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State v. Maahs Appellant's Reply Brief Dckt. 47690

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

STATE OF IDAHO,	)	
	)	
Plaintiff/Respondent,	)	**Supreme Court No. 47690-2020**
	)	
v.	)	**Ada Co. No. CR-18-17209**
	)	
PATRICK TYLER MAAHS,	)	
	)	
Defendant/Appellant.	)	
	)	

REPLY BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE DEBORAH A. BAIL
District Judge

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Introduction

The challenged factual findings of the district court should not be accepted by this Court, whether the clear error or free review standard is applied, as they are clearly contradicted by the officers' bodycam footage. The opening brief adequately presented the challenge to the factual findings in its argument, thereby permitting the Court's review. Furthermore, Mr. Maahs did not violate the principle behind I.A.R. 35 because the State actually addressed in the Respondent's brief the issue whether the district court's factual findings constituted clear error.

The State has failed to demonstrate that the intrusive measures used by the police to seize and restrain Mr. Maahs were justified as a necessary and reasonable part of an investigative detention. The State ignores the officers' uncontested testimony that at the time they employed these intrusive measures to apprehend Mr. Maahs, they had no information or evidence establishing that he and Korona were armed and dangerous. Given the absence of such evidence, their forceful measures transformed the encounter into a de facto arrest, for which the State does not even attempt to argue probable cause existed.

Even if the district court's factual findings are completely accepted by this Court, they did not provide the officers with sufficient reasonable suspicion to support even an investigative detention. Without any supporting authority, the State adopts the district court's contravention of Terry v. Ohio by endorsing the subjective hunches of the credit union tellers as a validly weighed factor that supports a finding of reasonable suspicion.

A. The Opening Brief's Challenge to the Trial Court's Factual Findings was Sufficient to Permit Review for Clear Error

The State argues that given the limited circumstances involved in State v. Andersen, 164 Idaho 309, 429 P.3d 850 (2018), the proper standard of review for the trial court's factual findings is clear error. (Respondent's brief, p. 10). The State further argues that Mr. Maahs's incorrect application of the free review standard should result in this Court's refusal to review the factual findings at all. Id.

However, the challenge to the trial court's factual findings presented in the opening brief is sufficient to warrant this Court's review, regardless of whether the applicable standard is clear error, rather than free review. I.A.R. 35(a)(4) provides that an appellant's "statement of issues presented will be deemed to include every subsidiary issue fairly comprised therein." Weisel v. Beaver Springs Owners Association, 152 Idaho 519, 525, 272 P.3d 491, 498 (2012). The opening brief's assertion in the statement of issues that the appropriate standard is free review necessarily implicates the subsidiary issue of whether the district court's factual findings should be accepted by this Court.

Furthermore, the Idaho Supreme Court has indicated that the requirements of I.A.R. 35(a)(4) "'might be relaxed where the issue[s are] ... addressed by authorities cited or arguments contained in the briefs.'" State v. Watkins, 148 Idaho 418, 422, 224 P.3d 485, 489 (2009) (quoting State v. Prestwich, 116 Idaho 959, 961, 783 P.2d 298, 300 (1989)), overruled on other grounds, State v. Guzman, 122 Idaho 981, 842 P.2d 660 (1992). In Everhart v. Washington County Rd. & Bridge Dept, 130 Idaho 273, 274-75, 939 P.2d 849, 850-51 (1997), the Court applied this relaxed standard.

Despite Everhart's failure to designate any issues on appeal, because she and the respondents between them provided argument and authority regarding them, the Court did not rigidly apply I.A.R. 35 but rather considered the entirety of the appeal. Id. at 275, 939 P.2d at 851. The Court reasoned that "[b]oth parties discussed the factual background in sufficient detail [such] that we can decide the issues …." Id.

Although the opening brief asserted that the applicable standard should be free review, Mr. Maahs presented sufficient factual background and authority to permit this Court to review his challenge to the specified factual findings, even under the clear error standard. The opening brief expressly recognized the standard typically applied in an appeal of the decision on a motion to suppress, under which the Court accepts the trial court's findings of fact that are supported by substantial evidence. (Appellant's brief, p. 22). Additionally, the opening brief contained a detailed summary of the bodycam footage and a section in the argument titled, "The District Court's Factual Findings and Conclusions are Inconsistent With the Officers' Bodycam Footage." (Appellant's brief, pp. 9-13, 16-18, 23).

By arguing that the officers' bodycam recordings contradict the district court's findings, Mr. Maahs effectively asserted that the findings constitute clear error, unsupported by substantial evidence. The recordings are the objective and neutral depiction of the officers' apprehension of Mr. Maahs in real-time. That authentic video evidence was admitted by the State during the June 3, 2019 suppression hearing, after both officers confirmed that they had reviewed it. (6/3/19 Tr., p. 103, L. 10—p. 104, L. 6 (State's Exhibit 1 (Reimers)), p. 156, Ls. 5-10, p. 162, Ls. 10-20

(State's Exhibit 2 (Mathis)). Both officers also affirmed the accuracy of the clips from their full bodycam recordings admitted by the defense. (6/3/19 Tr, p. 119, L. 14—p. 121, L. 2 (Defense Exhibit C (Reimers)), p. 172, L. 3—p. 173, L. 21 (Defense Exhibit D (Mathis)).

Where a video recording clearly contradicts a trial court's factual finding, the finding is not supported by substantial evidence. In State v. Dominguez, 137 Idaho 681, 684, 52 P.3d 325, 328 (Ct. App. 2002), the Court of Appeals determined that because an audio recording did not disprove a police officer's testimony, the Court could not conclude that the district court's factual findings were unsupported by substantial evidence.

That being so, where a recording does clearly disprove a district court's factual finding, the finding is necessarily unsupported by substantial evidence and thus constitutes clear error. Various courts have reached such a conclusion. See e.g., Wiggins v. Florida Dep't of Highway Safety and Motor Vehicles, 42 Fla.L.Weekly S 85, 209 So.3d 1165, 1175 (2017); City of Missoula v. Metz, 2019 MT 264, 451 P.3d 530, 539 (2019); Carmouche v. State, 10 S.W.3d 323, 332 (Tex. Crim. App. 2000); State v. Andrade, 342 Ga.App. 228, 230, 803 S.E.2d 118, 121 (2017). Also, although Mr. Maahs acknowledges that under Rule 15(f) of the Internal Rules of the Idaho Supreme Court unpublished opinions do not constitute binding authority, two such opinions of the Court of Appeals serve as examples where clear error was found based where video evidence contradicted a trial court's factual findings: State v. Gouge, No. 45403 (Ct. App. Sept. 12, 2018); State v. Riley, No. 47372 (Ct. App. Feb. 9, 2021).

Finally, this Court should review the district court's factual findings because Mr. Maahs has not violated the principle behind I.A.R. 35. In Suitts v. Nix, 114 Idaho 706, 708, 117 P.3d 120, 122 (2005), the Court explained it will not consider issues not addressed in the opening brief because "the issues presented ... are the arguments and authority to which the respondent has an opportunity to respond …." In State v. Watkins, 148 Idaho 418, 422, 224 P.3d 485, 489 (2009), the Court considered an issue that Watkins had failed to designate as an issue or argue in his opening brief because the State had an opportunity to respond.

Here, the State actually addressed the issue of whether the challenged factual findings were supported by substantial evidence. (Respondent's brief, pp. 11-13). Accordingly, this Court should not decline to review the trial court's factual findings, even if it does so for clear error.

B. The District Court's Factual Findings are Clearly Erroneous Because They are Contradicted by the Officers' Bodycam Footage

1. Mr. Maahs's Backpedaling did not Occur After He Looked at the Rear Hallway Door

The State maintains that the officers' bodycam footage supports the district court's finding that Mr. Maahs ignored the officers' commands and looked as if he intended to flee: "The on-body video footage clearly shows that after Maahs was told to come towards the officers after he exited the bathroom, but that [sic] he looked towards the door behind him and backed away from the officers instead."[1]

[1] The State cites in its brief to 00:24-00:33 of State's Exhibit 2, Officer Mathis's bodycam footage, as support for its position that instead of obeying the officers' instructions to come to them, Mr. Maahs looked towards the door behind him and

(Respondent's brief, p. 10-11). The State also characterizes the officers' testimony at the suppression hearing as consistent with their bodycam footage: "Corporal Reimers again testified that the officers directed Maahs to come towards them, but instead he 'turned his body towards that door in the hallway and appeared to be looking at that door, possibly as an escape route.'" (8/27/18 Tr., p.101, L.2 – p.103, L.9, p.126, Ls.18-25, p.139, L.21 – p.140, L.3). Officer Mathis also testified during the suppression hearing that Maahs 'glanced over' and 'started going away from [the officers] towards another door' after he exited the bathroom. (8/27/18 Tr., p.158, L.10 – p.159, L.8, p.166, L.23 – p.167, L.11.)" (Respondent's brief, p. 11-12).

In its Decision and Order Re: Motion to Suppress, (R., pp. 226-242), the district court repeats such findings, which support its conclusion that Mr. Maahs ignored the officers and attempted to flee. The district court finds that "[b]oth officers told [Mr. Maahs] to come over to them," but then "Maahs looked behind him at a door at the rear of the hallway and began backing towards it." (R., p. 227). The district court further observes that "[b]oth officers were concerned when Maahs looked down the hallway and then backed away from Officer Mathis when he was telling Maahs to come forward." (R., pp. 228-229). The district court also similarly finds that Mr. Maahs, "*in response* to being instructed to come towards [the officers], looked behind him at a door at the end of the hallway and began backing towards it …." (R., p. 233) (emphasis added).

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backed away from them. (Respondent's brief, p. 11). However, as reflected in State's Exhibit 2, Officer Mathis's bodycam is initially oriented downwards during his advance on Mr. Maahs. As a result, it does not show Mr. Maahs "look[ing] towards the door" and then backing towards it. Id.

The State's summary of Corporal Reimer's bodycam footage is wrong, for the video clearly contradicts the district court's findings and the officers' testimony, thus they are unsupported by substantial evidence. Corporal Reimers's bodycam footage disproves the finding that Mr. Maahs responded to the officers' orders by initially looking behind at the hallway door, then beginning to back towards it. (Respondent's brief, p. 11; R., p. 233). In fact, his bodycam footage unmistakably shows that Mr. Maahs begins backpedaling not after first looking at the hallway door, but when Officer Mathis immediately begins advancing on him. (State's Exhibit 1, 3:18-3:19). Furthermore, Corporal Reimers's bodycam clearly depicts Mr. Maahs briefly glancing backwards over his left shoulder at 3:20, *after* he has already begun backpedaling from Officer Mathis, who is aggressively marching towards him. (State's Exhibit 1, 3:18-3:20). The incontrovertible reality reflected in Officer this bodycam footage is that Mr. Maahs backpedals in reaction to Officer Mathis's rapid approach, not after looking at the hallway door. (State's Exhibit 1, 3:18; R., 183-85 (screen shots from Officer Reimers's bodycam, admitted at the suppression hearing as Exhibits E, F, G)).

This is not simply a competing interpretation of the bodycam footage, nor is the Court being asked to usurp the district court's role by weighing conflicting evidence; Corporal Reimers's bodycam footage, State's Exhibit 1, is an objective memorialization of Mr. Maahs's seizure that refutes the district court's findings, regardless of whether the video evidence is viewed frame-by-frame or full speed. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." State v. Green, 149 Idaho 706, 708, 239 P.3d

811, 813 (Ct. App. 2010) (internal quotations removed). Because this video evidence clearly contradicts the district court's findings regarding the sequence of events following Mr. Maahs's exit from the bathroom, they are not supported by substantial evidence and are clearly erroneous.

These clearly erroneous findings form the basis for the conclusion that Mr. Maahs's backpedaling reflects a conscious attempt to evade the officers. (R., p. 233). The State relies on this alleged evasion of the officers by Mr. Maahs to support its position that the officers had reasonable suspicion of criminal activity and were justified in using the most extreme and intrusive methods to apprehend Mr. Maahs during an investigatory detention. (Respondent's brief, p. 19, 22, 25).

2. The District Court Clearly Erred by Finding That Officer Mathis Only Frisked Mr. Maahs

Officer Mathis's bodycam, State's Exhibit 2, as well as his testimony, clearly contradict the district court's conclusion that Officer Mathis conducted a "quick frisk" of Mr. Maahs. (R., p. 233). Review of his bodycam footage refutes the claim that Officer Mathis merely patted Mr. Maahs's outer clothing down, only then removing those objects that felt like weapons. Rather, State's Exhibit 2 at 1:18-1:39 shows Officer Mathis putting his hands inside Mr. Maahs's front and back pockets and removing *everything*, including keys, lighters, and a law enforcement badge, putting those objects on the adjacent water fountain. Officer Mathis even acknowledged on cross-examination after being shown Defendant's Exhibit D, the clip from his bodycam video, that he put his hands inside Mr. Maahs's pockets and then "emptied *all* of the contents …." (6/3/19 Tr., p. 172, Ls. 19-24) (emphasis added). He further

admitted that these actions were not consistent with a Terry investigative detention. (6/3/19 Tr., p. 172, L. 19—p. 173, L. 3).[2] Officer Mathis never testified that he only put his hands in Mr. Maahs's pockets after externally patting something that felt like a weapon. (6/3/19 Tr., pp. 169-173). While he testified that he removed the law enforcement badge inside Mr. Maahs's pocket because it was a "hard metal object," he did not describe it as a weapon or that he had been concerned it might be one when he patted it through Mr. Maahs's clothes; rather, he claimed it could be "anything." (6/3/19 Tr., p. 171, L. 15).

Although Officer Mathis stated in response to a question on cross-examination that keys "could" be a weapon, he did not testify that he had removed Mr. Maahs's keys from his pocket because of any such concern. (6/3/19 Tr., p. 171, Ls. 17-18). Additionally, Officer Mathis did not explain why he removed the lighters in the course of emptying Mr. Maahs's pockets while he was handcuffed. (State's Exhibit 2, 1:18-1:39). He likewise did not testify that he removed Mr. Maahs's ID card because of concerns for officer safety. (6/3/19 Tr., p. 160, Ls. 11-14).

This bodycam evidence and testimony thus completely contradict the district court's characterization of Officer Mathis's actions as a pat-down "frisk"; to the extent the district court's legal conclusion was based on its finding that Officer Mathis merely patted down Mr. Maahs and did not put his hands inside his pockets, such a

[2] The district court improperly sustained the State's objection to Officer Mathis's admission that his actions were not consistent with an investigative detention. (6/3/19 Tr., p. 173, Ls. 4-13). This admission was not an improper legal conclusion; it confirmed that the officer had not merely patted down Mr. Maahs externally and only gone into his pockets after feeling something resembling a weapon.

finding is unsupported by substantial evidence. Notably, the district court's order does not even address this bodycam footage and testimony when characterizing Officer Mathis's actions as merely a "frisk." (R., pp. 226-242).

C. The Extreme Measures Used to Seize Mr. Maahs Exceeded the Scope of an Investigatory Detention and Escalated the Encounter to a De Facto Arrest

The factors identified by the State do not establish that Mr. Maahs and Mr. Korona presented a danger to the safety of the officers or others that warranted the implementation of these multiple restraints on Mr. Maahs's liberty in the course of an investigatory detention. Because the officers' safety concerns were not based on objective facts supporting the conclusion that the men were armed and dangerous, the officers' forceful tactics necessarily exceeded the scope of a permissible investigatory detention and rose to the level of a de facto arrest.

The State's argument that the officers' tactics were justified by the dangerous nature of this encounter completely overlooks both officers' admissions that *they had no specific articulable facts or information, that Mr. Maahs and/or Mr. Korona were armed or dangerous.* While Corporal Reimers expressed concern that the men could have gone into the bathroom in "preparation for an attack," (6/3/19 Tr., p. 112, Ls. 2-4), the following illustrative exchange with him reveals the lack of any specific, articulable facts to support his hunch:

Q. Were you told anything – you said preparation for an attack. Was there any information given to you by anybody at the credit union that they thought these men were armed?

A. No.

Q. Was there any evidence or – in fact, you weren't told anything indicating they had acted violently or aggressively?

A. I agree.

Q. And so you didn't have any evidence they were armed or dangerous at that point, did you, sir?

A. No.

Q. And you called on the radio for assistance after you went in and were observing the door, correct?

A. Right.

Q. The door to the bathroom.

A. Yes.

Q. And you used the phrase, "Both of these guys saw me and went into the bathroom together, acting kind of hinky," correct?

A. I believe I did use that when talking to Officer Mathis, yes.

Q. Actually, I think you used that on the radio when you radioed for assistance.

A. Okay. Sure.

…

Q. So again you didn't – but you didn't mention anything about being concerned about drug activity.

A. On the radio?

Q. Correct.

A. No.

Q. Or that you were worried that these men might be armed or dangerous.

A. No, I didn't say that specifically.

Q. You didn’t say that at all, did you, sir?

A. **No, I didn’t say that specifically.**

Q. All right. And, in fact, you didn’t say anything about maybe that you were worried that they were preparing for an attack.

A. **I did not say that, no.**

…

Q. Now, if you are concerned that somebody might be armed or dangerous, you would certainly notify your fellow officers. Isn't that true?

A. **Yeah. I did when I told Officer Mathis they're acting hinky.**

Q. Acting hinky?
That means armed and dangerous?

A. **It means something's afoot and you need to be careful. It means it's not normal behavior. It means that things are not good to go here. It means something is wrong.**

Q. My question was, are you saying when you said "hinky," you were telling him that they might be armed and dangerous?

A. **No.**

Q. Okay. Because you probably are pretty clear if you think somebody is armed and dangerous when you talk with other officers. Isn't that correct?

A. ***If I have, you know, some sort of reasonable knowledge or some articulable facts that someone is armed and dangerous, I'm going to let them know.***

Q. And you didn't say to Officer Mathis, “You know, I think they might be preparing to attack,” like you did on direct examination, correct?

A. **No, I didn't.**

Q. And again you said, "I don't know what we have exactly, but I figured we'd detain them," correct?

A. Yes.

(6/3/19 Tr., p. 112, L. 5—p. 124, L. 10) (emphasis added); (State's Exhibit 1, 2:12-3:15). Corporal Reimers further testified that in the course of the encounter, neither Mr. Maahs nor Mr. Korona reached for any weapon. (6/3/19 Tr., p. 138, Ls. 11-13). He did not see Mr. Maahs physically resist Officer Mathis. (6/3/19 Tr., p. 138, Ls. 14-25).

Officer Mathis, like Corporal Reimers, speculated that the men might be inside the bathroom "preparing weapons." (6/3/19 Tr., p. 157, Ls. 15-16). However, he, too, acknowledged that this concern was not based on any information he had indicating the men were armed or dangerous. (6/3/19 Tr., p. 171, Ls. 23—p. 172, L. 2). During the time Corporal Reimers briefs Officer Mathis, after Officer Mathis arrives inside the credit union as backup, the two officers do not express any concern about being vulnerable to a potential attack from the two men. (State's Exhibit 2, 2:12-3:15).

Thus, the officers' fears about this potential attack amount only to speculative hunches, rather than an objectively grounded safety concern supported by specific articulable facts. Such speculation cannot justify the use of extremely intrusive measures as part of an investigative detention. In State v. Johns, 112 Idaho 873, 878, 736 P.2d 1327, 1332 (1987), the Idaho Supreme Court noted that when objectively evaluating an officer's belief that a suspect may be armed and dangerous, "due weight must be given, not to his inchoate and unparticularized suspicions or 'hunch,' but to specific reasonable inferences which he is entitled to draw from the facts in light of

his experience." (citations omitted). The district court erred by weighing the officers' gut instincts as the basis for the intrusive measures they used to seize Mr. Maahs, notwithstanding their many years of experience.

1. Mr. Maahs's Alleged "Flight" Does Not Justify the Officers' Intrusive Measures

The State fails to identify facts regarding the officers' seizure of Mr. Maahs during this encounter that meet the "high threshold" required to justify the use of handcuffs as part of an investigatory detention. See State v. Pannell, 127 Idaho 420, 421, 901 P.2d 1321, 1322 (1995). The State primarily justifies the use of handcuffs to restrain Mr. Maahs based on his "apparent efforts to flee." (Respondent's brief, p. 191; R., p. 233). As set forth above, however, this conclusion was premised on the clearly erroneous finding that Mr. Maahs, "in response to being instructed to come towards [the officers], looked behind him at a door at the end of the hallway and began backing towards it." (R., p. 233). The officers' distorted perception of this sequence of events, which the district court clearly erred by accepting, is what "made them think that the defendant was considering running out the door at the rear of the hallway." (R., p. 229).

Nevertheless, even if this Court somehow disagrees that the district court clearly erred in its finding Mr. Maahs's backpedaling reflected an intent to flee, the Court must still examine the nature of this flight to ascertain whether it supports the legal conclusion regarding whether the officers reasonably suspected criminal activity or justified the officers' measures as part of a valid investigative detention. In Padilla v. State, 158 Idaho 184, 189-90, 345 P.3d 243, 248-89 (Ct. App. 2014), the

court reviewed the United States Supreme Court's holding in Illinois v. Wardlow, 528 U.S. 119, 120 S.Ct. 673 (2000) that "*unprovoked* flight," while "not necessarily indicative of wrongdoing … is certainly suggestive of such." Padilla, 158 Idaho at 189, 345 P.3d at 248 (citing, Wardlow, 528 U.S. at 124 (emphasis added). The Wardlow Court, however, declined to adopt a bright-line rule under which an individual's flight at the mere sight of a police officer automatically authorizes the person's detention. Padilla, 158 Idaho at 189, 345 P.3d at 248 (citing Wardlow, 528 U.S. at 126).

Padilla recognized that while a defendant may flee from police, this does not necessarily provide reasonable suspicion of criminal activity. It cited a decision by the Iowa Supreme Court, observing that "the circumstances surrounding the suspect's efforts to avoid the police must be such as to allow a rational conclusion that flight indicated a consciousness of guilt." Padilla, 158 Idaho at 189-90, 345 P.3d at 248-49 (quoting State v. Kreps, 650 N.W.2d 636, 643-44 (Iowa 2002)); see also, United States v. Brown, 925 F.3d 1150, 1156 (9th Cir. 2019) (noting that the Supreme Court has never endorsed a per se rule that flight establishes reasonable suspicion and treating it as just one factor in the reasonable suspicion analysis).

In this case, Mr. Maahs's purported "efforts to flee" lasted a scant few seconds followed by his complete submission to Officer Mathis's command to get down on the floor. (State's Exhibit 1, 3:18-3:21). Mr. Maahs was compliant from that point forward. (State's Exhibit 2, 00:31-15:46). This flight occurred immediately after he exited the bathroom, holding his cell phone to his ear. Id. Corporal Reimers described

Mr. Maahs's demeanor upon being confronted by the officers as "surprised" and "shocked." (6/3/19 Tr., p. 127, Ls. 2-10). Corporal Reimers even admitted this was "odd," given his initial suspicion that Mr. Maahs and Korona had gone down the hallway into the bathroom because they had spotted him waiting at the credit union doors. (6/3/19 Tr., p. 127, Ls. 2-6). He also acknowledged that if the two men had wanted to evade him, they could have proceeded through the rear hallway door before he entered the credit union. (6/3/19 Tr., p. 139, Ls. 1-20).

Corporal Reimers further agreed that Mr. Maahs never reached for the door handle and never fully turned towards the door. (6/3/19 Tr., p. 141, Ls. 2-4; p. 142, Ls. 4-9). This is confirmed by the bodycam footage. (State's Exhibit 1, 3:18-3:22; State's Exhibit 2, 00:28-00:31). Considering the speed with which Officer Mathis advanced and the fact that Mr. Maahs kept his phone to his ear while backpedaling, Corporal Reimers conceded that Mr. Maahs might just have been "bewildered" and "reflexively reacting to being shocked and surprised" by the sudden confrontation. (6/3/19 Tr., p. 141, Ls. 2-9; p. 144, Ls. 9-15; p. 145, L. 8—p. 146, L. 23).

That Mr. Maahs's "flight" does not reflect criminal culpability, but rather a surprised instinctive reaction, is further supported by his exclamation, "Holy shit!" as he crouches on the ground with Officer Mathis towering above, immediately following the officer's swift approach with his drawn and pointed firearm. (State's Exhibit 2, 00:38-00:39). Thus, even if the district court's factual finding that Mr. Maahs was trying to flee is upheld, at most there is substantial ambiguity that precludes it from being given any significant weight in the reasonable suspicion

analysis or to establish that Mr. Maahs presented a danger that justified the officers' extreme restraints on his liberty.

2. Officer Mathis Further Exceeded the Scope of a Permissible Investigatory Detention by Aiming His Gun at Mr. Maahs

Officer Mathis not only exceeded the bounds of a valid investigatory detention by handcuffing Mr. Maahs, but by aiming his firearm directly at him. (State's Exhibit 1, 3:20-3:24; State's Exhibit 2, 00:30-00:34). The State cannot demonstrate a sufficient danger to justify this display of deadly force as a reasonable element of an investigatory detention.

As an initial point, the State mischaracterizes Officer Mathis's actions by failing to even acknowledge that Officer Mathis pointed his gun at Mr. Maahs. Instead, the State indicates throughout its brief only that Officer Mathis "drew" his pistol. (Respondent's brief, pp. 2, 3, 7, 15, 19). The district court likewise only indicates in its opinion that Officer Mathis "drew" his gun. (R., pp. 227-28, 233). The State supports its sanitized description with a cite to State's Exhibit 2 at 00:26-00:45. (Respondent's brief, p. 2).

However, this minimization of Officer Mathis's display of deadly force is flatly contradicted by State's Exhibits 1 and 2. In State's Exhibit 1, at 3:20-3:23, Officer Mathis can clearly be seen pointing his gun at Mr. Maahs, even after Mr. Maahs has gotten down on the floor. State's Exhibit 2 at 00:30-00:33 likewise indisputably shows Officer Mathis not just drawing but pointing his pistol at Mr. Maahs. This is not just a varying interpretation of this video evidence – no one reviewing the officers' neutral

and objective bodycam footage could conclude otherwise. On top of this incontrovertible video evidence, Corporal Reimers testified that Officer Mathis pointed his gun at Mr. Maahs. (6/3/19 Tr., p. 133, Ls. 7-17, p. 135, Ls. 7-12).

In Washington v. Lambert, 98 F.3d 1181 (9th Cir. 1996), the Ninth Circuit quoted the Seventh Circuit's observation that a police officer's aiming of a gun is "far more frightening" than merely drawing it. Id. at 1188-89 (quoting United States v. Serna-Barreto, 842 F.2d 965, 967 (7th Cir. 1988) (citation omitted). The court opined that such an aggressive measure can only be applied where the danger to the officer is not just "potentially serious" but "clear and present." Id.

The information known to Corporal Reimers and Officer Mathis at the time they apprehended Mr. Maahs failed to establish such a "clear and present" danger justifying Officer Mathis's pointing of his firearm as a reasonable measure to protect officer safety within the limited bounds of an investigatory detention. The State cites State v. Salato, 137 Idaho 260, 265-67, 47 P.3d 763, 768-70 (Ct. App. 2001) in its efforts to fit Officer Mathis's action within the narrow category of investigatory detentions warranting such an extreme display of force. (Respondent's brief, p. 18).

Notably, however, the State omits any description of the facts in Salato. (Respondent's brief, p. 18). There, law enforcement conducted a "high-risk traffic stop" of a vehicle connected to the armed robberies of two convenience stores minutes beforehand. Id. at 263, 47 P.3d 466. The robber displayed and cocked a semi-automatic pistol during the first robbery. In the second, he drew, cocked, and pointed his gun at the clerk's daughter. Id.

The situation in Salato, where the police were presented with a highly dangerous scenario based on known articulable facts, is worlds away from this case, where, as previously noted, the officers candidly acknowledged they had no information indicating Mr. Maahs or Mr. Korona were armed and dangerous. Aside from this distinguishable case, the State cites no authority approving the aiming of their firearms as part of an investigatory detention where, as Corporal Reimers and Officer Mathis conceded, officers do not have objective facts establishing that a suspect is armed and dangerous.

Despite Corporal Reimers' observation, "I don't know what we have exactly, but I figured we'd detain them," State's Exhibit 1, 2:39-2:42, the State also attempts to justify these aggressive measures based on the seriousness of the suspected crime: "Corporal Reimers consistently maintained that he suspected that 'there's a potential robbery going on or something of a similar nature.'" (Respondent's brief, p. 20). However, the facts known by the officers at the time of Mr. Maahs's apprehension did not support any suspicion of a robbery in progress.

While Corporal Reimers claimed that the large cash deposit made by the men caused him to suspect a robbery, he conceded such a transaction would not be suspicious for a credit union in the course of business. (6/3/19 Tr., p. 108, L. 11—p. 109, L. 3). Corporal Reimers did not even know how much had actually been deposited. (6/3/19 Tr., p. 108, Ls. 11-17). Although the district court concluded in its opinion that this large deposit supported this suspicion that Mr. Maahs and Mr. Korona might be engaged in a robbery, (R., p. 237), in its order granting the

suppression motion filed by Kendall Wellard, the man detained in the credit union parking lot, the district court found the opposite: "The making of a large deposit at a credit union and changing clothes is pretty thin for reasonable suspicion of any crime." Decision and Order Re: Motion to Suppress at p. 6, State v. Wellard, CR01-18-19966.[3]

Furthermore, while the State emphasizes the officers' lengthy experience when it supports its arguments, it wholly ignores the fact that in their decades of experience, neither officer had ever encountered a situation where a robber deposited a large amount of money as a prelude to robbing a bank. (6/3/19, Tr., p. 109, L. 20—p. 110, L. 7 (Corporal Reimers), 6/3/19 Tr., p. 164, Ls. 3-23 (Officer Mathis)). Officer Mathis even candidly admitted that learning a possible robber initially made a large cash deposit might well diminish his suspicion that a robbery was afoot. (6/3/19 Tr., p. 164, L. 25—p 165, L. 14). This knowledge about the large deposit thus should have dispelled the officers' suspicion of a potential robbery.

Perhaps recognizing this, Corporal Reimers testified that he began to suspect the possible commission of a drug crime based on the large deposit and the men going into the bathroom, which is a "great place to destroy drugs because you can flush them, and they are now gone." (6/3/19 Tr., p. 94, L. 22—p. 95, L. 1). Corporal Reimers testified about his training and focus on drug law enforcement during his law enforcement career to support this suspicion. (6/3/19 Tr., p. 84, L. 8—p. 85, L. 3).

[3] On November 3, 2020, the Court granted Mr. Maahs's Motion for Judicial Notice or to Augment Clerk's Record and indicated it would take judicial notice of the Decision and Order Re: Motion to Suppress, in State v. Wellard, CR01-18-19966.

However, many drug offenses, especially simple possession of a controlled substance, do not involve the use of force or weapons; therefore, the suspicion of such an offense does not support the officers' use of extremely intrusive methods to seize Mr. Maahs. In United States v. Delgadillo-Velasquez, 856 F.2d 1292, 1295 (9th Cir.1988), law enforcement's apprehension of drug traffickers at gunpoint and the use of handcuffs to restrain them resulted in a de facto arrest.

The State attempts to distinguish Delgadillo-Velasquez, by claiming that the Ninth Circuit "relied primarily on the fact that 'the agents immediately told the men that they were under arrest'" in concluding that the encounter constituted a de facto arrest. (Respondent's brief, p. 21 (quoting, Delgadillo-Velasquez, 856 F.2d at 1295-96)). However, the State misreads Delgado-Velasquez, as the Ninth Circuit did not identify this fact as the primary basis for its conclusion. Delgadillo-Velasquez, 856 F.2d at 1295-96. To the contrary, in United States v. Del Vizo, 918 F.2d 821, 825 (9th Cir. 1990), which the State does not address, the Ninth Circuit specifically observed that "[a]lthough in the instant case the police did not announce to the suspect that he was under arrest, as they did in Delgadillo-Velasquez, *the distinction is not pivotal*. Even without a statement that he was under arrest, the absolute curtailment of Del Vizo's liberty clearly would have lead a reasonable person to believe that he was not free to leave." (emphasis added).

Thus, Officer Mathis's repeated insistence that Mr. Maahs was only being detained for investigation does not meaningfully distinguish Delgadillo-Velasquez, given the similar absolute curtailment of Mr. Maahs's liberty. Both Delgadillo-

Velasquez and Del Vizo show that drug trafficking offenses are not so inherently dangerous to justify the use of extreme measures such as handcuffs and the pointing of firearms during an investigatory detention. Rather, a stop premised on suspicion of drug trafficking "will not support a per se justification for the use of guns and handcuffs in a Terry stop." United States v. Melendez-Garcia, 28 F.3d 1046, 1053 (10th Cir. 1994).

The State tries to justify the officers' intrusive tactics in seizing Mr. Maahs based on several other facts that, when examined, fail to demonstrate that Mr. Maahs and Mr. Korona presented a safety risk. For example, the State seems to suggest that Officer Reimers's initial confusion at finding the interior doors of the credit union locked raised his concern about the danger presented by the two men: "Upon entering the credit union, [Corporal Reimers] was puzzled by the locked doors, which indicated to him that the bank employees were either attempting to "detain someone inside or prevent others from getting inside." (Respondent's brief, p. 25).

However, Corporal Reimers's insinuation that the locked doors raised his concern is disingenuous in light of his bodycam footage. At the outset of that video evidence, he can be seen talking to the credit union employee, who lets him inside. (State's Exhibit 1, 00:01-00:31). The employee does not exhibit any sense of urgency or distress. Surely one would expect Corporal Reimers to ask the employee about the locked doors if he had any lingering concern they might have signaled something untoward.

What is more, after that credit union employee walks off, Corporal Reimers proceeds to the teller window area, where he has a brief exchange with other employees. They likewise do not appear to be anxious or scared, and Corporal Reimers does not ask them about the locked doors that the State suggests caused him concern. (State's Exhibit 1, 00:32-00:51). The bodycam footage in State's Exhibit 1 thus dispels any basis Corporal Reimers might have had to believe the initially locked doors signaled some type of mischief by Mr. Maahs or Korona.

Similarly, the officers' use of extreme measures to seize Mr. Maahs cannot be justified based on some perceived danger to the civilian employees who were still inside. (Respondent's Brief, p. 16, 18; R., p. 238). The State fails to account for the fact, as shown in Corporal Reimers's bodycam footage, that he had the time and ample opportunity to have those employees leave the building if his years of experience caused him to believe Mr. Maahs and Mr. Korona presented a danger to their safety.

D. Other Factors in the Totality of the Circumstances Support the Conclusion That the Officers' Actions Constituted a De Facto Arrest

In addition to the highly intrusive methods used to apprehend and restrain Mr. Maahs, several other factors defeat the State's contention that this encounter remained only an investigative detention and instead compel the conclusion that the officers' actions escalated it into a de facto arrest. These factors, along with the others would cause a reasonable, innocent person to conclude that he was only being briefly detained.

Officer Mathis's brusque tone and harsh physical treatment of Mr. Maahs objectively belied his insistence that Mr. Maahs was only the subject of a brief investigatory detention. He pulls his gun and aims it at Mr. Maahs, barking at him in a stern voice to "get on the ground" and "put your hands right there," followed by his loud command, "Don't move!" (State's Exhibit 2, 00:31-00:35). Although Mr. Maahs does not resist, Officer Mathis shoves his head down and roughly handles Mr. Maahs as he handcuffs his hands behind his back. (State's Exhibit 2, 00:45-1:00).

Officer Mathis continues to manhandle Mr. Maahs despite Mr. Maahs's compliance and his restraint in handcuffs. Officer Mathis's bodycam shows him pulling Mr. Maahs to his feet, while using both hands to continue to control him. (State's Exhibit 2, 1:01-1:18). As this occurs, Mr. Maahs does not resist; he is cooperative, and polite. Id.

Contrary to the State's claim that Officer Mathis merely conducts a limited pat-down frisk, the bodycam shows Officer Mathis proceeding to jam his hands inside Mr. Maahs's pockets and begin emptying the contents, which he puts on the water fountain. (State's Exhibit 2, 1:19-1:39). He maintains control of Mr. Maahs throughout this time, and Mr. Maahs continues to offer no resistance. Id.

Officer Mathis's tone as he questions Mr. Maahs is aggressive. When Mr. Maahs asks him why he is being arrested, Officer Mathis becomes increasingly agitated, advising Mr. Maahs that he is only being detained for investigation and that he has already told him that twice. (State's Exhibit 1:53-2:25). Officer Mathis continuously keeps his hand on Mr. Maahs, making him stand with his face to the

door and telling him to "stay right there." Id.. Officer Mathis does not respond to Mr. Maahs's questions about why he is being held, other than to interrupt him and repeat that he is being detained for an investigation. Officer Mathis then removes Mr. Maahs's hat. (State's Exhibit 2; 2:15-2:33). After Mr. Maahs calmly states that he does not understand why he is being "harassed" and indicates he does not want to talk with the officer because of the treatment he has received and the fact that it is "scary," Officer Mathis says, "Good, let's go outside" and begins marching Mr. Maahs through the credit union, keeping a constant grip on his arm. (State's Exhibit 2, 2:50-3:30).

When Mr. Maahs asks where he is being taken, Officer Mathis responds in an exasperated tone, "You're going outside, that's what I just told you." (State's Exhibit 2, 2:53-3:31). Officer Mathis then tells Mr. Maahs again that he is being detained for an investigation based on the report that "there is some suspicious activity going on" and the credit union employees called the police because he and Mr. Korona were "acting a little strange" and "doing some weird things." (State's Exhibit 2, 3:32-3:50).

Officer Mathis then puts Mr. Maahs in the backseat of the patrol vehicle while his hands are still cuffed behind his back, and as Mr. Maahs struggles to fit in the cramped space. When Mr. Maahs asks again if he is under arrest, Officer Mathis becomes agitated and yells at him. He then shuts the patrol vehicle door, cutting Mr. Maahs off while he is talking and locking him in the backseat. (State's Exhibit 2, 3:49-4:20). Later, Officer Mathis returns and contacts Mr. Maahs while he is in the backseat, instructing him in a raised voice that he is not listening and that he needs

to do what the police tell him without asking three times. (State's Exhibit 2, 6:02-6:37). Again, Mr. Maahs's tone is quiet and polite. At 10:30-10:35 on State's Exhibit 2, Officer Mathis responds, "Nope," when Mr. Maahs asks for water, telling him to take a seat and "you're fine." Mr. Maahs continues to be confined in the backseat of the patrol vehicle.

Officer Mathis's demeanor and physical handling of Mr. Maahs further counter the State's position the manner of Mr. Maahs's detention was reasonable. (Respondent's brief, p. 17). These circumstances would have conveyed to a reasonable person that this was more than just a brief investigation following which he would be free to leave. Officer Mathis's bellicose tone and continuous physical control of Mr. Maahs, followed by him requiring Mr. Maahs to squeeze into the backseat of the patrol vehicle, and then curtly refusing to give him water further establish this was a de facto arrest. Cf. United States v. Zapata, 18 F.3d 971, 975 (1st Cir. 1994) (demeanor and deportment of investigating officers and polite tenor of their remarks weighed against finding a de facto arrest).

The State argues that Mr. Maahs's prolonged seizure in the back of the patrol vehicle after he was apprehended with these forcible measures was reasonable. (Respondent's brief, p. 16). However, as addressed in the opening brief and reflected by the bodycam footage, Mr. Maahs was held in the patrol vehicle for considerable time after being removed from the scene of his apprehension inside the credit union. (Appellant's opening brief, p. 35).

The State has the burden "to demonstrate that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure." State v. Pannell, 127 Idaho 420, 423, 901 P.2d 1321 1324 (1995). Considering the preceding totality of circumstances involved in his seizure, Officer Mathis's movement of Mr. Maahs from the scene and the length of his detention further supports the conclusion that the officers exceeded the bounds of an investigatory detention.

E. The State Improperly Relies on Subjective Hunches Instead of Sufficient Articulable Facts Establishing Reasonable Suspicion

The State argues that Mr. Maahs was not seized immediately once he emerged from the credit union bathroom because he did not yield to Officer Mathis's verbal command to come over to him. (Respondent's brief, p. 15). As reflected above, the finding that his backpedaling reflected his attempt to flee was clearly erroneous. Corporal Reimers's bodycam clearly shows that Mr. Maahs's flight was provoked by Officer Mathis's sudden and swift advance, rather than in response to first viewing the rear hallway door and then consciously moving towards it. (State's Exhibit 1, 3:18-3:20). Furthermore, even if the Court credits the district court's factual finding, this Court must still determine its significance in the reasonable suspicion analysis.

The State also maintains that the tellers' nervousness, which was based solely on their vague indications that the men had made a large deposit and changed clothes in the parking lot, (8/27/18 Tr., p. 35, L. 6—p. 36, L. 2; 6/3/19 Tr., p. 108, L. 7-10), should be accorded "particular importance" and "weight" in establishing reasonable

suspicion that Mr. Maahs was engaged in criminal activity. (Respondent's brief, p. 25). The State's position rejects the bedrock principle established decades ago in Terry v. Ohio, 392 U.S. 1 (1968), that subjective hunches unsupported with specific articulable facts do not constitute reasonable suspicion of criminal activity. See State v. Bonner, ___ Idaho ___, 467 P.3d 452, 458 (2020) (quoting Terry v. Ohio 392 U.S. 1, 27 (1967)). Instead, the State affords the tellers' inchoate suspicions special probative value due to their training and experience. (Respondent's brief, p. 25).

The State unsurprisingly offers no authority from any court supporting its novel claim that while the subjective hunches of law enforcement officers do not establish reasonable suspicion, the gut instincts of credit union tellers can. The State offers no explanation for this, when police officers generally possess at least as much, if not more, training and experience in spotting suspicious activity.

Importantly, the district court contradicts itself regarding the significance of the tellers' nervousness in its inconsistent opinions resolving the motions to suppress filed by Mr. Maahs and Kendall Wellard. In its opinion granting Wellard's suppression motion, the district court did not attribute the tellers' concerns any weight; rather, it evaluated the articulable facts on which the tellers' nervousness was based, concluding they did not support the officers' reasonable suspicion: "The making of a large deposit at a credit union and changing clothes is pretty thin for reasonable suspicion of any crime." Decision and Order Re: Motion to Suppress at 6, State v. Wellard, CR01-18-19966.

However, in its order denying Mr. Maahs's motion to suppress, the district court reached precisely the opposite conclusion, finding the tellers' nervousness, and the facts forming the basis for it, supported Corporal Reimers' reasonable suspicion: "Cpl. Reimers *gave justifiable weight to [the tellers'] concerns* that the circumstances they described in the call represented a potential risk of a robbery because of the three men conferring with each other and one of them changing clothes in the parking lot and the large deposit." (R., p. 237) (emphasis added).[4]

Furthermore, in the opinion granting Wellard's motion, the district court made findings recognizing the ambiguity in the initial report from the tellers: "There was never any confirmation prior to his arrest that [Wellard] was the individual who made the large deposit or changed clothes nor even was there any amplification of what 'changing clothes' meant to the teller (putting on a different tee shirt? A baseball cap?).'" At the time the officers apprehended Mr. Maahs, those questions likewise remained unanswered. (6/3/19 Tr., p. 118, Ls. 22-25, p. 121, L.8—p. 122, L. 16) (Corporal Reimers's testimony that he did not know which of the three men made the large deposit or if there had been one or two deposits).

The State insists that despite the officers' repeated "general expressions of their concerns that something was amiss," their reasonable suspicion of Mr. Maahs's criminal activity was grounded in "objective facts and circumstances." (Respondent's

[4] At the May 9, 2018, preliminary hearing involving Mr. Maahs and Wellard, similar testimony about the special training that tellers have in "recognizing suspicious activity" was presented. (R., p. 148, p. 11, Ls. 2-4 (transcript of preliminary hearing, attached as Exhibit A to Mr. Maahs's motion to suppress)).

brief, p. 28). Under Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968), law enforcement officers cannot stop individuals for behavior that is purely ambiguous; rather, under the United States Constitution, they "'must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" such an intrusion. State v. Bonner, ___ Idaho ___, 467 P3d 452, 462 (2020) (quoting, Terry, 392 U.S. at 20, 88 S.Ct. 1868). "[The] demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence." Terry, 392 U.S. at 21 n.18, 88 S.Ct. 1868.

In this case, the State has failed to meet its burden to show that the officers had specific, articulable facts supporting an objective reasonable suspicion that Mr. Maahs and Korona were engaged in criminal activity, as opposed to having only an inchoate and unparticularized suspicion or hunch. Their lack of such objective grounds for such a conclusion is reflected in the amorphous words and phrases used by the officers to describe the situation, including: "hinky," (6/3/19 Tr, p. 123, Ls. 1-6), "I don't know what we have exactly," (6/3/19 Tr., p. 123, L. 24—p. 124, L. 2), "I suspected suspicious activity," (6/3/19 Tr., p. 169, Ls. 3-6), "They could be, or they couldn't be [engaged in criminal activity]," (6/3/19 Tr., p. 163, Ls. 19-22), "There is some suspicious activity going on," and the police were called because Mr. Maahs and Mr. Korona were "acting a little strange" and "doing some weird things." (State's Exhibit 2, 3:32-3:50). These vague descriptions, the officers' lack of clarity regarding the particular crimes suspected, their reliance on the tellers' unspecified nervousness, as well as the district court's unspecific observations that the officers were

"confronting a suspicious but uncertain situation," (R., p. 233), involving "concern about the suspiciousness of the circumstances," (R., p. 239), and an "unknown level of risk," (R., p. 238), and of "unknown" scope, (R., p., 234), presenting a "threatening" situation (R., p. 227) – all powerfully reveal the officers' lack of a particularized and objective basis to believe that the defendants had engaged in criminal conduct. See United States v. Jones, 438 F.Supp.3d 1039, 1057 (N.D.Cal. 2020) (statements made by officers that there was something "a little weird" going on and that they were trying to "figure out what's going on" provided "compelling evidence" that they did not have a particularized and objective basis to believe the defendants had engaged in criminal conduct).

Conclusion

The State has failed to meet its burden of demonstrating specific articulable facts supporting the officers' objective reasonable suspicion of criminal activity. Thus, the officers lacked grounds to conduct even a limited investigative detention. Even if they had, by employing the most intrusive measures to apprehend and restrain Mr. Maahs, the officers exceeded the bounds of an investigative detention and transformed this encounter into a de facto arrest unsupported by probable cause. Because the officers' actions violated Mr. Maahs's Fourth Amendment rights under the United States Constitution and Article 1, § 17 of the Idaho Constitution, the district court should have granted Mr. Maahs's motion to suppress all evidence that flowed from his unlawful seizure.

Accordingly, Mr. Maahs respectfully requests this Court to reverse the district court's denial of his motion to suppress and remand this case back to the district court to allow him to withdraw his guilty plea and with instructions to the district court to grant the motion to suppress and conduct further proceedings consistent with such ruling.

Dated: April 12, 2021 Respectfully submitted,

/s/Thomas Monaghan
Thomas Monaghan
Thomas Monaghan Law
Attorney for Appellant
PATRICK TYLER MAAHS

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that on this 12th day of April 2021, I caused a true and correct copy of the foregoing legal document to be served upon the individual named below in the manner so indicated:

State of Idaho Office of the Attorney General 700 W. Jefferson Street, Suite 210 P.O. Box 83720 Boise, Idaho 83720-0010	☑ EFILE AND SERVE

/s/Thomas Monaghan
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PATRICK TYLER MAAHS