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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 46240-2018**
Plaintiff-Respondent,	)	
	)	**Madison County Case No.**
v.	)	**CR-2017-1370**
	)	
JARED BLAKE FRANDSEN,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

HONORABLE STEVAN H. THOMPSON
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Jared Blake Frandsen appeals from the district court's order denying his motion to suppress evidence discovered as a result of a traffic infraction stop.

Statement Of The Facts And Course Of The Proceedings

The district court set forth the facts of this case as follows:

> On January 2, 2017, [Sheriff's Deputy] Bestor was driving on Main Street in Rexburg when he observed a vehicle that he believed belonged to Frandsen. Bestor had previously received a tip that Frandsen was involved in selling drugs. After Bestor turned around to try and locate the vehicle, he entered the parking lot of a Quality Inn where he observed the vehicle next to a Subaru. The Subaru attempted to leave the parking lot and pulled onto the driveway leading to a Maverik gas station and Main Street. The driveway does not lead anywhere else. When Bestor observed that one of the Subaru's headlights was out, he pulled the vehicle over while it was still in the driveway. Bestor believed that the driveway was a public road, but later conceded that the road was not publically maintained and that he had been mistaken. Frandsen was seated in the back of the Subaru. As Bestor asked for information from the driver and passengers, he stated that he smelled the odor of marijuana and began questioning the occupants as to whether they possessed any marijuana. Frandsen was eventually discovered to have small quantities of marijuana and assorted paraphernalia on his person and in the car.

(R., p.74 (explanation added).)

The state charged Frandsen with delivery of a controlled substance (marijuana) to a person under the age of eighteen (Count I), two counts of delivery of a controlled substance (marijuana) where children are present (Counts II and III), and possession with intent to deliver a controlled substance (marijuana) (Count IV). (R., pp.55-57.) Based on the Fourth Amendment of the United States Constitution, Frandsen filed a motion to suppress all physical evidence and statements resulting from the stop of the vehicle, arguing that because the deputy observed the vehicle being driven on private property with only one headlight, there was no "reasonable, articulable suspicion of criminal activity" to detain him, which violated his rights under the Fourth Amendment of the

United States Constitution. (R., pp.41-44.) After a hearing on the motion (see generally 11/17/17 Tr.), the district court denied Frandsen's suppression motion (R., pp.73-79). Frandsen filed a motion to reconsider (R., pp.82-83), which the district court denied (R., pp.85-90). Pursuant to a plea agreement, Frandsen entered conditional pleas of guilt to Counts I, II and III, and Count IV was dismissed. (R., p.94.) The district court sentenced Frandsen to four years with one year fixed on Count I, three years with six months fixed on Count II, and three years with one year fixed on Count III, all Counts to run consecutive. (R., pp.104-107.) Frandsen filed a timely notice of appeal. (R., pp100-102.)

ISSUES

Frandsen states the issues on appeal as:

1. Did the District Court err by denying Defendant's Motion to Suppress concerning evidence seized during a traffic stop when it found the stop could be based on a police officer's reasonable belief that a "future traffic violation" was about to be committed?

2. Did the District Court err by denying Defendant's Motion to Suppress concerning evidence seized during a traffic stop when it found the stop could be based on a police officer's reasonable belief that a "past traffic violation" had been committed, although unobserved, unreported and occurred at an unknown time if at all?

(Appellant's Brief, p.7.)

The state rephrases the issue[1] as:

Did the district court err in denying Frandsen's motion to suppress?

[1] Because the district court denial of Frandsen's suppression motion was based on the "future traffic violation" theory, there is no need to respond to Frandsen's second issue relative to a "past traffic violation" theory. (See R., p.78 ("Therefore, because Bestor had a reasonable belief that the driver of the Subaru was about to commit a traffic violation, Defendant's Motion to Suppress is DENIED."), p.89 ("However, the Court finds it sufficient that the facts of this case show that it was reasonable to believe that a traffic violation was imminent.").

ARGUMENT

The District Court Did Not Err By Denying Frandsen's Motion To Suppress

A. Introduction

In its Decision and Order Re: Defendant's Motion to Suppress, the district court first rejected the state's "mistake of fact" and "community caretaking" arguments. (R., pp.75-77.) However, the court went on to hold that Deputy Bestor had a reasonable, articulable suspicion to justify the stop of the vehicle Frandsen rode in because the officer reasonably believed it was going to enter a public roadway without one of its headlights working. (R., pp.77-78.) In his motion for reconsideration, Frandsen argued unsuccessfully that "a non-investigatory traffic stop may not be based on the possibility that a traffic violation will occur in the future" (R., p.82), and, as explained by the district court,[2] "that there is a difference between a stop based on a perceived traffic violation and a Terry investigative stop" (R., p.87). Frandsen's argument, repeated on appeal, fails. Additionally, the district court's denial of Frandsen's suppression motion should be affirmed under the "community caretaking" exception to the warrant requirement.

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 accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts. State v. Page, 140 Idaho 841, 843, 103 P.3d 454, 456 (2004).

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[2] Although the district court's case summary shows that Frandsen filed a Memorandum of Law on the same day he filed his motion for reconsideration, the Clerk's Record does not include that document. (See R., p.10 (entry for 12/18/2017); p.82 (motion for reconsideration referencing "Memorandum submitted in support of this Motion").

C. The District Court Correctly Ruled That The Legality Of A Traffic Stop For An Infraction Is Determined By The Same Standards Set Out In *Terry v. Ohio*[3], Which Allows An Investigative Detention When A Person Detained "Is, Has Been, *Or Is About*" To Be Engaged In Criminal Activity

For its response to Frandsen's arguments, and except for the district court's analysis and conclusion regarding the state's "community caretaking" argument, the state relies on the district court's well-reasoned Decision and Order Re: Defendant's Motion to Suppress (R., pp.73-79), and Decision and Order Re: Defendant's Motion to Reconsider (R., pp.85-90), attached as Appendix A and B (respectively), and incorporated into this brief as if fully set forth herein. In addition to the district court's analyses and conclusions, the state makes the following arguments.

1. The Reasonable Suspicion Standard Of *Terry* Applies To Traffic Infraction Stops

On appeal, Frandsen contends that because Deputy Bestor "did not observe the Defendant's vehicle being driven contrary to traffic laws, or that a traffic violation had, or was occurring, then the stop was unreasonable pursuant to the Fourth Amendment of the U.S. Constitution and Article 1, Section 17, and the motion to suppress should have been granted." (Appellant's Brief, p.17.) Although Frandsen cites both the federal and state constitutions on appeal, it does not appear that he preserved his state constitution issue by presenting it to the district court (see R., pp.41-44, 82-83); therefore, his argument on appeal can only be based on the Fourth Amendment. State v. Garcia-Rodriguez, 162 Idaho 271, 275, 396 P.3d 700, 704 (2017) (holding "parties will be held to the theory upon which the case was presented to the lower court").

Frandsen contends that the "standards differ between observed traffic violations and 'investigatory stops.'" (Appellant's Brief, pp.11-14.) By asserting that the standards for traffic stops differ from investigatory criminal detentions under Terry, Frandsen attempts to limit the

[3] Terry v. Ohio, 392 U.S. 1 (1968).

legality of traffic stops to infractions that have occurred, or are presently occurring, in an officer's observation, and not be subject to the "or is about to be" language applicable to Terry detentions. See United States v. Cortez, 449 U.S. 411, 417 (1981) ("An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity."); Berkemer v. McCarty, 468 U.S. 420, 439 (1984) (same). Frandsen is incorrect.

Frandsen relies on an Ohio Court of Appeals' decision, State v. Moeller, 2000 WL 1577287 *2 (Ohio App. 2000) (emphasis added), in which the court attempts to clear up the "apparent confusion" over what constitutional standard applies to traffic stops, stating:

> First is the typical noninvestigatory traffic stop, wherein the police officer witnesses a violation of the traffic code, such as crossing over the center line of a road, and then stops the motorist for this traffic violation. Second is the investigative or "Terry" stop, wherein the officer does not necessarily witness a specific traffic violation, but the officer does have sufficient reason to believe that a criminal act has taken place or is occurring, and the officer seeks to confirm or refute this suspicion of criminal activity. *See Terry v. Ohio* (1968), 392 U.S. 1, 21 . . . . *A noninvestigatory traffic stop must be supported by probable cause, which arises when the stopping officer witnesses the traffic violation. See Whren v. United States* (1996), 517 U.S. 806, 810 . . . ; *Pennsylvania v. Mimms* (1977), 434 U.S. 106, 109 . . . . By contrast, an investigatory *Terry* stop is proper so long as the stopping officer has "reasonable articulable suspicion" of criminal activity. *Terry*, 392 U.S. at 21 . . . .

In essence, Moeller states (incorrectly) that a non-investigatory traffic stop must be supported by (1) probable cause, and (2) an officer's observation of the traffic infraction.

By arguing that "non-investigatory traffic stops" are only legal when they have occurred in the past or present, Frandsen may also be indirectly arguing[4] that a routine traffic stop must, as

[4] Frandsen does not *expressly* agree with the "probable cause" aspect of Moeller's statement, as his Appellant's Brief contains contrary statements that are clearly correct. (See Appellant's Brief, p.10 ("The legality of a traffic stop is analyzed under the framework articulated in *Terry v. Ohio*[.]"); id., ("A traffic violation alone is sufficient to establish reasonable suspicion." (citing Whren v. United States, 517 U.S. 806, 810 (1996)).)

Moeller states, be supported by probable cause, because an officer who witnesses an infraction would invariably have probable cause to believe the driver committed the infraction. If Frandsen is attempting to draw the same probable cause/reasonable suspicion distinction made in Moeller, his argument is misplaced; a review of relevant law shows that the Terry standard applies fully to traffic stops for infractions. Because Terry permits a detention if there is reasonable suspicion to believe a criminal act is "about to be" committed, the same holds true as applied to traffic stops.[5] Although the facts of this case are unique – reasonable suspicion that a traffic infraction is about to be committed – that dynamic does not require well-settled law to be changed or overlooked.

In State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003), the Idaho Court of Appeals explained the adoption of the Terry reasonable suspicion standard, which also applies to of activity about to occur, as the standard applicable to traffic stops:

> A traffic stop is subject to the Fourth Amendment restraint against unreasonable seizures. *Delaware v. Prouse,* 440 U.S. 648, 653 . . . (1979). 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 (1968). *Prouse*, 440 U.S. at 653–54 . . . . Under *Terry*, 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. *Id.* at 21 . . . . *See also United States v. Cortez*, 449 U.S. 411, 417 . . . (1981); *State v. Holcomb*, 128 Idaho 296, 302, 912 P.2d 664, 670 (Ct.App.1995).

Emphases added; see State v. Chapman, 146 Idaho 346, 349, 194 P.3d 550, 553 (Ct. App. 2008) (emphasis added) ("[O]fficers may conduct investigative detentions, including traffic stops, based upon reasonable suspicion that an individual has been *or is about to be engaged in* criminal activity, including suspicion that a vehicle is being operated contrary to traffic laws."). Regardless

[5] As the district court opined in regard to the cases cited by Frandsen below, the cases he cites on appeal "all refer to an officer's ability to initiate a stop for violating a traffic law in the past or present tense." (R., p.87; see Appellant's Brief, pp.12-14 (cases cited therein).)

of what the law is in Ohio, in Idaho, the reasonable suspicion standard of Terry applies to traffic stops, including an officer's right to detain a person the officer reasonably suspects "is about to be engaged in" a traffic infraction.

In United States v. Choudhry, 461 F.3d 1097, 1101-1102 (9th Cir, 2006), the Ninth Circuit considered, and rejected, an argument similar to the "two standards" argument presented by Frandsen, stating:

> In [*Whren v. United States,* 517 U.S. 806, 810 (1996)], the Court held that when police have probable cause to believe that a traffic violation has occurred, the decision to stop an automobile is reasonable. 517 U.S. at 810 . . . . The defendants in *Whren* argued that, in the context of "civil traffic regulations," the Fourth Amendment standard should be different-namely, that the standard should consider whether a reasonable officer would have made a stop based on the particular violation, not whether the officer observed any violation. *Id.* The Court rejected this argument. Instead, it held that a traffic violation was sufficient to justify an investigatory stop, regardless of whether (i) the violation was merely pretextual, *id.* at 811-12 . . . , (ii) the stop departed from the regular practice of a particular precinct, *id.* at 814-15 . . . , or (iii) the violation was common and insignificant, *id.* at 818-19 . . . . Thus, under *Whren*, so long as Officers Silver and Chan had reasonable suspicion to believe that Alvarado "violated the traffic code," the stop was "reasonable under the Fourth Amendment [and] the evidence thereby discovered admissible." *Id.* at 819 . . . .
>
> Choudhry seeks to distinguish *Whren* on two related grounds. First, he argues that *Whren* does not apply because the reasonable suspicion inquiry centers on criminal activity-that is, he asserts that *Whren* is limited to conduct for which the individual may be arrested. Second, he argues that in California, parking laws are distinct from other traffic laws because of California's separate civil-administrative scheme for enforcing parking penalties. We find neither argument persuasive.
>
> 1.
>
> In separating civil parking violations and criminal activity, Choudhry reads *Whren* more narrowly than that decision and our circuit law permit. Although the reasonable suspicion inquiry does center on suspected criminal activity, *Whren* carves out an exception in the context of traffic stops, i.e., a stop is "reasonable" where an officer suspects an individual has committed a traffic violation. 517 U.S. at 810 . . . . *Whren* is not limited to "criminal" traffic code violations. In fact, the case specifically contemplated the opposite: at the outset of its opinion, the Court noted that it was addressing the petitioners' appeal in the scope of "civil traffic violation[s]." *Id.* at 808 . . . . The Court explicitly declined to distinguish among different types of traffic code violations, be they standing or moving violations. *See id.* at 818-19 . . . . Indeed, we have interpreted *Whren* as applying generally to

> traffic code violations. *See Willis*, 431 F.3d at 715 (describing *Whren* as sanctioning all stops where the officers have cause to "believe that the petitioner violated the traffic code"); *cf. Miranda v. City of Cornelius*, 429 F.3d 858, 864 & n. 4 (9th Cir. 2005) (noting that although a "non-criminal" traffic violation did not justify impoundment, it was "sufficient justification for police officers to seize a vehicle for a traffic stop"). Thus, *Whren* does not distinguish between traffic violations enforced through a civil-administrative process and traffic violations subject to criminal enforcement.

In United States v. Lopez-Soto, 205 F.3d 1101, 1104 (9th Cir. 2000), the Ninth Circuit explained:

> Prior to *Whren*, it was settled law that reasonable suspicion is enough to support an investigative traffic stop. . . .
>
> . . . .
>
> We do not believe that the Court in *Whren* intended to change this settled rule. The passage on which Lopez-Soto relies tells us only that probable cause is sufficient to support a traffic stop, not that it is necessary. If the Supreme Court announced in *Whren* a new rule of law, as Lopez-Soto contends, we would expect it to have acknowledged the change and explained its reasoning. Such an explanation is notably absent from the *Whren* opinion.

See United States v. Callarman, 273 F.3d 1284, 1287 (10th Cir. 2001) ("While either probable cause or reasonable suspicion is sufficient to justify a traffic stop, only the lesser requirement of reasonable suspicion is necessary."). Based on the Ninth Circuit's analyses of Whren in Choudhry and Lopez-Soto, as well as Idaho decisions such as Sheldon and Chapman, the standard for conducting a traffic infraction stop does not differ from the Terry "reasonable suspicion" standard – which includes conducting limited detentions for actions that are "about to occur."[6]

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[6] In People v. Ellis, 14 Cal.App.4th 1198, 1201-1202 (1993) (citation omitted), the defendant was driving on private property at night with the vehicle's headlights off, and an officer stopped him "to remind him to turn on his headlamps, not to cite him for a traffic violation[;]" the court ruled:

> Officer Hart was not required to wait until appellant actually drove upon a public street to stop appellant. . . . Had Hart waited for appellant to drive on a public street, and had a traffic collision occurred, Hart would have been subject to justifiable criticism. While Hart could not, perhaps, legally cite appellant in the parking lot, appellant's driving without his headlamps on was activity "relating" to

In determining that Deputy Bestor was justified in believing that the driver of the vehicle Frandsen rode in was about to commit a traffic infraction by driving onto a public roadway (Main Street) with only one functioning headlight, the district court explained:

> When looking at the totality of the circumstances, there are only two exits the Subaru could have taken from the driveway: Main Street, or the entrance to Maverik. It was entirely reasonable for Bestor to believe that the Subaru was going to exit the parking lot of the Quality Inn by turning onto Main Street, where the driver would immediately be in violation of the statute. The Court holds that it was reasonable for Bestor to believe that the driver of the Subaru was about to commit a traffic violation, and that enough reasonable suspicion existed to stop the vehicle.

(R., pp.77-78.) In its order denying Frandsen's motion to reconsider, the court further explained:

> The Subaru was headed towards Main Street. As soon as it entered Main Street from the driveway, a traffic violation would have occurred. The Subaru could have entered the parking lot of the Maverik, but as the Court pointed out in its previous decision, this is mere speculation. It was reasonable to believe that a traffic violation was about to occur, and the Court finds that it was not necessary, given the circumstances of this case, for Bestor to wait until the Subaru entered Main Street to effectuate a stop.

(R., pp.88-89.) The district court's rationale makes sense. When Deputy Bestor saw the vehicle driving toward the exit of the private driveway and Main Street with a nonfunctioning headlight, it would not have been reasonable for him to wait simply because he may not have known with certainty that the vehicle was not going to the Maverik store.

Although not discussed below, the relatively short distance between the hotel parking lot where the Subaru was initially parked, and the Maverik store, reasonably suggests the occupants of the vehicle would have walked to the store if that was where they were going. (See St. Exhibits 10, 14; 11/17/17 Tr., p.18, L.16 – p.19, L.5 ("app used for taking satellite photos" used to "determine it was 300 feet" "between Main Street and the front of the Quality Inn parking lot".)

> a violation of Vehicle Code section 24400 and it was "about to occur" on a public street. The suppression motion was properly denied.

Deputy Bestor could reasonably presume that the vehicle was heading out of the driveway to the hotel parking lot and onto Main Street. The deputy was not required to wait until the vehicle actually drove onto Main Street before stopping it for a headlight violation.

Based on the district court's orders, and the additional arguments presented above, the court's finding that Deputy Bestor had reasonable suspicion that the driver of the vehicle was about to commit a traffic infraction by driving onto Main Street with a broken headlight should be affirmed.

2. The Vehicle Stop For A Broken Headlight Was Valid Under The Community Caretaking Function

The community caretaking function involves the duty of the police to help individuals that officers believe are in need of immediate assistance. State v. Wixom, 130 Idaho 752, 754, 947 P.2d 1000, 1002 (1997) (citing In re Clayton, 113 Idaho 817, 748 P.2d 401 (1988)). "In analyzing community caretaking function cases, Idaho courts have adopted a totality of the circumstances test." Id. "The constitutional standard in community caretaking function cases is whether intrusive action of police was reasonable in view of all surrounding circumstances." Wixom, 130 Idaho at 754, 947 P.2d at 1002 (quoting State v. Waldie, 126 Idaho 864, 867, 893 P.2d 811, 814 (Ct. App. 1995)) (brackets omitted).

The district court rejected the state's argument that Deputy Bestor was justified in stopping the vehicle pursuant to the community caretaking function in order to keep it off the roadway when it only had one functioning headlight. (R., pp.76-77; see 11/17/17 Tr., p.51, L.3 – p.53, L.6.) In reaching its decision, the court noted Deputy Bestor's testimony "that he was in the parking lot because he believed that Frandsen was in the area and he had received information that Frandsen was dealing drugs." (R., p.5; see 11/17/17 Tr., p.77, L.6 – p.78, L.6.) With that factual

background, the court focused on a statement from Cady v. Dombrowski, 413 U.S. 433, 441 (1973), which reads:

> Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, *totally divorced* from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.

Emphasis added. The court opined:

> Bestor testified that he pulled the Subaru over because one of the headlights was not working, and he believed that this was a violation of the statute governing headlight use. He also gave testimony that he was in the parking lot because he believed that Frandsen was in the area and he had received information that Frandsen was dealing drugs. The State argues that Bestor acted out of concern for the occupants and others on the road, but this argument is unconvincing. Bestor did not believe that the occupants of the Subaru needed police assistance, nor did he "perceive a medical emergency *or other exigency compelling [his] immediate action*." [*State v. Fry*, 122 Idaho 100, 102, 831 P.2d 942, 944 (Ct. App. 2016)]. Instead, he pulled the Subaru over because he believed that a statute was being violated and possibly because he was already searching for Frandsen. *The State cannot use "community caretaking functions" to justify the stop when Bestor was clearly engaged in "the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute," as community caretaking duties are "totally divorced" from an officer's duties related to gathering evidence regarding criminal activity. Id.*

The district court incorrectly rejected the state's community caretaking argument in two respects.

First, when asked at the suppression hearing, "Does it create a hazard to the public to operate a vehicle on a public roadway without a headlight?" Deputy Bestor answered, "It does." (11/17/17 Tr., p.52, L.24 – p.53, L.2.) Therefore, as he was viewing the hazard created by a vehicle being driven with a broken headlight, the deputy was concerned that there was an "exigency compelling [his] immediate action." State v. Fry, 122 Idaho 100, 102, 831 P.2d 942, 944 (Ct. App. 2016). As noted previously, in People v. Ellis, 14 Cal.App.4th 1198 (1993) (see n.5, supra), the California Court of Appeals affirmed the lower court's denial of Ellis's suppression motion,

holding that it was legal for the officer to stop Ellis for a no-headlight infraction that was "about to" be committed. The Ellis court also relied on the need to protect the safety of the public, stating:

> Hart activated his overhead lights and stopped appellant to remind him to turn on his headlamps, not to cite him for a traffic violation. Stopping appellant was the most effective means to assure that he would turn on his lights before driving on the street. We agree with the prosecutor's common sense argument made at the suppression hearing. *In view of the potential harm to the public* if appellant drove on a public street without headlamps on, Hart's detention of appellant was reasonable.

Ellis, 14 Cal.App.4th at 1201-1202 (emphasis added); see Pruitt v State, 934 N.E.2d 767, 770 (Ind. Ct. App. 2010) ("[T]he statute does not necessarily imply that a driver is allowed at all times and under all circumstances to drive without headlights on private property[,]" and "[s]uch a reading of the statute would run counter to the policy of facilitating safe automobile traffic."). The same "safety" factor applies here – operating a vehicle at night with only one functioning headlight creates an unreasonable risk of harm to other motorists and pedestrians.

Second, the district court took the "totally divorced" phrase from Cady out of context by ruling, in effect, that the community caretaking justification for the traffic stop was not available because Deputy Bestor was also, at the time, investigating Frandsen in regard to drug dealing. Although the court seems to suggest that Cady's comment means a police officer's subjective motives or expectations while engaged in a community caretaking function must be totally divorced from any hope or expectation of detecting or investigating criminality, it is the community caretaking *function* itself that Cady alluded to as being totally divorced from a criminal investigation or detection – not an officer's subjective motives or intent. Contrary to the tenor of the court's ruling, an officer "may harbor at least an expectation of detecting or finding evidence of a crime." State v. Deccio, 136 Idaho 442, 445, 34 P.3d 1125, 1128 (Ct. App. 2001); State v. Schmidt, 137 Idaho 301, 304, 47 P.3d 1271, 1274 (Ct. App. 2002) (same).

Based on the testimony of Deputy Bestor and the fact that it is the community caretaking *function* that *is* "totally divorced" from a criminal investigation under Cady – not that an officer's subjective intent must be totally divorced from a criminal investigation – the denial of Frandsen's suppression should be affirmed on this alternative ground.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Frandsen's suppression motion.

DATED this 13th day of November, 2019.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of November, 2019, served a true and correct copy of the BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

RANDOLPH B. NEAL
LAW OFFICE OF RANDOLPH B. NEAL
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/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

JCM/dd

APPENDIX A

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

STATE OF IDAHO, Plaintiff, v. JARED BLAKE FRANDSEN, Defendant.	Case No: CR-2017-1370 DECISION AND ORDER RE: DEFENDANT'S MOTION TO SUPPRESS

This is a motion to suppress the introduction of evidence against the defendant, namely, all evidence obtained as a result of Defendant Jared Blake Frandsen's ("Frandsen") detention and all statements made prior to his being advised of his Miranda rights. Frandsen argues that the police officer who stopped him, Deputy Braden Bestor ("Bestor") could not have had reasonable suspicion to do so because the vehicle Frandsen was travelling in was on private property and even though one of the car's headlights was out, the statute mandating headlights only applies to "highways," which are publically maintained, and therefore the stop was illegal. The State contends that the officer believed that the area where Frandsen was stopped was a "highway" and encompassed by the meaning of the statute. The State further states that the deputy who stopped Frandsen had reasonable suspicion that a traffic violation was being committed, permitting the officer to make the stop. The State also argues that the stop of the vehicle was permitted under Bestor's "community caretaking duties", since the broken headlight posed a danger to the occupants of the vehicle and others.

After reviewing the motion and holding a hearing on the matter, the Court finds that Besttorhad a reasonable belief that the driver of the vehicle was about to commit a traffic infraction. Therefore, the Court DENIES Defendant's Motion to Suppress. The Court rules as follows:

I. STANDARD OF REVIEW

The standard of review of a suppression motion is bifurcated. A district court's findings of fact will be accepted if they are supported by substantial evidence, but the application of constitutional principles to those facts is freely reviewed. *State v. Holland,* 135 Idaho 159, 161 (2000).

II. BACKGROUND

On January 2, 2017, Bestor was driving on Main Street in Rexburg when he observed a vehicle that he believed belonged to Frandsen. Bestor had previously received a tip that Frandsen was involved in selling drugs. After Bestor turned around to try and locate the vehicle, he entered the parking lot of a Quality Inn where he observed the vehicle next to a Subaru. The Subaru attempted to leave the parking lot and pulled onto the driveway leading to a Maverik gas station and Main Street. The driveway does not lead anywhere else. When Bestor observed that one of the Subaru's headlights was out, he pulled the vehicle over while it was still in the driveway. Bestor believed that the driveway was a public road, but later conceded that the road was not publically maintained and that he had been mistaken. Frandsen was seated in the back of the Subaru. As Bestor asked for information from the driver and passengers, he stated that he smelled the odor of marijuana and began questioning the occupants as to whether they possessed any marijuana. Frandsen was eventually discovered to have small quantities of marijuana and assorted paraphernalia on his person and in the car.

III. ANALYSIS

A traffic stop is subject to Fourth Amendment protections, including protection against unreasonable seizures. *State v. Sheldon*, 139 Idaho 980, 983 (Ct. App. 2003), *see also Delaware v. Prouse*, 440 U.S. 648, 653 (1979). Traffic stops are analyzed under the jurisprudence first laid down in *Terry v. Ohio*, 392 U.S. 1 (1968), which provides that "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. If a defendant challenges the legality of a search or seizure based on the lack of a warrant (and provided that defendant has standing to do so), then the burden shifts to the State to show that the search "either fell within a well-recognized exception to the warrant requirement or was otherwise reasonable under the circumstances." *State v. Neal*, 159 Idaho 919 (2016).

Reasonable suspicion is evaluated under a totality of the circumstances standard, and is lower than probable cause, but "more than mere speculation or instinct on the part of the officer." *Id.* The reasonable suspicion standard is met if an officer observes a vehicle and has "a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws," but the standard is not met if "the conduct observed by the officer fell within the broad range of what can be described as normal driving behavior." *State v. Roe*, 140 Idaho 176, 180 (Ct.App.2004).

Frandsen argues that Bestor's mistake of fact regarding the road cannot give rise to reasonable suspicion on either subjective or objective grounds. The Court agrees with Frandsen that no good-faith exception to the warrant requirement exists in Idaho under *State v. Guzman*, 122 Idaho 981 (1992). Therefore, Bestor's subjective belief is irrelevant as to whether the level of reasonable suspicion necessary to make the stop existed. As for whether his mistake of fact was objectively reasonable, Frandsen argues that the characteristics of the driveway (for

example, its lack of curbs, markings, or signs) make Bestor's mistake of fact unreasonable. The State argues that the driveway does have some characteristics that would lead an observer to believe that it is publically maintained, such as manhole covers denoting the presence of sewer lines and the placement of the mailboxes. However, the Court agrees with Frandsen that this mistake of fact was not objectively reasonable. As noted above and by both parties in their briefing, the driveway leads to only two private businesses, Maverik and the Quality Inn. The driveway possesses no characteristics common to other publically maintained roads such as those which abut shopping centers and other private businesses in other areas, such as markings, sidewalks, and lighting. Therefore, Bestor's mistake of fact is not objectively reasonable.

The Court also agrees with Frandsen that the stop cannot be justified by claiming that Bestor was fulfilling his community caretaking duties. In *State v. Fry*, 122 Idaho 100 (Ct. App. 1991), the Court of Appeals held that the officers involved were not engaged in their "community caretaking functions" when the officers detained the defendant in his truck after deciding to investigate him. The Court of Appeals stated that "an officer's community caretaking functions are totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute'" and went on to note that neither of the officers involved in the defendant's detention had approached him with "a belief that Fry needed police assistance, nor did they perceive a medical emergency or other exigency compelling their immediate action." *Fry*, 122 Idaho at 102., *see also Cady v. Dombrowski,* 413 U.S. 433 (1973) (community caretaking functions "divorced" from duties relating to violations of statutes); *State v. McAfee,* 116 Idaho 1007 (Ct.App.1989) (examples of community services, including exigencies and medical emergencies).

A similar situation is at play in this case. Bestor testified that he pulled the Subaru over because one of the headlights was not working, and he believed that this was a violation of the statute governing headlight use. He also gave testimony that he was in the parking lot because he believed that Frandsen was in the area and he had received information that Frandsen was dealing drugs. The State argues that Bestor acted out of concern for the occupants and others on the road, but this argument is unconvincing. Bestor did not believe that the occupants of the Subaru needed police assistance, nor did he "perceive a medical emergency or other exigency compelling [his] immediate action." *Fry*, 122 Idaho at 102. Instead, he pulled the Subaru over because he believed that a statute was being violated and possibly because he was already searching for Frandsen. The State cannot use "community caretaking functions" to justify the stop when Bestor was clearly engaged in "the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute," as community caretaking duties are "totally divorced" from an officer's duties related to gathering evidence regarding criminal activity. *Id.*

However, the Court does agree with the State that reasonable suspicion existed, because Bestor could have reasonably believed that the Subaru was about to drive onto Main Street, where the driver would then be in violation of the statute. Frandsen claims that no authority exists to support the notion that the State could act preemptively to prevent a violation of the traffic laws, but the *Terry* jurisprudence in Idaho includes this statement from the Idaho Court of Appeals, cited above: "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, supra*, emphasis added. Frandsen argues that the vehicle could have been going to the Maverik parking lot, but this is speculative. When looking at the totality of the circumstances, there are only two exits the Subaru could have taken from the

driveway: Main Street, or the entrance to Maverik. It was entirely reasonable for Bestor to believe that the Subaru was going to exit the parking lot of the Quality Inn by turning onto Main Street, where the driver would immediately be in violation of the statute. The Court holds that it was reasonable for Bestor to believe that the driver of the Subaru was about to commit a traffic violation, and that enough reasonable suspicion existed to stop the vehicle. Because Frandsen does not contend that any of Bestor's conduct after the stop violated his Fourth Amendment rights, the Court will not evaluate any of Bestor's conduct other than whether he possessed reasonable suspicion to make the stop.

Therefore, because Bestor had a reasonable belief that the driver of the Subaru was about to commit a traffic violation, Defendant's Motion to Suppress is DENIED.

IT IS SO ORDERED.

Dated this 12 day of December, 2017.

Alan C. Stephens, District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of December, 2017, I did send a true and correct copy of the forgoing document upon the parties listed below my mailing, with the correct postage thereon; by fax; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be delivered.

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APPENDIX B

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

STATE OF IDAHO, Plaintiff, v. JARED BLAKE FRANDSEN, Defendant.	Case No: CR-2017-1370 DECISION AND ORDER RE: DEFENDANT'S MOTION TO RECONSIDER

This is a motion to reconsider this Court's denial of Defendant Jared Blake Frandsen's ("Frandsen") motion to suppress evidence gathered from a traffic stop in the parking lot of a Quality Inn. The Court held that the stop could not have been justified by Deputy Braden Bestor's ("Bestor") belief that the driveway where he stopped the vehicle Frandsen was traveling in was a publically-maintained road, since the characteristics of the driveway made such a belief unreasonable. The Court also held that the stop could not be justified by invoking "community caretaking functions." However, the Court held that because Bestor could have reasonably believed that a traffic violation was about to occur, reasonable suspicion existed and the stop was justified. Frandsen asks the Court to reconsider this holding.

After reviewing Frandsen's Motion to Reconsider, the Court finds that the facts of this specific situation justified a reasonable belief that a traffic violation was about to be committed and also justified a belief that a traffic violation had already been committed. The Court finds that either of these reasonable beliefs was sufficient to justify the stop. Therefore, the Court DENIES Frandsen's Motion to Reconsider. The Court rules as follows:

I. STANDARD OF REVIEW

The Idaho Rules of Criminal Procedure have no explicit rule permitting a district court to hear a motion for reconsideration on an order in a criminal case analogous to Rule 11.2(b)(1) of the Idaho Rules of Civil Procedure. Nevertheless, the Court of Appeals has previously stated that "a trial court is free to entertain such a motion when made." *State v. Montague*, 114 Idaho 319, 320 (Ct.App.1988)(following the federal approach). However, "whether a district court can entertain such a motion to reconsider in the criminal context is dependent on the rule under which the preceding motion (and subsequent decision by the district court) was made." *Id.*, *see also State v. Bottens*, 137 Idaho 730, 731–32 (Ct.App.2002) (motions to reconsider not permitted for decisions on motions filed under ICR 35). Where there is no requirement governing motions to suppress akin to the requirement in ICR 35 that mandates that only one motion can be filed, the Court can hear this motion.

When the court hears a motion for reconsideration, it must consider any new admissible evidence or authority bearing on the correctness of an interlocutory order. *Fragnella v. Petrovich*, 153 Idaho 266, 276 (2012). The court must apply the same standard of review that the court applied "when deciding the original order that is being reconsidered." *Id.*

II. BACKGROUND

On January 2, 2017, Bestor was driving on Main Street in Rexburg when he observed a vehicle that he believed belonged to Frandsen. Bestor had previously received a tip that Frandsen was involved in selling drugs. After Bestor turned around to try and locate the vehicle, he entered the parking lot of a Quality Inn where he observed the vehicle next to a Subaru. The Subaru attempted to leave the parking lot and pulled onto the driveway leading to a Maverik gas station and Main Street. The driveway does not lead anywhere else. When Bestor observed that

one of the Subaru's headlights was out, he pulled the vehicle over while it was still in the driveway. Bestor testified that he believed at the time that the driveway was a public road, but later conceded that the road was not publically maintained and that he had been mistaken. Frandsen was seated in the back of the Subaru. As Bestor asked for information from the driver and passengers, he stated that he smelled the odor of marijuana and began questioning the occupants as to whether they possessed any marijuana. Frandsen was eventually discovered to have small quantities of marijuana and assorted paraphernalia on his person and in the car.

III. ANALYSIS

In its decision on the motion to suppress, the Court relied on the language of *State v. Sheldon*, 139 Idaho 980, 983 (Ct. App. 2003), in which the Court of Appeals stated that "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." This statement derives from *Terry v. Ohio,* 392 U.S. 1 (1968), in which the United States Supreme Court held that police officers may initiate investigative stops based on reasonable suspicion. Frandsen contends that there is a difference between a stop based on a perceived traffic violation and a *Terry* investigative stop. Frandsen bases this difference on the phrasing found in the cases which deal with traffic stops which were initiated for a violation of traffic laws, instead of for other investigative reasons. The Idaho cases which Frandsen cites all refer to an officer's ability to initiate a stop for violating a traffic law in the past or present tense. *See State v. Naccarato*, 126 Idaho 10 (Ct. App. 1994)(driver was continuously weaving under direct observation by officer); *State v. Rawlings*, 121 Idaho 930 (1992)(defendant observed walking away from scene of burglary); *State v. Flowers,* 131 Idaho 205 (Ct. App. 1998)(stop must be supported by a reasonable and articulable suspicion that the vehicle is being driven

contrary to traffic laws or that either the vehicle or the occupant is subject to detention in connection with a violation of other laws). Frandsen implies from the phrasing found in these cases that no ability to initiate a stop for future violations exists, meaning that since the occupant of the Subaru was on private property and not on a highway as defined in the Idaho Code at the time of the stop, that the stop was invalid because no violation of the traffic laws was occurring.

However, the State points to language from *State v. Chapman*, 146 Idaho 346, 349 (Ct. App. 2008), which states: "officers may conduct investigative detentions, including traffic stops, based upon reasonable suspicion that an individual has been or is about to be engaged in criminal activity, including suspicion that a vehicle is being operated contrary to traffic laws." This language indicates that under Idaho law, police officers have the ability to initiate a stop if an individual is about to be engaged in criminal activity, and that this ability extends to traffic violations. Therefore, under Idaho law, no difference between a stop based on a traffic violation and a *Terry* stop exists; both are analyzed under the reasonable suspicion standard. Because *Chapman* included traffic violations in its analysis of the reasonable suspicion standard, which permits an officer to stop an individual when the officer has reasonable suspicion that the individual is about to engage in criminal activity, the Court must give effect to Idaho precedent and disregard Frandsen's citations to other jurisdictions, which are only persuasive authority.

Frandsen does not address the circumstances of the stop, which played a large role in the Court's earlier decision. The Subaru was headed towards Main Street. As soon as it entered Main Street from the driveway, a traffic violation would have occurred. The Subaru could have entered the parking lot of the Maverik, but as the Court pointed out in its previous decision, this is mere speculation. It was reasonable to believe that a traffic violation was about to occur, and

the Court finds that it was not necessary, given the circumstances of this case, for Bestor to wait until the Subaru entered Main Street to effectuate a stop.

The Court is aware that the ability to stop a vehicle for a future traffic violation will not be applicable in many other cases, but the specific facts of this case lead the Court to hold that the stop was lawful. Additionally, the Court notes that Bestor could have possessed a reasonable belief that a traffic law *had* been violated. Because the property at issue was a hotel and not the home or other private property of the driver of the Subaru, it was reasonable for Bestor to believe that the driver of the Subaru had previously committed a traffic infraction by driving to the hotel parking lot in the first place. It is not likely that the first time the headlight on the Subaru failed to function was when the car attempted to leave the parking lot. However, the Court finds it sufficient that the facts of this case show that it was reasonable to believe that a traffic violation was imminent.

Therefore, because Bestor had a reasonable belief that the driver of the Subaru was about to commit a traffic violation, Defendant's Motion to Reconsider is DENIED.

IT IS SO ORDERED.

Dated this 16th day of January, 2018.

Alan C. Stephens, District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of January, 2018, I did send a true and correct copy of the forgoing document upon the parties listed below my mailing, with the correct postage thereon; by fax; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be delivered.

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_____