Electronically Filed
2/26/2019 12:01 PM
Idaho Supreme Court
Karel Lehrman, Clerk of the Court
By: Brad Thies, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45852**
Plaintiff-Respondent,	)	
	)	**Kootenai County Case No.**
v.	)	**CR-2017-1740**
	)	
STEVEN PATRICK DROOGS,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

HONORABLE RICHARD S. CHRISTENSEN
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

ANDREW V. WAKE
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

ATTORNEYS FOR PLAINTIFF-RESPONDENT

MAYA P. WALDRON
Deputy State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712
E-mail: documents@sapd.state.id.us

ATTORNEY FOR DEFENDANT-APPELLANT

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

Nature Of The Case 1

Statement Of The Facts And Course Of The Proceedings 1

ISSUES 6

ARGUMENT 7

I. Droogs Failed To Establish That The District Court Erred In Denying His Motion To Suppress 7

A. Introduction 7

B. Standard Of Review 7

C. The District Court Correctly Concluded That No Evidence Was Secured As A Result Of The Exploitation Of Droogs' Unlawful Detention 7

II. Droogs Has Failed To Show That The District Court Abused Its Sentencing Discretion 13

A. Introduction 13

B. Standard Of Review 13

C. The District Court Acted Well Within Its Sentencing Discretion 14

CONCLUSION 16

CERTIFICATE OF SERVICE 17

TABLE OF AUTHORITIES

CASES **PAGE**

Nix v. Williams, 467 U.S. 431 (1984) 8

North Carolina v. Alford, 400 U.S. 25 (1970) 4

Padilla v. State, 158 Idaho 184, 345 P.3d 243 (Ct. App. 2014).. 7

Padilla v. State, 161 Idaho 624, 389 P.3d 169 (2016) 9, 10

People v. Doke, 171 P.3d 237 (Colo. 2007) 11

State v. Agundis, 127 Idaho 587, 903 P.2d 752 (Ct. App. 1995) 10

State v. Atkinson, 128 Idaho 559, 916 P.2d 1284 (Ct. App. 1996) 7

State v. Bigham, 141 Idaho 732, 117 P.3d 146 (Ct. App. 2005...................................... 12

State v. Deisz, 145 Idaho 826, 186 P.3d 682 (Ct. App. 2008).. 11

State v. Farwell, 144 Idaho 732, 170 P.3d 397 (2007) 13, 14

State v. Hansen, 138 Idaho 791, 69 P.3d 1052 (2003).. 14

State v. Hiassen, 110 Idaho 608, 716 P.2d 1380 (Ct. App. 1986) 8

State v. Hudson, 133 Idaho 543, 989 P.2d 285 (1999) 8

State v. Kapelle, 158 Idaho 121, 344 P.3d 901 (Ct. App. 2014) 7

State v. Keene, 144 Idaho 915, 174 P.3d 885 (Ct. App. 2007).. 8

State v. Lusby, 146 Idaho 506, 198 P.3d 735 (Ct. App. 2008).............................. 4, 10, 11

State v. Page, 140 Idaho 841, 103 P.3d 454 (2004)... 8, 12

State v. Schevers, 132 Idaho 786, 979 P.2d 659 (Ct. App. 1999) 7

State v. Stover, 140 Idaho 927, 104 P.3d 969 (2005) 14

State v. Toohill, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982) 14

State v. Valdez-Molina, 127 Idaho 102, 897 P.2d 993 (1995) 7

State v. Wersland, 125 Idaho 499, 873 P.2d 144 (1994) 14

State v. Wren, 115 Idaho 618, 768 P.2d 1351 (Ct. App. 1989) 11

State v. Zichko, 129 Idaho 259, 923 P.2d 966 (1996) 11

State v. Zuniga, 143 Idaho 431, 146 P.3d 697 (Ct. App. 2006) 9, 10

OTHER AUTHORITIES

iCourt Portal, State v. Droogs, Nez Perce County District Court
Case No. CR-2016-8760 15

STATEMENT OF THE CASE

Nature Of The Case

Steven Patrick Droogs appeals from the judgement entered upon his conditional plea of guilty to battery with intent to commit a serious felony. He argues that the district court erred in denying his motion to suppress evidence. In the alternative, he argues that the district court imposed an excessive sentence.

Statement Of The Facts And Course Of The Proceedings

Deputy Solar Larsen was in his patrol car when he observed Defendant-Appellant Steven Patrick Droogs walking. (10/30/17 Tr., p.22, Ls.3-21; p.24, Ls.8-17.) He considered it strange to see someone walking in that area, which was rural, heavily-wooded, and not well-travelled (10/30/17 Tr., p.26, Ls.1-6); at that time, around 7 a.m. (10/30/17 Tr., p.24, Ls.8-23); and in "pretty bad weather," while it was snowing and the temperature was around 15 degrees Fahrenheit (10/30/17 Tr., p.23, Ls.4-7; p.24, Ls.18-23). Concerned for Droogs' well-being, Deputy Larsen stopped to ask if he was alright. (10/30/17 Tr., p.26, L.24 – p.27, L.13.) Droogs responded that he was and that he was "'walking to a friend's house.'" (Id.) Deputy Larsen then asked if Droogs wanted a ride. (Id.) Droogs did not respond, but appeared nervous and "fidgety," which Deputy Larsen thought could be attributable to the cold or to nervousness around law enforcement. (10/30/17 Tr., p.27, Ls.14-25.) But Deputy Larsen also recognized that Droogs' demeanor was consistent with a person under the influence of a controlled substance. (10/30/17 Tr., p.29, L.1 – p.31, L.8.) Deputy Larsen then asked if he could see Droogs' identification. (10/30/17 Tr., p.27, Ls.14-25.) Droogs responded that he did not have any

identification (id.), but gave his name as "Patrick Nichols" and his [redacted]

[redacted]. (10/30/17 Tr., p.28, Ls.1-12). Droogs' [redacted]. (PSI, p.1.[1])

Still believing that Droogs may be interested in a ride, Deputy Larsen asked Droogs to step over to the patrol car so that he could quickly pat him down for weapons before giving him a ride. (10/30/17 Tr., p.31, Ls.9-16.) As a matter of course, no one is allowed into a patrol car without being checked for weapons. (10/30/17 Tr., p.24, Ls.2-7.) Droogs came over to the patrol car and Deputy Larsen asked him to briefly put his hands behind his back so that he could pat Droogs down for weapons. (10/30/17 Tr., p.31, L.17 – p.32, L.5.) Though Droogs began to do so, he abruptly ran. (Id.) As Deputy Larsen followed, he repeatedly instructed Droogs to stop. (10/30/17 Tr., p.36, L.19 – p.38, L.20.) Droogs refused, yelling that he had a gun, that he was not going back, and "'You're going to have to fucking kill me.'" (Id.)

Droogs eventually entered a house. (10/30/17 Tr., p.41, L.14 – p.42, L.1.) When the homeowners exited, they gave officers permission to enter and remove Droogs. (10/30/17 Tr., p.64, Ls.4-11.) He was located hiding in the attic and, for over an hour, ignored repeated commands to come down. (10/30/17 Tr., p.66, L.14 – p.67, L.16.) Deputy Nathan Nelson attempted to enter the attic with a police dog and Droogs responded by repeatedly hitting Deputy Nelson with fiberglass insulation and punching him. (10/30/17 Tr., p.67, L.17 – p.71, L.7.) Droogs was then subdued by use of a police dog and O.C. spray, and was removed from the attic. (10/30/17 Tr., p.71, L.8 – p.72,

[1] References to "PSI" are to the Presentence Report, and attachments thereto, contained in the forty-six page pdf file titled "DROOGS, Steven SC #4582 Sealed."

L.4.) More than three hours passed between Deputy Larsen's initial contact with Droogs and when officers removed him from the house. (10/30/17 Tr., p.44, Ls.14-18.)

The state charged Droogs with felony assault or battery upon an officer in violation of Idaho Code section 18-915; misdemeanor providing false information to law enforcement in violation of Idaho Code section 18-5413; and misdemeanor obstructing an officer in violation of Idaho Code section 18-705. (R., pp.219-21.) He was also charged as a persistent violator. (Id.)

Droogs filed a Motion to Suppress, asking the court to suppress "any and all statements, observations, evidence, information or any other evidentiary fruits obtained as a result of the detention, arrest, search, seizure, and subsequent questioning of the Defendant in this matter." (R., pp.129-30.) He later filed a memorandum in support (R., pp.142-56) in which he argued that Deputy Larsen's initial interaction with Droogs constituted an unlawful detention that "was flagrant enough to warrant exclusion of evidence discovered as a result of the stop," notwithstanding any attenuation between the allegedly unlawful detention and the discovery of the evidence (R., pp.146-51). He also argued that the use of a police dog to secure his compliance was an excessive use of force. (R., pp.151-56.)

After a hearing, the district court issued a memorandum decision denying Droogs' motion. (R., pp.202-16.) The court initially noted that Droogs had not identified with any specificity the evidence he was moving to suppress, improperly leaving the court "to guess." (R., pp.210-11.) It found that Deputy Larsen's interaction with Droogs was initially a proper exercise of his community caretaking function, but evolved into an unlawful detention when "Deputy Larsen directed Droogs to his vehicle, ordered him to

place his hands behind his back, and then held them while patting him down without justification." (R., pp.211-12.) But this detention lasted "an extremely brief period of time," as "Droogs broke free and fled on foot," at which point he was not detained, and there was no evidence gathered during that very brief period of detention to suppress. (Id.) The court then held that evidence of a battery on Deputy Nelson was not suppressible for the additional reason that "'when a suspect responds to an unconstitutional search or seizure by a physical attack on the officer, evidence of this new crime is admissible notwithstanding the prior illegality.'" (R., p.211 (quoting State v. Lusby, 146 Idaho 506, 509, 198 P.3d 735, 738 (Ct. App. 2008)). The court also concluded that any evidence gathered while Droogs was in the attic was too attenuated from the unlawful detention to be suppressed. (R., pp.212-15.) Finally, as to the claim that officers used excessive force by employing a police dog, the court held that that question should be resolved by a jury and was not appropriately decided on a motion to suppress. (R., p.215.)

Droogs agreed to enter a conditional Alford[2] plea to battery with intent to commit a serious felony, retaining the right to appeal the denial of his motion to suppress, in exchange for which the state would drop the other charges and recommend a unified sentence of twenty years with ten years fixed. (R., p.218.) The district court accepted that plea. (11/9/17 Tr., p.10, Ls.15-19; p.12, Ls.6-11.)

In accordance with the plea agreement, the state recommended a unified sentence of twenty years with ten years fixed. (1/12/18 Tr., p.88, L.21 – p.90, L.18.) Droogs requested a unified sentence of five years with three years fixed. (1/12/18 Tr., p.94, L.22

[2] North Carolina v. Alford, 400 U.S. 25 (1970).

– p.95, L.1.) The district court imposed a unified sentence of sixteen years with six years fixed. (1/12/18 Tr., p.100, Ls.20-23; R., pp.228-29.) Droogs was on parole for involuntary manslaughter at the time he committed this offense. (1/12/18 Tr., p.90, L.13 – p.91, L.13.) He requested that his sentence in this matter run concurrently with the remainder of his sentence for the involuntary manslaughter conviction. (Id.) The district court ordered that it do so. (R., pp.228-29.)

Droogs timely appealed. (R., pp.230-33.)

ISSUES

Droogs states the issues on appeal as:

I. Did the district court err by denying Mr. Droogs' motion to suppress?

II. Did the district court abuse its discretion when it sentenced Mr. Droogs to a unified term of sixteen years, with six years fixed, for battery with the intent to commit a serious felony?

(Appellant's brief, p.5.)

The state rephrases the issues as:

1. Has Droogs failed to show the district court erred in denying his motion to suppress?

2. Has Droogs failed to show that the district court abused its discretion when it sentenced him to a unified term of sixteen years, with six years fixed, for battery with the intent to commit a serious felony?

ARGUMENT

I.
Droogs Failed To Establish That The District Court Erred In Denying His Motion To Suppress

A. Introduction

Droogs concedes that the the evidence he sought to suppress below was not "derived from the exploitation of his unlawful detention." (Appellant's brief, p.8.) The district court therefore properly denied his motion to suppress.

B. Standard Of Review

"The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, [the appellate court] accept[s] the trial court's findings of fact that are supported by substantial evidence, but [the court] freely review[s] the application of constitutional principles to the facts as found." State v. Kapelle, 158 Idaho 121, 124, 344 P.3d 901, 904 (Ct. App. 2014) (citing State v. Atkinson, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996)). "At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court." Id. (citing State v. Valdez-Molina, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); State v. Schevers, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999)).

C. The District Court Correctly Concluded That No Evidence Was Secured As A Result Of The Exploitation Of Droogs' Unlawful Detention

"Generally, evidence obtained as a result of an unlawful search or as a result of an unlawful seizure may not be used against the victim of the search." Padilla v. State, 158 Idaho 184, 187, 345 P.3d 243, 246 (Ct. App. 2014). "To determine whether to

suppress evidence as 'fruit of the poisonous tree,' the court must inquire whether the evidence has been recovered as a result of the exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." State v. Page, 140 Idaho 841, 846, 103 P.3d 454, 459 (2004). "Before the exclusionary rule is invoked at all, the challenged evidence must be 'in some sense the product of illegal government activity.'" State v. Hiassen, 110 Idaho 608, 610, 716 P.2d 1380, 1382 (Ct. App. 1986) (quoting Nix v. Williams, 467 U.S. 431, 444 (1984)). "Thus, where a defendant moves to suppress evidence allegedly gained through unconstitutional police conduct, the defendant bears an initial burden of going forward with evidence to show a factual nexus between the illegality and the state's acquisition of the evidence." State v. Keene, 144 Idaho 915, 918, 174 P.3d 885, 888 (Ct. App. 2007). "Subsequently, the state bears the ultimate burden of persuasion to prove that the challenged evidence is untainted." Id.

As the district court recognized, Droogs did not identify with any specificity the evidence he attempted to suppress. (R., pp.210-11.) Instead, he sought to suppress "any and all statements, observations, evidence, information or any other evidentiary fruits obtained as a result of the detention, arrest, search, and subsequent questioning of the Defendant in this matter," but without pointing to any such statements, observations, evidence, etc. (R., pp.129-30). On appeal, he provides the same broad characterization of the evidence that the district court allegedly should have suppressed. (Appellant's brief, p.8.) Droogs cannot carry his burden to provide evidence supporting a factual nexus between the alleged illegal conduct and the discovery of the relevant evidence without identifying the relevant evidence. See State v. Hudson, 133 Idaho 543, 545, 989

P.2d 285, 287 (1999) ("Hudson has failed to identify, either at the district court level or on appeal, what evidence seized from Hudson after the allegedly illegal stop should have been suppressed. Consequently, any attempt by this Court to identify such evidence would be pure supposition.").

Though that fact alone establishes that the district court correctly denied Droogs' motion, the district court also correctly concluded that no evidence was gathered through the exploitation of illegal government activity. (R., pp.210-15.) Droogs concedes on appeal that the district court was correct. (Appellant's brief, p.8.)

The district court found that Droogs was unlawfully detained "when Deputy Larsen directed Droogs to his vehicle, ordered him to place his hands behind his back, and then held them while patting him down without justification." (R., pp.211-12.) As soon as Deputy Larsen began to check Droogs for weapons, Droogs ran. (10/30/17 Tr., p.31, L.17 – p.32, L.5.) After he ran, he was not detained. See Padilla v. State, 161 Idaho 624, 626, 389 P.3d 169, 171 (2016) ("A seizure does not occur until a person is either physically restrained by the police or yields to a show of authority and stops."); State v. Zuniga, 143 Idaho 431, 436, 146 P.3d 697, 702 (Ct. App. 2006) (holding that, where suspect initially complied with unlawful police demands to remain seated but then fled while police gave chase, the unlawful detention ended when the suspect fled). The allegedly unlawful detention therefore occurred over "an extremely brief period of time" and there was no evidence gathered during that very brief period to suppress. (R., p.212.)

Evidence gathered while Droogs was fleeing from Deputy Larsen is not suppressible. Idaho courts have repeatedly and consistently held that where a defendant flees from police rather than submitting to a detention, evidence gathered during that

flight is not suppressible solely because the detention would have been unlawful had the defendant complied. See, e.g., Zuniga, 143 Idaho at 436-37, 146 P.3d at 702-03 (where defendant initially complied with police, though detention was unlawful, but then fled while police chased, district court properly denied motion to suppress methamphetamine thrown by defendant during chase); Padilla, 161 Idaho at 627-28, 389 P.3d at 172-73 (holding that methamphetamine discarded while fleeing from police was not suppressible); State v. Agundis, 127 Idaho 587, 590-93, 903 P.2d 752, 755-58 (Ct. App. 1995) (holding that cocaine and marijuana discarded while fleeing from police was not suppressible).

Evidence regarding Droogs' battery of Deputy Nelson is not suppressible for that and an additional reason. "It appears to be a nearly universal rule in American jurisdictions [including Idaho] that when a suspect responds to an unconstitutional search or seizure by a physical attack on the officer, evidence of this new crime is admissible notwithstanding the prior illegality."[3] State v. Lusby, 146 Idaho 506, 509, 198 P.3d 735, 738 (Ct. App. 2008). "[A]lthough officers may have conducted an unconstitutional search or seizure, a subsequent attack on the officer is a new crime unrelated to any prior illegality." Id. at 510, 198 P.3d at 739. "Because there has been no exploitation of the officer's unconstitutional conduct, the purpose of the exclusionary rule—to deter police

[3] This is not to concede that the seizure of Droogs from the home was unlawful. By that point, Droogs fled from Deputy Larsen, threatened him with a weapon, yelled "'You're going to have to fucking kill me'" (10/30/17 Tr., p.36, L.19 – p.38, L.20), entered a home he did not own (10/30/17 Tr., p.41, L.14 – p.42, L.1), and the homeowners gave police permission to enter the home and remove Droogs (10/30/17 Tr., p.64, Ls.4-11). Police had probable cause to seize him and remove him from the home, notwithstanding any alleged illegality in Deputy Larsen's initial interaction with Droogs. Still, even if they did not have probable cause to seize him and remove him from the home, evidence regarding Droogs' battery of Deputy Nelson is not suppressible.

misconduct—would not be advanced by suppressing evidence of the attack on the officer." Id. See also State v. Deisz, 145 Idaho 826, 831, 186 P.3d 682, 687 (Ct. App. 2008) (holding that evidence of violent resistance to police was not suppressible, notwithstanding illegality of search and seizure, and noting that "[a] contrary ruling 'would effectively give the victim of police misconduct carte blanche to respond with any means, however violent.'" (quoting People v. Doke, 171 P.3d 237, 241 (Colo. 2007)); State v. Wren, 115 Idaho 618, 627, 768 P.2d 1351, 1360 (Ct. App. 1989) (refusing to suppress evidence having "to do with Wren's altercation with the officers, upon which he is charged with battery and resisting arrest" because "this evidence flowed not from the arrest but from Wren's conduct" while being arrested, notwithstanding allegations that the arrest was unlawful).

On appeal, Droogs argues only that Deputy Larsen's initial interaction with him was "flagrant enough" to require the exclusion of evidence gathered during Droogs' flight and while hiding in the attic. (Appellant's brief, p.8.[4]) That is mistaken for two reasons.

First, the flagrancy of police misconduct is a factor in the "attenuation doctrine," which provides that evidence that was "the fruit of police misconduct" may nevertheless be admissible if its discovery was sufficiently attenuated from the misconduct. State v.

---

[4] Droogs does not address his argument below that the police used excessive force when they employed a police dog. "When issues on appeal are not supported by propositions of law, authority, or argument, they will not be considered." State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). Even so, the district court properly held that the question whether police used excessive force is for the jury and is independent of any motion to suppress. (R., p.215.) See State v. Wren, 115 Idaho 618, 627, 768 P.2d 1351, 1360 (Ct. App. 1989) (holding that defendant's claim of excessive force was irrelevant to motion to suppress, though it potentially provided a defense to the charges of battery and resisting arrest).

Bigham, 141 Idaho 732, 734, 117 P.3d 146, 148 (Ct. App. 2005). Here, as discussed above and as acknowledged by Droogs (Appellant's brief, p.8), there was no evidence that was the fruit of police misconduct. Police did not discover evidence of criminal conduct by means of Deputy Larsen's brief detention of Droogs. Instead, the relevant evidence involved only observation of Droogs' conduct after he was no longer detained, including his battery of Deputy Nelson. Because there was no evidence that was the fruit of police misconduct, there is nothing to suppress.

Second, the district court correctly determined that, "[e]ven if Droogs attempted to stretch the exclusionary rule from the temporary seizure to his stand-off in the attic," evidence regarding his stand-off would be admissible because "the temporal proximity is too great with too many intervening circumstances between them." (R., p.213.) That is, the district court determined that even if there were evidence that constituted fruit of police misconduct, the attenuation doctrine would apply and render the evidence admissible. To determine whether the discovery of evidence is sufficiently attenuated from police misconduct to make the evidence admissible, courts look to three factors: "(1) the elapsed time between the misconduct and the acquisition of the evidence, (2) the occurrence of intervening circumstances, and (3) the flagrancy and purpose of the improper law enforcement action." State v. Page, 140 Idaho 841, 846, 103 P.3d 454, 459 (2004).

More than three hours passed between Deputy Larsen's brief detention of Droogs and when he was removed from the attic (10/30/17 Tr., p.44, Ls.14-18), during which time Droogs threatened police with a weapon (10/30/17 Tr., p.36, L.19 – p.38, L.20), entered someone else's home and refused to leave (10/30/17 Tr., p.41, L.14 – p.42, L.1;

p.64, Ls.4-11; p.66, L.14 – p.67, L.16), and physically attacked Deputy Nelson when he tried to remove Droogs from the home (10/30/17 Tr., p.67, L.17 – p.71, L.7). The district court also found that, though Deputy Larsen very briefly detained Droogs unlawfully, "it was not the type of purposeful or flagrant misconduct in need of sanctioning" and "the purpose of Deputy Larsen's misconduct was investigatory in nature and motivated by a sense of officer safety and not for the purpose of a 'fishing expedition.'" (R., p.214.) At the hearing on his motion to suppress, Droogs appeared to concede as much, stating that Deputy Larsen's conduct, while illegal, was "diligent policing" and "wasn't malicious" or "anything else." (10/30/18 Tr., p.85, Ls.9-17.) The district court properly denied Droogs' motion to suppress and this Court should affirm that denial.

II.
Droogs Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

Droogs asserts that the district court abused its discretion when it imposed a unified sentence of sixteen years with six years fixed for battery with the intent to commit a serious felony. (Appellant's brief, pp.9-11.) Considering the objectives of sentencing, his extensive criminal history, and the nature of his crime, Droogs has failed to establish an abuse of discretion.

B. Standard Of Review

When a sentence is within statutory limits, the appellate court will review only for an abuse of discretion. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). The appellant has the burden of demonstrating that the sentencing court clearly abused its discretion. Id.

C. The District Court Acted Well Within Its Sentencing Discretion

Because Droogs does not claim that his sentence is outside statutory limits, he must show that the district court clearly abused its discretion. That is, he must show that, "'under any reasonable view of the facts, the sentence was excessive considering the objectives of criminal punishment.'" Id. (quoting State v. Stover, 140 Idaho 927, 933, 104 P.3d 969, 975 (2005)). This Court will not "substitute [its] view for that of a sentencing judge where reasonable minds might differ." State v. Toohill, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). "A sentence is reasonable if it appears necessary to achieve the primary objectives of protecting society or the related sentencing goals of deterrence, rehabilitation, or retribution." State v. Hansen, 138 Idaho 791, 797, 69 P.3d 1052, 1058 (2003). "Not all of the sentencing factors, even the most important factor of protection of society, need be advanced by a sentence if the sentence is appropriate in light of one or more than one such criterion." State v. Wersland, 125 Idaho 499, 504, 873 P.2d 144, 149 (1994). The "reasonableness of a sentence is determined by looking to the probable term of confinement," which is the fixed portion of the sentence. Id. at 503, 873 P.2d at 148.

The district court here considered the appropriate sentencing factors. (1/12/18 Tr., p.98, L.23 – p.101, L.7) The court also ordered and considered a new presentence investigation report, substance abuse evaluation, and mental health evaluation. (1/12/18 Tr., p.98, Ls.8-20.) After reviewing Droogs' prior criminal history, the court found that Droogs has "been a danger to society" and "continued to be a danger to the officers in this case." (1/12/18 Tr., p.99, Ls. 12-17.) Droogs' "adult criminal record reveals he has accumulated 23 primary charges," that "[t]he instant offense is his fifth adult felony

conviction," with "three additional felony charges in an unrelated inactive case." (PSI, p.8.[5]) Droogs was on parole for involuntary manslaughter at the time he committed the offense for which he was convicted here (PSI, pp.4, 7-9; Appellant's brief, p.3 n.2), and, according to defense counsel, had approximately four years remaining on that sentence (1/12/18 Tr., p.91, Ls.9-13).

The court additionally considered the nature of Droogs' offense. (1/12/18 Tr., p.100, Ls.3-8.) Droogs threatened Deputy Larsen with a weapon and stated, "You're going to have to fucking kill me" (10/30/17 Tr., p.36, L.19 – p.38, L.20), then hid in a home in which he did not have permission to be while refusing commands to come out (10/30/17 Tr., p.41, L.14 – p.42, L.1; p.64, Ls.4-11; p.66, L.14 – p.67, L.16), and physically attacked Deputy Nelson when he tried to remove Droogs from the home (10/30/17 Tr., p.67, L.17 – p.71, L.7).

Droogs contends that the district court's sentence was excessive in light of the mitigating factors he presented: his history of abusing drugs, his alleged accountability and remorse, and his alleged "motivation to become a productive, law-abiding member of society." (Appellant's brief, pp.9-10.) The district court considered these mitigating factors in its sentencing analysis. At the sentencing hearing, both Droogs (1/12/18 Tr., p.97, L.15 – p.98, L.7) and his counsel (1/12/18 Tr., p.90, L.24 – p.97, L.12) extensively discussed his alleged remorse and hope to become a productive member of society. Droogs' PSI extensively addresses his history of substance abuse and previous, failed attempts at substance abuse treatment. (PSI, pp.13, 19-20.) The district court stated that

[5] Those three additional charges later resulted in a felony conviction for burglary and a five year determinate sentence. iCourt Portal, State v. Droogs, Nez Perce County District Court Case No. CR-2016-8760.

its sentencing determination was based on arguments at the sentencing hearing, including from Droogs and his attorney, as well as the PSI. (1/12/18 Tr., p.98, Ls. 8-20.)

After considering the facts of the case and the objectives of criminal punishment, the district court reasonably determined that imposing a unified sentence of sixteen years with six years fixed for Droogs' conviction for battery with the intent to commit a serious felony was appropriate "based upon the protection of society and punishment." (1/12/18 Tr., p.101, Ls.3-4.) In doing so, it imposed a sentence less than that recommended by the state (1/12/18 Tr., p.88, L.22 – p.89, L.1), and accepted Droogs' request for the sentence to run concurrently with the remainder of his sentence for involuntary manslaughter (1/12/18 Tr., p.91, Ls.9-13; R., pp.228-29). Under any reasonable view of the facts, Droogs has failed to establish an abuse of discretion.

CONCLUSION

The state respectfully requests that this Court affirm the district court's denial of Droogs' Motion to Suppress and affirm his sentence for battery with intent to commit a serious felony.

DATED this 26th day of February, 2019.

/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of February, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

MAYA P. WALDRON
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General

AVW/dd