

FILED _____

AT _____ O'clock ____ M
CLERK, DISTRICT COURT

Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)
)
) *Plaintiff,*)
 vs.)
)
) **CRAIG ALEN BOWMER,**)
)
) *Defendant.*)
 _____)

Case No. **CRF 2008 27648**

**MEMORANDUM DECISION AND
ORDER ON DEFENDANT'S MOTION
TO SUPPRESS**

I. FACTUAL BACKGROUND.

Defendant (Bowmer) was approached by Tribal police officers while parked in the Worley School District parking lot at about 8:20 p.m. on December 16, 2008. The officers pulled in behind Bowmer's vehicle and approached him as he sat in the driver's seat. They asked Bowmer if he was alright, and Bowmer replied he was text messaging on his telephone. The officers asked Bowmer to produce identification because they did not believe cell reception existed in this area, they did not see a cellular telephone in Bowmer's hands, and they were concerned about prior thefts in this area. After Bowmer reached for his license in a bag on the passenger's seat, he dropped it at his feet while attempting to hand it to the officer. At this point, one of the officers looked down and saw a four-inch pocket knife on the floor by Bowmer's feet. The officers asked Bowmer to step out of the vehicle and sought to retrieve and secure the knife. When the officer opened the driver's

side door, he noticed what he believed to be marijuana between the driver's seat and the driver's door. The officer then went to secure the knife and discovered a bottle of whiskey under the seat. Bowmer was placed under arrest and the officers searched the vehicle, finding a glass pipe with methamphetamine residue in the bag which had contained Bowmer's license.

Bowmer now moves to dismiss or suppress all statements, observations, evidence, information, or other evidentiary fruits obtained because the detention and arrest were made without a warrant or other legal justification. Bowmer argues the "only issue to be presented is the Community Caretaking function of the Officer(s)." Brief in Support of Motion to Dismiss or Suppress, p. 2.

II. STANDARD OF REVIEW.

In an appeal from an order denying a motion to suppress, the Court of Appeals will not disturb findings of fact supported by substantial evidence, but will freely review whether the trial court's determination as to whether constitutional requirements were satisfied in light of the facts. *State v. Whiteley*, 124 Idaho 261, 264, 858 P.2d 800, 803 (Ct. App. 1993). When evaluating the trial court's determination of voluntariness of consent given, reviewing courts will not disturb such a decision on appeal if the trial court's finding is based on reasonable inferences to be drawn from the record. *State v. Post*, 98 Idaho 834, 837, 573 P.2d 153, 156 (1978). Whether consent to a search was voluntary is a question of fact and reviewing courts accept the factual findings of a trial court unless they are clearly erroneous. *State v. McCall*, 135 Idaho 885, 886, 26 P.3d 1222, 1223 (2001). Findings are not deemed clearly erroneous when supported by substantial evidence in the record. *State v. Benson*, 133 Idaho 152, 155, 983 P.2d 225, 228 (Ct.App. 1999).

The standard of review of a suppression motion is bifurcated; the Court of Appeals

accepts a trial court's findings of fact supported by substantial evidence and freely reviews the court's application of constitutional principles applied to the facts found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct.App. 1996); *State v. Cruz*, 144 Idaho 906, 908, 174 P.3d 876, 878 (Ct. App. 2007). On appeal, reviewing courts "take a similar approach to review the trial court's denial of [a] motion to dismiss." *State v. Zubizareta*, 122 Idaho 823, 826, 839 P.2d 1237, 1240 (Ct.App. 1992).

III. ANALYSIS.

Preliminarily, Bowmer objects to the State's Brief in Opposition to the Motion to Suppress as this Court set the deadline for briefs as May 12, 2009. Objection to State's Brief in Opposition of Motion to Suppress, p. 1. The State's brief, filed May 15, 2009, is untimely. On the parties' Stipulation for Extension of Time to file Brief(s) in Support of Motion/Opposition to Dismiss/Suppress, this Court ordered the deadline to file such brief be set at May 12, 2009. Order Continuing Pretrial Conference and Jury Trial and Extending Deadline to File Briefs, p. 2. The Court's mandatory "shall" language indicates that the State was required to file any briefs by the deadline or risk having any briefs stricken. However, because oral argument on the motion to dismiss/suppress was set for May 26, 2009, eleven days after the State's late filing of its brief, it was unlikely Bowmer was prejudiced. At the May 26, 2009, hearing, Bowmer's counsel did not claim any prejudice resulting from the State's three-day-late filing.

Bowmer argues the community caretaking exception to the warrant requirement is the only issue before the Court. Brief in Support of Motion to Dismiss or Suppress, p. 2, citing *State v. Schmidt*, 137 Idaho 301, 47 P.3d 1271 (2002) (analyzing the community caretaking function cases under a totality of the circumstances test). Bowmer argues that, as in *Schmidt*, the officers here had no reasonable belief that he was in need of immediate

assistance. Brief in Support of Motion to Dismiss or Suppress, p. 6. Bowmer points out that he was legally parked, the police had received no emergency calls which may have involved Bowmer, his vehicle was in no danger of being hit, nothing indicated he needed assistance, the officers had no warrant to search Bowmer's car and Bowmer did not give consent, the vehicle had no damage indicating an accident had occurred, there were no skid marks or debris on the road, and there was no ice, snow or rain on the road. *Id.*, pp. 5-6. The State argues there was no "stop" and Bowmer's liberty was only restrained once the officers had discovered the marijuana. Brief in Opposition to Motion to Suppress, p. 3. The State argues that under Fourth Amendment reasonableness, the officers had a reasonable suspicion that "something might be amiss" due to Bowmer's being parked in a school parking lot at 8:20 p.m., the officer having been aware of a history of theft in the area and the officers not believing Bowmer was texting because of their belief that no cellular reception was available. *Id.*, p. 6.

The Fourth Amendment prohibits unreasonable searches and seizures; its purpose is to impose a standard of reasonableness on the discretion exercised by government agents. *Delaware v. Prouse*, 440 U.S. 648, 653-54, 99 S.Ct. 1391, 1396 (1979); *State v. Maddox*, 137 Idaho 821, 824, 54 P.3d 464, 467 (Ct.App. 2002). Reasonableness in community caretaking cases is determined by balancing public need in the police conduct against the degree and nature of the intrusion on citizens' privacy. *State v. Page*, 140 Idaho 841, 844, 103 P.3d 454, 457 (2004). "Among the core community caretaking activities are the responsibilities of police to search for missing persons, mediate disputes, aid the injured or ill, and provide emergency services." *State v. Cutler*, 143 Idaho 297, 302, 141 P.3d 1166, 1171 (Ct.App. 2006) (citing *State v. Diloreto*, 180 N.J. 264, 850 A.2d 1226, 1236 (2004)). For the community caretaking function analysis to be applicable, officers

must have a subjective belief that an individual is in need of immediate assistance, “although the officer may harbor at least an expectation of detecting or finding evidence of a crime.” *Schmidt*, 137 Idaho 103, 304, 47 P.3d 1271, 1274.

However, the community caretaking function is not to be confused with an officer’s ability to engage in conversation with any person. The community caretaking function would be involved if the officers here suspected Bowmer was in need of immediate assistance. If that perceived need were legitimate, the officers could open Bowmer’s door to initiate conversation and determine what assistance Bowmer needed. The only concern the officer’s had regarding Bowmer’s need for immediate assistance was the extremely cold temperature the evening of December 16, 2009, about three degrees. Brief in Opposition to Motion to Suppress, p. 2, citing Tr., p. 5. The only other subjective concerns the officers had were the time of day and the previous thefts in the area, neither of which go to Bowmer’s need for immediate assistance.

The facts of the present case are much different than a community caretaking case. Here, the conversation occurs, legitimately, through Bowmer’s opened car window.

Police have the right to approach individuals and speak with them, even if no obvious criminal activity is afoot. *State v. Jordan*, 122 Idaho 771, 774, 839 P.2d 38, 41 (Ct.App. 1992); *State v. Zubizareta*, 122 Idaho 823, 827, 839 P.2d 1237, 1241 (Ct.App. 1992) (“...the police were authorized to approach the car and attempt to talk to Zubizareta. Zubizareta voluntarily complied with the request to roll down the window. His freedom to go about his business was not restricted at this point.”). The Fourth Amendment does not proscribe all contact between police and citizens. *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968). In *State v. Osborne*, 121 Idaho 520, 826 P.2d 481 (Ct.App. 1991), the Idaho Court of Appeals stated:

A seizure does not occur simply because a police officer approaches an individual on the street or other public place, by asking him questions, or by putting questions to him if he is willing to listen. *Florida v. Bostick*, 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991); *Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). Unless and until there is a detention, there is no seizure within the meaning of the fourth amendment and no constitutional rights have been infringed. *Royer*, 460 U.S. at 498, 103 S.Ct. at 1324. Even when officers have no basis for suspecting a particular individual, they may generally ask the individual questions and ask to examine identification. *Florida v. Rodriguez*, 469 U.S. 1, 105 S.Ct. 308, 83 L.Ed.2d 165 (1984); *INS v. Delgado*, 466 U.S. 210, 104 S.Ct. 1758, 80 L.Ed.2d 247 (1984); *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980). Thus, where an officer merely approaches a person who is standing on the street, or seated in a non-moving vehicle located in a public place, and poses a few questions, no seizure has occurred. See *United States v. Castellanos*, 731 F.2d 979 (D.C.Cir.1984); *United States v. Woods*, 720 F.2d 1022 (9th Cir.1983).... [T]he critical inquiry is whether, taking into account all of the circumstances surrounding the encounter, “the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.” *Bostick*, 501 U.S. at 434, 111 S.Ct. at 2387, quoting *Michigan v. Chesternut*, 486 U.S. 567, 569, 108 S.Ct. 1975, 1977, 100 L.Ed.2d 565 (1988).

121 Idaho 520, 523-34, 826 P.2d 481, 484-85.

Thus, contrary to Bowmer’s argument, community caretaking function analysis is not the only issue before the Court. This Court must, in fact, determine the reasonableness of the officers’ actions in light of broader Fourth Amendment implications.

Ultimately, because the officers had every right to approach Bowmer, speak with him and request his identification, even if no criminal activity is obviously afoot, the issue before this Court is whether the officers communicated to Bowmer (or any reasonable person in his position) that he was not at liberty to go about his business and ignore the police presence. See *Bostick*, 501 U.S. at 434, 111 S.Ct. at 2387. The Idaho Supreme Court has held that a brief stop of a suspicious individual to determine his identity or to maintain the status quo momentarily may be reasonable depending on the facts known to the officer at the time. *In Matter of Clayton*, 113 Idaho 817, 819, 748 P.2d 401, 403 (1988).

In *Florida v. Rodriguez*, 469 U.S. 1, 105 S.Ct. 308 (U.S. 1984), the United States Supreme Court held: “The initial contact between the officers and respondent, where they simply asked if he would step aside and talk with them, was clearly the sort of consensual encounter that implicates no Fourth Amendment interest. *United States v. Mendenhall*, *supra*, 446 U.S., at 554, 100 S.Ct., at 1877 (opinion of Stewart, J.); *Florida v. Royer*, *supra*, 460 U.S., at 497, 103 S.Ct., at 1324 (opinion of WHITE, J.)” 469 U.S. 1, 5-6, 105 S.Ct. 308, 311. In determining that Immigration and Naturalization Service surveys of workers in factories did not amount to a seizure, the United States Supreme Court in *INS v. Delgado*, 466 U.S. 210, 104 S.Ct. 1758 (1984) held:

We conclude that these factory surveys did not result in the seizure of the entire work forces, and that the individual questioning of the respondents in this case by INS agents concerning their citizenship did not amount to a detention or seizure under the Fourth Amendment. Accordingly, we reverse the judgment of the Court of Appeals.

The analysis of the United States Supreme Court was as follows:

The Fourth Amendment does not proscribe all contact between the police and citizens, but is designed “to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.” *United States v. Martinez-Fuerte*, 428 U.S. 543, 554, 96 S.Ct. 3074, 3081, 49 L.Ed.2d 1116 (1976). Given the diversity of encounters between police officers and citizens, however, the Court has been cautious in defining the limits imposed by the Fourth Amendment on encounters between the police and citizens. As we have noted elsewhere: “Obviously, not all personal intercourse between policemen and citizens involves ‘seizures’ of persons. Only when the officer, by means of physical force or show of authority, has restrained the liberty of a citizen may we conclude that a ‘seizure’ has occurred.” *Terry v. Ohio*, *supra*, 392 U.S., at 19, n. 16, 88 S.Ct., at 1879 n. 16. While applying such a test is relatively straightforward in a situation resembling a traditional arrest, *see Dunaway v. New York*, 442 U.S. 200, 212-216, 99 S.Ct. 2248, 2256-2258, 60 L.Ed.2d 824 (1979), the protection against unreasonable seizures also extends to “seizures that involve only a brief detention short of traditional arrest.” *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 95 S.Ct. 2574, 2578, 45 L.Ed.2d 607 (1975). What has evolved from our cases is a determination that an initially consensual encounter between a police officer and a citizen can be transformed into a seizure or detention within the meaning of the Fourth Amendment, “if, in view of all the

circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” *Mendenhall, supra*, 446 U.S. at 554, 100 S.Ct., at 1877 (footnote omitted); see *Florida v. Royer*, 460 U.S. 491, 502, 103 S.Ct. 1319, 1326, 75 L.Ed.2d 229 (1983) (plurality opinion).

466 U.S. 210, 215, 104 S.Ct. 1758, 1762.

In the present case, the officer’s car had not blocked Bowmer’s car. The dialogue was cordial. This is not a case where the officer took Bowmer’s identification. Bowmer did not even get his identification to the officer. As the Idaho Court of Appeals in *State v. Stewart*, 145 Idaho 641, 181 P.3d 1249 (Ct.App. 2008), recently revisited *State v. Jaborra*, 143 Idaho 94, 137 P.3d. 481 (Ct.App. 2006):

A determination of voluntariness does not turn “on the presence or the absence of a single controlling criterion.” *Schneckloth*, 412 U.S. at 226, 93 S.Ct. at 2047, 36 L.Ed.2d at 862. Factors to be considered include whether there were numerous officers involved in the confrontation, *Castellon v. United States*, 864 A.2d 141, 155 (D.C.2004); *United States v. Jones*, 846 F.2d 358, 361 (6th Cir.1988); the location and conditions of the consent, including whether it was at night, *United States v. Mapp*, 476 F.2d 67, 77-78 (2d Cir.1973); **whether the police retained the individual’s identification**, *United States v. Chemaly*, 741 F.2d 1346, 1353 (11th Cir.1984); whether the individual was free to leave, *Ohio v. Robinette*, 519 U.S. 33, 39-40, 117 S.Ct. 417, 421-22, 136 L.Ed.2d 347, 354-55 (1996); *Chemaly*, 741 F.2d at 1353; *State v. Gutierrez*, 137 Idaho 647, 651, 51 P.3d 461, 465 (Ct.App.2002); and whether the individual knew of his right to refuse consent, *Schneckloth*, 412 U.S. at 248-49, 93 S.Ct. at 2058-59, 36 L.Ed.2d at 875; *Chemaly*, 741 F.2d at 1353; *State v. Jones*, 126 Idaho 791, 793, 890 P.2d 1214, 1216 (Ct.App.1995). Although the presence of multiple police officers does not, standing alone, establish coercion, and there is no requirement that police inform the individual that he is free to leave or that he has a right to refuse consent, these factors are nevertheless relevant when viewing the totality of the circumstances. See *Robinette*, 519 U.S. at 39-40, 117 S.Ct. at 421-22, 136 L.Ed.2d at 354-55; *Schneckloth*, 412 U.S. at 248, 93 S.Ct. at 2058, 36 L.Ed.2d at 875; *Jones*, 846 F.2d at 361; *Chemaly*, 741 F.2d at 1353; *Castellon*, 864 A.2d at 155; *Gutierrez*, 137 Idaho at 651, 51 P.3d at 465; *Jones*, 126 Idaho at 793, 890 P.2d at 1216.

The trial court is the proper forum for the “careful sifting of the unique facts and circumstances of each case” necessary in

determining voluntariness. *Schneckloth*, 412 U.S. at 233, 93 S.Ct. at 2050, 36 L.Ed.2d at 866.
Jaborra, 143 Idaho at 97-98, 137 P.3d at 484-85.

145 Idaho 641, 181 P.3d 1249, 1256. (bold added). In *Jaborra*, the Idaho Court of Appeals affirmed the District Court's finding that Jaborra was not free to leave, based on the fact that Jaborra's license was not returned, coupled with the additional facts that there were three police present who arrived in three police cars, one or two of the cars had overhead lights flashing, one of the officers had grabbed Jaborra by the arm and was told to put his hands on his head.

Here, Bowmer arguably voluntarily complied with the request to identify himself by producing his divers' license, and only upon his dropping the license did the police officers see the knife at his feet which led to their asking him to step out of the vehicle and ultimately led to their discovering the marijuana in Bowmer's vehicle.

As Bowmer was parked, there was no stop of Bowmer. At the time he was asked for his identification, there was no detention of Bowmer, nor was there any detention at the time Bowmer fumbled his identification and it wound up on the floor of his car. The fumble resulted in the officer seeing the knife, which for officer safety allowed the removal of Bowmer from his car to securing of the knife. The securing of the knife led to the discovery of the marijuana.

At oral argument, counsel for Bowmer claimed there was Idaho case authority that an officer asking a person for identification or driver's license is a detention. The Court gave Bowmer's counsel additional time to furnish such to the Court, and Bowmer's counsel faxed the Court a copy of *State v. Page*, 140 Idaho 841, 103 P.3d 454 (2004). The Court read that case and makes the following observations. The facts of that case were Page, a pedestrian, was walking in a residential area of Post Falls, Idaho, walking down the middle

of a roadway lacking sidewalks at 2 a.m. on March 1, 2003. The officer activated his overhead lights, asked Page for his identification, then took Page's license to his patrol car. After discovering Page had an outstanding warrant, Page was arrested. The district court found there to be a detention, as the Court of Appeals noted: "The judge ruled, however, that the detention of Page for the purposes of retrieving his driver's license and running his name through dispatch exceeded the permissible scope of the officer's community care-taking function and constituted an unlawful seizure." 140 Idaho 841, 843, 103 P.3d 454, 456. The Idaho Court of Appeals found Page was improperly detained. In the present case, Bowmer was not detained.

In this case, the *totality of the circumstances* presented to Officer Marshall showed no compelling need to *seize the identification* and conduct a warrants check; nor were there facts present that legitimized *the detention of Page* once the officer determined, pursuant to his community caretaker function, that Page was not in need of assistance. Appellant has also not demonstrated a particularized or objective justification for detaining Page. This Court is concerned about the implications of a rule allowing law enforcement officers the ability to initiate consensual encounters with *pedestrians* in order to seize identification and run a warrants check. Twenty-five years ago the United States Supreme Court made clear the general rule the in the absence of any basis for suspecting an individual of misconduct, the Fourth Amendment generally does not allow government agents to detain an individual and demand identification. *Brown v. Texas*, 443 U.S. 47, 99 S.Ct. 2637 (1979). Thus, at that point, Page was improperly detained and the question then becomes whether there is any justification for the officer's subsequent search.

140 Idaho 841, 845, 103 P.3d 454, 459. (italics added). The italicized portions illustrate the profound differences between the facts in *Page* and the facts in Bowmer's case. The "totality of the circumstances" in *Page* consisted of a pedestrian, walking down a street where there was no sidewalk, who, when stopped by an officer with overhead lights activated, was asked to provide identification and did so, and then had that license taken by the officer. In the present case, Bowmer is a driver of a car which was parked. Bowmer wasn't stopped by the officer, he was already parked. No overhead lights were used.

Bowmer was asked for identification, and before that identification could be handed to the officer, he fumbled it, providing the discovery of the knife, which then led to the discovery of drugs. The facts in Bowmer's case are similar to the situation that was commented on in

Page:

In fact, the record is devoid of evidence that the officer officially "stopped" or otherwise restrained his liberty, either by physical force or show of authority at this time [up to the officer's taking Page's license]. Officer Marshall simply approached Page on a public street to ask a few questions and examine his identification. Page complied with these requests without objection. This Court has previously held that "[i]nterrogating a person concerning his identification or requesting identification does not, without more, constitute a seizure." [*State v. Nickel*, 134 Idaho at 613, 7 P.3d at 222. Further, no seizure has occurred when an officer simply approaches an individual on the street or other public place, by asking him if he is willing to answer some questions, or by putting questions to him if he is willing to listen. *Florida v. Bostick*, 501 U.S. 429 (1991). There is no indication that the officer threatened or touched Page, displayed his weapon, or exhibited other intimidating behavior that would indicated Page was not free to simply discontinue the encounter and walk away. See e.g., *State v. Reese*, 132 Idaho 652, 653, 978 P.2d 212, 213 (1998). Therefore, the officer's initial contact with Page is clearly the sort of consensual encounter that does not implicate any Fourth Amendment rights.

140 Idaho 841, 844, 103 P.3d 454, 458. The distinguishing fact in *Page* that caused the Court of Appeals to analyze the community caretaking exception, was the fact that the officer in *Page* took Page's identification and went back to his patrol car with that identification. The Idaho Court of Appeals continued:

However, the district judge granted Page's motion to suppress on the basis that Page was unlawfully seized at the point in time when Officer Marshall secured his driver's license and ran his name through dispatch to check for outstanding warrants. This Court has previously held that a limited detention does occur when an officer retains a driver's license or other paperwork of value. *State v. Godwin*, 121 Idaho 491, 493, 826 P.2d 452, 454 (1992).

140 Idaho 841, 844, 103 P.3d 454, 458. The Idaho Court of Appeals then went on to interpret *Godwin*, and concluded: "The request for the license and action in running it

through dispatch must be reasonable under the circumstances.” 140 Idaho 841, 845, 103 P.3d 454, 459. In the present case, due to Bowmer’s fumble of the license, those facts did not develop. Bowmer’s license was not taken from him.

Walking back to a patrol car with a person’s license may be a detention, depending on the circumstances. And while it is conceivable there may be circumstances where merely *asking* a person for his license amounts to a detention, the facts in Bowmer’s case do not present those circumstances. The officer was not parked behind Bowmer, no overhead lights were involved, and when the officer requested Bowmer’s identification he quickly and voluntarily complied.

IV. CONCLUSION AND ORDER.

IT IS HEREBY ORDERED, based on the reasons set forth above, defendant Bowmer’s Motion to Dismiss, Alternatively to Suppress All Fruits of the Illegal Detention is DENIED.

DATED this 26th day of May, 2009.

JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of May, 2009 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney - Suzanna L. Graham
Prosecuting Attorney -

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY: _____
Deputy