9-14-2017

State v. Pieper Appellant's Brief Dckt. 44818

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 44818**
Plaintiff-Respondent,	)	
	)	**KOOTENAI COUNTY NO. CR 2016-9592**
v.	)	
	)	
TYSON MICHAEL PIEPER,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
_____	)	

BRIEF OF APPELLANT

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

HONORABLE JOHN T. MITCHELL
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Tyson Pieper entered a conditional guilty plea to two counts of possession of methamphetamine and one count of misdemeanor possession of drug paraphernalia, preserving his right to appeal the denial of his motion to suppress. Mr. Pieper asserts that his seizure was not justified by reasonable, articulable suspicion of wrongdoing or by any other exception to the warrant requirement.

Statement of the Facts and Course of Proceedings

On May 22, 2016, at approximately 10 o'clock in the evening, Tyson Pieper and a friend were parked at a public park, using their phones while sitting in Mr. Pieper's car.[1] (11/2/16 Tr., p.6, L.22 – p.8, L.21; p.38, Ls.5-7; Defendant's Exhibit A.) Two officers pulled into the parking lot, parked, and quickly approached Mr. Pieper's car, walking up on either side of the car. (11/2/16 Tr., p.13, Ls.4-10, p.15, Ls.5-19, p.19, L.21 - p.20, L.10.) The officers were shining their flashlight into the car as they approached. (11/2/16 Tr., p.20, Ls.11-25.) Officer Johns, upon reaching the driver's side where Mr. Pieper was sitting, said "Can I talk to you guys? You got any I.D. on you, both of you?"[2] (11/2/16 Tr., p.12, Ls.23-25, p.37, Ls.19-25; Defendant's Exhibit A.) Both the driver and the passenger responded in the affirmative and the driver began to hand his identification to Officer Johns. (11/2/16 Tr., p.37, L.23 – p.38, L.1; p.53, Ls.4-7.) At the same time, Officer Weidebush approached the passenger side of the car, and greeted the passenger. (11/2/16 Tr., p.31, Ls.5-13; State's Exhibit A.) Within ten seconds of

[1] Mr. Pieper was in the driver's seat of the car. There was no evidence presented at the suppression hearing regarding who actually owned the car. For ease of reference, Mr. Pieper will refer to the car as his car throughout this Appellant's Brief.

walking up to the car, and after he greeted the passenger, Officer Weidebush commented on a jar containing what appeared to be marijuana that was sitting on the back seat. (11/2/16 Tr., p.31, Ls.14-23, p.37, Ls.10-18, p.40, Ls.1-7, p.53, Ls.13-20.) Both Mr. Pieper and his passenger were ordered out of the car and Mr. Pieper was handcuffed incident to his arrest. (11/2/16 Tr., p.38, L.8 – p.39, L.6.) A search of Mr. Pieper's person resulted in Officer Johns finding a small, cylindrical container in his pants pocket that contained a substance that tested presumptively positive for methamphetamine. (11/2/16 Tr., p.47, Ls.13-23; R., p.19.) After Mr. Pieper was handcuffed, there were no *Miranda* warnings given. (11/2/16 Tr., p.57, Ls.7-11.) A search of the car also revealed psilocybin mushrooms, marijuana candy, and various prescription pills. (R., pp.18-19, 21.)

Based on these facts, the State filed an Information which alleged that Mr. Pieper committed four counts of possession of a controlled substance—one count for possession of methamphetamine, one count for possession of hydrocodone, one count for possession of oxycodone, and one count for possession of morphine. (R., pp.67-69.) Thereafter, Mr. Pieper filed a Motion to Suppress and a Memorandum in Support of Motion to Suppress Evidence. (R., pp.51-53, 90-107.) He asserted that the evidence gathered against him should be suppressed because the encounter ceased being consensual when two uniformed, armed officers encircled Mr. Pieper's car and demanded identification from Mr. Pieper and his passenger. (R., p.93.) The defense argued that there was no reasonable, articulable suspicion of criminal wrongdoing at that time the officers encircled Mr. Pieper and demanded identification, and that everything that followed—the observations made by the officers—must be suppressed. (R., p.93.) The defense

[2] Officer Johns had not yet completed his POST training and was being supervised by Officer Weidebush. (11/2/16 Tr., p.7, Ls.5-10, p.12, Ls.23-25, p.49, Ls.11-22.)

based its argument on the Fourth Amendment to the United States Constitution as well as the greater protections of Idaho's Constitution, Article I, § 17. (R., pp.93-96.)

The State filed a memorandum in opposition to Mr. Pieper's motion to suppress which alleged that the stop was, at first, consensual, and that there was probable cause to detain Mr. Pieper and his passenger after one officer observed, in plain view, a mason jar of marijuana in the back seat. (R., p.109.)

At the hearing on his motion to suppress, Mr. Pieper's trial counsel argued that "[a] citizen confronted at night by two armed police officers in uniform who asked, "Have you got identification," is going to submit to that authority, or . . . risk being placed under arrest for obstructing them, because the officers don't have any obligation to tell them if they're being investigated and what for at that point." (11/2/16 Tr., p.62, L.22 – p.63, L.3.) Counsel argued, in response to the State's assertion that there must be a show of police authority to make the encounter a seizure, "When you have after dark two police officers flank the -- they come up in a flanking position, interrupt what you are doing while you're sitting in your vehicle, and ask for your identification, while peering in the vehicle with their flashlights, that communicates to the average citizen that this isn't a police officer just coming up and saying, 'Hello.' . . . That is a display of state authority to which a citizen is expected to submit. And that's what happened here." (11/2/16 Tr., p.67, Ls.6-15.)

At the conclusion of the hearing on Mr. Pieper's motion to suppress, the district court ruled:

> All right, I'm denying the motion to suppress.
>
> I have never seen any Idaho Supreme Court or Court of Appeals case law that says a consensual encounter is the type normal people would have. I just haven't seen that written anywhere.

All the case law indicates that -- well, I'm just going to read it from State vs. Frye.

"The Seizure does not occur simply because a peace officer or police officer approaches an individual on the street or other public place and asks a few questions."

I am not citing to any U.S. Supreme Court decisions that are cited.

"Even when officers have no basis for suspecting a particular individual, they may generally ask the individual questions and ask to examine identification." More U.S. and Idaho Supreme Court cases.

"So long as police do not convey a message that compliance with their request is required, their encounter is deemed consensual, and no reasonable suspicion is required."

That's the standard, not whether this is a conversation that would occur at a barbecue or at Wendy's, or anywhere else.

So, what did the police do here or not do to convey a message that compliance with their requests is required?

This by all appearances happened very rapidly. And I'm finding that there is no -- well, regardless of where you put the burden of proof, whether the defendant has the burden of proving seizure, or the plaintiff has the burden of proving consensual encounter. The plaintiffs met that burden. The defendant has failed to meet its burden.

At all times up to when Officer Johns told the defendant to get out of the car; put his hands behind their back, this is at all times a consensual encounter.

The fact that there's two officers; the fact that it's at night, everything is -- that doesn't change my analysis. It's consensual. It's asking questions. There's no command until: "Get out of the car. Put your hands behind you [sic] back," after the statement being made Weidebush that he saw a big old jar of weed.

And from that point and -- and the "big old jar of weed" isn't going to be suppressed. It's only statements that were made from that point in time on, from the time that Johns said based on Weidebush's response, "There's a big old jar of weed; put your hands behind your back," and cuffs him, until Miranda is read, if it's ever read, It don't know if it is, then any statements are suppressed, but not the evidence, not the -- not the weed.

So, I mean, up until that point in time, there's no suppression of any statements. And there's -- there's no suppression of the -- of the -- if it's weed that was found.

> And I don't know of any -- I haven't been cited any case law that would say that you can't use a flashlight to find out what's and who's inside of a car. And that's plain view with the assistance of a flashlight at night. I don't know. I have not been cited to anything that tells me that that's improper.
>
> Certainly, the location of the officers' car is not something that would make a reasonable citizen feel that he was being restrained, didn't have the ability to leave. And that's the standard. It's not what happens at Wendy's. It's whether a reasonable person would feel free to disregard the police officer's requests and leave. And -- and I find that that isn't the case; that hasn't been proven up until the time that John --- or that -- yeah -- that Johns says based on Weidebush's claim that there's a big old pot of weed in the back, jar of weed in the back, "Get out of the car," Johns says, and "Put your hands behind your back." That's when there's a seizure. That's when it's no longer consensual. That's when Miranda was needed for anything not to be suppressed.
>
> So that's my ruling.

(11/2/16 Tr., p.67, L.17 – p.70, L.16.) The district court denied Mr. Pieper's motion to suppress, finding that the initial encounter was consensual and there was no seizure of Mr. Pieper until after the marijuana was observed on the back seat—when Mr. Pieper was told to put his hands behind his back. (11/2/16 Tr., p.68, L.25 – p.70, L.14; R., p.119.)

Mr. Pieper entered a conditional guilty plea, pleading guilty to one count of felony possession of a controlled substance but preserving his right to appeal the denial of the motion to suppress. (11/9/16 Tr., p.10, Ls.8-20; R., pp.127-130.) In exchange for Mr. Pieper's plea of guilty to one count of possession of a controlled substance, the State agreed to dismiss the remaining counts. (R., p.128.) On January 10, 2017, the district court sentenced Mr. Pieper to five years, with one year fixed. (11/9/16 Tr., p.20, Ls.5-13; R., pp.135-136.) On January 30, 2017, Mr. Pieper filed a Notice of Appeal timely from the district court's Sentencing Disposition and Notice of Right to Appeal. (R., pp.137-141, 152-158.)

ISSUE

Did the district court err when it denied Mr. Pieper's motion to suppress?

ARGUMENT

The District Court Erred When It Denied Mr. Pieper's Motion To Suppress

A. Introduction

Mr. Pieper asserts that he was seized when the officers approached the car on each side and demanded identification, and where driving away would have meant hitting at least one officer with his car. Because that seizure was not supported by reasonable, articulable suspicion or justified by the community caretaking exception to the warrant requirement, Mr. Pieper submits that the district court erred by denying his motion to suppress.

B. Standard Of Review

The Court uses a bifurcated standard to review a district court's order on a motion to suppress. *State v. Danney*, 153 Idaho 405, 408 (2012). The Court will accept the trial court's findings of fact "unless they are clearly erroneous." *State v. Wulff*, 157 Idaho 416, 418 (2014). "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." *State v. Ellis*, 155 Idaho 584, 587 (Ct. App. 2013). The Court exercises free review of "the trial court's application of constitutional principles to the facts found." *Danney*, 153 Idaho at 408.

C. The Officers Seized Mr. Pieper And His Passenger When They Encircled The Car And Demanded Identification

When the two officers arrived on either side of Mr. Pieper's car and demanded his identification, he was just as detained as if there were flashing lights behind him. However, the district court found the contact was "consensual" because it believed Mr. Pieper was "free to

disregard the police officer's requests and leave." (11/2/16 Tr., p.70, Ls.2-14.) The district court erred.

1. The Police Conduct Constituted A Seizure In Violation Of The Idaho Constitution, Which Provides Greater Protection From Governmental Interference Than The Federal Constitution

Specific to Idaho, the Idaho Constitution provides additional protections, over and above those provided by the Fourth Amendment to the United States Constitution. Idaho provides additional guarantees beyond the federal constitution whereby its citizens are shielded from governmental interference more so than under the federal system. Idaho's constitution protects against governmental interference and emphasizes the freedom from seizures enjoyed by Idaho's citizens. Article I, § 1 gives the foundational core of Idaho's relation to its people:

> All men are by nature free and equal, and have certain inalienable rights, among which are enjoying and defending life and liberty; acquiring, possessing and protecting property; pursuing happiness and securing safety.

These provisions guaranteeing liberty and freedom with one's body and property are not in the federal constitution.

In addition, Article I, § 17 provides:

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized.

Although similar to the Fourth Amendment of the U.S. Constitution, Idaho's protections are broader. This was pointed out in *State v. Fees*, 140 Idaho 81, 88-89 (2004): "Although the wording of the two constitutional provisions is similar, this Court has at times construed the provisions of our Constitution to grant greater protection than that afforded under the United States Supreme Court's interpretation of the federal Constitution."

In the case of *State v. Henderson*, 114 Idaho 293, 298 (1988), the Idaho Supreme Court discussed the freedoms from governmental interference enjoyed by Idaho citizens:

> Perhaps the most important attribute of our way of life in Idaho is individual liberty. A citizen is free to stroll the streets, hike the mountains, and float the rivers of this state without interference from the government. That is, police treat you as a criminal only if your actions correspond.

Henderson, 114 Idaho at 298 (holding that police roadblock to catch drunk drivers was impermissible under the Idaho Constitution, although the United State Supreme Court had not yet held whether such roadblocks violated the federal Constitution).

Such increased protections made the police seizure in this case unreasonable and constitutionally impermissible. Mr. Pieper was sitting in a lawfully parked car when the police encircled the car and demanded identification. These actions, undertaken without reasonable, articulable suspicion of criminal activity, and without any concern for the welfare or safety of the occupants of the car or the community generally, violated Mr. Pieper's right to be free from governmental interference and to be treated as a criminal only if his actions warranted it. Evidence obtained in violation of Article I, § 17 of the Idaho State Constitution must be suppressed. *State v. Arregui*, 44 Idaho 43 (1927).

2. The Police Conduct Constituted A Seizure In Violation Of The Fourth Amendment

"The Fourth Amendment of the United States Constitution protects citizens from unreasonable search and seizure." *State v. Hansen*, 138 Idaho 791, 796 (2003). "Article I, Section 17 of the Idaho Constitution nearly identically guarantees that '[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.'" *State v. Green*, 158 Idaho 884, 886 (2015) (alteration in

original). A warrantless search is presumptively unreasonable, unless it falls within "one of several narrowly drawn exceptions." *State v. Anderson*, 154 Idaho 703, 706 (2012).

A seizure occurs when officers detain someone through physical force or show of authority. *State v. Page*, 140 Idaho 841, 843 (2004). When a defendant seeks to suppress evidence that was obtained as a result of an unlawful seizure, the defendant has the burden of proving that a seizure occurred. *Id*. "The test to determine if an individual is seized for Fourth Amendment purposes is an objective one" which requires an evaluation of "the totality of the circumstances." *State v. Henage*, 143 Idaho 655, 658 (2007).

"Law enforcement officers do not seize someone merely by approaching the person in a public place, by asking if the person is willing to answer questions, and by then questioning the person." *State v. Maland*, 140 Idaho 817, 821 (2004). A person who is simply being questioned by police, prior to any seizure, is free to decline to listen to the questions and to go his or her own way. *Id.* However, an "oral command" constitutes a seizure when the citizen yields to the command, as the oral command constitutes a show of authority. *Id.*, at 140 Idaho at 820. A seizure is initiated through a show of authority requires words or actions, or both, by a law enforcement officer that would convey to a reasonable person that the officer was ordering him or her to restrict his or her movement. *Id*. There is no seizure unless the individual actually submits to the officer's show of authority. *Id*. *See State v. Willoughby*, 147 Idaho 482, 488 (2009) ("Certainly, not every motorist who observes a police vehicle's activated overhead lights has been seized. Rather, the motorist must actually submit to the show of authority.") *See, e.g.*, *State v. Reese*, 132 Idaho 652, 653 (1999).

In *Florida v. Bostick*, 501 U.S. 429 (1991), the United States Supreme Court explained that the police may do more than merely ask questions without turning the encounter into a seizure:

> "We have stated that even when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual; ask to examine the individual's identification; and request consent to search his or her luggage—as long as the police do not convey a message that compliance with their requests is required.

Bostick, 501 U.S. at 434-35 (internal citations omitted). "[T]he crucial test is whether, taking into account all of the circumstances surrounding the encounter, the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.'" *Id*. at 437 (quoting *Michigan v. Chesternut.*, 486 U.S. 567, 569 (1988)).

The United States Supreme Court, in *United States v. Mendenhall*, 446 U.S. 544, 554 (1980), stated:

> Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.

However, this is not an exhaustive list.

The Idaho Court of Appeals recently addressed the distinction between an order and a request in *State v. Linenberger*, 151 Idaho 680 (Ct. App. 2011). The court noted,

> Not all encounters between the police and citizens involve the seizure of a person. *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968); *State v. Jordan*, 122 Idaho 771, 772 (Ct.App.1992). Only when an officer, by means of physical force or show of authority, restrains the liberty of a citizen may a court conclude that a seizure has occurred. *State v. Fry*, 122 Idaho 100, 102 (Ct.App.1991). A seizure does not occur simply because a police officer approaches an individual on the street or other public place, by asking if the individual is willing to answer some questions or by putting forth questions if the individual is willing to listen. *Florida v. Bostick*, 501 U.S. 429, 434 (1991); *Florida v. Royer*, 460 U.S. 491, 497 (1983). Unless and until there is a detention, there is no seizure within the meaning of the

> Fourth Amendment and no constitutional rights have been infringed. *Royer*, 460 U.S. at 498. Even when officers have no basis for suspecting a particular individual, they may generally ask the individual questions and ask to examine identification. *Fry*, 122 Idaho at 102. *So long as police do not convey a message that compliance with their requests is required, the encounter is deemed consensual and no reasonable suspicion is required. Id.*

Id. at 684 (emphasis added).

Here, the officers parked, radioed in the license plate, and then approached Mr. Pieper's car, one officer on each side. (11/2/16 Tr., p.13, Ls.4-10, p.15, Ls.5-19, p.19, L.21 – p.20, L.10, Ls.23-25.) The officers moved quickly as they exited their police car and moved up to Mr. Pieper's car. (11/2/16 Tr., p.15, Ls.5-19.) There is nothing that communicates to a reasonable person that they are free to drive away when two police officers with flashlights surround that person's car at night, with one of them demanding identification from both the driver and the passenger. There was nothing in these acts that suggested that compliance was optional or that a reasonable person would feel free to leave. A person free to leave would have the freedom to go about their business, including backing out of the parking space and driving away. The order, combined with the position of the two officers when the order was given—one on either side of the car—constituted a seizure of Mr. Pieper.

Furthermore, Mr. Pieper started to hand Officer John his identification and thereby complied with Officer John's order. (11/2/16 Tr., p.53, Ls.4-7; Defendant's Exhibit B.) This is further demonstration that Mr. Pieper did not believe he was free to go, and a reasonable (innocent) person would not believe he was free to try to drive away, provided he could do so without hitting the officers standing on either side of the car.

Finally, when Officer Johns demanded identification, he was commanding Mr. Pieper to communicate, thus, a reasonable person would not feel free to ignore the officer's request for fear of the possibility of incurring criminal liability pursuant to I.C. § 18-705, which prohibits

resisting or obstructing an officer's lawful investigation, and/or I.C. § 49-316, which requires a driver to surrender a driver's license to a police officer upon demand.

The district court erred in finding Mr. Pieper was not detained until he was ordered to put his hands behind his back. When Mr. Pieper was ordered to provide his identification, he was detained.

D. The Officers Seized Mr. Pieper And His Passenger Absent Reasonable, Articulable Suspicion Of Criminal Wrongdoing

When the officers made contact with Mr. Pieper, they did not have reasonable, articulable suspicion that Mr. Pieper or his passenger were involved in criminal activity. The State did not establish a particularized, objective justification for seizing Mr. Pieper, absent a warrant, before the marijuana on the back seat was spotted by Officer Weidebush.

An investigative stop is permissible only 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 (Ct. App. 2003). Reasonable suspicion must be based on specific, articulable facts and the rational inferences that can be drawn from those facts. *Terry*, 392 U.S. at 21. The quantity and quality of information necessary to establish reasonable suspicion is less than that necessary to establish probable cause. *Alabama v. White*, 496 U.S. 325, 330 (1990). Still, reasonable suspicion requires more than a mere hunch, or "inchoate and unparticularized suspicion." *United States v. Sokolow*, 490 U.S. 1, 7 (1989). Whether an officer possessed reasonable suspicion is evaluated based on the totality of the circumstances known to the officer at or before the time of the stop. *Sheldon*, 139 Idaho at 983.

Several Idaho appellate decisions have held that a brief seizure for purposes of determining license validity of a driver does not implicate the Fourth Amendment. *See State v. Godwin*, 121 Idaho 491, 494-95 (2001) (holding that "a police officer's brief detention of

a driver to run a status check on the driver's license, after making a valid, lawful contact with the driver, is reasonable for purposes of the Fourth Amendment."); *State v. Landreth*, 139 Idaho 986, 991 (Ct. App. 2004) (same). However, each of these decisions reminded us that the officer's request for a driver's license and action in running it through dispatch must be reasonable under the circumstances, and they cautioned against the unfettered discretion of the officers in initiating unnecessary "consensual encounters" in order to obtain a driver's license to do a warrants or check a license status. *See Godwin*, 121 Idaho at 496 ("police officers do not have unfettered discretion to stop drivers and request a display of a driver's license" to conduct a random status or warrants check); *Landreth*, 139 Idaho at 991 ("We caution that our decision does not countenance officers initiating "consensual contacts" with individuals merely in order to follow that contact with a request for identification to run a license check or a warrants check. Such a law enforcement tactic would run afoul of the Supreme Court decision in *Brown*, discussed above." [3]). In all of those cases, the officer(s) did have at least ***a*** reason for interacting with the drivers. Here, we have precisely the evil the *Godwin* and *Landreth* courts cautioned against—there was no reason for the officers to approach Mr. Pieper's car. Not an unjustified community caretaking concern. Not even a hunch. No reason at all.

Like the drivers in both *Godwin* and *Landreth*, Mr. Pieper was sitting in a lawfully parked car when he was contacted by officers. Here, however, the officers approached the car on both sides, at night, with flashlights. Officer Johns demanded identification from Mr. Pieper and

[3] In *Brown v. Texas*, 443 U.S. 47 (1979), the Supreme Court articulated a balancing test which involved "weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty" and noted, "A central concern in balancing these competing considerations in a variety of settings has been to assure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field." *Brown*, 443 U.S. at 50-51. (internal citations omitted).

his passenger. Had Mr. Pieper tried to back his car up to leave the parking area and end the encounter, he likely would have hit one or both officers with his car.

Officer Weidebush testified that he did not have any reason to believe that the car was involved in some sort of criminal enterprise or activity. (11/2/16 Tr., p.11, Ls.13-17.) He did not believe the car was stolen. (11/2/16 Tr., p.11, Ls.18-20.) He did not see any activity going on inside the car that caused him to be suspicious that there was criminal activity occurring. (11/2/16 Tr., p.11, L.21 – p.12, L.2.) He did not obtain any information from dispatch that would have led him to believe that there was a problem with the vehicle. (11/2/16 Tr., p.12, Ls.3-11.) There was nothing suspicious about the car and no reason to further investigate the car. (11/2/16 Tr., p.12, Ls.9-11.) Officer Weidebush testified that the only reason he approached the car was because Officer Johns decided to make contact with the occupant(s) of the car. (11/2/16 Tr., p.18, Ls.18-22; p.19, Ls.15-18.)

Officer Johns testified that he "saw a car that had a blue light coming from the inside of it, which seemed kind of weird, especially being almost 10 o'clock at night" so he decided to make contact with the vehicle. (11/2/16 Tr., p.42, Ls.1-7.) He was not investigating anything. (11/2/16 Tr., p.43, Ls.3-9.) He approached the driver's side door, where Mr. Pieper was sitting. (11/2/16 Tr., p.44, Ls.17-25.)

Officer Weidebush testified that he could see one person in the car, but there was nothing that alerted his attention to that person; the person was not armed, he did not recognize the person, the person did not match the description of any armed or dangerous persons. (11/2/16 Tr., p.16, L.10 – p.17, L.12.)

Mr. Pieper submits that the State did not establish reasonable, articulable suspicion that he was, or was about to be, engaged in criminal activity. There is absolutely no indication that

the officers believed he was armed or dangerous, and, even when viewed objectively, there were no circumstances establishing reasonable, articulable suspicion of criminal wrongdoing. Thus, the detention of Mr. Pieper, which began at the point he was ordered to provide his identification, was not supported by reasonable and articulable suspicion of criminal activity.

Mr. Pieper asserts that his seizure and detention was unreasonable and the search of the vehicle and his person was unlawful and, thus, violated his Fourth Amendment and Article I § 17 right to be free from unreasonable searches and seizures.

CONCLUSION

Mr. Pieper respectfully requests that this Court vacate the district court's judgment and order of commitment and reverse the order which denied his motion to suppress.

DATED this 14th day of September, 2017.

_____/s/_____
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of September, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

TYSON MICHAEL PIEPER
INMATE #92776
ICIO
381 W HOSPITAL DRIVE
OROFINO ID 83544

JOHN T MITCHELL
DISTRICT COURT JUDGE
E-MAILED BRIEF

MICHAEL G PALMER
ATTORNEY AT LAW
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_____/s/_____
EVAN A. SMITH
Administrative Assistant

SJC/eas