STATE OF IDAHO)
County of KOOTENAI)ss

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CLERK, 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

STATE OF IDAHO, *Plaintiff,* vs. THOMAS CARL DICKERSON**,** *Defendant.*	Case No. **CRF 2008 2801** **MEMORANDUM DECISION AND ORDER ON APPEAL**

I. PROCEDURAL HISTORY AND BACKGROUND.

This is an appeal from a June 3, 2008, decision of Magistrate Judge Barry Watson, denying Thomas Dickerson's Motion to Suppress. Dickerson was charged with Providing False Information to Law Enforcement Officers, Idaho Code § 18-5413. Dickerson filed his Motion to Suppress on March 13, 2008, seeking to prohibit the observations of the police and the answers he gave to their questions. Motion to Suppress, p. 1.

On February 12, 2008, Dickerson was stopped by Coeur d'Alene Police Officer Cantrell. Tr. p. 2, Ll. 1-23. At the time, Dickerson was walking west on the north side of Locust Avenue in Coeur d'Alene. *Id.* At the same moment, Cantrell was following a white Jeep, which was traveling East on Locust and made a U-turn so that it was now heading west and on the north side of Locust Avenue. The white Jeep stopped and was now pointed toward Cantrell's patrol vehicle. *Id.,* p. 3, Ll. 1-4. Dickerson was about 15-20 feet

away from the Jeep, further west on Locust Avenue. *Id.,* p. 2, L. 24 – p. 4, L. 4.

Just before his encounter with Dickerson, Cantrell had received a call from dispatch regarding a white Jeep chasing children behind the Albertson's store. *Id.,* p. 2, Ll. 9-15. Upon responding to this call from Highway 95, Cantell noticed a white Jeep behind Albertson's on Ironwood Drive. *Id.,* Ll. 16-23. Cantrell followed the white Jeep from there, onto Government Way and then onto Locust Avenue where it made the U-turn. *Id.* Cantrell noticed all three of the occupants of the Jeep looked toward Dickerson as they passed him on the street before making the U-turn and parking behind him. *Id.,* p. 3, Ll. 7-15. The white Jeep then pulled up closer to where Dickerson was walking, and Cantrell pulled his car over in front of the white Jeep, got out of his patrol car and told the driver of the white Jeep to pull to the side of the road so Cantrell could speak with the occupants of the Jeep and with Dickerson. *Id.,* p. 3, Ll. 10-20, p. 4, Ll. 2-6. Another officer arrived, but was not involved in the facts that transpired. Cantrell testified:

> Q. What happened after you said that [to pull over to the side of the road]?
> A. Um, as I was speakin' – or as I was approachin' Mr. Dickerson I tried to catch his attention, and he continued walking as if he didn't wanna speak with me.
> Q. What did you do, if anything, at that point?
> A. Um, at that time I directed him to stop to speak with me, I briefly advised him of the incident and why I was speakin' with him.

Id., p. 4, Ll. 7-14. Cantrell clarified that he had to tell Dickerson to stop and talk with him. *Id.,* p. 12, L. 25 – p. 13, L. 2. When Cantrell advised Dickerson why he was speaking with him, Dickerson told Cantrell "he was goin' to get his pizza". *Id.,* p. 12, Ll. 10-21. Papa Murphy's Pizza is nearby, and Cantrell could not recall the name of the pizza shop but Cantrell knew a pizza shop was nearby. *Id.,* p. 12, Ll. 17-21. Cantrell asked Dickerson for identification and Dickerson indicated he had none. *Id.,* p. 4, Ll. 11-17. Cantrell then asked Dickerson for his name. Dickerson hesitated, then gave Cantrell the name of John A.

Turck. *Id.,* p. 4, L. 18 – p. 5, L. 2. Cantrell informed him dispatch had no record of a John A. Turck and asked Dickerson if he was lying, and after again hesitating, Dickerson gave his name: "Thomas Dickerson." *Id.,* p. 5, Ll. 2-20. Cantrell called dispatch again, found there was an outstanding warrant for Thomas Dickerson, arrested Dickerson on the warrant, and charged him with providing false information to a law enforcement officer. *Id.,* p. 5, L. 21 – p. 6, L. 24.

Judge Watson found: "…it certainly doesn't appear to me that Officer Cantrell felt that Mr. Dickerson was involved in any illegal activity or involved in any crimes and –and uh, but it is quite possible that Mr. Dickerson was the victim of the criminal activity uh, of the driver of the Jeep or the occupants of the Jeep." *Id.,* p. 23, L. 23 – p. 24, L. 3. *See also,* p. 25, Ll. 13-22. Judge Watson discussed *State v. Page,* 140 Idaho 841, 103 P.3d 454 (2004), and *State v. Godwin,* 121 Idaho 491, 826 P.2d 491 (1992). *Id.,* p. 24, L. 19 – p. 25, L. 12. Judge Watson concluded: "…I feel that on the uh, community care taking function and on the authority that was cited here uh, that there is lawful authority for that stop and I would not uh, allow – grant the motion to suppress at this time." *Id.,* p. 25, L. 23 – p. 26, L. 2.

Dickerson moves to suppress any statements made by him, arguing police had no rational suspicion that a crime had occurred before he was detained. Motion to Suppress, p. 2. Dickerson claims on appeal there was no basis for his detention under *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) (Appellant's Brief, pp. 2-5), and the "community caretaking" exception to the warrant requirement does not apply because Dickerson was not a victim. Appellant's Brief, pp. 5-7. Dickerson argues suppression of the officer's observations and Dickerson's comments is the remedy for Dickerson's illegal detention under *United States v. Crews,* 445 U.S. 463, 100 S.Ct. 1244, 1249 (1980), as it is

the fruit of illegal activity.

The State claims there was reasonable suspicion to detain Dickerson (Respondent's Brief, pp. 5-7), and even if there was not reasonable suspicion to detain Dickerson, Cantrell had a duty to contact Dickerson under the "community caretaking" function of law enforcement. *Id.,* pp. 7- 8.

Oral argument on appeal was held March 3, 2009.

II. STANDARD OF REVIEW.

The standard of review of a suppression motion is bifurcated; the Court of Appeals accepts a trial court's findings of fact supported by substantial evidence and freely reviews the court's application of constitutional principles applied to the facts found. *State v. Atkinson,* 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct.App. 1996); *State v. Cruz,* 144 Idaho 906, 908, 174 P.3d 876, 878 (Ct.App. 2007).

III. ANALYSIS.

A. Cantrell Had No Reasonable Suspicion to Detain Dickerson.

Judge Watson found, as a factual matter, that Cantrell had no reasonable suspicion to detain Dickerson, when he held: "…it certainly doesn't appear to me that Officer Cantrell felt that Mr. Dickerson was involved in any illegal activity or involved in any crimes…" *Id.,* p. 23, L.. 23-25. That is a factual finding and this Court must determine whether it is supported by substantial competent evidence.

Dickerson argues Cantrell had no reasonable suspicion to detain him. Appellant's Brief, p. 5. The State argues there was reasonable suspicion to detain Dickerson to determine his involvement, if any, with the white Jeep. Respondent's Brief, p. 7. At oral argument, counsel for the State candidly admitted there was no reasonable suspicion to detain Dickenson. Since the issue was raised at least by the briefing, this Court will

analyze the claim by the State that there was reasonable suspicion to detain Dickenson.

As a preliminary matter, this Court must determine whether Dickerson was ever seized. Police have the right to approach individuals and speak with them, even if no obvious criminal activity is afoot. *State v. Jordan,* 122 Idaho 771, 774, 839 P.2d 38, 41 (Ct.App. 1992); *State v. Zubizareta,* 122 Idaho 823, 827, 839 P.2d 1237, 1241 (Ct.App. 1992) ("…the police were authorized to approach the car and attempt to talk to Zubizareta. Zubizareta voluntarily complied with the request to roll down the window. His freedom to go about his business was not restricted at this point."). The Fourth Amendment does not proscribe all contact between police and citizens. *Terry v. Ohio,* 392 U.S. 1, 19 n.16 (1968).

The Idaho Supreme Court has held that a brief stop of a suspicious individual to determine his identity or to maintain the *status quo* momentarily may be reasonable depending on the facts known to the officer at the time. *In Matter of Clayton,* 113 Idaho 817, 819, 748 P.2d 401, 403 (1988). Here, Dickerson was stopped as he walked west on Locust Avenue because of Cantrell's desire to determine his involvement, if any, with the white Jeep. Respondent's Brief, p. 7. Dickerson was *directed* to stop and speak with Cantrell. Tr. P. 13, Ll. 4-6.

The State argues Cantrell acted properly in asking for identification as officers have the right to indentify those with whom they are dealing. Respondent's Brief, p. 8 (citing *State v. Godwin,* 121 Idaho 491, 826 P.2d 452 (1992). This Court finds Cantrell acted properly in asking Dickerson for his identification, but this occurred after Cantrell directed Dickerson to stop and talk to Cantrell. That directive to stop resulted in a seizure. *Godwin* involved the statutory requirement that motorists carry and exhibit licenses on demand and in *Godwin,* the defendant was determined to have been seized when his license was taken and he was told to stay in his car, but the nature of the intrusion by police had not been

outweighed by the legitimate public interest in requesting a driver's license and running a status check (as Godwin was already stopped at the roadside and the officers had determined the person traveling with him was operating her car without a license). 121 Idaho 491, 495, 826 P.2d 452, 456. The facts in *Godwin* are distinguishable from those in the present case.

Ultimately, officers, even without any basis for suspecting a particular individual, may generally ask the individual questions and ask to examine identification. *Florida v. Rodriguez,* 469 U.S. 1, 105 S.Ct. 308 (1984); *State v. Zapp,* 108 Idaho 723, 701 P.2d 671 (Ct.App. 1985). But such encounters are only considered consensual and require no reasonable suspicion where the police do not convey a message that compliance with their requests is required. *Florida v. Bostick,* 501 U.S. 429, 111 S.Ct. 2382 (1991). Here, Dickerson attempted to continue on his way, but was directed to stop by Cantrell. This stop was made without a reasonable suspicion Dickerson had been, or was about to be, engaged in criminal activity. The tip police had received indicated the three passengers were outside the Jeep and one male (presumably Dickerson) was on Government Way. Cantrell observed nothing which would corroborate the tip, because Dickerson was walking toward Government Way, and Cantrell watched as the Jeep approached Dickerson and apparently Dickerson gave no reaction to the Jeep executing a U-turn and following him. Cantrell made no allegation that Dickerson stopped walking to speak to the Jeep's occupants or made any attempt to engage them (or disengage from them) in any way.

A seizure occurs when one's freedom of movement has been restrained, either by physical force or show of authority, such that the circumstances demonstrate a reasonable person would not have felt free to leave. *Terry v. Ohio,* 392 U.S. 1, 16, 88 S.Ct. 1868, 1877 (1968) ("It must be recognized that whenever a police officer accosts an individual and

restrains his freedom to walk away, he has 'seized' that person.") Having *directed* Dickerson to stop and speak with Cantrell, it follows that Cantrell had seized Dickerson, and needed a reasonable suspicion to do so.

This Court must analyze whether Judge Watson's finding that Cantrell had no reasonable suspicion is supported by substantial competent evidence. The Idaho Supreme Court has held that a brief stop of a suspicious individual to determine his identity or to maintain the status quo momentarily may be reasonable depending on the facts known to the officer at the time. *In Matter of Clayton, supra,* 113 Idaho 817, 819, 748 P.2d 401, 403. The State's argument regarding the use of a tip to justify a *Terry* stop may be applicable to Cantrell's stopping the white Jeep, but the rationale does not extend to a pedestrian where all dispatch informed Cantrell of was three males outside the Jeep and one male near Government Way, and where Cantrell had never observed any occupants of the Jeep outside the vehicle and had not corroborated any information given in the tip.

Here, the tip leading Cantrell to respond to Albertson's was a tip regarding a Jeep chasing children. Cantrell testified that he did not believe Dickerson to be a child, and it follows that he did not believe Dickerson to be a victim. Cantrell testified he did believe Dickerson was involved in the incident and the Jeep was "after him." Tr. p. 3, Ll. 7-9. Obviously, Judge Watson disagreed.

Cantrell admitted that he did not know Dickerson by name, but "had previous contacts with him". Tr. p. 12, L. 8. After advising Dickerson of the incident to which he was responding and why he was now speaking to Dickerson, Dickerson told Cantrell he was going to get a pizza. Tr. p. 12, Ll. 11-16. Cantrell also testified a pizza restaurant was nearby. Tr. p. 12, Ll. 17-19. The extent of the Jeep occupants' involvement with Dickerson was that "…when the Jeep drove by all three occupants in the Jeep looked towards him,

and then briefly after that they completed a U-turn and proceeded back to where he was at." Tr. P. 3, ll. 12-15. It was later determined Dickerson had no involvement whatsoever with the call received by police. Cantrell testified Dickerson had not attempted to stop or hail the patrol cars. Tr. p. 11, Ll. 6-8. In evaluating the facts as known to Cantrell at the time of the stop, Cantrell had no reasonable suspicion to stop and detain Dickerson. Cantrell had observed the Jeep suddenly make a U-turn near where Dickerson was walking, but had not observed the Jeep occupants interact with Dickerson in any way.

Dickerson cites *State v. Fry,* 122 Idaho 100, 831 P.2d 942 (Ct.App. 1992) in support of his argument that he was unreasonably seized. Appellant's Brief, p. 5. In *Fry,* the defendant and his passenger were parked in his truck in a parking lot in Ketchum, Idaho. Officers approached his truck as he was attempting to pull out of the parking lot, one knocked on the passenger window as the other stood behind the truck and blocked Fry's exit. 122 Idaho 100, 101, 831 P.2d 942, 943. The Court of Appeals held Fry's attempting to leave as officers approached, and the "unusual fashion" in which Fry operated his vehicle, did not give rise to a reasonable suspicion that criminal activity was afoot and the investigative stop was improper. *Id.,* 122 Idaho 101, 104, 831 P.2d 942, 946. The State argues *Fry* is distinguishable as the police in that case had received no report of illegal or suspicious activity in the area and had not observed any acts by Fry that would have given rise to a reasonable suspicion. Respondent's Brief, p. 6. However, the report received in the instant case involved occupants of a white Jeep and children. Nothing about the tip indicated Dickerson was involved. Dickerson's walking west on Locust Avenue as a vehicle happened to make a U-turn and park behind him is also not sufficient to give rise to a reasonable suspicion that crime was afoot by Dickerson.

Judge Watson's finding of fact that Cantrell had no reasonable suspicion to detain Dickerson is supported by substantial evidence, and Judge Watson's application of the law is sound.

B. The "Community Caretaking Function" Exception to the Warrant Requirement is Not Applicable Given These Facts.

Dickerson argues the community caretaking function does not apply, contrary to the magistrate's finding in this matter, and the police could not lawfully detain him as a victim or potential witness. Appellant's Brief, pp. 6-7. The State argues Cantrell had a duty to contact Dickerson under the community caretaking function. Respondent's Brief, p. 8.

At oral argument, Dickerson cited *State v. Schmidt,* 137 Idaho 301, 47 P.3d 1271 (Ct.App. 2002), regarding the community caretaking function. This Court took this appeal under advisement to analyze that case.

In *Schmidt,* the officer noticed a stationary vehicle which had pulled about 20-30 feet off the right side of a highway in an unimproved pullout. The officer pulled over to investigate, but located his car such that it blocked the vehicle in which Schmidt was a passenger. When the driver rolled down the window, the officer smelled marijuana coming from the vehicle. 137 Idaho 301, 302-03, 47 P.3d 1271, 1272-73. The magistrate granted Schmidt's motion to suppress, but the district court reversed the magistrate's order. *Id.* The Idaho Court of Appeals reversed the district court, and held the officer's initial detention of the vehicle was not reasonable pursuant to the community caretaking function and the officer's investigative detention of the vehicle was not justified by his reasonable and articulable suspicion developed after he contacted the vehicle's occupants. 137 Idaho 301, 303-04, 47 P.3d 1271, 1273-04. Regarding the community caretaking function, the Idaho Court of Appeals held that the officer must have "a subjective belief that the individual is in

need of immediate assistance", and that subjective belief must be "reasonable in view of all the surrounding circumstances." *Id.* The Court of Appeals' analysis is as follows:

> The community caretaking function involves the duty of police to help individuals officers believe are in need of immediate assistance. *State v. Mireles,* 133 Idaho 690, 692, 991 P.2d 878, 880 (Ct.App.1999). As stated in *Cady v. Dombrowski,* 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973):
>
> > Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.
>
> *Id.* at 441, 93 S.Ct. at 2528, 37 L.Ed.2d at 714-15.
>
> In analyzing community caretaking function cases, Idaho has adopted a totality of the circumstances test. *State v. Wixom,* 130 Idaho 752, 754, 947 P.2d 1000, 1002 (1997). The constitutional standard is whether the intrusive action of the police was reasonable in view of all the surrounding circumstances. *Id.* Reasonableness is determined by balancing the public need and interest furthered by the police conduct against the degree and nature of the intrusion upon the privacy of the citizen. *State v. Godwin,* 121 Idaho 491, 495, 826 P.2d 452, 456 (1992). 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. *See In re Clayton,* 113 Idaho 817, 818, 748 P.2d 401, 402 (1988); *State v. Deccio,* 136 Idaho 442, 445, 34 P.3d 1125, 1128 (Ct.App.2001).
>
> In the instant case, although Morgado may have held a subjective belief that the occupants of the car were in need of immediate assistance, his belief was not reasonable in view of all the surrounding circumstances. As the magistrate found, Morgado did not receive any notice from dispatch that there were any emergencies involving vehicles in the area nor did he have any reports from any other source that this particular vehicle was stranded or abandoned. There was no debris or skid marks on the roadway, and the roadway was not slick with ice, snow or rain so as to create the possibility of a slide-off. The exterior appearance of the vehicle did not indicate that it had been involved in an accident. There was no visual evidence that the vehicle left the road in a reckless or inattentive manner. Further, the vehicle was parked in a lawful and safe manner at least twenty feet from the roadway in an area described by Morgado as a "pull out." It is undisputed that it was off the roadway and not a safety hazard. Moreover, Morgado did not observe anything about the vehicle's

> occupants that led him to believe they were in need of assistance. The only information that Morgado possessed was that the vehicle was parked with its lights off, facing oncoming traffic in a place he had never seen a car parked before.
>
> In reversing the magistrate's order granting Schmidt's motion to suppress, the district court relied heavily on *In re Clayton,* 113 Idaho 817, 748 P.2d 401 (1988). However, the present case is distinguishable from *Clayton.* There, an officer approached a vehicle parked near a bar, with its lights on, the motor running, and the driver slumped over the wheel. The Idaho Supreme Court held that in those circumstances, the officer's actions were consistent with his caretaking function. In the instant case, however, there were no such indications that the occupants of the vehicle were in need of assistance. The vehicle was lawfully parked a safe distance from the road with its lights off. Therefore, we uphold the magistrate's determination that the facts were insufficient to justify the seizure of the vehicle in which Schmidt was a passenger, under the community caretaking function. We also uphold the magistrate's conclusion that because the initial detention was unreasonable and unlawful, the reasonable, articulable suspicion of criminal activity that Morgado developed after contacting Schmidt and the driver cannot be relied upon in order to justify the subsequent investigative detention. *See State v. Fry,* 122 Idaho 100, 102, 831 P.2d 942, 944 (Ct.App.1991).

137 Idaho 301, 303-04, 47 P.3d 1271, 1273-04. The Court of Appeals concluded "…the information possessed by Morgado did not justify the initial detention of the vehicle in which Schmidt was a passenger pursuant to the community caretaking function." 137 Idaho 301, 304, 47 P.3d 1271, 1274.

In the present case, at no point in time did Cantrell testify he had a subjective belief that Dickerson was in need of immediate assistance. The closest Cantrell came to that was when he stated: "Um, my observation, I thought he [Dickerson] was involved with the incident and it appeared to me the Jeep was after him." Tr. p. 3, Ll. 7-9. The first part of that sentence, the phrase that Cantrell thought Dickerson was involved in the incident, really goes toward reasonable suspicion to detain, which has already been discussed. Judge Watson found such was not supported by the facts.

The last part of that sentence, the phrase that it appeared to Cantrell that the Jeep was after Dickerson, is not a statement by Cantrell that Dickerson was in need of

immediate assistance. Thus, Cantrell has not expressed a subjective belief that Dickerson was in need of immediate assistance.

Even if Cantrell had expressed that subjective belief, that belief would not have been reasonable in light of all the surrounding circumstances. Cantrell had no reasonable belief that Dickerson was in need of immediate assistance. Even if the Jeep did appear to be "after" Dickerson, by the time Cantrell first spoke to Dickerson, the Jeep had stopped. If there were a need for immediate assistance, it had vaporized prior to Cantrell first words to Dickerson. The fact that Dickerson was walking away from the Jeep and Cantrell, and continued walking when Cantrell first spoke to Dickerson, provides strong evidence that Dickerson was not in immediate distress. Cantrell did not believe that Dickerson was a child. Tr. p. 13, Ll. 12-14. It follows that Cantrell did not have a suspicion that Dickerson was a victim as the call from dispatch Cantrell had received was regarding the Jeep chasing children behind Albertson's. Tr. p. 2, Ll. 11-13. Cantrell testified he believed Dickerson "was involved with the incident and it appeared to me the Jeep was after him." Tr. p. 3, Ll. 7-9. However, that finding goes to reasonable suspicion that Dickerson was involved in a crime,

On the record, Judge Waston discussed *State v. Page,* 140 Idaho 841, 103 P.3d 454 (2004), and *State v. Godwin,* 121 Idaho 491, 826 P.2d 491 (1992). *Id.,* p. 24, L. 19 – p. 25, L. 12. Judge Watson concluded: "…I feel that on the uh, community care taking function and on the authority that was cited here uh, that there is lawful authority for that stop and I would not uh, allow – grant the motion to suppress at this time." *Id.,* p. 25, L. 23 – p. 26, L. 2.

Godwin does not discuss the community caretaking function exception to the warrant requirement. *Godwin* stands for the proposition that an officer can ask a motorist

to show the officer the motorist's license. 121 Idaho 491, 493, 826 P.2d 491, 493. However, in this case, Dickerson was a pedestrian. Cantrell has every right to engage Dickerson in conversation, but when Cantrell *directed* Dickerson to stop and speak with him, he effectuated a seizure. That directive, that seizure, occurred before Cantrell asked Dickerson for his name. Nothing about *Godwin* allows the application of the community caretaking function exception to the warrant requirement to apply in this case.

Page, as discussed by the Idaho Supreme Court, is a community caretaking function exception case. However, the Idaho Supreme Court only allowed the *initial* encounter under the community caretaking exception, and not the request for identification of the pedestrian which immediately followed the initial encounter. Page was walking down the middle of a roadway in a residential area (which lacked sidewalks) in Post Falls, Idaho at two in the morning, carrying some bags. 140 Idaho 841, 842, 103 P.3d 454, 455. Without activating his overhead lights, an officer pulled in behind Page, got out of his car, and asked Page if he could talk to him, to which Page replied "Sure". "After inquiring about Page's well-being, Officer Marshall asked Page for some identification and was handed an Idaho driver's license in the name of Arnold Page." 140 Idaho 841, 842-43, 103 P.3d 454, 455-56. The officer ran the license and found there was a warrant and Page was arrested, and methamphetamine was found on his person. The district court, Judge Hosack, found the officer "…was acting lawfully within the scope of his community caretaking function when he initially contacted Page." "The judge ruled, however, that the detention of Page for the purposes of retrieving his driver's license and running his name though dispatch exceeded the permissible scope of the officer's community care-taking function and constituted an unlawful seizure." *Id.* The Idaho Supreme Court noted:

> In granting Page's motion to suppress, the district judge did not make any explicit factual findings, other than to determine that the initial encounter,

> including the initial questioning of Page, was accomplished pursuant to the officer's community caretaker function. This finding is supported by substantial evidence. The community caretaker function arises from the duty of police officers to help citizens in need of assistance. *State v. Wixom,* 130 Idaho 752, 754, 947 P.2d 1000, 1002 (1997). The officer clearly had reason under his community caretaker function to approach Page and make sure everything was alright when he noticed Page walking down the middle of a public street late at night.

140 Idaho 841, 844, 103 P.3d 454, 457. The Idaho Supreme Court then held:

> In this case, the totality of the circumstances presented to Officer Marshall showed no compelling need to seize the identification and conduct a warrants check; nor were there facts present that legitimized the detention of Page once the officer determined, pursuant to his community caretaker function, that Page was not in need of assistance. Appellant has also not demonstrated a particularized or objective justification for detaining Page. This Court is concerned about the implications of a rule allowing law enforcement officers the ability to initiate consensual encounters with pedestrians in order to seize identification and run a warrants check. Twenty-five years ago the United States Supreme Court made clear the general rule that in the absence of any basis for suspecting an individual of misconduct, the Fourth Amendment generally does not allow government agents to detain an individual and demand identification. *Brown v. Texas,* 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979). Thus, at that point, Page was improperly detained and the question then becomes whether there is any justification for the officer's subsequent search.

140 Idaho 841, 847, 103 P.3d 454, 460. The Idaho Supreme Court then reversed Judge Hosack's suppression of the methamphetamine, based on the attenuation doctrine, on the ground that there was an outstanding warrant which was discovered prior to the search of Page's person. 140 Idaho 841, 845-47, 103 P.3d 454, 458-60.

In the present case, Dickerson had a warrant, but Cantrell did not have that information when he asked Dickerson who he was and Dickerson replied: "John A. Turck." Tr. p. 4, L. 18 – p. 5, L. 2. In the present case, no drugs were suspected to be, searched for or found on Dickerson. All Dickerson seeks to suppress is his lie to the officer about his name. At the point in time that Dickerson lied to Cantrell, due to Cantrell's directive to Dickerson to stop and talk, a seizure had already occurred. Thus, the exact situation which

the Idaho Supreme Court discussed in *Page* in dicta, has taken place in the instant case:

> It is important to note that had the drug evidence in this case been seized after the officer seized Page's license and took it back to the patrol vehicle, but prior to discovery of the valid warrant, the considerations outlined in *Green* would not justify the conclusion that the evidence was sufficiently attenuated from improper police conduct so as to be admissible. *See, e.g., State v. Maland,* 140 Idaho 817, 103 P.3d 430, 2004 WL 2930716 (November 24, 2004). In such a case, evidence seized prior to the arrest, unless justified by some other exception, would not be admissible simply because, ultimately, a valid arrest warrant was discovered. A judicial determination of probable cause focuses on the information and facts the officers possessed at the time. *State v. Schwarz,* 133 Idaho 463, 467, 988 P.2d 689, 693 (1999). It is only the fact that there was an intervening factor between the unlawful seizure and discovery of the evidence-the discovery of the warrant in this case-that creates the exception, which permitted the officer to arrest Page and made the subsequent seizure of evidence admissible.

This Court wonders why the community caretaking exception was utilized by the Idaho Supreme Court in analyzing the initial encounter the officer had with Page, as all indications are such encounter was entirely consensual. The Idaho Supreme Court even noted it was consensual. 140 Idaho 841, 844-45, 103 P.3d 454, 457-58. Since an officer has the ability to talk to anyone he or she would like to at any time, it is a mystery to this Court why the community caretaking exception to the warrant requirement was even discussed in *Page*. However, even using the Idaho Supreme Court's analysis in *Page,* "once the officer determined, pursuant to his community caretaker function, that Page was not in need of assistance", at the time Cantrell stepped out of his vehicle and spoke to Dickerson, Dickerson was no longer in need of assistance. By that time, the white Jeep had stopped, Dickerson was not a child, was not a victim and was not in need of Cantrell's assistance.

The lesson to be learned is that while an officer has every right to ask anyone he or she comes in contact with any question, once the officer *directs* an individual to stop, the officer has *detained* that individual. Because of that detention caused by the officer

directing the individual to stop, the officer at that moment needs either: 1) a reasonable suspicion that the individual was involved in illegal activity in order to detain the individual, or 2) a subjective belief that the individual is in need of immediate assistance, and such subjective belief is objectively reasonable in view of all the surrounding circumstances. Cantrell had neither in this case.

IV. CONCLUSION.

IT IS HERBY ORDERED THAT the decision of Magistrate Judge Barry Watson denying Dickerson's Motion to Suppress is REVERSED, Dickerson's Motion to Suppress is GRANTED, and this matter remanded for an entry of an order consistent with this decision.

DATED this 4th day of March, 2009.

_____
JOHN T. MITCHELL, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of March, 2009 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney - Martin Neils
Prosecuting Attorney – Wes Summerton, Julia Eisentrout

Honorable Barry Watson

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY:_____
Deputy