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# State v. Bowman Appellant's Reply Brief Dckt. 41713

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 41713
	)	
v.	)	ADA COUNTY NO. CR 2013-1473
	)	
STEVEN KENNETH BOWMAN,	)	REPLY BRIEF
	)	
Defendant-Appellant.	)	

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REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

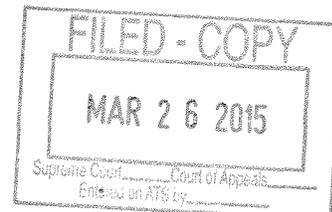
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## STATEMENT OF THE CASE

### Nature of the Case

Steven Bowman appeals, contending that the district court erred by denying his motion to suppress. He has made various assertions explaining why the district court's analysis of the challenges he raised below was wrong, including the fact that the district court was considering inappropriate factors in its analysis. The State has not refuted Mr. Bowman's claims in that regard. Rather, it has adopted the district court's rationales, flawed and erroneous though they be, as its arguments on appeal. Because the district court's analysis did not address all the challenges that Mr. Bowman has made on appeal, his now-unrefuted arguments demonstrate that the district court did, in fact, err when it denied his motion to suppress. Therefore, this Court should reverse the district court's order denying Mr. Bowman's motion to suppress and remand this case for further proceedings.

### Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Bowman's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Whether the district court erred by denying Mr. Bowman's motion to suppress.

## ARGUMENT

### The District Court Erred By Denying Mr. Bowman's Motion To Suppress

- A. By Adopting The District Court's Rationale As Its Argument On Appeal, The State Has Failed To Refute Several Of Mr. Bowman's Arguments On Appeal; Any One Of Those Arguments Demonstrates Why The District Court Erred By Denying Mr. Bowman's Motion To Suppress

The State offers no direct rebuttal to any of Mr. Bowman's arguments on appeal. Instead, it cites various principles of Fourth Amendment jurisprudence and summarizes the facts of this case before simply adopting the district court's rationales as its entire argument on appeal. (Resp. Br., pp.3-9.) The State contends that the district court "addressed all of [Mr.] Bowman's complaints and rejected them." (Resp. Br., p.9.) That assertion is wrong in two respects. First, the district court's analysis does not address Mr. Bowman's claim on appeal that whatever suspicion the officers may have had dissipated when the drug dog did not alert on his car. Second, the district court's analysis does not address Mr. Bowman's contentions that the district court's analysis is flawed or that the district court considered inappropriate factors in its analysis.

Thus, Mr. Bowman's now-unrefuted contentions demonstrate that the order denying his motion to suppress was erroneous and should be reversed. See *Idaho Power Co. v. Cogeneration, Inc.*, 134 Idaho 738, 745 (2000) (noting that, while a respondent's failure to offer argument on an issue does not mandate reversal of the district court's ruling, the appellate courts will review the claims appellant has raised without the benefit of the respondent's arguments, which would have furthered the goal of properly adjudicating the issues on appeal). As such, by not offering responses to Mr. Bowman's contentions in its brief, the State has forfeited any argument it might make against these contentions. *State v. Ruiz*, 150 Idaho 469, 471 (2010) ("The State

has not argued that the error was harmless. Therefore, we vacate the judgment of conviction.”); *see also State v. Almaraz*, 154 Idaho 584, 601 (2013) (pointing out that, as “the subject is not even discussed in the State’s written brief,” the State failed to meet its burden to prove the error harmless, and therefore, the conviction was vacated).

1. The District Court Did Not Address Mr. Bowman’s Claim That Whatever Suspicion The Officers Had Dissipated When The Drug Dog Did Not Alert On His Car, And Therefore, Any Subsequent Warrantless Searches Were Unreasonable

One of Mr. Bowman’s arguments on appeal was that, regardless of whatever suspicion the officers may have initially had, that suspicion dissipated when the drug dog, Ruwa, did not alert on his car. (App. Br., pp.23-25.) The district court’s analysis only addresses the first part of that argument: whether the officers had reasonable suspicion to justify expanding the scope of their investigation in the first place. To that end, the district court determined that the officers did have a sufficient suspicion to expand the scope of their investigation and have Ruwa sniff Mr. Bowman’s car once they found the scale in Mr. Bowman’s pocket. (R., pp.145-47.)

However, that is not the end of the analysis of Mr. Bowman’s claim. Part of Mr. Bowman’s argument is that, when Ruwa did not alert on the car’s exterior, the officers no longer had a *reasonable* suspicion to continue searching him or his property.<sup>1</sup> (App. Br., pp.23-25.) The district court, and thereby, the State, offered no analysis on this part of Mr. Bowman’s argument. (*See generally*, R., pp.134-48.) Thus,

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<sup>1</sup> The officers clearly did not have a reasonable suspicion that Mr. Bowman had contraband on his person, as the pat search of his person (which Mr. Bowman also asserted was unreasonable) revealed nothing of note besides the scale. Additionally, the fact that the officers gave the scale back to Mr. Bowman despite the fact that he remained unrestrained indicates that they did not believe the scale to be contraband.

the State's assertion that the district court's analysis refutes all of Mr. Bowman's contentions (Resp. Br., p.9) is wrong, and Mr. Bowman's argument – that the suspicion the officers might (or might not) have had arising from the discovery of the scale in Mr. Bowman's pocket dissipated when Ruwa did not alert on the car's exterior – has gone unrefuted.

As explained in depth in the Appellant's Brief, because the officers did not have a *reasonable* suspicion to continue searching Mr. Bowman or his property once Ruwa did not alert on the car, the evidence found thereafter was discovered in violation of Mr. Bowman's Fourth Amendment rights, and should have been suppressed.

2. The District Court's Analysis Does Not Address Mr. Bowman's Contentions That The District Court's Analysis Was Wrong Or That The District Court Considered Inappropriate Factors In Its Analysis

The State's assertion that the district court's analysis responds to all of Mr. Bowman's contentions is also erroneous because the district court did not identify the flaws in its own reasoning and rebuff potential arguments regarding those flaws. Yet, many of Mr. Bowman's arguments on appeal do precisely that – identify a flaw in the district court's reasoning and explain why and how that flaw demonstrates the district court's conclusion is incorrect. (*See generally* App. Br.)

For example, Mr. Bowman contended that the district court's analysis of whether the officers had reasonable suspicion to expand the scope of the stop beyond issuing traffic citations was flawed because it expressly considered the fact that Mr. Bowman refused to consent to searches of his person or property as a factor contributing to the purported existence of reasonable suspicion. (App. Br., pp.21-22 (quoting R., p.144 n.1).) As discussed in the Appellant's Brief, numerous other courts have pointed out

that considering a refusal to consent in the calculus for reasonable suspicion is wholly improper and constitutes its own violation of the Fourth Amendment protections. The district court does not offer any analysis as to how its consideration of that factor in its analysis did not violate Mr. Bowman's Fourth Amendment rights. (See R., p.144 n.1.) As such, the district court's analysis does not refute Mr. Bowman's argument on this point.

The State, by merely adopting the district court's rationale, has not only endorsed that incorrect assertion, but it has affirmatively argued it on appeal. The fact that the district court, and by extension, the State, are willing to encroach on Mr. Bowman's Fourth Amendment rights and consider his invocation of those rights as a basis for detaining him and searching his person and property without a warrant is more than sufficient to demonstrate that the order denying Mr. Bowman's motion to suppress should be vacated.

Because the State did not offer any argument of its own means that all Mr. Bowman's arguments about the shortcomings in the district court's rationales have gone unrefuted on appeal. On each issue, the district court erred. As discussed in detail in the Appellant's Brief, those errors, individually and as a whole, demonstrate why the district court's decision to deny Mr. Bowman's motion to suppress should be vacated. (See App. Br., pp.11-29.)

B. The District Court Erred By Denying Mr. Bowman's Motion To Suppress

As the State has offered no additional arguments on the merits of this case, no further reply is necessary. Mr. Bowman simply refers this Court back to his Appellant's

Brief, wherein he explained in detail why and how the district court's decision to deny his motion to suppress was improper. (See App. Br., pp.11-29.)

CONCLUSION

Mr. Bowman respectfully requests that this Court reverse the district court's order denying his motion to suppress the evidence and remand this case for further proceedings.

DATED this 26<sup>th</sup> day of March, 2015.



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BRIAN R. DICKSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26<sup>th</sup> day of March, 2015, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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