

a statute requires registration of a motor vehicle be made by application for registration to the county treasurer or other designated county official of the county in which the motor vehicle has situs and that the color of a motor vehicle is statutorily required on each new application for registration. Based upon the attachment to the stipulation, the court determined that the registration was issued by the Burt County treasurer. The court stated that there was no evidence to indicate who was at fault for the incorrect color designation on Bromm's motor vehicle registration certificate.

Although the district court determined that the sole reason for the traffic stop was erroneous, the court concluded that the good faith exception to the exclusionary rule applied. The district court reasoned that there was no evidence that the Washington County dispatcher or the arresting officer was responsible for the error or that the Burt County treasurer was connected to any law enforcement duties. The district court found the facts of the case to be distinguishable from *State v. Hisey*[2] because there was no evidence that the error was made by an adjunct to the law enforcement team.

Court of Appeals' Decision

Bromm next appealed to the Court of Appeals. The Court of Appeals considered the State's argument that county treasurers' offices should not be considered adjuncts of law enforcement because they are not involved in promulgating rules and regulations that law enforcement must enforce, nor are they integral to the laws concerning motor vehicles and persons who operate motor vehicles.

The Court of Appeals observed that the officer had received the information suggesting that Bromm's vehicle did not have proper license plates from the dispatcher—who had to be considered law enforcement—but that there was no direct evidence as to where the dispatcher had obtained the erroneous information. The Court of Appeals recalled that the burden of proof was on the State to prove the applicability of the good faith exception to the exclusionary rule, determined that the

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[2] *State v. Hisey*, 15 Neb. App. 100, 723 N.W.2d 99 (2006).

State failed to prove that the erroneous information came from the Burt County treasurer's office, and concluded that the dispatcher got the information from the Nebraska Department of Motor Vehicles (DMV). And under *Hisey*,[3] a traffic stop based upon erroneous information contained in the DMV's records was unlawful.

Accordingly, the Court of Appeals determined that the good faith exception did not apply and that the county court and the district court erred in not sustaining Bromm's motion to suppress. Based upon that determination, the Court of Appeals did not reach Bromm's assignments of error and arguments concerning the horizontal gaze nystagmus test, administration of the preliminary breath test, and alleged errors in the arresting officer's report.

We granted the State's petition for further review.

ASSIGNMENT OF ERROR

The State assigns that the Court of Appeals erred in finding that the county court and district court erred in not sustaining Bromm's motion to suppress evidence, particularly with respect to the basis for the stop of the vehicle and the sufficiency of the evidence relating to the registration.

STANDARD OF REVIEW

[1] In reviewing a trial court's ruling on a motion to suppress based on a claimed violation of the Fourth Amendment, we apply a two-part standard of review. Regarding historical facts, we review the trial court's findings for clear error. But whether those facts trigger or violate Fourth Amendment protections is a question of law that we review independently of the trial court's determination.[4]

ANALYSIS

On petition for further review, the State contends that the Court of Appeals erred in focusing on who transmitted the incorrect information regarding the color of Bromm's vehicle, rather than on who made the error. The State asserts that the

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[3] *Id.*

[4] *State v. Alarcon-Chavez*, 284 Neb. 322, 821 N.W.2d 359 (2012).

record contains evidence showing the error originated with the treasurer's office and that it is this error which should be considered in determining whether suppression should be employed to deter further transgressions.

In response to the State's petition for further review, Bromm argues that the Court of Appeals determined that the State failed to meet its burden of proof regarding who was at fault for the incorrect color appearing on Bromm's registration and that the Court of Appeals corrected the district court's judgment by placing the burden of proof on the issue where it should have been—with the State. Bromm asserts that the only direct evidence as to the source of the incorrect information was that it came from the dispatcher. Thus, Bromm argues that the Court of Appeals properly concluded the State had not proved the source of the erroneous information.

The record contains evidence pointing to the source of the incorrect information, and the district court considered this evidence. When the matter proceeded to trial before the county court upon the parties' written stipulation, a copy of the certificate of registration for Bromm's vehicle was admitted as one of the attachments to the stipulation. As the district court observed, statutes require that (1) every owner of a motor vehicle must apply for registration to the county treasurer or designated official of the county[5]; (2) the application shall include a description of the vehicle, "including the color"[6]; and (3) the certificate of registration shall contain a description of the motor vehicle as set forth in the application, which, as we have already noted, must include the vehicle's color.[7] Another statute mandates that county treasurers shall act as agents for the DMV in the collection of all motor vehicle taxes, motor vehicle fees, and registration fees.[8] And yet another statute requires the county to issue and file registration certificates using the vehicle titling and registration computer system prescribed by the

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[5] Neb. Rev. Stat. § 60-385 (Reissue 2010).

[6] Neb. Rev. Stat. § 60-386 (Reissue 2010).

[7] Neb. Rev. Stat. § 60-390 (Reissue 2010).

[8] Neb. Rev. Stat. § 60-3,141(1) (Reissue 2010).

DMV.[9] Thus, the functions of the county treasurer in receiving the registration information, issuing the registration, and entering the registration information in the DMV's computer system are all expressly prescribed by statute—a process which clearly traces the information entered by the county treasurer into the records of the DMV.

[2,3] The district court properly considered the evidence of the certificate of registration which had been admitted as trial evidence and was included in the record on appeal. In an appeal of a criminal case from the county court, the district court acts as an intermediate court of appeal.[10] When a motion to suppress is denied pretrial and again during trial on renewed objection, an appellate court considers all the evidence, both from trial and from the hearings on the motion to suppress.[11] Thus, on appeal, the district court could consider the trial evidence in addition to the evidence from the suppression hearing. We conclude that the same rule applies upon subsequent appeal to a higher court.[12] Thus, the evidence of the certificate of registration is properly before us.

[4,5] Contrary to the Court of Appeals' decision, the certificate of registration is direct evidence of the registered color of Bromm's vehicle. Direct evidence is that evidence which proves the fact in dispute directly without inference or presumption.[13] It encompasses not just testimonial evidence, but the admission of documents and other tangible items.[14] The

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[9] Neb. Rev. Stat. § 60-372(1) (Reissue 2010).

[10] See *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

[11] *State v. Ball*, 271 Neb. 140, 710 N.W.2d 592 (2006).

[12] See, generally, *State v. Graff*, 282 Neb. 746, 810 N.W.2d 140 (2011) (district court and higher appellate court review appeals from county court for error appearing on record).

[13] *Nebraska Legislature on behalf of State v. Hergert*, 271 Neb. 976, 720 N.W.2d 372 (2006).

[14] See, NJI2d Crim. 5.0 (stating in part that "[d]irect evidence is either physical evidence of a fact or testimony by someone who has first-hand knowledge of a fact by means of his or her senses"); *State v. Davis*, 1 Neb. App. 502, 500 N.W.2d 852 (1993) (determining that jury instruction given—which mirrored that in NJI2d Crim. 5.0—accurately stated law).

certificate from the Burt County treasurer described Bromm's vehicle as "WHI," which in the absence of any other description of the vehicle's color clearly conveys that it was white. Thus, the certificate of registration showed that the error originated with the Burt County treasurer's office. Accordingly, the State met its burden to show that the error began with the treasurer's office and not with the DMV or the dispatcher. Because this burden has been met, we turn to the issue at the heart of the State's argument.

The State argues that the county treasurer's office should not be considered an adjunct to law enforcement and, thus, that the exclusionary rule should not apply in this case. As discussed in *Hisey*,[15] the distinction is important under *Arizona v. Evans*[16] for purposes of determining whether the good faith exception to the exclusionary rule should apply. In *Evans*, the U.S. Supreme Court held that evidence seized incident to an arrest based upon a negligent error by a court clerk did not need to be suppressed. The Court reasoned that the exclusionary rule was designed as a means of deterring police misconduct, not mistakes by court employees, and that there was no evidence that lawlessness among court personnel required the sanction of suppression. The Court stated, "Because court clerks are not adjuncts to the law enforcement team . . . they have no stake in the outcome of particular criminal prosecutions."[17] The Court reasoned that the threat of exclusion could not be expected to deter these individuals, nor would the behavior of the arresting officer be altered.

In the instant case, the State argues that county treasurers have even less stake in the outcome of criminal prosecutions than do court clerks. According to the State, the only reason the treasurer's office issues vehicle registrations instead of the DMV is because it is required to do so by statute. The State argues that the treasurer's office is "far more akin to a court

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[15] *State v. Hisey, supra* note 2.

[16] *Arizona v. Evans*, 514 U.S. 1, 115 S. Ct. 1185, 131 L. Ed. 2d 34 (1995).

[17] *Id.*, 514 U.S. at 15.

clerk's office than it is to [the] DMV."[18] Thus, the State contends that the Court of Appeals improperly extended its prior decision in *Hisey*.[19]

[6] We agree with the State that a county treasurer's office should not be treated as an adjunct of the law enforcement team when application of the exclusionary rule is at issue. The purpose of the exclusionary rule is to deter police misconduct.[20] But like in *Evans*, no law enforcement agent did anything wrong. The officer in this case was justified in relying on the registration information provided to him, and his reliance upon the information was objectively reasonable. We have no reason to believe that applying the exclusionary rule under these circumstances would have any significant effect on employees of a county treasurer's office. They have no interest in maintaining inaccurate records. Like the court clerks in *Evans*, such employees are not "engaged in the often competitive enterprise of ferreting out crime"[21] and "have no stake in the outcome of particular criminal prosecutions."[22] Likewise, the Washington County sheriff's office has no control over the records of the Burt County treasurer.

[7] At oral argument, the State extended the argument set forth in its brief, contending that *Hisey* was wrongly decided. Recent precedents from the U.S. Supreme Court demonstrate a reluctance to exclude evidence where the deterrent effect would be minimal. *Davis v. U.S.*[23] concerned evidence obtained during a search conducted in reasonable reliance on binding appellate precedent in effect at the time of the search. The U.S. Supreme Court iterated that "in 27 years of practice under *Leon*'s good-faith exception, [the Court had] 'never applied' the exclusionary rule to suppress evidence obtained

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[18] Brief for appellant in support of petition for further review at 8.

[19] *State v. Hisey, supra* note 2.

[20] *United States v. Leon*, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984).

[21] *Arizona v. Evans, supra* note 16, 514 U.S. at 15.

[22] *Id.*

[23] *Davis v. United States*, 564 U.S. 229, 131 S. Ct. 2419, 180 L. Ed. 2d 285 (2011).

as a result of nonculpable, innocent police conduct."[24] In *Herring v. United States*,[25] the U.S. Supreme Court considered whether the exclusionary rule should apply to negligent errors by law enforcement personnel. In that case, an investigator asked the county's warrant clerk to check for any outstanding warrants for the defendant's arrest and learned that there was an outstanding warrant in a neighboring county. The investigator then arrested the defendant, and a search incident to arrest revealed methamphetamine and a pistol (which the defendant, as a felon, could not possess). When the warrant clerk for the neighboring county went to retrieve the actual warrant in order to send it to the warrant clerk who requested it, she was unable to find it and subsequently learned that the warrant had been recalled 5 months earlier, although that information did not appear in the database. The Court concluded that the exclusionary rule should not apply when police mistakes are the result of negligence rather than "systemic error or reckless disregard of constitutional requirements."[26]

Although we need not decide today whether *Hisey* remains good law in light of these precedents, we conclude that the evidence in the instant case need not be suppressed because (1) the officer's reliance on the information he received from dispatch was objectively reasonable, (2) the erroneous information originated from an entity that cannot be considered an adjunct of the law enforcement team, and (3) application of the exclusionary rule under these circumstances would have no deterrent effect. Accordingly, we conclude that the good faith exception to the exclusionary rule applies and that the Court of Appeals erred in reaching a contrary conclusion.

CONCLUSION

On further review, we conclude that the Court of Appeals erred in determining that the good faith exception did not apply

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[24] *Id.*, 131 S. Ct. at 2429.

[25] *Herring v. United States*, 555 U.S. 135, 129 S. Ct. 695, 172 L. Ed. 2d 496 (2009).

[26] *Id.*, 555 U.S. at 147.

and that the county court and the district court erred in not sustaining Bromm's motion to suppress. Accordingly, we reverse the decision of the Court of Appeals.

Because the Court of Appeals determined that the evidence should be suppressed, it did not consider Bromm's assignments of error and arguments concerning the horizontal gaze nystagmus test, administration of the preliminary breath test, and alleged errors in the arresting officer's report. We therefore remand the cause to the Court of Appeals to consider Bromm's remaining assignments of error.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

STATE OF NEBRASKA, APPELLEE, V.
BILLY RAMIREZ, APPELLANT.
825 N.W.2d 801

Filed February 8, 2013. No. S-12-251.

1. **Sentences: Appeal and Error.** Sentences within statutory limits will be disturbed by an appellate court only if the sentence complained of was an abuse of judicial discretion.
2. ____: ____. An abuse of discretion takes place when the sentencing court's reasons or rulings are clearly untenable and unfairly deprive a litigant of a substantial right and a just result.
3. **Statutes: Appeal and Error.** Statutory interpretation is a question of law that an appellate court resolves independently of the trial court.
4. **Criminal Law: Juries.** The determination of whether an injury is a "serious bodily injury" is a question of fact for the jury.
5. **Criminal Law: Restitution: Damages.** Neb. Rev. Stat. § 29-2280 (Reissue 2008) vests trial courts with the authority to order restitution for actual damages sustained by the victim of a crime for which a defendant is convicted.
6. **Sentences: Restitution.** After the sentencing court determines that a conviction warrants restitution, it then becomes the sentencing court's factfinding responsibility to determine the victim's actual damages and the defendant's ability to pay.
7. ____: ____. Under Neb. Rev. Stat. § 29-2281 (Reissue 2008), the sentencing court may hold a hearing at the time of sentencing to determine the amount of restitution.
8. **Effectiveness of Counsel: Records: Evidence: Appeal and Error.** A claim of ineffective assistance of counsel need not be dismissed merely because it is made on direct appeal. The determining factor is whether the record is sufficient to adequately review the question.