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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 40210
Plaintiff-Respondent,)	
)	BANNOCK COUNTY
v.)	NO. CR 2011-4716
)	
MARTHA LORRAINE MOORE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

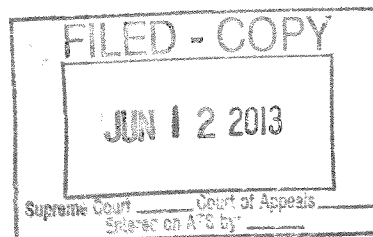
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STATEMENT OF THE CASE

Nature of the Case

Martha Moore appeals, pursuant to her conditional guilty plea to possession of methamphetamine, challenging the district court's order denying her motion to suppress. She contends that the officers did not have her valid consent to search her purse, located in her room, based on their assertion that they were searching pursuant to her son's consent to searches as part of the terms of his probation. Since it was not reasonable to believe that her son had joint control over either the purse in which the methamphetamine was found or the room in which the purse was located, his waiver did not give them the lawful authority to search either the purse or the room. Thus, their representation of lawful authority to search pursuant to the son's waiver coerced any consent Ms. Moore gave at that time. Furthermore, since the officers did not have a signed agreement from Ms. Moore consenting to such searches, there is no justification for the warrantless search. Thus, the search violated Ms. Moore's constitutional rights and the evidence found during that illegal search should be suppressed.

Statement of the Facts and Course of Proceedings

Probation Officer Julie Guiberson, accompanied by four other armed and uniformed police officers, went to Ms. Moore's home to execute an arrest warrant on Ms. Moore's son, Ryan McInelly. (Tr., p.8, Ls.4-5, 22-25; Tr., p.35, Ls.15-23.) Officer Guiberson was Mr. McInelly's supervising officer while he was on probation. (Tr., p.7, Ls.16-19.) While Ms. Moore's home was not Mr. McInelly's original residence on probation, Officer Guiberson had approved it as a residence for Mr. McInelly, and he had, to her knowledge, been living there at times. (Tr., p.27, L.25 - p.28, L.11; Tr., p.13, Ls.8-12.) Officer Guiberson had never asked Ms. Moore to sign a notification regarding

the impact of having a probationer living in her house. (Tr., p.27, L.15 - p.28, L.1.) Officer Guiberson claimed to have discussed that issue with Ms. Moore (Tr., p.14, Ls.6-12), but Ms. Moore testified that no such discussion occurred. (Tr., p.80, Ls.6-8)

The arrest team was met at the door by Ms. Moore's other son, a teenager.¹ (Tr., p.15, Ls.16-18.) Ms. Moore was in the bathroom. (Tr., p.15, Ls.19-20.) Three of the officers entered at the teenage son's invitation and Officer Guiberson waited for Ms. Moore to exit the bathroom. (Tr., p.15, Ls.16-21; Tr., p.16, Ls.18-21 (identifying the three officers who went into the house).) While waiting, the officers performed a protective sweep, but found no one else in the residence. (Tr., p.17, L.16 - p.18, L.1; Tr., p.51, Ls.14-17.) When Ms. Moore finished in the bathroom, she tossed her purse onto her bed, and went out to meet with the officers. (Tr., p.19, L.6 - p.20, L.14.) Officer Guiberson found this conduct to be suspect. (Tr., p.20, Ls.12-23.)

Ms. Moore informed the officers that Mr. McInnelly was not at the residence, but was out looking for a job. (Tr., p.21, Ls.6-8.) Ms. Moore was able to get a hold of Mr. McInnelly by telephone and Officer Guiberson talked with him, confirmed that he was job hunting, and ordered him to meet her at her office in fifteen minutes. (Tr., p.21,

¹ Ms. Moore's teenage son and daughter live with her. (Tr., p.74, Ls.11-22.) Ms. Moore's husband would also normally be living in that house, but was incarcerated at the time of the search. (Tr., p.100, Ls.17-24.) His belongings were in the room he shared with Ms. Moore. (Tr., p.100, Ls.17-18.) And even though there was only one bed in Ms. Moore's room (Tr., p.23, L.6), Officer Guiberson mistakenly believed Mr. McInnelly, his son (Ms. Moore's grandson), and Ms. Moore all shared that room. (See, e.g., Tr., p.26, Ls.2-3.) Rather, when he was there, Mr. McInley and his son would sleep in one of the other rooms, which was furnished for their needs. (Tr., p.100, Ls.3-13; see also Tr., p.55, Ls.1-16 (Officer Paula Aldous testifying that she observed two beds in another room, in which the teenage son showed her some of Mr. McInnelly's clothes.) However, Ms. Moore indicated that Mr. McInnelly was staying primarily with another of her sons, who had his own residence. (Tr., p.82, L.24 - p.83, L.1.)

L.18 - p.22, L.4.) Rather than return to her office for the arranged meeting with Mr. McInnelly, Officer Guiberson decided she wanted to search the house, specifically, Ms. Moore's purse. (See Tr., p.22, Ls.5-18.) She claimed that she wanted to be sure the house was "a safe place for [Mr. McInnelly] to live" while on probation (Tr., p.24, Ls.2-7), even though she was planning on arresting him for violating his probation by using drugs. (Tr., p.9, Ls.1-6.)

Ms. Moore testified that Officer Guiberson said she had a right to search the whole home pursuant to the terms of Mr. McInnelly's probation. (Tr., p.78, Ls.14-17; Tr., p.83, Ls.9-10.) Officer Guiberson testified she could not remember whether she had made such statements. (Tr., p.46, Ls.10-15.) However, Officer Tom Foltz (one of the three officers who entered the home) testified that Officer Guiberson had given him the impression that they had "a combined consent along with the probationary search of the home." (Tr., p.64, Ls.21-24.) As a result of Officer Guiberson's claim that she had a right to search the home pursuant to the terms of Mr. McInnelly's probation, Ms. Moore permitted the search of the home. (See Tr., p.83, Ls.9-10; Tr., p.24, Ls.2-7.) However, Ms. Moore maintains that she did not consent to a search of her purse. (Tr., p.99, Ls.13-14.) Rather, Ms. Moore testified that Officer Guiberson searched the purse without requesting permission to do so. (Tr., p.83, Ls.19-22.) However, Officer Guiberson and Officer Aldous testified that Ms Moore consented to that search. (Tr., p.25, Ls.17-22; Tr., p.52, L.24 - p.53, L.6.) Officer Guiberson did get Ms. Moore's purse from the bedroom, searched it, and found methamphetamine and drug paraphernalia in the purse. (Tr., p.26, Ls.3-7.)

As a result, the State charged Ms. Moore with possession of methamphetamine. (R., pp.26-27.) She filed a motion to suppress the evidence found in her purse, claiming

the officers had no justification to search the purse. (R., pp.39-40, 44-47.) The State responded that Ms. Moore “freely and voluntarily consented to the officer’s search of her purse and residence,” and therefore, the search was valid. (R., pp.52-57.) The district court determined, based on the clear weight of the evidence, that Mr. McInelly had been living in Ms. Moore’s home. (R., p.67.) It also ruled that “[a]s [Mr. McInelly’s] probation officer investigating a parole violation involving illegal drug use, Guiberson had the authority and responsibility to search the home for evidence relating to possible probation violations and to determine if the residence continued to be safe housing.” (R., p.67.) As a result, it determined that Ms. Moore consented to the search of her home and her purse. (R., pp.67-68.) Therefore, it denied the motion to suppress. (R., p.68.)

Ms. Moore entered a conditional guilty plea, reserving the right to appeal the district court’s decision regarding her motion to suppress. (R., p.97.) The district court ultimately granted Ms. Moore’s request for a withheld judgment and placed her on probation for four years. (Tr., p.129, Ls.13-14; R., p.109.) Ms. Moore filed a timely notice of appeal pursuant to her conditional guilty plea. (R., pp.116-17.)

ISSUE

Whether the district court erred by not suppressing the evidence found during an illegal search which was conducted without the voluntary, knowing, and intelligent consent of Ms. Moore.

ARGUMENT

The District Court Erred By Not Suppressing The Evidence Found During An Illegal Search Which Was Conducted Without The Voluntary, Knowing, And Intelligent Consent Of Ms. Moore

A. Introduction

Both the United States and Idaho Constitutions protect against unreasonable, searches and seizures. In this case, officers represented that they could search the entire residence based on the fact that Mr. McInnelly had consented to searches pursuant to the terms of his probation. That was incorrect and Ms. Moore's subsequent acquiescence to that erroneous representation does not constitute voluntary consent. Thus, absent a valid waiver of Ms. Moore rights, officers did not have independent justification to conduct the warrantless search of her house, much less of her purse pursuant to the terms of Mr. McInnelly's probation. Therefore, the district court erred by not suppressing the evidence found during the illegal search.

B. Standard Of Review

The standard of review of a suppression motion is bifurcated. See, e.g., *State v. Tyler*, 153 Idaho 623, 626-27 (Ct. App. 2012). The appellate court accepts those findings of fact which are supported by substantial evidence, but freely reviews the application of constitutional principles. *Id.* "[T]he power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court." *Id.*

C. The Fact That Mr. McInelly Was On Probation And Living In Ms. Moore's House Did Not Give Officers An Absolute Right To Search The Residence

The Fourth Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ." U.S. CONST. amend IV. The Fourth Amendment is enforceable against the states through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961); *State v. Johnson*, 110 Idaho 516, 524 (1986). The Idaho Constitution provides its own, similar protections against unreasonable searches and seizures. IDAHO CONST. Art. I, § 17; *State v. Donato*, 135 Idaho 469, 471 (2001).

A unanimous United States Supreme Court has held that warrantless searches are *per se* unreasonable. *Mincey v. Arizona*, 437 U.S. 385, 390 (1978). Therefore, a warrantless search is presumed to violate the Fourth Amendment unless the State demonstrates that one of the exceptional, well-established, and well-delineated exceptions to this requirement is applicable to the facts. *Id.* at 390-91; *see also State v. Holton*, 132 Idaho 501, 503-04 (1999) (holding the same standard applies to Art. I, § 17 of the Idaho Constitution).

When multiple people share a residence, one person's consent to search only extends to the property shared in common. *See, e.g., Georgia v. Randolph*, 547 U.S. 103, 109 (2006); *State v. Robinson*, 152 Idaho 961, 965-66 (Ct. App. 2012). This consent also extends to the property over which police reasonably, albeit erroneously, believe that the person giving the consent has shared control. *Id.* Whether or not the consent-giver has such apparent authority is determined by evaluating the totality of the circumstances. *Robinson*, 152 Idaho at 965-66. As a result, probationers cannot waive the rights of other people with whom they cohabit if the probationer does not have

authority over the area or property in question. See, e.g., *State v. Barker*, 136 Idaho 728, 730-31 (2002); *Robinson*, 152 Idaho at 965. As such, Mr. McInnelly's consent to search the residence pursuant to the terms of his probation only extended to that property over which he had actual or apparent control. *Randolph*, 547 U.S. at 109; *Barker*, 136 Idaho at 730-31; *Robinson*, 152 Idaho at 965-66. Thus, the district court's conclusion that Officer Guiberson had the "authority and responsibility to search the home for evidence relating to possible probation violations and to determine if the residence continued to be safe housing" (R., p.67) is directly contrary to established precedent.

Putting aside, for the moment, the question of which rooms to which Mr. McInnelly's consent extended, officers could not have reasonably believed Mr. McInnelly shared control over Ms. Moore's purse. Since the methamphetamine was found in Ms. Moore's purse, (see, e.g., R., p.64; Tr., p.26, Ls.1-7), Mr. McInnelly's consent to search did not justify the officer's warrantless search of that purse. See *Randolph*, 547 U.S. at 109; *Barker*, 136 Idaho at 730-31; *Robinson*, 152 Idaho at 965-66. Therefore, absent Ms. Moore's valid consent, the search of the purse was unlawful.

However, Mr. McInnelly's consent to search did not even extend to the bedroom in which the purse was found. Officers could not reasonably believe that Mr. McInnelly shared control over that bedroom. First, there were two bedrooms in the trailer home and some other smaller rooms. (Tr., p.55, Ls.7-13.) Officer Guiberson indicated that she believed Ms. Moore, Mr. McInnelly, and Mr. McInnelly's son all stayed in one of the two bedrooms. (Tr., p.23, Ls.2-6.) However, Officer Guiberson admitted that the only indication that someone besides Ms. Moore stayed in Ms. Moore's room was the

presence of adult male clothing in the room.² (Tr., p.33, Ls.16-20.) Additionally, Officer Guiberson noticed there was only one bed in Ms. Moore's bedroom. (Tr., p.23, L.6.) In fact, Officer Guiberson testified it would be odd for all three of them to stay in that room. (Tr., p.23, Ls.4-5.) Furthermore, the absence of children's clothes in that bedroom demonstrates that Officer Guiberson's belief that Mr. McInelly and his young son stayed in that room was not reasonable. (See Tr., p.23, Ls.2-6.) Therefore, it was not reasonable to believe that Mr. McInelly had shared control over that room or the items therein. See *Randolph*, 547 U.S. at 109; *Barker*, 136 Idaho at 730-31; *Robinson*, 152 Idaho at 965-66.

Rather, it would be reasonable to believe that, as Ms. Moore indicated, Mr. McInelly and his son would stay in another room when they were at that home. (See Tr., p.23, Ls.4-5.) The evidence reveals the reasonableness of that conclusion since there was another room furnished for Mr. McInelly's needs. (Tr., p.100, Ls.9-13.) It had two beds, one child-sized and one adult-sized. (Tr., p.100, Ls.9-13.) In fact, Officer Aldous testified that the teenage son who initially opened the door showed her some of Mr. McInelly's clothes in one of the other bedrooms and she observed the two beds in that room. (Tr., p.55, Ls.1-4.) It was also where the children's toys were located. (Tr., p.100, Ls.9-13.) Therefore, based on the totality of the circumstances, that was obviously the room over which Mr. McInelly had apparent control, and thus, the only one of the bedrooms to which his consent to search would extend. See *Randolph*, 547 U.S. at 109; *Barker*, 136 Idaho at 730-31; *Robinson*, 152 Idaho at 965-66. As a result, Mr. McInelly's consent to search pursuant to the terms of his probation

² As Ms. Moore was married and her husband would stay in that room with her (see Tr., p.100, Ls.17-24), Officer Guiberson's observation of male clothing in the room does not give rise to a reasonable inference that Mr. McInelly stayed in that room.

agreement does not justify the warrantless search of either Ms. Moore's bedroom or her purse.

D. Ms. Moore's Consent Was Not Given Knowingly, Voluntarily, And Intelligently; It Was Merely Acquiescing To A Claim Of Lawful Authority

When voluntarily granted, consent is one of the established exceptions to the warrant requirement. *State v. Hansen*, 138 Idaho 791, 796 (2003). The test for whether consent was given freely and voluntarily given looks at the totality of the circumstances. *Ohio v. Robinette*, 519 U.S. 33, 40 (1996); *State v. Garcia*, 143 Idaho 774, 778 (Ct. App. 2006). There are several factors which may impact the determination of whether consent was voluntary, or whether it was coerced by the officers overbearing the defendant's will. *Schneekloth v. Bustamonte*, 412 U.S. 218, 226 (1973); *Garcia*, 143 Idaho at 778. Mere acquiescence to a claim of lawful authority does not constitute knowing, intelligent, and voluntary consent, since the claim of lawful authority (particularly when falsely or erroneously made) is inherently coercive. *Bumper v. North Carolina*, 391 U.S. 543, 548-49 (1968); *State v. Tietsort*, 145 Idaho 112, 118 (Ct. App. 2007). Other factors which influence whether consent was voluntarily-given include the number of officers involved, the location, conditions, and time at which the consent was given, whether the individual was free to leave, and whether the individual knew of his/her right to deny consent are all factors which impact this determination. *Garcia*, 143 Idaho at 778.

The totality of the circumstances indicate that Ms. Moore did not give voluntary consent; rather, her consent was coerced. First, the officers were searching pursuant to an erroneous claim of authority based on Mr. McInnelly's probation waiver. (Tr., p.78, Ls.14-17; Tr., p.83, Ls.9-10; see also Tr., p.64, Ls.21-24.) As discussed in Section C,

supra, officers did not have lawful authority to search the area in which the evidence was found (Ms. Moore's purse, which was in Ms. Moore's room) pursuant to Mr. McInnelly's consent pursuant to his probationary release since he did not have actual or apparent control over the bedroom or the purse. Ms. Moore testified that Officer Guiberson claimed the right to search her home pursuant to the terms of Mr. McInnelly's probation. (Tr., p.78, Ls.14-17; Tr., p.83, Ls.9-10.) There was no direct refutation of that evidence. (See, e.g., Tr., p.46, Ls.10-15.) In fact, one of the other officers present indicated that his impression was that the search was being conducted pursuant to the terms of Mr. McInnelly's probation. (Tr., p.64, Ls.21-24.) Ms. Moore also testified that she consented to allow them to search for Mr. McInnelly once Officer Guiberson told her that "she had the right and that she could search anywhere she wanted in my home." (Tr., p.78, Ls.3-21.) As such, the evidence demonstrates that Ms. Moore only acquiesced to a claim of lawful authority to search. Therefore, since that was an erroneous claim of lawful authority, any consent that Ms. Moore may have given was coerced, and thus, was not voluntary. *Bumper*, 391 U.S. at 548-49; *Tietsort*, 145 Idaho at 118.

Second, Officer Guiberson admitted that she had not had Ms. Moore sign any waiver or consent form waiving her Fourth Amendment rights as a result of having a probationer living in her home. (Tr., p.27, L.15 - p.28, L.1.) That is important, since Officer Foltz testified that, when searches are performed in these situations, the other officers will rely on the probation officer to confirm to which areas the waiver of the probationer's Fourth Amendment rights stemming from the terms of probation apply because it is those terms that "dictate to us where we're allowed to search." (Tr., p.71, Ls.1-21.) Officer Foltz also testified that the general policy is to search pursuant to

those terms, rather than a specific consent waiver. (Tr., p.71, Ls.22-25.) Ms. Moore testified that Officer Guiberson had also not informed her that such a term could apply if she let her son stay with her, (Tr., p.80, Ls.6-11), though Officer Guiberson remembered differently. (Tr., p.14, Ls.6-12.) However, the State bears the burden to show that this case falls within one of the well-delineated warrant exceptions. *Mincey*, 437 U.S. at 390; *Holton*, 132 Idaho at 503-04. Therefore, the State has failed to prove that this justification is present in this case. As a result, this exception does not justify the warrantless search.

Finally, the State argued below “[t]he defendant’s Motion to Suppress should be denied because [Ms.] Moore freely and voluntarily consented to the officer’s search of her purse and residence” (R., p.54.) However, a consideration of the totality of the circumstances reveals that was not the case. See *Garcia*, 143 Idaho at 778. In this case, there were five armed officers at Ms. Moore’s residence, three of whom were inside her house. (Tr., p.40, Ls.8-18.) Only Ms. Moore and her teenage son were at home at that time. (Tr., p.51, Ls.14-17.) Officers represented to Ms. Moore that they could search her home pursuant to a probation waiver (Tr., p.78, Ls.14-17; Tr., p.83, Ls.9-10), even though, as discussed *supra*, officers did not actually have such a waiver for the areas and items within Ms. Moore’s control in that residence. Nonetheless, based on Officer Guiberson’s representation of authority, Ms. Moore was unaware that she could refuse consent to search, since officers were acting under the guise of the apparent authority of a probation waiver. Therefore, a reasonable person viewing the totality of the circumstances would conclude that Ms. Moore did not give voluntary consent to search her purse. The district court’s conclusion to the contrary is erroneous and should be reversed.

CONCLUSION

Ms. Moore respectfully requests that this Court reverse the district court's order denying her motion to suppress and remand this case for further proceedings.

DATED this 12th day of June, 2013.



BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th day of June, 2013, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

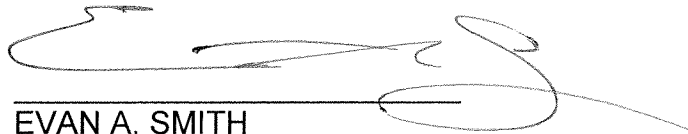
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