STATE OF IDAHO)
County of KOOTENAI)ss

FILED_____

AT_____ O'Clock _____M
CLERK OF DISTRICT COURT

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Deputy

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

MARK ANTHONY WEEMS, *Petitioner/Appellant*, vs. **STATE OF IDAHO, DEPARTMENT OF TRANSPORTATION,** *Respondent*.	Case No. **CV 2008 5107** **MEMORANDUM DECISION AND ORDER ON APPEAL AFFIRMING DECISION OF IDAHO TRANSPORTATION DEPARTMENT ON DRIVER'S LICENSE SUSPENSION**

I. BACKGROUND AND PROCEDURAL HISTORY.

Appellant Mark Weems (Weems) was stopped while driving his vehicle on May 28, 2008, by Officer Cantrell (Cantrell). Cantrell responded to assist Officer Harris (Harris) in a welfare check at Outback Steakhouse restaurant in Coeur d'Alene, Idaho. Harris received a call from a reporting party who was concerned about a conversation she and her husband had overheard at the restaurant between a male approximately fifty years old and a female approximately 18 years old. The conversation was about the female running away with the male. Dispatch had advised Cantrell that the reporting party did not believe the male and female knew each other prior to this meeting at the restaurant, and the reporting party was concerned due to the female's apparent age. While en route to respond, Cantrell was flagged down by the reporting party standing outside a blue van at the Coeur d'Alene Car Wash on the corner of Kathleen Avenue and Ramsey Road. The reporting party pointed to the ATM

at the Mountain West Bank across the street and identified the silver-colored truck the male was driving with the young female. At this time, dispatch advised Cantrell the reporting party was driving a blue van and the male and female at issue were in a silver truck with license plate BF6504 on Ramsey Road.

Cantrell followed the silver truck from the ATM, confirmed the license plate matched the one provided by the reporting party, radioed Harris that he had located the vehicle, and stopped the truck in the Lake City High School parking lot, further north on Ramsey Road as compared to where Cantrell first encountered the silver truck. After stopping the vehicle, Cantrell smelled alcohol and had the driver (Weems) perform field sobriety tests. Thereafter, Weems was arrested for driving under the influence.

The only issue raised by Weems is whether Cantrell had legal cause to stop his vehicle.

II. ANALYSIS.

A. Standard of Review.

Review of decisions to deny, cancel, suspend, disqualify, revoke, or restrict driver's licenses is governed by the Idaho Administrative Procedures Act (IDAPA). *See* I.C. §§ 49-201, 49-330, 67-5201(2), 67-5270. Reviewing Courts review the agency record on appeal independently. *Marshall v. Idaho Dep't of Transp.,* 137 Idaho 337, 340, 48 P.3d 666, 669 (Ct.App. 2002). But reviewing courts do not substitute their judgment for that of the agency as to weight of the evidence presented. I.C. § 67-5279(1); *Marshall,* 137 Idaho at 340, 48 P.3d at 669. An agency's findings of fact are deferred to unless they are clearly erroneous. *Castaneda v. Brighton Corp.,* 130 Idaho 923, 926, 950 P.2d 1262, 1265 (1998). The agency's factual determinations are binding on the reviewing court, even where there is conflicting evidence before the agency, so

long as the determinations are supported by substantial, competent evidence in the record. *Fischer v. City of Ketchum,* 141 Idaho 349, 109 P.3d 1091, 1094 (2005).

Courts may overturn an agency's decision where its findings, inferences, conclusions, or decisions: (a) violate statutory or constitutional provisions; (b) exceed the agency's statutory authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence in the record or (e) are arbitrary, capricious, or an abuse of discretion. I.C. § 67-5279(3). The party challenging the agency decision must demonstrate that the agency erred in a manner specified in I.C. § 67-5279(3) and that a substantial right of that party has been prejudiced. *Price v. Payette County Bd. Of County Comm'rs,* 131 Idaho 426, 429, 958 P.2d 583, 586 (1998).

B. Review of Weems' Administrative License Suspension.

Idaho Code § 18-8002A, the administrative license suspension statute, requires the Idaho Transportation Department (ITD) to suspend the license of a driver who has failed a blood alcohol concentration (BAC) test. I.C. § 18-8002A(4). A driver may request a hearing before a hearing officer designated by the ITD to contest such a suspension. At this hearing, the burden of proof rests on the driver to prove any of the grounds sufficient to vacate suspension. I.C. § 18-8002A(7); *Kane v. State, Dep't of Transportation,* 130 Idaho 596, 590, 83 P.3d 130 134 (Ct.App. 2003). The hearing officer must uphold the decision to suspend a license unless the driver has shown: (a) the peace officer did not have legal cause to stop the person; (b) the officer did not have legal cause to believe the person was driving or in actual physical control of the vehicle while under the influence; (c) the test results do not show an alcohol concentration or presence of substances in violation of the statute; (d) the tests for alcohol concentration, drugs or other substances administered were not conducted in

conformance with statutory requirements; or (e) the person was not informed of the consequences of submitting to evidentiary testing as required. I.C. § 18-8002A(7); *Archer v. State Department of Transportation,* 145 Idaho 617, 610, 181 P.3d 543, 546 (Ct.App. 2008). Here, Cantrell's legal cause for stopping Weems is the only ground at issue.

Appellant Weems argues the information Cantrell had at the time he stopped and detained Weems was insufficient to justify his stop and detention pursuant to a community caretaking function. Appellant's Opening Brief, p. 5. Weems claims that although Cantrell's stop of Weems was premised on a welfare check requested by an unidentified reporting party, what the reporting party had relayed to Cantrell prior to the stop and detention was insufficient to warrant such a stop or detention. *Id.,* pp. 5-6. Weems argues the information relayed to Cantrell (a conversation between a 50-year-old man and 18-year-old woman about the woman running away with the man) "can just as easily be interpreted as innocuous conversation between either friends or relatives." *Id.,* p. 6. Weems argues the only information Cantrell had at the time of the stop made upon his own observations was: the identification of the license plate; no observation of any unusual behavior by either Weems or the female; no attempts by the female to leave; and no signs the female was in distress. *Id.,* pp. 6-7.

Respondent ITD argues Cantrell had legal cause to make contact with Weems under both his community caretaking function and for investigative purposes. Respondent's Brief, p. 13. After making initial contact with Weems and the female, ITD argues Cantrell had legal cause to further investigate Weems' violation of prostitution laws and violation of DUI laws. *Id.* ITD urges the Court to consider Cantrell's affidavit in

conjunction with Harris' and conclude that the primary reason for the stop was a welfare check of the female in Weems' truck. *Id.*

It is important to look at who had what information and when.

First, it is important to analyze exactly what information *Cantrell* had as he made his stop. Cantrell's report reads in pertinent part:

> I responded to assist Ofc. Harris at the Outback Steak House, in reference to a welfare check. Dispatch advised an approximately 50 year old male met with an approximately 18 year old female and they were talking back and forth about the female running away with the male. Dispatch advised both parties didn't seem to know each other and the reporting party was concerned for the female's welfare due to her age.
>
> As I was traveling South on Ramsey Rd. from Kathleen Ave., I was waived down by a male and a female standing next to a blue colored van, in the CDA Car Wash parking lot. While speaking with the male and the female, I discovered they were the reporting party of the welfare check, and they pointed across the street towards a silver colored truck, parked near the ATM machine in the Mountain West Bank parking lot. They briefly told me, the male and the young female are in that silver truck and they requested that I check her welfare.
>
> At this time dispatch advised the reporting party is in a blue colored van, and the male and the female left in a silver colored truck North on Ramsey Rd. Dispatch provided the license plate of the silver colored truck as BF6504. While observing the silver colored truck it drove out of the Mountain West Bank's parking lot and North onto Ramsey Rd. At this time I advised Ofc. Harris over the radio that I located the reporting party and the male and female involved in the dispatched call.
>
> I followed and caught up to the silver colored truck near Ramsey Rd. and Dalton Ave. I matched the license plate of BF6504 which was attached to the middle of the rear bumper with dispatch. Dispatch advised that is the license plate that the reporting party provided. I stopped this truck in the parking lot of Lake City High School. A brief moment Ofc. Harris arrived to assist me.
>
> As I approached the male driver I noticed a young looking female in the front passenger seat.

R. p. 13. Even if this Court were to ignore what dispatch and Officer Harris knew at the point of stopping Weems, Cantrell had all he needed to be able to legitimately stop

Weems, when Cantrell wrote at the beginning of his report: "Dispatch advised an approximately 50 year old male met with an approximately 18 year old female and they were talking back and forth about the female running away with the male. Dispatch advised both parties didn't seem to know each other and the reporting party was concerned for the female's welfare due to her age." *Id.*

An investigative detention must be based upon reasonable suspicion, derived from articulable facts, that the person stopped has committed or is about to commit a crime. *Terry v. Ohio,* 392 U.S. 1, 21, 88 S.Ct. 1868, 1879-80 (1968). Cantrell had these articulable facts: a female, who was estimated by two citizens concerned enough to call police, to be about age 18, and male who they estimated to be about 50, were having a conversation at the restaurant, and even though they apparently did not know each other prior to meeting at the restaurant, were having a discussion about running away. Based on those articulable facts, Cantrell could have had a reasonable suspicion that any one of several crimes might be underway: statutory rape (if the female were less than age 18), solicitation of prostitution and prostitution (since the female was apparently quite willing to leave with a man whom she had just met while discussing running away), kidnapping, felony injury to a child, and abduction of a female for sex-trade. ITD identified some of these possible crimes. Respondent's Brief, p. 17. All Cantrell needed was suspicion that Weems was about to commit *a* crime. Cantrell had a reasonable suspicion that Weems was about to commit *several* possible crimes.

Weems argues: "The information the reporting party provided Cantrell can just as easily be interpreted as innocuous conversation between either friends or relatives." Appellant's Opening Brief, p. 6. First of all, from a factual analysis, that is wrong. This Court cannot conceive of an "innocuous" conversation between friends or relatives

where the topic would be “running away”, when those relatives are male and female of disparate ages, with the female being estimated to be age eighteen. Second, from a legal standpoint, the inquiry is not whether there possibly *could* have been a *legitimate* subject that was being talked about. The inquiry is whether Cantrell had a reasonable suspicion that Weems had committed or was about to commit a crime. He did.

Second, this Court finds it is relevant to look at what information Coeur d’Alene Police had collectively. Since Cantrell was dispatched to assist Harris in an investigation, this Court can find no reason not to consider the information known to Harris at the time of the stop. Officer Harris’ report reads:

> I was dispatched to a welfare check at the Outback Steak House. Dispatch said an older male was attempting to get a young female to runaway with him. The reporting party said they heard him make comments to the young girl about getting a passport. Dispatch said the reporting party was waiting for contact outside the restaurant. During my response to the scene Officer J. Cantrell was flagged down by the witnesses near the intersection of Ramsey and Kathleen.

R. p. 8. Harris has the additional fact that: “The reporting party said they heard him make comments to the young girl about getting a passport.” Since it was Harris who asked Cantrell to assist him in investigating, and presumably, in making a stop, a welfare check, there is no reason why this fact should not be imparted to Cantrell, even though Cantrell did not put this in his report and may not have been told this fact by Harris. The additional fact of getting a passport certainly gives one more “articulable fact” which gives even more “reasonable suspicion” “that the person stopped has committed or is about to commit a crime”.

Third, what is not relevant are the facts that were developed after Cantrell stopped Weems. The fact that Weems admitted to drinking, failed his field sobriety tests, and tested over the legal limit for blood alcohol concentration is not relevant. Tr.

p. 14. The fact that the female was under 17 is not relevant. The fact that Weems had withdrawn $200 from the ATM (*Id.*) while the reporting party and Cantrell witnessed that event is not relevant (though it is relevant that Officer Cantrell witnessed Weems going to the ATM, Cantrell just did not know how much was withdrawn). It is not relevant that Weems admitted to finding the female on Craig's List and "suspected" she was a prostitute. *Id.* It is not relevant that the female was identified and was seventeen years old, admitted to being a prostitute, admitted she and Weems agreed to have sex at his place for $200.00 and said to Officer Harris "I can prove it" as she opened her purse and pulled out $200.00 and gave it to Harris. Tr. p. 8.

As stated above, an investigative detention must be based upon reasonable suspicion, derived from articulable facts, that the person stopped has committed or is about to commit a crime. *Terry v. Ohio,* 392 U.S. 1, 21, 88 S.Ct. 1868, 1879-80 (1968). The reasonableness of a stop is determined by looking at the totality of the circumstances confronting the officer at the time of the stop. *United States v. Cortez,* 449 U.S. 411, 417, 101 S.Ct. 690, 694-95 (1981). Reasonable suspicion may be supplied by an informant's tip or citizen's report of suspect activity, and whether information from such a source is sufficient to create reasonable suspicion depends on the content and reliability of the information the source provides, including whether the source reveals his or her identity and the basis of his or her knowledge. *See Alabama v. White,* 496 U.S. 325, 330, 110 S.Ct. 2412, 2416 (1990); *State v. Larson,* 135 Idaho 99, 101, 15 P.3d 334, 336 (Ct.App. 2000). An anonymous tip, standing alone, is usually *not* sufficient to justify a stop because "an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity…" *White,* 496 U.S.325, 329, 110 S.Ct. 2412, 2415-16. However, where information comes from a known citizen informant

rather than an anonymous tipster, the citizen's disclosure of his or her identity, which carries with it the risk of accountability if allegations were fabricated, is generally adequate to show veracity and reliability. *Illinois v. Gates,* 462 U.S. 213, 233, 110 S.Ct. 2317, 2329 (1983); *State v. O'Bryan,* 96 Idaho 548, 552, 531 P.2d 1193, 1197 (1975).

Here, Weems argues the information provided to Harris by the reporting party along with the identity of the reporting party were communicated to Cantrell, who effectuated the stop, *after* Cantrell had already stopped and detained Weems. Appellant's Opening Brief, p. 7. No citation is given by Weems as to why he feels that would be inappropriate. Weems argues "Cantrell overreacted", and Weems argues the community caretaking function had not ripened at the time of the stop because Cantrell could point to no immediate and present need for assistance on the part of the female. *Id.,* pp. 7-8. ITD replies because the reporting parties gave their names and location to the dispatcher, they were not anonymous and their tip was reliable enough to justify the stop, which, in turn, provided Cantrell with further reasonable suspicion to justify the field sobriety test. Respondent's Brief, p. 15. Field sobriety testing after the stop was legal as a reasonable and permissible prolonging of the detention based on reasonable suspicion of DUI. *Id.* at 18, citing *State v. Buell,* 145 Idaho 54, 175 P.3d 216 (2008).

In the instant matter, it is clear that Cantrell spoke to the reporting parties prior to the stop of Weems. R. p. 13; Appellant's Opening Brief, p. 2; Respondent's Brief, p. 2. The reporting parties waved Cantrell down while he was travelling to the restaurant. R. p. 13. While Cantrell apparently did not ask for their names (at least it is not mentioned in his report), as Cantrell spoke to them, they told Cantrell they were the reporting parties. *Id.* At the same time, dispatch informed Cantrell that the reporting parties were driving a blue van, which Cantrell immediately recognized as being the truth. *Id.* As

such, the reporting party was neither *unknown* nor an *anonymous tipster* to Cantrell. The reporting parties probably provided dispatch with their identities, but even if they did not, they (a husband and wife) provided Harris with their names at the scene of the stop. R. p. 8. Weems argues the reporting parties were not known to Cantrell to the extent he could assess their veracity and reliability. Appellant's Reply Brief, p. 2. Weems argues the reporting party had only made generic references to overhearing a conversation between Weems and the female about running away, her not knowing Weems, and the reporting party's concern for the female. *Id.* at pp. 2-3. Weems argues the reporting party did not provide information, only opinions and concerns which would not support reasonable suspicion, derived from articulable facts, justifying Cantrell's stop. *Id.* at 3. At oral argument, Weems' counsel referred to the reporting parties' observations as "perceptions", not facts.

At issue is whether a reporting party must provide *specific*, articulable facts giving rise to a reasonable suspicion that a *specific* crime has been or will be committed and whether such facts must be corroborated by the officer before he can stop a suspect. Clearly, reasonable suspicion must be based on specific, articulable facts and rational inferences that can be drawn from those facts; reasonable suspicion requires more than a hunch or inchoate and unparticularized suspicion. *White,* 496 U.S. 325, 329, 110 S.Ct. 2412, ____ (quoting *United States v. Sokolow,* 490 U.S. 1, 7, 109 S.Ct. 1581, 1587 (1989). This Court has not been cited to, and cannot find on its own, a requirement such as Weems seems to urge, that the facts must give rise to a reasonable suspicion of a *specific* crime. All that is needed is reasonable suspicion of a crime. This Court finds there was reasonable suspicion of several possible crimes. Whether a tip amounts to reasonable suspicion depends on the substance, source, and

reliability of the information provided; in other words, the totality of the circumstances. *See White,* 496 U.S. at 329, 110 S.Ct. 2412, 2416. In the present case, Cantrell knew from dispatch that "an approximately 50 year old male met with an approximately 18 year old female and they were talking back and forth about the female running away with the male", even though they apparently did not know each other prior to meeting at the restaurant. That was based on the reporting parties' "perceptions", as Weems claims, but perceptions of facts. Weems in fact was an older man. His female was in fact seventeen. The reporting parties were essentially right on those facts, even though they "perceived" them to be fifty and eighteen respectively. "Running away" with the male was apparently a direct quote from their dinner conversation overheard by the reporting parties at the restaurant, so that is a fact. Not knowing each other prior to meeting at the restaurant was no doubt an opinion formed by the reporting parties taking all the overheard dinner conversation into account and in context, and it turned out to be a fact. Weems' argument that the information given by the reporting parties was merely "opinion" or "perceptions" is simply not persuasive. There is essentially nothing but fact given by the reporting parties to the police.

Where an informant's tip is provided, it may give rise to reasonable suspicion if it would warrant a reasonable man to believe a stop is appropriate. *White,* 496 U.S. 325, 329, 110 S.Ct. 2412 (quoting *Terry,* 392 U.S. 1, 22). Factors indicative of reliability and veracity of an informant include: (a) whether the informant reveals his identity and basis of his knowledge; (b) whether the location of the informant is known, (c) whether the information is based on first-hand observation of the events as they were occurring, (d) whether the information provided could be immediately confirmed or corroborated by police, (e) whether the informant previously provided reliable information, (f) whether the

information is predictive, and (g) whether the informant could be held criminally liable for making a false report. *White,* 329 U.S. 325, 331-32. All of these criteria are met except criteria "e", and its absence is merely a neutral factor which does not cut down the strength of the presence of all the other criteria in this case. And an informant does not necessarily need to provide the police with his or her name to be considered a known citizen informant, especially where the informant is not trying to conceal their identity; for example, where the informant seeks police assistance or reports illegal activity they personally observed. *Larson,* 135 Idaho 99, 102, 15 P.3d 334, 337. That is precisely what happened here. Although their names were not initially known to Cantrell when he was first flagged down by the reporting parties, the reporting parties freely gave that information to Harris moments after they first spoke with Cantrell. The informants not only called the police, but apparently kept watch on Weems after he left the restaurant up until and after Cantrell and Harris arrived on the scene.

The reporting parties in this case made no attempt to conceal their identity, even going so far as to flag down the officer on his way to the restaurant. After speaking with Officer Cantrell, the reporting parties identified Weems' truck, where it was located, then followed Cantrell and Harris to the site of the stop of Weems' truck. Thus, in determining the reporting parties' information was sufficient to give rise to reasonable suspicion to Cantrell, this Court considers the **content** (a 50-year-old man and an 18-year-old female having a conversation about the female running away with him); the **source** (two reporting parties making absolutely no effort to conceal their identity and seeking assistance of law enforcement by reporting activity they personally observed and about which they were obviously very concerned); the **reliability of the source** (the informant revealed their identity to Harris at the site where they first flagged down

Cantrell, and then followed Cantrell and Harris to the stop) and **basis of knowledge** (the informants had first-hand knowledge of what they observed and overheard at the restaurant; Cantrell learned the informant's location when they flagged him down in close proximity to Weems' truck; Cantrell had the information given to him describing the informants' vehicle immediately after coming in personal contact with the informants; the color and license plate of Weems' vehicle could be and was immediately corroborated and confirmed by Cantrell; and the information turned out to be highly predictive of more than one crime. Confirmation and corroboration of the tip is only one factor Cantrell was to consider in evaluating the totality of the circumstances. Cantrell, for good reason, found the reporting party reliable enough to find reasonable suspicion for a stop, considering all the information available to him at the time of the stop.

Finally, the parties have raised the community caretaking exception. The community caretaking exception to the warrant requirement need not be analyzed because Cantrell had reasonable suspicion to believe a crime was or could be committed. However, this Court finds the community caretaking exception to the warrant requirement applies given the facts of this case.

The Fourth Amendment prohibits unreasonable searches and seizures; its purpose is to impose a standard of reasonableness on the discretion exercised by government agents. *Delaware v. Prouse,* 440 U.S. 648, 653-54, 99 S.Ct. 1391, 1396 (1979); *State v. Maddox,* 137 Idaho 821, 824, 54 P.3d 464, 467 (Ct.App. 2002). Reasonableness in community caretaking cases is determined by balancing public need in the police conduct against the degree and nature of the intrusion on citizens' privacy. *State v. Page,* 140 Idaho 841, 844, 103 P.3d 454, 457 (2004). The intrusion in the instant case, a traffic stop, was minimal. The need for Cantrell's action, protection of a

probable minor (later determined to be a minor) is large. A traffic stop to see if the reporting parties' observations were justified, was a minimal intrusion balanced against the serious crimes that could be occurring (solicitation) or about to occur (statutory rape, prostitution, kidnapping, injury to child, etc.). In order for the community caretaking function analysis to apply, an officer must possess a subjective belief that an individual is in need of immediate assistance, although the officer may harbor at least an expectation of detecting or finding evidence of a crime. *State v. Schmidt,* 137 Idaho 301, 303, 47 P.3d 1271, 1273 (Ct.App. 2002). While not under duress, because a minor cannot consent, a minor is in need of immediate assistance when an apparent stranger suggests they run away. "Among the core community caretaking activities are the responsibilities of police to search for missing persons, mediate disputes, aid the injured or ill, and provide emergency services." *State v. Cutler,* 143 Idaho 297, 302, 141 P.3d 1166, 1171 (Ct.App. 2006) (citing *State v. Diloreto,* 180 N.J. 264, 850 A.2d 1226, 1236 (2004). According to the conversation overheard in the restaurant by the reporting parties, the female was about to become a missing person if she in fact "ran away" with Weems. *State v. Schmidt,* 137 Idaho 301, 303, 47 P.3d 1271, 1273, involved the Court of Appeals overturning the Magistrate's conclusion (that a detention was reasonable under an officer's caretaking function) because Schmidt had been a passenger is a lawfully parked vehicle where no visible evidence existed that the vehicle had been in an accident. Here, while the female was not under duress, there were certainly indications that other crimes were imminent.

III. CONCLUSION.

Officer Cantrell, based solely on the facts known to him, had proper legal cause

to stop Weems. The findings and conclusions of the Hearing Officer were proper. The Hearing Officer's findings are supported by substantial evidence in the record and are not arbitrary, capricious, or an abuse of his discretion. I.C. § 67-5279(3). Additionally, the community caretaking exception to the warrant requirement applies. This Court **affirms** the license suspension of the Idaho Transportation Department.

Entered this 26th day of February, 2009.

_____
John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of February, 2009, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	**Fax #**	**Lawyer**	**Fax #**
James A. Raeon	666-9211	Rami Amaro/James McMillan	762-8096

_____
Jeanne Clausen, Deputy Clerk