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

STATE OF IDAHO,	)	
	)	**No. 48159-2020**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR01-2019-46613**
	)	
WILLIAM JOHN BECKLUND,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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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STATEMENT OF THE CASE

Nature Of The Case

William John Becklund appeals the denial of his motion to suppress.

Statement Of Facts And Course Of Proceedings

On November 4, 2019, around 11:50 a.m., Officer Andrew Johnson of the Boise Police was patrolling the area of Boise around Corpus Christi House and the Interfaith Sanctuary. (R., p. 61; 03/16/20 Tr., p. 8, Ls. 1-7.) Officer Johnson observed Becklund and another individual known to him named Jeramiah Martinez, engaged in what appeared to him to be a hand-to-hand drug transaction. (03/16/20 Tr., p. 19, L. 14 – p. 21, L. 17.) His suspicion arose from the two individuals' close proximity, furtive movements, and body language; the clear case in Becklund's hand; the location known for high incidence of drug use; and that Martinez was suspected of buying and selling drugs in the area. (See 03/16/20 Tr., p. 8, L. 18 – p. 9, L. 12; p. 13, Ls. 7-21; p. 19, L. 14 – p. 21, L. 17; p. 27, Ls. 1-7; p. 69, Ls. 5-15.)

Officer Johnson approached Becklund and said something to him, likely to confront him about what he had seen, although he could not remember at the time of the suppression hearing what words he had used. (See 03/16/20 Tr., p. 25, L. 25 – p. 26, L. 24.) Becklund shook out the contents of a black bag, and several syringes fell out, raising further suspicion. (03/16/20 Tr., p. 27, L. 8 – p. 28, L. 16.) At that point, Officer Johnson told him to sit down three times. (Exhibit 1, 0:31-0:37.[1]) Becklund sat down on the ground. (Exhibit 1, 0:38-0:44.) Officer Johnson then questioned Becklund about drug possession and dealing for about five minutes before he handcuffed him and informed him he was under arrest. (03/16/20 Tr., p. 64, L. 10 – p. 68, L. 6;

[1] The state refers to Officer Johnson's body camera footage as Exhibit 1.

Exhibit 1, 0:45-5:33.) During this approximately five-minute period, Officer Johnson asked if it was "okay to look" in the clear case, and Becklund said, "Go for it." (Exhibit 1, 2:03-2:05.) Inside the case Officer Johnson found a glass pipe that looked like the kind used for smoking methamphetamine. (12/05/19 Tr., p. 6, Ls. 15-24.) Throughout this encounter, Officer Johnson did not advise Becklund of his Miranda rights. (03/16/20 Tr., p. 68, Ls. 3-11.) When Officer Johnson searched Becklund's person, he found methamphetamine. (12/05/19 Tr., p. 6, L. 25 – p. 7, L. 6.)

On December 9, 2019, the state charged Becklund with one count of felony possession of a controlled substance in violation of I.C. § 37-2732(c) and one count of misdemeanor possession of drug paraphernalia in violation of I.C. § 37-2734A. (R., pp. 24-25.) The state subsequently filed a second part to the information, identifying two prior convictions for felony possession of a controlled substance and seeking that Becklund be treated as a persistent violator. (R., pp. 30-31.)

Becklund moved to suppress all evidence obtained from the encounter between Becklund and Officer Johnson, including Becklund's statements. (See R., p. 32.) In his motion, Becklund asserted that he was detained without reasonable suspicion and that his statements were obtained in violation of his Miranda rights. (See R., p. 34.) At the hearing on the motion to suppress, the state called Officer Johnson to testify (03/16/20 Tr., p. 6, Ls. 14-15), the parties stipulated to admission of the officer's body camera footage (03/16/20 Tr., p. 34, L. 11 – p. 35, L. 7), and the court took judicial notice of the preliminary hearing transcript (03/16/20 Tr., p. 82, Ls. 16-18).

The court denied the motion to suppress in a memorandum order. (R., pp. 60-79.) In the court's order, it made a number of factual findings regarding Officer Johnson and his initiation of the encounter with Becklund, including the following:

- "Officer Johnson is a 20-year employee of the Boise Police Department with an advanced POST certificate." (R., p. 61.)
- "Corporal Johnson has served as a bicycle patrol officer in Boise for the past 15 years." (Id.)
- "The alley where the encounter occurred is in a neighborhood that Officer Johnson has patrolled several times per week during his 15 years of service as a bicycle patrol officer." (Id.)
- "The area around Corpus Christi has been identified by Boise Police as the single highest law enforcement call-generating area within the City of Boise, particularly with respect to complaints of illicit drug use." (Id.)
- "Over his many years of patrolling this area, Officer Johnson has personally received numerous calls or complaints regarding illicit drug use in this area." (R., p. 62.)
- "During his years of law enforcement service, Officer Johnson has on several occasions observed what he described as hand to hand illicit drug exchanges." (Id.)
- On November 4, 2019, Officer Johnson observed "Defendant and a person known to him as Jeramiah Martinez standing close together, facing each other with their hands raised, engaging in what he described as furtive movements." (Id.)
- "Officer Johnson further described these persons' body positions as being in 'close proximity,' closer than what he considered a normal conversational distance with tighter body language." (Id.)

- "He noted the observed persons held their hands higher than normal for persons engaged in a conversation. He also opined that their relative body positioning was guarded." (Id.)
- He "observed a clear or white sunglass type case in the Defendant's hand. From his training and experience, his observation of the body language and movements of the persons engaged in this contact, Officer Johnson suspected the parties were engaged in a hand to hand illicit drug transaction." (Id.)
- Officer Johnson "knew he said something to both parties as he approached them but did not recall exactly what he said." (Id.)
- "As he initially approached the Defendant, Officer Johnson did not observe any specific controlled substances or drug paraphernalia." (R., p. 63.)
- "[A]pproximately 10-seconds after Officer Johnson reached the Defendant, the Defendant held up the black bag he was carrying, turned it over and shook out several syringes that fell to the ground." (R., p. 64.)
- About five to seven seconds later, Officer Johnson "appeared to dismount from his bicycle[.]" (Id.)
- About the same time, "[t]he defendant started turning away from the officer walking toward a fence behind him." (Id.)
- Four seconds later, when the audio on the body camera begins,[2] "the officer directed the Defendant to sit down three times." (Id.)

[2] Officer Johnson's body camera footage does not capture Officer Johnson's initial observations of the interaction between Becklund and Martinez. (See R., p. 63.) Officer Johnson activated his body camera when he reached Becklund. (Id.) Once activated, the camera preserves "approximately the 30 seconds of video without sound that preceded its activation." (Id.)

- "The Defendant complied by sitting with his back against the fence on the side of the alley." (Id.)

The district court also made detailed factual findings relating to the approximately four-minute exchange between Officer Johnson and Becklund as Becklund sat against the fence. (See R., pp. 64-67.) The court found the following, with respect to the initial discussion between Officer Johnson and Becklund:

> At 45-47 seconds into the video, the Officer directed the Defendant to place the glasses case he was holding on the ground in front of him. At 54-55 seconds, Officer Johnson asked the Defendant: 'How much you got in there?' referring to the case(s). The Defendant responded: 'That is what I have in there.' Officer Johnson replied: 'Just a little bit?' The Defendant over the next several seconds denied he had anything, then stated he found these 'stupid little things in the porta-potties' referencing the syringes. Officer Johnson could be seen putting on protective gloves over the next several seconds. At 1:12 Officer Johnson told the Defendant that the Defendant did not find the syringes in the porta-potty. Defendant responded by insisting that he had.

(R., p. 64.) The district court made further factual findings about Officer Johnson's and Becklund's interaction relating to whether Becklund had drugs or was dealing drugs:

> At approximately 1:21 Officer Johnson stated to the Defendant that: 'You were just over there giving him something.' At 1:23 Officer Johnson stated: 'You were dealing him something.' At 1:25 Defendant responded that he 'Didn't really – (inaudible)- giving him my phone number, bro.' At 1:29 Officer Johnson said 'No you weren't, you were pulling something out of here' referring to the case. At 1:32-1:33 Officer Johnson stated, 'So be straight up with me.' Defendant responded that he was trying to be. From 1:37 through 1:42 Officer Johnson picked up the syringes the Defendant had dumped on the ground and asked: 'When I test these, tell me what I am going to find.' The Defendant responded with 'I am guessing probably meth.' At approximately 1:45 Officer Johnson stated: 'So you are in possession of methamphetamine.' The Defendant responded: 'Oh my God.' At 1:50-1:51 Officer Johnson, in reference to the glasses case, asked: 'How much you got in here?' Defendant responded that there was 'nothing.' Officer Johnson asked: 'You sure?' The Defendant responded: 'Yeah[.]' At 2:03 Officer Johnson asked, 'Okay to look?' in reference to the glasses case. The Defendant answered, 'Go for it.' The Officer looked through the glasses case. At 2:16 Officer Johnson asked the defendant if he had any more needles in his (unintelligible). The Defendant shook his head no.

(R., pp. 64-65.) The court found that there were further communications between Officer Johnson and Becklund about his identification, a knife he had on his person, and whether Becklund could light a cigarette:

> At 2:31-2:32 Officer Johnson asked the Defendant if he had his identification on him. The Defendant indicated that he did have his identification. Officer Johnson asked the Defendant about the location of his identification. The Defendant advised Officer Johnson that it was in his wallet. At 2:40-2:41 Officer Johnson asked the Defendant to produce his identification. Officer Johnson then took possession of the Defendant's identification and read his name out loud. At 3:06 Officer Johnson commented to the Defendant that he saw that he had a knife on his right front pocket. The Defendant acknowledged that he had what he characterized as a 'little pocketknife' and offered to put it on the ground. At 3:13-3:14 Officer Johnson followed up by instructing the defendant to set the knife over next to him and not to get up off the ground. He further instructed him where to place the knife. During these comments the defendant asked Officer Johnson if he could light a cigarette and was told no: 'No cigarettes just yet.'

(R., pp. 65-66.) The court found that the conversation regarding drug possession continued:

> At 3:26-3:27 into the video, Officer Johnson could be seen laying the Defendant's identification on the ground while he stated: 'I am going to hang on to that for just a minute.' At 3:30-3:32 Officer Johnson asked the Defendant: 'Sir, do you have any more methamphetamine on you?' The Defendant responded: 'No.' Officer Johnson followed up: 'Are you certain of that?' At 3:37 the Defendant responded: 'Unless someone stuck it in my pocket while I was asleep (unintelligible) in there.' Officer Johnson inquired: 'Could that have happened?' The Defendant answered: 'I wouldn't be surprised. There are people in there that hate me.' Officer Johnson then asked: 'So it is possible (unintelligible) that you have more methamphetamine on your person?' The Defendant responded: 'Yeah, I guess it could be . . . Like I said there are people in there that hate me.' The defendant explained that he had been attacked by a guy three or more times over a period of two or three days.

(R., p. 66.) A few minutes into the encounter, Officer Johnson restrained him in handcuffs and advised he was under arrest:

> At 4:09 Officer Johnson asked the Defendant to stand up and remove his red jacket by dropping it to the ground. Officer Johnson then directed the Defendant to turn around and hold his hands up behind his back. (4:31). Officer Johnson then began [the] process of handcuffing the Defendant. While he was handcuffing the Defendant, Officer Johnson continued his conversation with the Defendant. Officer

> Johnson asked the Defendant how many more needles he had on his person (4:42-4:43). The Defendant answered that he was not aware of any. Officer Johnson then commented that the Defendant seemed to collect needles by his own admission (4:49-4:50). The Defendant acknowledged he did and suggested that he turns them in. Over the next few seconds, the Officer and the Defendant continued their discussion about the syringes and the Defendant's again acknowledged that the syringes may contain methamphetamine (5:08-5:10). Officer Johnson stated that the Defendant appeared to have a methamphetamine pipe and cleaning tools on him (5:13-5:17). The Defendant responded by saying: 'What? Where?' (5:19). From 5:20 to 5:24, Officer Johnson reminded the Defendant to spread his legs several times. At approximately 5:22, Officer Johnson advised the Defendant that the meth pipe and cleaning tools were located in the glasses case. The first handcuff was placed on the defendant at approximately 4:49. The second handcuff was placed on him at approximately 5:03. Officer Johnson finished securing the cuffs with a hand-held tool at 5:15. At 5:33 into the video, Officer Johnson orally advised the Defendant that he was under arrest.

(R., pp. 66-67.)

On April 27, 2020, Becklund pled guilty to the count of felony possession of methamphetamine, reserving the right to appeal the court's denial of his motion to suppress. (R., p. 80.)

Becklund timely appealed. (See R., pp. 98, 104.)

ISSUE

Becklund states the issue on appeal as follows:

Did the district court err in denying Mr. Becklund's motion to suppress?

(Appellant's brief, p. 6.)

The state rephrases the issue on appeal as follows:

Did the district court appropriately deny Becklund's motion to suppress?

ARGUMENT

The District Court Properly Denied Becklund's Motion To Suppress

A. Introduction

Officer Johnson had reasonable suspicion to detain Becklund, as he did, to investigate a potential drug offense. Based on twenty years' experience and training, Officer Johnson observed what he believed to be a hand-to-hand drug transaction between Becklund and an individual known to him who was suspected of past buying and selling of illicit drugs. And Officer Johnson also saw Becklund shake several syringes out of his bag.

Becklund's Miranda rights were not violated because he was not in custody while being questioned. Officer Johnson did not handcuff Becklund, the encounter took place in a public place with other people around, the questioning lasted less than five minutes, and only one other officer was present, who did not participate in the questioning.

This Court should affirm the district court's denial of Becklund's motion to suppress.

B. Standard Of Review

When reviewing a district court's denial of a motion to suppress, the appellate court accepts the trial court's findings of fact unless clearly erroneous and freely reviews the district court's "application of constitutional principles in light of the facts found." State v. Pylican, 167 Idaho 745, 750, 477 P.3d 180, 185 (2020) (internal quotation marks omitted).

C. The District Court Correctly Denied The Motion To Suppress With Respect To The Alleged Fourth Amendment Violation Because Officer Johnson Had Reasonable Suspicion To Detain Becklund

An investigative detention is permissible if an officer has "reasonable suspicion to believe that criminal activity may be afoot." United States v. Arvizu, 534 U.S. 266, 273 (2002) (internal

quotation marks and internal citations omitted). "An investigatory stop does not deal with hard certainties, but with probabilities." State v. Munoz, 149 Idaho 121, 127, 233 P.3d 52, 58 (2010) (internal quotation marks omitted). The reasonable suspicion standard is an objective test that is satisfied if law enforcement can articulate specific facts which, along with the reasonable inferences from those facts, justify the suspicion that the person detained is or has been involved in criminal activity. See State v. Nickerson, 132 Idaho 406, 408, 973 P.2d 758, 760 (Ct. App. 1999). "The justification for an investigative detention is evaluated upon the totality of the circumstances then known to the officer." State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003).

"The standard of 'reasonable articulable suspicion' is not a particularly high or onerous standard to meet." State v. Danney, 153 Idaho 405, 410, 283 P.3d 722, 727 (2012). "Although a mere 'hunch' does not create reasonable suspicion, the level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause." Navarette v. California, 572 U.S. 393, 397 (2014) (internal quotation marks and citations omitted). Whether reasonable suspicion exists is evaluated in light of the officer's experience and training. Danney, 153 Idaho at 410, 283 P.3d at 727.

For instance, in State v. Manthei, the court held that an officer had reasonable suspicion when he observed a syringe in defendant's pocket and testified that he believed that the syringe was "possibly dope related" and potentially drug paraphernalia. 130 Idaho 237, 239, 939 P.2d 556, 558 (1997), overruled in part on other grounds by State v. Maland, 140 Idaho 817, 103 P.3d 430 (2004).[3] And in State v. Holcomb, the court ruled that law enforcement had reasonable

[3] Maland overrules Manthei's holding that an officer may enter a suspect's home to continue a Terry stop, without the suspect's consent. See Maland, 140 Idaho at 823, 103 P.3d at 436. Maland

suspicion to believe that the defendant was using drugs. 128 Idaho 296, 302, 912 P.2d 664, 670 (Ct. App. 1995). Law enforcement observed the defendant and another individual in a truck, "apparently doing something with their hands below the level of the dashboard," which in law enforcement's experience was "consistent with inhalation of drugs, although [the officer] could not directly observe any drug use." Id. at 297, 912 P.2d at 666. Law enforcement observed defendant enter the tavern, return to the truck with another individual, and again do something "below the dashboard." Id. When officers approached defendant, he "appeared to be quickly trying to put something in his pocket." Id.

Here, at the time the investigatory detention began, Officer Johnson had reasonable suspicion that Becklund had a controlled substance or paraphernalia and/or had just been engaged an illegal drug transaction. Officer Johnson testified that he had observed suspicious body movements: Becklund standing facing another individual, closer than what he considered normal conversational distance with tighter body language, engaged in furtive movements, hands held higher than normal for conversation, with "guarded" body positioning. (R., p. 62; 03/16/20 Tr., p. 19, L. 14 – p. 21, L. 12.) While this positioning and movement is not conclusive of a hand-to-hand drug transfer, the reasonable suspicion standard does not deal with "hard certainties, but with probabilities." Munoz, 149 Idaho at 127, 233 P.3d at 58; see also Holcomb, 128 Idaho at 297, 302, 912 P.2d at 666, 670 (holding reasonable suspicion existed for investigatory detention arising from furtive movements by defendant consistent with inhaling drugs, in a location known for drug use). Officer Johnson's suspicion about the body language indicative of a hand-to-hand drug transfer was based on his 20 years of experience and training. (03/16/20 Tr., p. 20, Ls. 13-24; R., p. 61;

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does not address Manthei's holding that reasonable suspicion existed to initiate the Terry stop. See id.

see Danney, 153 Idaho at 410, 283 P.3d at 727 (whether reasonable suspicion exists is evaluated in light of the officer's experience and training).) Further, Officer Johnson recognized the individual with whom Becklund was interacting, Martinez, whom he had questioned several times in the past about suspected buying and selling of drugs in the area. (03/16/20 Tr., p. 69, Ls. 5-15.) Officer Johnson also testified that the area in which he encountered Becklund has been identified by the Boise Police Department as the single highest law enforcement call-generating area within the City of Boise, with respect to complaints of illicit drug use (R., p. 61), heightening suspicion, see Holcomb, 128 Idaho at 297, 302, 912 P.2d at 666, 670 (location known for drug use contributed to reasonable suspicion). When Officer Johnson approached Becklund, he "walked away at a quicker pace than a normal walking pace." (R., p. 70; 03/16/20 Tr., p. 56, Ls. 14-17.) Finally, Becklund shook several syringes from his bag in front of Officer Johnson. (R., p. 64; 03/16/20 Tr., p. 27, L. 8 – p. 28, L. 16.) The syringes indicated potential possession of illicit substances or paraphernalia. See Manthei, 130 Idaho at 239, 939 P.2d at 558 (reasonable suspicion existed when officer observed a syringe in defendant's pocket and testified he believed the syringe was related to illegal drug use). The district court was correct to hold that Officer Johnson had reasonable suspicion for an investigative detention.

Becklund disputes the conclusion that should be reached from the evidence. He argues that there was nothing suspicious about the way that Becklund was positioned or moving while interacting with Martinez. (Appellant's brief, pp. 9-10.) But this argument ignores Officer Johnson's testimony about why the way they were interacting was suspicious—that they were standing closer and with hands raised higher, than is usual for normal conversation, and that their body language was tight and guarded—which was consistent with Officer Johnson's experience witnessing hand-to-hand drug transactions. (R., p. 62; 03/16/20 Tr., p. 19, L. 14 – p. 21, L. 12.)

Becklund also relies on State v. Henage, 143 Idaho 655, 152 P.3d 16 (2007), for the proposition that Officer Johnson needed to articulate details of the furtive movements in order for them to count toward reasonable suspicion. (See Appellant's brief, p. 10.) But Henage does not stand for that proposition. In Henage, the court concluded that it was not objectively reasonable for the officer to conduct a safety pat down of the defendant, when the officer did not testify that the defendant had made any furtive movements, reached for his pocket or other area where a weapon might be retrieved, or done anything else that would cause an officer to reasonably conclude that the defendant posed a risk. See id. at 661-62, 152 P.3d at 22-23. In other words, the officer could not reasonably conclude the defendant posed a risk when the officer did not testify as to any movements the defendant made to raise such a suspicion, which was not the case here.

Becklund also argues that his shaking syringes out of his bag carries little weight, stating, "[W]e cannot draw much significance from this act as we do not know what precipitated it." (Appellant's brief, p. 11.) Case law and common sense say otherwise. Shaking several syringes out of a bag indicates potential intravenous drug use, possession of paraphernalia, or possession or distribution of illegal drugs. Carrying syringes may not be conclusive of drug use, but it is certainly suspicious. See Manthei, 130 Idaho at 239, 939 P.2d at 558.

Becklund's arguments regarding carrying a clear case, walking away quickly, being in an area with high incidence of drug use, and interacting with a suspected drug buyer/seller (Appellant's brief, pp. 8-10), should also be rejected. It is not the state's position that each of these facts independently constitutes reasonable suspicion, but rather that the totality of the circumstances demonstrated reasonable suspicion.

D. The District Court Appropriately Denied The Motion To Suppress With Respect To The Alleged *Miranda* Violation, As Becklund Was Not In Custody[4]

"[A]n individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation." Miranda v. Arizona, 384 U.S. 436, 471 (1966). Miranda warnings, however, are only required when a suspect is "in custody." State v. James, 148 Idaho 574, 576, 225 P.3d 1169, 1171 (2010). A suspect is considered to be in custody if there is a formal arrest or there is restraint of the suspect's "'freedom of movement to the degree associated with a formal arrest.'" Id. (quoting California v. Beheler, 463 U.S. 1121, 1125 (1983)). The defendant bears the burden to establish custody. State v. Munoz, 149 Idaho 121, 129 233 P.3d 52, 60 (2010).

The court assesses whether a suspect is in custody for Miranda purposes by evaluating the totality of the circumstances surrounding the interrogation. Beheler, 463 U.S. at 1125. The court evaluates the following factors to determine whether a defendant was in custody: (1) "where the questioning occurred," (2) "the duration of the interrogation," (3) "whether the defendant is informed that the detention may not be temporary," (4) "the intensiveness of the questions and requests of the police officer." State v. Godwin, 164 Idaho 903, 915, 436 P.3d 1252, 1264 (2019) (internal quotation marks omitted). The determination of custody is not a subjective test; rather, the court inquires "how a reasonable person in the suspect's position would have understood his or her situation." State v. Beck, 157 Idaho 402, 408, 336 P.3d 809, 815 (Ct. App. 2014).

A suspect is not in custody for Miranda purposes merely because some coercion occurred. See Oregon v. Mathiason, 429 U.S. 492, 495 (1977). Indeed, "[a]ny interview of one suspected

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[4] The parties below stipulated that the state would not seek to introduce into evidence any of the statements Becklund made after he was handcuffed. (R., pp. 77-78.) Accordingly, on appeal, the state only analyzes the Miranda issue with respect to the time period before Becklund was handcuffed.

of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime." Id.

Significantly, "persons temporarily detained by law enforcement are not in custody for purposes of Miranda." State v. Andersen, 164 Idaho 309, 313, 429 P.3d 850, 854 (2018); see also State v. Silver, 155 Idaho 29, 32, 304 P.3d 304, 307 (Ct. App. 2013) (investigative detentions under Terry v. Ohio do not implicate Miranda, "even though the detained persons are not free to leave during the stop") (citing Berkemer v. McCarty, 468 U.S. 420, 440 (1984)); State v. Pilik, 129 Idaho 50, 52, 921 P.2d 750, 752 (Ct. App. 1996) (holding that defendant was not in custody when detained to undergo field sobriety test). The correct inquiry is "whether a reasonable person would believe he or she was in police custody to a degree associated with formal arrest, not whether the person would believe he or she was not free to leave." State v. Silva, 134 Idaho 848, 854, 11 P.3d 44, 50 (Ct. App. 2000).

For instance, in State v. Andersen, the court held that the defendant was not in custody even though officers twice "'forcefully instructed her to 'stay seated'" when she began to rise from the armchair where she was sitting, and during questioning the officers accused her of lying more than once. 164 Idaho at 311, 313-14, 429 P.3d at 852, 854-55. One officer interrupted the defendant's answers and became aggressive and sarcastic. Id. at 311, 429 P.3d at 852. There were six law enforcement officers on the scene, but only one or two questioned the defendant at a time. Id. at 310-11, 429 P.3d at 851-52. The defendant was not handcuffed during the questioning. Id. at 311, 429 P.3d at 852.

In State v. Beck, the court held that the defendant was not in custody although the officer woke defendant up and ordered him to come out of his tent at a public camp site and sit in a

camping chair, then repeatedly asked him if a beer can, apparently used to smoke marijuana, was his. 157 Idaho at 404, 408, 336 P.3d at 811, 815.

And in State v. Ybarra, law enforcement stopped the defendant after 3:00 a.m. with four police cars present, and officers drew their guns, ordered the defendant out of the car, and frisked him before questioning him. 102 Idaho 573, 574, 634 P.2d 435, 436 (1981). The court held that the defendant was not in custody because once the officers determined that the defendant was not armed, all but one officer "receded from the scene," the officer asked "basic investigatory questions," and the questioning lasted only "a few minutes." Id. at 574, 576-77, 634 P.2d at 436, 438-39.

Here, Becklund was not in custody. In fact, all the factors weigh against Becklund being in custody. Becklund was not handcuffed or otherwise physically restrained. (See Exhibit 1, 0:00-4:49.) This fact weighs against custody. See Andersen, 164 Idaho at 311, 429 P.3d at 852 (holding defendant not in custody when, among other things, defendant was not handcuffed). Rather, Officer Johnson instructed Becklund to sit down three times, and Becklund complied, while Officer Johnson secured the scene by picking up the syringes Becklund had shaken out of his bag. (Exhibit 1, 0:20-1:12; R., p. 75; see also Andersen, 164 Idaho at 313-14, 429 P.3d at 854-55 (being forcefully told to stay seated did not render a suspect in custody); Beck, 157 Idaho at 408, 336 P.3d at 815 (being ordered out of a camping tent and into a chair did not mean defendant was in custody).) Officer Johnson questioned Becklund for less than five minutes in a public place in broad daylight. (See Exhibit 1, 0:00-4:49; R., pp. 64-67, 76; Beck, 157 Idaho at 408, 336 P.3d at 815 (questioning in public place weighed against defendant being in custody); Ybarra, 102 Idaho at 577, 634 P.2d at 439 (brevity of the questioning weighed against defendant being in custody).) Becklund was not informed that his detention was more than temporary. (See Exhibit 1, 0:00-

4:49.) And Officer Johnson's manner of questioning was "firm but not particularly abrasive or intimidating," and only one other officer was present for part of the time, and she did not ask any questions. (R., p. 75; compare Exhibit 1, 0:00-4:49, with Andersen, 164 Idaho at 311, 429 P.3d at 852 (defendant not in custody despite officers repeating questions and accusing defendant of lying).) The district court correctly held that Becklund was not in custody.

Becklund argues that a reasonable person would have felt that he "was subjected to coercive questioning that was going to end, one way or another, in his arrest." (Appellant's brief, p. 14.) He bases his argument on Officer Johnson "not accept[ing] Mr. Becklund's denials" and not stopping the questioning. (Appellant's brief, p. 13.) That Officer Johnson continued to ask questions for a few minutes, even about the same subjects, does not transform an investigative detention into a custodial interrogation. See Mathiason, 429 U.S. at 495 ("Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime."); Andersen, 164 Idaho at 311, 313-14, 429 P.3d at 852, 854-55 (aggressive and sarcastic questioning coupled with accusing defendant of lying does not make investigatory detention custodial). Becklund cites no authority that this manner of asking questions makes the questioning custodial. Rather, Officer Johnson's style of questioning merely indicates that he did not believe Becklund's responses.

The situation here was a simple investigatory detention, not a custodial interrogation. The circumstances were even less coercive than those in Andersen, Beck, or Ybarra, where in each instance the court held that questioning was not custodial. This Court should affirm the district court's decision denying Becklund's motion to suppress.

CONCLUSION

The state respectfully requests that this Court affirm the district court's denial of Becklund's motion to suppress.

DATED this 13th day of August, 2021.

/s/ Jennifer Jensen
JENNIFER JENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of August, 2021, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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JJ/ah