

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 47162-2019
 Plaintiff-Respondent,)
) Kootenai County Case No.
 v.) CR28-18-19631
)
 HEATHER ROCHELLE COX,)
)
 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**

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE.....	1
Nature Of The Case	1
Statement Of The Facts And Course Of The Proceedings.....	1
ISSUE	4
ARGUMENT	5
Cox Has Failed To Show That The District Court Erred By Denying Her Motion To Suppress	5
A. Introduction.....	5
B. Standard Of Review	5
C. The District Court’s Factual Finding That Cox Failed To Stop Before Entering The Roadway Is Supported By The Record And Was Not Clearly Erroneous.....	6
CONCLUSION.....	9
CERTIFICATE OF SERVICE	9

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Ornelas v. United States</u> , 517 U.S. 690 (1996)	5
<u>State v. Fairchild</u> , 164 Idaho 336, 429 P.3d 877 (Ct. App. 2018)	6
<u>State v. Ferreira</u> , 133 Idaho 474, 988 P.2d 700 (Ct. App. 1999)	6
<u>State v. Montague</u> , 114 Idaho 319, 756 P.2d 1083 (Ct. App. 1988).....	6
<u>State v. Munoz</u> , 149 Idaho 121, 233 P.3d 52 (2010).....	5, 8
<u>State v. Rawlings</u> , 121 Idaho 930, 829 P.2d 520 (1992)	6
<u>State v. Sheldon</u> , 139 Idaho 980, 88 P.3d 1220 (Ct. App. 2003).....	6
<u>State v. Willoughby</u> , 147 Idaho 482, 211 P.3d 91 (2009).....	5
<u>State v. Wright</u> , 134 Idaho 73, 996 P.2d 292 (2000)	6
<u>Terry v. Ohio</u> , 392 U.S. 1 (1968)	6
<u>United States v. Cortez</u> , 449 U.S. 411 (1981)	6
 <u>STATUTES</u>	
I.C. § 49-120	7
I.C. § 49-651	passim
 <u>CONSTITUTIONAL PROVISIONS</u>	
U.S. Const. amend. IV	6

STATEMENT OF THE CASE

Nature Of The Case

Heather Rochelle Cox appeals from the judgment of conviction entered upon the jury trial verdicts finding her guilty of possession of methamphetamine and possession of drug paraphernalia. Specifically, she challenges the district court's denial of her motion to suppress.

Statement Of The Facts And Course Of The Proceedings

In November 2018, Coeur d'Alene police officer Alexander Mauri was on a routine patrol observing an intersection and motel known to be a "hot spot" for illegal drug transactions. (Tr.,¹ p.8, Ls.13-18; p.9, L.11 – p.12, L.5.) Officer Mauri received information about a particular car that may have been associated with drug activity in this area. (Tr., p.11, L.24 – p.12, L.22.) Officer Mauri observed two vehicles exit the parking lot of the motel, cross a sidewalk, and then enter the roadway. (Tr., p.13, L.13 – p.14, L.11.) The first vehicle was a Dodge Nitro, and the second vehicle was a yellow Mustang. (Tr., p.14, Ls.7-11; State's Exhibit 2, 0:20 – 0:45.) From his perspective in the vehicle, Officer Mauri believed that neither vehicle stopped before entering the roadway in violation of Idaho law (I.C. § 49-651). (Tr., p.14, Ls.16-23.) Officer Mauri effectuated a traffic stop on the second vehicle, the yellow Mustang. (Tr., p.20, Ls.8-9.) Another officer pulled over the Dodge Nitro. (Tr., p.29, Ls.16-22.)

Officer Mauri identified the driver of the yellow Mustang as Heather Cox. (Tr., p.20, Ls.10-16.) Cox admitted to Mauri that she was "stoned." (R., p.16.) Officer Mauri initiated a DUI investigation. (Id.) Another officer arrived at the scene and detected the odor of Marijuana coming from the passenger side of the vehicle. (R., pp.16-18.) A subsequent search of Cox's

¹ The only transcript to which the state cites in this brief is the transcript of the 3/6/19 hearing on Cox's motion to suppress. Therefore, the state refers to this transcript simply as "Tr."

person and of the vehicle revealed drug paraphernalia and a plastic bag containing methamphetamine. (R., pp.17-18.) The state charged Cox with felony possession of methamphetamine and misdemeanor possession of drug paraphernalia. (R., pp.68-69.)

Cox filed a motion to suppress all statements and evidence acquired by police after the traffic stop. (R., pp.72-73, 78-79.) She asserted that she stopped her vehicle prior to entering the roadway, and that Officer Mauri therefore lacked reasonable suspicion to stop her on suspicion of violating I.C. § 49-651. (R., pp.78-79.)

At the subsequent hearing on the motion to suppress, both Officer Mauri and Officer Eric Boardman (who was also at the scene), acknowledged that, contrary to their prior perception, and upon their review of the dash cam video recording of the two vehicles' exit from the motel parking lot, the first vehicle, the Dodge Nitro, *did* in fact stop prior to entering the roadway. (Tr., p.18, L.13 – p.19, L.9; Tr., p.31, Ls.5-21.) Officer Mauri explained that the video provided a different perspective than what his naked eye was able to see from his patrol vehicle, and that upon his review of the video, he was “confident the Dodge Nitro did stop.” (Tr., p.19, Ls.17-23) However, both officers maintained that, even after reviewing the video, the yellow mustang driven by Cox did not stop before entering the roadway, in violation of Idaho law. (Tr., p.19, L.24 – p.23, L.1; p.31, Ls.22-24.)

In the argument portion of the hearing, Cox argued that the video depicted her stopping for “a fraction of second” before entering the roadway. (Tr., p.35, Ls.2-17.) Cox also argued that “no pedestrian was in danger from either one of these vehicles,” and that the relevant statute requiring a vehicle to stop in these circumstances also requires “the possibility of creating danger” before an infraction is committed. (Tr., p.36, Ls.9-17; p.39, L.20 – p.40, L.3.)

The district court denied the motion to suppress. (R., pp.91-92; Tr., p.40, L.23 – p.46, L.14.) In so doing, the court referred to statutory definitions of the terms “stop” and “stopping,” made a factual finding that Cox failed to stop her vehicle prior to entering the roadway from the motel parking lot as required by I.C. § 49-651, and that Officer Mauri therefore had reasonable suspicion to effectuate the traffic stop. (Tr., p.41, L.24 – p.45, L.12.) The court made this finding based both upon the testimony of the officers, and upon its own observation of the dash cam video which was admitted into evidence. (Tr., p.43, L.24 – p.45, L.25.) The court also subsequently denied Cox’s motion for reconsideration, in which Cox argued that I.C. § 49-651 was unconstitutional because it did not provide adequate notice to citizens about what a “stop” is. (R., pp.87-90, 97-98.)

The case proceeded to trial, at the conclusion of which the jury found Cox guilty of both felony possession of methamphetamine and misdemeanor possession of drug paraphernalia. (R., p.147.) The district court withheld judgment on the felony conviction and placed Cox on probation for two years. (R., pp.215-218.) The court imposed a fine for the misdemeanor conviction. (R., p.214.) Cox timely appealed. (R., pp.222-226.)

ISSUE

Cox states the issue on appeal as:

Did the district court err when it denied Ms. Cox's motion to suppress?

(Appellant's brief, p.7.)

The state rephrases the issue as:

Has Cox failed to show that the district court erred by denying her motion to suppress?

ARGUMENT

Cox Has Failed To Show That The District Court Erred By Denying Her Motion To Suppress

A. Introduction

Cox contends that the district court erred by denying her motion to suppress. (Appellant's brief, pp.8-11) Specifically, Cox contends that the district court made a clearly erroneous factual finding – that she failed to stop her vehicle before entering the roadway in violation of I.C. § 49-651. (Id.) However, a review of Officer Mauri's dash cam video and the testimony of Officer Mauri and Officer Boardman demonstrate that the court's finding was supported by substantial and competent evidence.

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 the findings are clearly erroneous,” and “freely reviews the trial court's application of constitutional principles to the facts as found.” State v. Willoughby, 147 Idaho 482, 485-86, 211 P.3d 91, 94-95 (2009). “[I]n conducting that review the appellate court ‘should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers.’” State v. Munoz, 149 Idaho 121, 127, 233 P.3d 52, 58 (2010) (quoting Ornelas v. United States, 517 U.S. 690, 699 (1996)). “Findings of fact are not clearly erroneous if they are supported by substantial and competent evidence. Decisions regarding the credibility of witnesses, weight to be given to conflicting evidence, and factual inferences to be drawn are also within the discretion of the trial court.” Id. at 128, 233 P.3d at 59 (internal quotation marks omitted).

C. The District Court's Factual Finding That Cox Failed To Stop Before Entering The Roadway Is Supported By The Record And Was Not Clearly Erroneous

Pursuant to the Fourth Amendment of the United States Constitution “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Const. amend. IV.

A police officer may detain a person for the purpose of investigating possible criminal behavior “if there is an articulable suspicion that the person has committed or is about to commit a crime.” State v. Wright, 134 Idaho 73, 76, 996 P.2d 292, 295 (2000) (quoting State v. Rawlings, 121 Idaho 930, 932, 829 P.2d 520, 522 (1992)). Such a 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.” State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003) (citing Terry v. Ohio, 392 U.S. 1, 21 (1968); United States v. Cortez, 449 U.S. 411, 417 (1981)).

“The reasonableness of the suspicion must be evaluated upon the totality of the circumstances at the time of the stop.” State v. Fairchild, 164 Idaho 336, ___, 429 P.3d 877, 882 (Ct. App. 2018) (citing State v. Ferreira, 133 Idaho 474, 483, 988 P.2d 700, 709 (Ct. App. 1999)). Reasonable suspicion “requires less than probable cause but more than mere speculation or instinct on the part of the officer.” Id. (citing Ferreira, 133 Idaho at 483, 988 P.2d at 709). “An officer may draw reasonable inferences from the facts in his or her possession, and those inferences may be drawn from the officer’s experience and law enforcement training.” Id. (citing State v. Montague, 114 Idaho 319, 321, 756 P.2d 1083, 1085 (Ct. App. 1988)).

Idaho Code § 49-651 provides:

The driver of a vehicle emerging from an alley, building, private road or driveway within a business or residential district shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area

extending across the alley, building entrance, or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the highway to be entered where the driver has a view of approaching traffic.

Idaho Code § 49-120(25) defines a “stop” as “the act of or complete cessation from movement, and I.C. § 49-120(26) defines “stopping” as “the act of halting even momentarily of a vehicle.”

In this case, after reviewing Officer Mauri’s dash cam video of Cox leaving the motel parking lot, and after considering the testimony of Officers Muri and Boardman at the suppression hearing, the district court concluded that Cox did not stop prior to entering the roadway, and that Officer Mauri therefore had reasonable suspicion to stop Cox’s vehicle. (Tr., p.41, L.24 – p.45, L.12.) A review of the record supports the court’s determination.

Most simply, a review of the dash cam video reveals that Cox’s vehicle did not stop, under any reasonable definition of that term, between when the vehicle first emerged in the video from inside of the motel parking lot, to when the vehicle entered the roadway. (State’s Exhibit 2, 0:35 – 0:45.) When Cox’s vehicle entered the roadway, Officer Muri left his parked position to initiate a traffic stop. (Id., 0:45 – 1:15.) A review of this video is thus dispositive of this appeal. Additionally, Officer Mauri and Officer Boardman testified that they observed, both at the time, and upon review of the video, Cox entering the roadway from the parking lot without stopping. (Tr., p.19, L.24 – p.23, L.1; p.31, Ls.22-24.)

On appeal, in addition to contending that the video depicts her stopping prior to entering the roadway, Cox notes that the video clearly depicts the *other* vehicle, the Dodge Nitro, stopping prior to entering the roadway – despite the officers’ previous reports that the Dodge Nitro did not stop. (Appellant’s brief, pp.10-11.) Cox asserts that this, along with the district

court's comment that the stop of Cox's vehicle was a "pretext stop," "undermines the district court's determination that the officers were credible." (Id.)

However, as noted above, the video itself depicts that Cox's yellow Mustang did not stop before entering the roadway. No credibility determinations or evaluation of the officers' testimony were thus even necessary for the district court to deny Cox's motion to suppress. In any event, even to the extent that the video could be construed as being inconclusive to the question of whether Cox stopped, "the credibility of witnesses is for the trial court to determine." Munoz, 149 Idaho at 124, 233 P.3d at 55. Here, the district court was fully aware of the officers' prior belief that the Dodge Nitro stopped, and of the officers' concession that their subsequent review of the video revealed otherwise. However, the court expressly did not find bad faith on the part of the officers, and acknowledged that the prior incorrect reports had "some bearing on the Court's determination of the credibility of the officers' testimony." (Tr., p.45, Ls.13-25.) The court ultimately determined that the officers' testimony was credible with respect to their observations of Cox's vehicle, and this Court may not second-guess this credibility determination.

The district court's factual finding that Cox failed to stop before entering the roadway in violation of I.C. § 49-651 is supported by the evidence submitted at the hearing on the motion to suppress. Cox has therefore failed to show that the district court erred in concluding that Officer Mauri possessed reasonable suspicion to stop her, or that the court erred in denying her motion to suppress.

CONCLUSION

The state respectfully requests that this Court affirm the judgment of conviction and the district court's order denying Cox's motion to suppress.

DATED this 3rd day of June, 2020.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of June, 2020, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Mark W. Olson
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MWO/dd