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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO, )  
 ) No. 45351  
 Plaintiff-Respondent, )  
 ) Bingham County Case No.  
 v. ) CR-2016-3419  
 )  
 AUGUSTINE GARNICA PEREZ, JR., )  
 )  
 Defendant-Appellant. )  
 \_\_\_\_\_ )

\_\_\_\_\_  
**BRIEF OF RESPONDENT**  
\_\_\_\_\_

**APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF BINGHAM**

\_\_\_\_\_  
**HONORABLE DARREN B. SIMPSON**  
District Judge  
\_\_\_\_\_

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# TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE.....	1
Nature Of The Case .....	1
Statement Of The Facts And Course Of The Proceedings .....	1
ISSUE .....	2
ARGUMENT .....	3
Perez Has Failed To Show Error In The District Court’s Denial Of His Motion To Suppress .....	3
A.    Introduction.....	3
B.    Standard Of Review .....	4
C.    The District Court’s Factual Findings Support The Determination Of Reasonable Suspicion .....	4
CONCLUSION.....	9
CERTIFICATE OF SERVICE .....	9

## **TABLE OF AUTHORITIES**

<b><u>CASES</u></b>	<b><u>PAGE</u></b>
<u>Navarette v. California</u> , ___ U.S. ___, 134 S. Ct. 1683 (2014) .....	6
<u>State v. Danney</u> , 153 Idaho 405, 283 P.3d 722 (2012) .....	4
<u>State v. Morgan</u> , 154 Idaho 109, 294 P.3d 1121 (2013).....	4
<u>State v. Zapata-Reyes</u> , 144 Idaho 703, 169 P.3d 291 (Ct. App. 2007).....	6, 7, 8
<u>Terry v. Ohio</u> , 392 U.S. 1 (1968) .....	4
<u>United States v. Arvizu</u> , 534 U.S. 266 (2002) .....	4
<u>United States v. Cortez</u> , 449 U.S. 411 (1981).....	4
<u>United States v. Sokolow</u> , 490 U.S. 1 (1989) .....	4
 <b><u>STATUTES</u></b>	
I.C. § 49-1401(1).....	5, 6

## STATEMENT OF THE CASE

### Nature Of The Case

Augustine Garnica Perez, Jr., appeals from his conviction for felony DUI. On appeal he challenges the district court's ruling denying his motion to suppress.

### Statement Of The Facts And Course Of The Proceedings

The state charged Perez with felony DUI, with a persistent violator enhancement, and misdemeanor offenses of driving without a valid license and failure to provide proof of insurance. (R., pp. 82-86.) Perez filed a motion to suppress, claiming he was subject to a traffic stop without reasonable suspicion. (R., pp. 153, 171-72.) Concluding that the traffic stop was supported by reasonable suspicion of reckless driving based upon a citizen's report, the district court denied the motion. (R., p. 187; Tr., p. 22, L. 17 - p. 28, L. 22.)

Perez and the state entered a plea agreement whereby he pled guilty to felony DUI and the state dismissed the misdemeanors and the enhancement. (R., pp. 228-30, 234-42, 244-46.) Although not originally part of the agreement, at the plea hearing the parties stipulated the plea would be conditional and allow Perez to appeal the denial of his suppression motion. (Tr., p. 36, L. 3 - p. 38, L. 6.) Perez timely appealed from the entry of judgment. (R., pp. 248-50, 254-55.)

ISSUE

Perez states the issue on appeal as:

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

(Appellant's brief, p. 8.)

The state rephrases the issue as:

Has Perez failed to show error in the district court's denial of his motion to suppress because the traffic stop was supported by reasonable suspicion?

## ARGUMENT

### Perez Has Failed To Show Error In The District Court's Denial Of His Motion To Suppress

#### A. Introduction

In denying the motion to suppress, the district court found that an identified citizen, Ms. Edmo, called the police “and reported a reckless driver” who had “almost hit a vehicle” and “outlined the basis for a person driving a vehicle in a reckless manner.” (Tr., p. 22, Ls. 17-25.) Officer Henry pulled over the vehicle and made contact with the driver. (Tr., p. 22, Ls. 7-16; p. 23, Ls. 1-7.) Officer Henry “immediately noticed the smell of alcohol” when he contacted the driver, which “led to the defendant’s arrest.” (Tr., p. 23, Ls. 8-11.) After reviewing the applicable legal standards (Tr., p. 23, L. 12 – p. 28, L. 5), the district court concluded that suppression was not warranted in this case because Ms. Edmo “identified herself by name and gave contact information” and reported events she had witnessed that constituted reasonable suspicion that the described car was being driven recklessly (Tr., p. 28, Ls. 6-11). In addition, the car she described was “a unique car in [that] area” and therefore its description was adequate to justify the stop. (Tr., p. 28, Ls. 12-18.) Thus, under the totality of the circumstances, Officer Henry did have reasonable suspicion to stop the car. (Tr., p. 28, Ls. 19-22.)

On appeal Perez contends the district court erred in finding reasonable suspicion, asserting that the information provided by Ms. Edmo was insufficient to support a finding of reasonable suspicion for a traffic stop and further arguing that the officer lacked reasonable suspicion that the car he stopped was the one described by the citizen. (Appellant’s brief, pp. 9-15.) Review of the record shows these claims of error to be without merit.

B. Standard Of Review

“Determinations of reasonable suspicion are reviewed de novo.” State v. Morgan, 154 Idaho 109, 111, 294 P.3d 1121, 1123 (2013). “On review of a suppression motion ruling, this Court will accept the district court’s findings unless they are clearly erroneous.” State v. Danney, 153 Idaho 405, 410, 283 P.3d 722, 727 (2012).

C. The District Court’s Factual Findings Support The Determination Of Reasonable Suspicion

“An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.” United States v. Cortez, 449 U.S. 411, 417 (1981). “[T]he Fourth Amendment is satisfied if the officer’s action is supported by reasonable suspicion to believe that criminal activity ‘may be afoot.’” United States v. Arvizu, 534 U.S. 266, 273 (2002) (quoting United States v. Sokolow, 490 U.S. 1, 7 (1989)). The court must “look at the ‘totality of the circumstances’ of each case to see whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing.” Id. (quoting Cortez, 449 U.S. at 417-18). “Although an officer’s reliance on a mere ‘hunch’ is insufficient to justify a stop, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard.” Id. (quoting Terry v. Ohio, 392 U.S. 1, 27 (1968)). “The Fourth Amendment requires some minimal level of objective justification for making the stop.” Sokolow, 490 U.S. at 7. Furthermore, reasonable suspicion “need not rule out the possibility of innocent conduct.” Arvizu, 534 U.S. at 277.

The district court concluded that the citizen’s report of a reckless driver provided reasonable suspicion for the traffic stop. (Tr., p. 22, Ls. 17-25 (Ms. Edmo “outlined the



basis for a person driving a vehicle in a reckless manner”; p. 28, Ls. 6-11 (citizen “outlined the events which she saw” which provided “reasonable suspicion that a crime had been committed”).) The determination that the witness described events giving rise to reasonable suspicion is supported by the record.

Ms. Edmo described a car “roaring around” her neighborhood, driving in an erratic manner (as if it were a standard that the driver did not know how to drive) and had “turned east,” toward the bingo hall, from “Wardance Circle.” (State’s Exhibit 1(a).) The driver was “roaring” the motor as if he wanted to “race someone.” (State’s Exhibit 1(b).) He pulled into the driveway of her elderly aunt and “almost hit her car.” (State’s Exhibit 1(b).) He was “driving really recklessly” and Ms. Edmo feared for the safety of children who might be outside on the sidewalk. (State’s Exhibit 1(c).) A driver commits the offense of reckless driving if he (1) “upon a highway” or “public or private property open to public use” (2) drives (a) “carelessly and heedlessly or without due caution and circumspection,” and (b) “at a speed or in a manner as to endanger or be likely to endanger any person or property.” I.C. § 49-1401(1). Ms. Edmo’s description of a car being driven recklessly, almost hitting a car parked in a driveway and creating a risk to children on the sidewalk created reasonable suspicion that the driver had committed the offense of reckless driving.

Perez argues that Ms. Edmo’s statement that the driver was driving recklessly, nearly hit a parked car in a driveway, and was putting the neighborhood children at risk was insufficient to show reasonable suspicion because “there is no reported observation of any driving behavior on any public roadway.” (Appellant’s brief, p. 13.) The argument that the only reasonable inference from Ms. Edmo’s report is that all of the described reckless driving occurred on her aunt’s driveway rather than on a public roadway is

specious.<sup>1</sup> The risk to persons and property in the statute is not limited to property actually on the highway. I.C. §49-1401(1) (person driving on highway so as to “endanger *any* person or property” (emphasis added) is guilty of reckless driving). Certainly someone driving so carelessly as to risk leaving the roadway and hitting a car parked on a driveway or children on a sidewalk is driving recklessly. “Reasonable suspicion depends on the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” Navarette v. California, \_\_\_ U.S. \_\_\_, 134 S. Ct. 1683, 1690 (2014). It was reasonable for the officer, and the district court, to conclude that Ms. Edmo was describing reckless driving on a public road that endangered persons or property.

Perez also argues that the description of the vehicle as a white Mercedes was insufficient to pull over Perez as he drove his white Mercedes. (Appellant’s brief, pp. 14-15.) He relies on State v. Zapata-Reyes, 144 Idaho 703, 169 P.3d 291 (Ct. App. 2007), contending that the scarcity of Mercedes in the Fort Hall housing area does not translate into reasonable suspicion the white Mercedes Officer Henry stopped was the same white Mercedes Ms. Edmo identified. (Appellant’s brief, pp. 14-15.) This argument overlooks both the facts of Zapata-Reyes and the facts of this case.

In Zapata-Reyes the caller reported that his house had been “shot at two weeks before” and he was suspicious of “three or four people in a ‘white Corsica, or Buick like, a Pontiac’ that had driven past twice that evening.” 144 Idaho at 705, 169 P.3d at 293. The caller did not “indicate how much time had passed since the suspicious vehicle had last driven by his house.” Id. Officers spotted “a white Oldsmobile passenger car

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<sup>1</sup> Perez did not claim that Wardance Circle, the road in question, was not a public road. (See generally R.; Tr.) Officer Henry described Wardance Circle as being in the “Old Fort Hall Housing Complex.” (Tr., p. 8, Ls. 1-4.)

approximately one block from the caller's residence" being "driven away from the location of the caller's house" and followed it to a taco stand where the car stopped and a driver and a passenger, the only occupants of the car, got out. Id. The officers detained the men (Zapata-Reyes was the passenger). Id. In finding no reasonable suspicion justifying the detention of Zapata-Reyes, the Idaho Court of Appeals pointed out that "the caller did not indicate how much time had elapsed between when he last observed the suspicious white vehicle and when he called dispatch"; "the caller's description of the suspicious vehicle was merely that it was a white passenger car, maybe a Corsica or a Buick" but the car Zapata-Reyes was in was a white Oldsmobile; and "the caller indicated that there were three or four occupants in the vehicle that passed by his residence, not two occupants as in the Oldsmobile." Id. at 708-09, 169 P.3d at 296-97.

By comparison, Ms. Edmo reported a white Mercedes with a driver, "a native guy," that had "just left" the area "[n]ot even five minutes ago" and turned east from "Wardance Circle." (State's Exhibit 1(a).) The responding officer had earlier that day seen a white, two-door Mercedes parked at a house on "Wardance Circle in the Old Housing." (Tr., p. 8, Ls. 18-25; p. 9, L. 16 – p. 10, L. 3.) The car drew his attention because this was the first white Mercedes the officer had seen parked in Old Housing in his three years as the highway safety officer. (Tr., p. 6, Ls. 6-14; p. 9, Ls. 4-10.) Believing the report of a person recklessly driving a white Mercedes in the same area might involve the same white Mercedes he had seen there earlier, the officer drove to where he had seen the car, but it was no longer there. (Tr., p. 8, L. 18 – p. 9, L. 3; p. 10, Ls. 4-17.) He checked the casino and related buildings but did not see the Mercedes there either. (Tr., p. 10, Ls. 18-24.) He then went North on Eagle Road and spotted a white, two-door Mercedes coming toward

him. (Tr., p. 10, L. 25 – p., 11, L. 10.) He turned around and used his lights to stop the car. (Tr., p. 11, Ls. 11-15.) The time from the call to the stop was between five to ten minutes. (Tr., p. 15, Ls. 1-5.) Thus, the evidence shows that the officer pulled over a car matching the description of the one being driven recklessly, in the same general area and shortly after the event, and that the presence of that particular type of car was unusual or even unique.

Perez's attempt to invoke Zapata-Reyes is unavailing. The factors demonstrating suspicion was not reasonable in that case (unknown timing, wrong make, and wrong number of occupants) are not present in this case, where the timing is known, the make is correct and the number of occupants is consistent. Moreover, the fact that the officer had seen the white, two-door Mercedes in the neighborhood where the incident took place earlier that same evening and the fact that it was the only such car he had ever seen there in three years bolsters the reasonableness of the officer's suspicion that the white, two-door Mercedes he pulled over was the one reported by Ms. Edmo. Because the officer's actions were based on far more than a "hunch," Perez has failed to show error in the district court's determination the officer had reasonable suspicion to stop the Mercedes and conduct an investigation into reckless driving.

CONCLUSION

The state respectfully requests this Court to affirm Perez's judgment for felony  
DUI.

DATED this 14th day of June, 2018.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of June, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

KIMBERLY A. COSTER  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/dd