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State v. Finnicum Appellant's Reply Brief Dckt. 34087

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)
)
Plaintiff-Appellant,)
)
vs.)
)
PEGGY JEAN FINNICUM,)
)
Defendant-Respondent.)

NO. 34087

FILED - COPY
NOV - 5 2008
Supreme Court _____ Court of Appeals _____
Entered on ATS by: _____

REPLY BRIEF OF APPELLANT

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

HONORABLE JOHN L. LUSTER, District Judge
HONORABLE PENNY FRIEDLANDER, Magistrate Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

STEPHEN A. BYWATER
Deputy Attorney General
Chief, Criminal Law Division

REBEKAH A. CUDÉ
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
PLAINTIFF-APPELLANT

FREDERICK G. LOATS
Attorney at Law
111 N. 2nd St., Suite 300
PO Box 831
Coeur d'Alene, ID 83816

ATTORNEY FOR
DEFENDANT-RESPONDENT

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ARGUMENT

Finnicum Was The Subject Of An Already-Effectuated And Completed Terry Stop Before She Fled Into Her Home

In her respondent's brief, Finnicum misconstrues the state's argument on appeal as simply a rehashing of the state's arguments in *State v. Manthei*, 103 Idaho 237, 939 P.2d 556 (1997), the holding of which was overruled by the Court in *State v. Maland*, 140 Idaho 817, 824, 103 P.3d 430, 437 (2004):

The state again argues, as it did in *Manthei*, that there is no "reason to distinguish" entry in to a residence when the police have reasonable grounds to suspect criminal activity under *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968), as opposed to probable cause to arrest." ...The Court in *Maland* was quite clear that no warrantless police entry is justified to "effectuate" a Terry stop

(Respondent's brief, pp.5-6.) That argument, however, is not the argument presented by the state in this appeal.

The state did argue that there is no "rational basis to distinguish" the holding in *United States v. Santana*, 427 U.S. 38, 42 (1976), with the circumstances in her case – to distinguish between officers pursuing an individual into a home who fled there after officers had effectuated an arrest outside the home and officers pursuing an individual into a home who fled there after officers had effectuated (and in this case, wholly completed) a *Terry* stop outside the home.

The state's argument is simple: the Court in *Maland* held that law enforcement officers may not enter a home in order to effectuate a *Terry* stop in the absence of probable cause for an arrest, exigent circumstances or consent. *Maland*, 140 Idaho at 822, 103 P.3d at 435. That ruling, however, has little to do

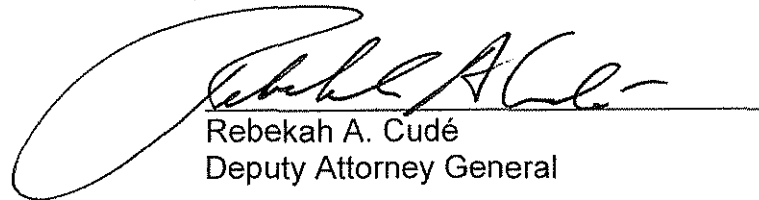
with the circumstances of Finnicum's case, because the officers entered Finnicum's home to retrieve her after she fled from the lawful *Terry* stop that had already been effectuated and completed outside her home. They did not enter her home to effectuate the stop.

The district court apparently misunderstood the breadth of the holding in *Maland*, expanded its holding beyond the circumstances presented therein and apparently felt constrained to reverse the magistrate's order denying the motion to suppress. Nothing in *Maland* required the district court to so rule. The district court's order reversing the order of the magistrate should be reversed.

CONCLUSION

The state respectfully asks this Court to reverse the district court's order reversing the magistrate's order denying Finnicum's motion to suppress (thereby affirming the magistrate's order denying Finnicum's motion to suppress) and remand for further proceedings.

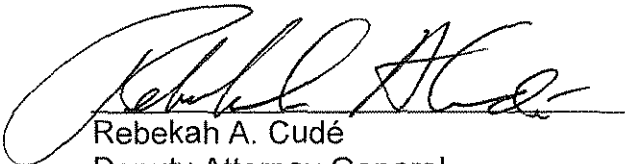
DATED this 6th day of November, 2008.


Rebekah A. Cudé
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 6th day of November, 2008, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

FREDERICK G. LOATS
ATTORNEY AT LAW
P.O. BOX 831
COEUR d'ALENE, ID 83814


Rebekah A. Cudé
Deputy Attorney General

RAC/pm