

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

6-17-2020

### State v. Vazquez-Torres Appellant's Reply Brief Dckt. 47711

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"State v. Vazquez-Torres Appellant's Reply Brief Dckt. 47711" (2020). *Not Reported*. 6454.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/6454](https://digitalcommons.law.uidaho.edu/not_reported/6454)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff/Respondent,

vs.

JACOBO VAZQUEZ-TORRES,

Defendant/Appellant.

Supreme Court No. 47711-2020

Twin Falls County District Court  
Case No.: CR42-18-11902

---

APPELLANT'S REPLY BRIEF

---

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

---

HONORABLE BENJAMIN J. CLUFF, DISTRICT JUDGE PRESIDING

---

Grant Loeb  
Twin Falls County Prosecuting Attorney  
Twin Falls County Courthouse  
P.O. Box 126  
Twin Falls, ID 83303-0126

Attorneys for Plaintiff/Appellant

Michael D. Danielson  
BENOIT, ALEXANDER &  
MOLLERUP, PLLC  
P.O. Box 366  
Twin Falls, ID 83303-0366

Attorneys for Defendant/Appellant

**TABLE OF CONTENTS**

TABLE OF CASES AND AUTHORITIES.....i

I. ARGUMENT.....1

II. CONCLUSION.....3

CERTIFICATE OF SERVICE.....4

**TABLE OF CASES AND AUTHORITIES**

**Cases**

*State v. Adams*  
142 Idaho 305, 127 P.3d 208 (Ct. App. 2005).....2

*State v. Tryon*  
164 Idaho 254, 429 P.3d 142 (2018).....3

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for Twin Falls County, Honorable Benjamin J. Cluff, presiding.

## I. ARGUMENT

The Appellant has argued in this case that there was insufficient evidence presented at trial upon which a reasonable jury can have concluded, beyond a reasonable doubt, that Jacobo Vazquez-Torres (“Vazquez-Torres”) was guilty of Excessive DUI. Specifically, Appellant believes that insufficient evidence was presented to establish that he was driving or in actual physical control of the vehicle.<sup>1</sup> In its *Respondent’s Brief*, the State argues that the following is sufficient circumstantial evidence upon which to uphold Vazquez-Torres’ conviction: (1) that three witnesses testified that they saw Vazquez-Torres either near or leaning into the passenger door of the vehicle, (2) that those witnesses testified that they didn’t see anybody else inside or near the vehicle, and (3) that an officer testified that the vehicle was registered to a woman with the same last name as Appellant. *Respondent’s Brief*, pp. 5-7. Appellant maintains that this evidence, by itself, is insufficient upon which to base a conviction.

Three factors were made clear at trial. First, nobody looked in the vehicle to see if there was anyone else present. The three women/witnesses admitted that they never got out of their vehicles and the officers that testified admitted that they drove by without stopping because they were eager to confront and detain Vazquez-Torres. Second, nobody knew how long the vehicle in question had been present on the side of the road. Nobody testified that they had seen it in motion. Nobody testified that they had seen it stop. Nobody testified that they had felt the hood to determine if it was warm. Third, nobody knew if the vehicle was operable. Neither the three women/witnesses nor the officers that testified claimed that they ever saw the vehicle in motion,

---

<sup>1</sup> Appellant is not challenging the sufficiency of the evidence presented at trial that he was intoxicated.

saw the vehicle with the motor running, or had any knowledge regarding its ability to be driven. Nobody at trial testified that the keys were found in the ignition, in the car, or on Vazquez-Torres's person.

Therefore, the jury was asked to find, beyond a reasonable doubt, that Vazquez-Torres had driven or was in actual physical control of a motor vehicle, because he was the only individual seen in close proximity to a vehicle (by people that never got out of their vehicles and conducted a search), that may or may not have been operable, that may have been at that particular location for multiple hours or even longer, that was registered to someone to whom he may have been related. That is it.

In *State v. Adams*, 142 Idaho 305, 127 P.3d 208 (Ct. App. 2005), Idaho's Court of Appeals held that in order to find that an individual is driving or in actual physical control of a motor vehicle, for purposes of Idaho's DUI statute, the vehicle must be capable of control, operable, or reasonably capable of being rendered operable. *Adams*, 142 Idaho at 308, 127 P.3d at 211. The *Adams* Court went on to recognize that

[b]ecause most DUI stops occur as a result of an officer's observation of erratic driving, we expect that cases where the operability of the vehicle is at issue will be rare. In those few cases where the vehicle is at rest when first observed by an officer, any question whether the vehicle is disabled will often be resolved by a few questions from the officer to occupants concerning the vehicle's condition and how and when it arrived at its present location. When there is evidence from which a fact-finder could sensibly conclude that the vehicle was reasonably capable of being rendered operable, the issue is for the jury.

*Id.* Here, the jury was never provided with any such information. Instead, the jury was asked to speculate that the car was operable, speculate that Vazquez-Torres possessed keys to the vehicle, and speculate that he had driven it—based on nothing more than his proximity to the vehicle and his last name. While it is true that a conviction can be based solely on circumstantial evidence, a jury must still be presented with “evidence that meets the standard of proof beyond a reasonable

doubt.” *State v. Tryon*, 164 Idaho 254, 258, 429 P.3d 142, 146 (2018). The evidence that was presented at Vazquez-Torres’s trial falls short of meeting that burden. Therefore, his conviction should be overturned.

## II. CONCLUSION

At trial, the State failed to provide evidence regarding how long the vehicle in question had been at the location and whether or not the vehicle was operable or reasonably capable of being rendered operable. They failed to provide evidence placing Vazquez-Torres behind the wheel of that vehicle or with the keys necessary to operate it. Instead, they presented evidence that he was seen leaning into the passenger side of the vehicle and then walking away, that nobody else was seen near the vehicle, and that he and the female owner of the vehicle shared the same last name. This evidence was insufficient for a reasonable or rational jury to determine, beyond a reasonable doubt, that Vazquez-Torres had driven or been in actual physical control of the vehicle while intoxicated.

DATED this 17<sup>th</sup> day of June, 2020.

BENOIT, ALEXANDER & MOLLERUP, PLLC

Digitally signed by Michael D.  
Danielson  
Date: 2020.06.17 17:53:10 -06'00'

By Michael D. Danielson  
Michael D. Danielson  
Attorneys for Defendant/Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of June, 2020, I caused a true and correct copy of the foregoing **APPELLANT'S REPLY BRIEF** to be served upon the following in the following manner:

Grant Loeb  
Twin Falls County Prosecuting Attorney  
(Attorney for Plaintiff/Appellant)

Hand Delivered  
U.S. Mail  
Fax (208) 736-4120  
Electronic Court Filing  
[inbox.pros@co-twin-falls.id.us](mailto:inbox.pros@co-twin-falls.id.us)

Michael D.  
Danielson

Digitally signed by Michael D.  
Danielson  
Date: 2020.06.17 17:53:24 -06'00'

---

Michael D. Danielson