6-26-2018

State v. Flores Respondent's Brief Dckt. 45188

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45188**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR01-2016-35619**
	)	
ARTURO GONZALEZ FLORES,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Arturo Gonzalez Flores appeals from the district court's denial of his motion to suppress evidence.

Statement Of The Facts And Course Of The Proceedings

The state charged Flores with possession of heroin, possession of methamphetamine, and a persistent violator enhancement. (R., pp.36-37, 51-52.) Flores moved to suppress evidence (R., pp.67-75), claiming, among other things, that law enforcement "unreasonably extended his detention after the purpose of the [traffic] stop had been abandoned" (R., p.70). Following a hearing, the district court found the following facts:

A minor child reported to the police that her parents were using heroin at a house in Meridian (the "Moskee residence"). (R., p.106.) Law enforcement went to the Moskee residence to conduct a welfare check; they made contact with the child's mother—a woman named Yolanda—who "appeared nervous, guarded, lethargic, and unkempt," and who would not let the police enter. (R., p.107.) Police also had information that there was "a large amount of stop and go traffic at the Moskee residence"; that there were altercations at the house; and that law enforcement had previously responded to the house "based on a report that a female was experiencing seizures induced by heroin use." (R., p.107.) One of the officers investigating the reported overdose was told that Flores, "and his wife, Jennifer Flores," were Yolanda's roommates. (R., p.107.)

Law enforcement surveilled the Moskee residence. (R., p.107.) At one point they observed a car, driven by Flores, stop at the residence. (R., p.107.) Flores testified that he went inside the Moskee residence, while his wife, who had been a passenger in the car, went and retrieved her son from a nearby school. (R., p.107.) After some 20 to 45 minutes elapsed, Flores, his wife, and her son departed from the Moskee residence. (R., pp.107-08.)

Detectives followed Flores's vehicle in undercover police cars. (R., p.108.) They observed a child moving around in the car and not wearing a seatbelt, and saw Flores's wife, who was driving, turn without signaling. (R., p.108.) The detectives "relayed the information regarding the pursuit and the observed traffic violation to Meridian Police Patrol Officer Branden Esparza." (R., p.108.)

Officer Esparza overheard the officers via radio traffic "'talking about a vehicle that they were following.'" (R., p.108 (quoting Prelim. Hr'g Tr., p.21, Ls.15-16).) While Officer Esparza did not personally observe the traffic violations, he testified that he initiated the traffic stop "based on the violations that were relayed to him," and because he "'was advised that this was a stop that they needed because of possibly some drug business going on at an address.'" (R., p.108 (quoting Prelim. Hr'g Tr., p.22, Ls.4-6).)

Officer Esparza stopped the vehicle. (R., p.108.) He identified Flores by driver's license and, "[w]hile Officer Esparza ran a driver and warrant check," a K-9 unit arrived. (R., pp.108-109.) Officer Esparza asked Flores to exit the vehicle, which Flores did, and Flores was handcuffed after a pat-down search. (R., p.109.) The officer then told Flores's wife to exit the vehicle; at this point "she handed over to Officer Esparza, a small rubber ball shaped item and stated that there was marijuana in the ball." (R., p.109.) The

K-9 subsequently alerted on the vehicle. (R., p.109.) Law enforcement searched the vehicle and found two baggies inside—one containing "some heroin residue" and the other containing methamphetamine. (R., p.109.)

The district court interpreted the issues as whether "the officers immediately abandoned the purpose of the stop (a traffic violation) and turned it into a drug investigation, without reasonable suspicion"; and whether "the drug dog sniff added time to the stop."[1] (R., pp.110, 116.) The court concluded that "the drug dog sniff did not add time to the stop, and assuming *arguendo* it did, the officers had reasonable suspicion to conduct a drug investigation," and that "the officers were justified and acted reasonably in handcuffing Defendant during the stop." (R., p.117.) The court accordingly denied Flores's motion to suppress. (R., p.117.)

Flores went to trial and was found guilty of possession of methamphetamine, possession of heroin, and the persistent violator enhancement. (R., pp.154-55.) Flores was sentenced to two concurrent sentences of 15 years imprisonment, with three years fixed on each count. (R., pp.213-16.) He timely appealed from the judgment of conviction. (R., pp.221-24.)

[1] Flores has not challenged the district court's finding that the K-9 sniff did not add time to the stop, or otherwise raised the K-9 alert as an issue on appeal. (See generally Appellant's brief.)

ISSUE

Flores states the issue on appeal as:

Did the district court err in denying Mr. Flores' motion to suppress?

(Appellant's brief, p.4)

The state rephrases the issue as:

Has Flores failed to show the district court erred in denying his motion to suppress?

ARGUMENT

Flores Has Failed To Show The District Court Erred In Denying His Motion To Suppress

A. Introduction

Flores argues on appeal that the district court erred in denying his motion to suppress. While he concedes that the stop of his vehicle was supported by reasonable suspicion, he argues that "Officer Esparza abandoned, from the outset, the legitimate purposes of the stop, which was to investigate the traffic violation, because he was not aware of the nature of the violation." (Appellant's brief, p.5.) Flores also contends the district court "erred in concluding, in the alternative, that the stop of the vehicle was supported by reasonable suspicion of drug activity," because "[p]rior to the stop, none of the officers knew the identity of the individuals in the vehicle, and there was insufficient evidence connecting the individuals in the vehicle to the suspected drug activity at the Moskee residence." (Appellant's brief, p.5.)

These claims fail. Flores fails to show that Officer Esparza abandoned the investigation "because [Officer Esparza] was not aware of the nature of the violation"—the record shows Officer Esparza was aware of the traffic violation and did not abandon his investigation into it. Furthermore, the district court correctly found that, based on the totality of the circumstances, the officers had reasonable suspicion to conduct a drug investigation.

B. Standard Of Review

On review of a ruling on a motion to suppress, the appellate court defers to the trial court's findings of fact unless clearly erroneous, but exercises free review of the trial

court's determination as to whether constitutional standards have been satisfied in light of the facts. State v. Willoughby, 147 Idaho 482, 485-86, 211 P.3d 91, 94-95 (2009); State v. Fees, 140 Idaho 81, 84, 90 P.3d 306, 309 (2004). If findings are supported by substantial evidence in the record, those "[f]indings will not be deemed clearly erroneous." State v. Stewart, 145 Idaho 641, 648, 181 P.3d 1249, 1256 (Ct. App. 2008) (quoting State v. Jaborra, 143 Idaho 94, 98, 137 P.3d 481, 485 (Ct. App. 2006)).

C. The Officers Did Not Abandon The Legitimate Purpose Of The Traffic Stop

"Because a routine traffic stop is normally limited in scope and of short duration, it is more analogous to an investigative detention than a custodial arrest and therefore is analyzed under the principles set forth in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968)." State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). "Under the Fourth Amendment, an officer may stop a vehicle to investigate possible criminal behavior if there is a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws." State v. Roe, 140 Idaho 176, 180, 90 P.3d 926, 930 (Ct. App. 2004).

"An investigative detention must be temporary and last no longer than necessary to effectuate the purpose of the stop." State v. Ramirez, 145 Idaho 886, 889, 187 P.3d 1261, 1264 (Ct. App. 2008). "Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose." Rodriguez v. United States, ___ U.S. ___, 135 S. Ct. 1609, 1616 (2015) (internal quotes, brackets and citations omitted). "[A]s a matter of course in a valid traffic stop, a police officer may order the occupants of a vehicle to exit or to remain inside." State v. Irwin, 143 Idaho

102, 105, 137 P.3d 1024, 1027 (Ct. App. 2006). "The stop remains a reasonable seizure while the officer diligently pursues the purpose of the stop, to which that reasonable suspicion is related. However, should the officer abandon the purpose of the stop, the officer no longer has that original reasonable suspicion supporting his actions." State v. Linze, 161 Idaho 605, 609, 389 P.3d 150, 154 (2016).

"[W]hen an officer has an objectively reasonable basis for making an investigative stop, the officer's subjective motive or actual state of mind is irrelevant"; consequently, where a stop is justified by an "objectively reasonable basis," such as an observed traffic violation, "any underlying motive … in stopping [a defendant's] vehicle as a pretext to search for drugs" is irrelevant. State v. Myers, 118 Idaho 608, 610, 798 P.2d 453, 455 (Ct. App. 1990). Furthermore, the totality of the circumstances known to police is measured by the collective, not individual, knowledge of the police. State v. Baxter, 144 Idaho 672, 678, 168 P.3d 1019, 1025 (Ct. App. 2007) (citing State v. Van Dorne, 139 Idaho 961, 964, 88 P.3d 780, 783 (Ct. App. 2004)).

The district court correctly rejected Flores's arguments below that "the purpose of the stop (traffic violation) was completely abandoned" prior to the discovery of the marijuana, and that the traffic stop was "really a drug investigation from the start." (R., p.114 (citing State v. Myers, 118 Idaho 608, 798 P.2d 453 (Ct. App. 1990).) Citing Myers, the district court found that "[s]o long as an officer has an objectively reasonable basis for making an investigative stop based on an observed traffic violation, the officer's subjective motive for making a stop (i.e. as a pretext to search for drugs) is irrelevant." (R., p.114.)

In this case there was an objectively reasonable basis for the stop: the observed traffic violations. (R., p.108; p.114, n.4.) The district court also correctly found the officers were justified in handcuffing Flores during the stop, because "a police officer may order the occupants of a vehicle to exit or remain inside" as a "matter of course in a valid traffic stop," and because "officers are entitled to use handcuffs in limited investigatory stops to maintain their safety." (R., pp.114-116 (quoting State v. Irwin, 143 Idaho 102, 105, 137 P.3d 1024, 1027 (Ct. App. 2006); State v. DuValt, 131 Idaho 550, 554, 961 P.2d 641, 645 (1998)).

Moreover, the United States Supreme Court has held that, "[b]eyond determining whether to issue a traffic ticket, an officer's mission includes 'ordinary inquiries incident to [the traffic] stop.'" Rodriguez, 135 S. Ct. at 1615 (quoting Illinois v. Caballes, 543 U.S. 405, 408 (2005)). "Typically such inquiries involve *checking the driver's license, determining whether there are outstanding warrants against the driver*, and inspecting the automobile's registration and proof of insurance." Id. (emphasis added). "These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly." Id. Here, all of the police actions leading up to the discovery of the marijuana—stopping Flores, identifying Flores, running a warrants check, and asking Flores and the driver to step out of the vehicle—were routine and appropriate actions for a traffic stop. (R., pp.108-109); see Rodriguez, 135 S. Ct. at 1615. The district court therefore correctly concluded the officers' actions were justified and reasonable, and that the purpose of the stop was never abandoned. (R., p.117.)

On appeal, Flores contends that "[t]he district court misapprehended defense counsel's argument" by focusing on the officers' subjective motivations for effecting the stop. (Appellant's brief, p.7.) Flores claims, contrary to his own arguments below,[2] that the officer's subjective motivations are "not the issue." (Appellant's brief, p.7.) Instead, Flores now claims the issue is "[w]here, as here, the reasonable suspicion for the stop is based on another officer's knowledge of a traffic violation, *and the officer making the stop is not aware of the nature of the violation, the seizure is unlawful at the outset* as the officer cannot possibly pursue the original purpose of the stop, which is to investigate the traffic violation." (Appellant's brief, p.7 (emphasis added).)

This claim fails. It fails first because it effectively nullifies the collective knowledge doctrine. Even assuming, *arguendo*, that Officer Esparza was not personally aware of the nature of the traffic violation, the stop was justified by reasonable suspicion based on "the collective knowledge of all those officers and dispatchers involved." Baxter, 144 Idaho at 678, 168 P.3d at 1025. The collective knowledge here included the observations of the two detectives who personally witnessed traffic infractions. (See R., p.108.)

Flores's standard, by contrast, would require a patrol officer have independent, personal knowledge of the nature of a violation, or the stop would be automatically abandoned at the outset. Such a standard would make it impossible to conduct a traffic

[2] Any "misapprehension" on the part of the district court was invited by Flores, who made much ado below about the pretextual nature of the stop. (See, e.g., R., pp.73-74. ("A seatbelt violation is a secondary action when police stop the vehicle's operator for a suspected violation of another law. I.C. §49-673(5). Therefore, there was no purpose of the stop. The only reason for the stop was pre-textual in nature.").)

stop based on collective knowledge, insofar as *every* stop not grounded in personal knowledge would be abandoned before it began. Because Flores's proposed new standard effectively nullifies the collective knowledge doctrine, it is contrary to controlling case law.

But even assuming Flores is correct, and a traffic stop supported by reasonable suspicion "cannot possibly" be done by a patrol officer who has no personal knowledge of the nature of the traffic violation, Flores's argument fails on the facts. Flores claims that while Officer Esparza "arguably was aware" that a traffic violation had occurred, "it is clear Officer Esparza was not aware of the *nature* of the violation." (Appellant's brief, p.7 (emphasis added).)

This is demonstrably incorrect. The district court never found that Officer Esparza "was not aware of the nature of the violation." (See R., pp. 106-17.) Instead, the district court found the opposite: that "Detectives Durbin and Lueddeke relayed the information regarding the pursuit *and the observed traffic violation* to Meridian Police Patrol Officer Branden Esparza," and that Officer Esparza "initiated the stop *based on the violations that were relayed to him.*" (R., p.108 (emphasis added).) Flores has failed to show these factual findings were clearly erroneous; in fact, Officer Esparza's complete testimony at the preliminary hearing[3] makes it plain that these findings were correct:

> And then I heard that the vehicle was—that it would be eastbound on Fairview and towards—going towards Eagle Road.

[3] The factual record for the motion to suppress hearing consisted of the testimony adduced at the suppression hearing; the preliminary hearing transcript, which the district court took judicial notice of; and an affidavit supporting a search warrant for the Moskee residence, which the state submitted as an exhibit. (R., p.106, n.1; Aug. pp.1-13.) The district court considered the affidavit only "as it relate[d] to events occurring prior to and including October 26, 2016 (the date of the traffic stop)." (R., p.106, n.1.)

And so I was like, well, I'm here, this area. And then that's kind of when I started more intently listening to it.

And they said, "Well, this is what we have. This is the violations we have."

So when they saw the violations, I guess, and when I—other than the first violation they saw, I don't know the timeframe between there.

Q. Can you say with certainty that police eyes had been on this vehicle from the moment the alleged traffic citation—or traffic violation occurred to the moment that you initiated the traffic stop?

A. Say that—can I say for certain that they had seen it?

Q. Yes.

A. The way I—the way the radio traffic was sounding, it sounded like they had eyes on the vehicle the whole time. Do I know that for sure? I don't know.

Q. Okay. Now, you, yourself, did you see any traffic infractions?

A. I did not, no.

Q. Okay. Did you basically initiate the traffic stop as soon as you saw that vehicle?

A. No. I see the vehicle pass—I was going westbound on Fairview.

Q. Um-hmm.

A. Then I see—I—they were describing the vehicle and the occupants in the vehicle. As I was—as they passed me, I did a U-turn. But there was a vehicle between me and that vehicle, which was one of our—I believe our detectives that was involved in this. *And they were the one advising me what violations they had seen.*

Q. Okay.

(Prelim. Hr'g Tr., p.23, L.1 – p.24, L.15 (emphasis added).)

Esparza's testimony made it clear: he was not simply informed of the *fact* of violations—some unknown, unnamed violation that occurred in the abstract—he was

advised as to *what violations* the other officers had seen. (Prelim. Hr'g Tr., p.24, Ls.13-14.)

The officers who witnessed the traffic violations made it equally clear that they told Officer Esparza *what* they saw. The officer who testified at the preliminary hearing recalled that:

> As we approached the stoplight, *I observed there was a child in the backseat. And the child was obviously moving around the backseat unseatbelted*. As we passed the patrol car, that same child moved to the left-side seat and fastened the seatbelt quickly.
>
> Q. Okay. Do you recall how many occupants were in that vehicle?
>
> A. I believe three.
>
> Q. Okay. And did you radio to the patrol car to initiate a traffic stop?
>
> A. *I let the patrol officer know what my observations were, yes.*

(Prelim. Hr'g Tr., p.8, Ls.1-13 (emphasis added).)

Likewise, the officer who testified at the motion to suppress hearing testified that he reported the failure to signal to the other officers in the area:

> Q. Did you observe any traffic violations by the driver of the vehicle?
>
> A. I did.
>
> Q. Tell us about that.
>
> A. So the vehicle continued southbound through the neighborhood on Arrow Wood and then crossed over Ustick Road and then continued southbound back in through the neighborhood.
>
> As I was following it, we got to Cape Cod and Blue Heron, which is an intersection, not super far from where we originally started. And the vehicle stopped at the stop sign and then turned left, but didn't use a turn indicator, and then continued eastbound towards—I believe it's 10th or one of those streets over in east side.

Q. Did you continue to follow the vehicle?

A. I did.

Q. *When you observed the failure to signal, did you report that to the other officers in the area?*

A. *I did.*

Q. *How did you do that?*

A. *By radio.*

(Tr., p.50, L.12 – p.51, L.8 (emphasis added).)

In sum, the record does not remotely show that "it is clear that Officer Esparza was not aware of the nature of the violation." (Appellant's brief, p.7.) It shows the opposite: that Officer Esparza was well aware of the nature of the traffic violations, because the officers who saw them reported them to him. And Flores has not shown that the district court clearly erred when it found that "Detectives Durbin and Lueddeke relayed the information regarding the pursuit and the observed traffic violation" to Officer Esparza, and that Officer Esparza "initiated the stop based on the violations that were relayed to him." (R., p.108.) Accordingly, even if there is a "personal knowledge" exception to the collective knowledge doctrine, Flores fails to show that it would apply here, where the patrol officer in fact had personal knowledge of the nature of the traffic violations.

Flores finally contends that Officer Esparza "did not … diligently pursue[] the traffic investigation," and that "there is no evidence Officer Esparza intended to, or was in the process of, completing a traffic citation." (Appellant's brief, p.8.) This is also contradicted by the district court's factual findings and the record. As noted above,

"[b]eyond determining whether to issue a traffic ticket, an officer's mission includes 'ordinary inquiries incident to [the traffic] stop.'" Rodriguez, 135 S. Ct. 1609 (quoting Caballes, 543 U.S. at 408). "Typically such inquiries involve *checking the driver's license, determining whether there are outstanding warrants against the driver*, and inspecting the automobile's registration and proof of insurance." Id. (emphasis added).

Here, the district court found that Officer Esparza initiated the traffic stop; identified Flores via driver's license; and "*[w]hile Officer Esparza ran a driver and warrant check*, a drug detection K-9 unit arrived." (R., pp.108-09 (emphasis added).) Flores has not shown this finding was clearly erroneous, as the officer testified that after he made contact with the occupants of the vehicle, he began to run a "driver's and warrants check." (Prelim. Hr'g, p.16, Ls.11-14.) Thus, not only was it *possible* for the officer to diligently investigate the traffic violations, but that is precisely what he did, by performing the routine tasks incident to investigating a traffic stop. (See Prelim. Hr'g, p.16, Ls.11-14.)

The district court correctly rejected the argument that the officers abandoned the purpose of the stop, and correctly concluded the officers were justified in the actions they took during the stop. (R., p.117.) Flores fails to show any error on appeal.

D. The District Court Correctly Concluded The Drug Investigation Was Supported By Reasonable Suspicion

"An investigative detention is permissible if it is based upon specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity." Sheldon, 139 Idaho at 983, 88 P.3d at 1223 (citing Terry, 392 U.S. at 21; United States v. Cortez, 449 U.S. 411, 417 (1981)).

An investigative detention must not only be justified at its beginning, but must also be conducted in a manner that is reasonably related in scope and duration to the circumstances which justified the interference in the first place. Florida v. Royer, 460 U.S. 491, 499-500 (1983); State v. Roe, 140 Idaho 176, 181, 90 P.3d 926, 931 (Ct. App. 2004). "The purpose of a stop is not permanently fixed, however, at the moment the stop is initiated, for during the course of the detention there may evolve suspicion of criminality different from that which initially prompted the stop." Sheldon, 139 Idaho at 984, 88 P.3d at 1224. Routine traffic stops may turn up suspicious circumstances which could justify an officer asking questions unrelated to the stop. State v. Myers, 118 Idaho 608, 613, 798 P.2d 453, 458 (Ct. Ap 1990). "The officer's observations, general inquiries, and events succeeding the stop may—and often do—give rise to legitimate reasons for particular lines of inquiry and further investigation by an officer." Id.

The district court correctly concluded that, in addition to investigating the traffic violations, the officers "had reasonable suspicion to conduct a drug investigation based on the totality of the circumstance[s]":

> The stop of this vehicle was not an isolated event. Officers had ample information prior to stopping the vehicle regarding the house from which the vehicle came. There was concern regarding children's safety in the home based on the 14-year old's report that her parents were using heroin and had visitors frequenting the home. A concerned citizen also reported that the home received frequent visitors and stop and go traffic. Defendant and his wife used to be roommates with the 14-year old girl's parents. Defendant and his wife stopped at the Moskee residence for at least 20 minutes and left with Defendant's step-son unbuckled in the backseat, apparently driving quickly and evasively through neighborhoods on an indirect route to the destination of the final stop. Under these facts and circumstances, it was reasonable for the officers to investigate into the welfare of Defendant's step-son as well as to inquire as to whether the parents possess illegal substances.

(R., p.116-17.)

On appeal, Flores argues that "[t]he district court erred in concluding there was reasonable suspicion of drug activity prior to the stop of the vehicle," arguing that "[p]rior to the stop, none of the officers knew the identity of the individuals in the vehicle, and there was insufficient evidence connecting the individuals in the vehicle to the suspected drug activity at the Moskee residence." (Appellant's brief, pp.5, 9.)

Flores fails to show error. The district court correctly determined that, based on the facts known to the officers conducting the investigation—the reports of drug use and stop-and-go traffic at the Moskee residence, the quick and evasive driving pattern from a car leaving the house, and a child not seatbelted in the car—there was reasonable suspicion to conduct a drug investigation and to investigate the welfare of the child in the vehicle. (R., p.116-17.) And even if the officers did not know the identity of the individuals in the vehicle prior to the stop, they knew who Flores was—and, by extension, his connections to the Moskee residence—immediately after identifying him by his driver's license. Identifying Flores, as noted, was an "ordinary inquir[y] incident to" the traffic stop. Rodriguez, 135 S. Ct. at 1615. Moreover, Flores has not challenged the district court's finding that "it was reasonable for the officers to investigate into the welfare of Defendant's step-son"—which it plainly was, given the risk posed to the child by the driving pattern, the lack of a seat belt, and the departure from a house where another child had reported drug use.

Moreover, even assuming *arguendo* there was no initial reasonable suspicion to conduct a drug investigation, police may ask vehicle occupants to exit "as a matter of course" of investigating a traffic violation. Irwin, 143 Idaho at 105, 137 P.3d at 1027;

DuValt, 131 Idaho at 554, 961 P.2d at 645. Flores was stopped for traffic violations, and he and his passenger were asked to exit the vehicle. (R., pp.108-09.) When his passenger was asked to exit the vehicle she produced marijuana, admitting it was marijuana. (R., p.109.) At this point, irrespective of any other suspicious circumstances, the officers not only had probable cause to arrest Flores's passenger, but had clear reasonable suspicion to further investigate Flores and his vehicle for evidence of additional controlled substances.

In sum, the purpose of the traffic stop was never abandoned, and there was ample reasonable suspicion that supported the drug investigation here. Flores fails to show the district court erred in denying his motion to suppress.

CONCLUSION

The state respectfully requests this Court affirm the district court's denial of Flores's motion to suppress evidence.

DATED this 26th day of June, 2018.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of June, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

KDG/dd