7-17-2008

State v. Swindle Appellant's Brief Dckt. 34658

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. ABIGAIL M. SWINDLE, Defendant-Appellant.	)	NO. 34658 APPELLANT'S BRIEF

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 LANSING L. HAYNES
District Judge

MOLLY J. HUSKEY
State Appellate Public Defender
State of Idaho
I.S.B. # 4843

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STATEMENT OF THE CASE

Nature of the Case

Abigail Swindle was a visitor in Kristine Bear's home when she was illegally detained by police officers. After receiving Ms. Bear's consent to look around her residence, Kootenai County Sheriff's Deputies went to the room Ms. Swindle was in, escorted her to the living room, obtained her driver's license, and required that she remain seated in the living room for the duration of the search. A bindle believed to contain methamphetamine was discovered in the home, those present were questioned regarding who the bindle belonged to, and Ms. Swindle eventually stated the bindle was her's. Ms. Swindle was subsequently arrested and drug paraphernalia and methamphetamine were found on her person during the search incident to her arrest. She was eventually charged with possession of a controlled substance and possession of paraphernalia with intent to use.

Ms. Swindle filed a Motion to Suppress her statements and the evidence seized pursuant to her arrest as these were all products of her illegal detention. Ms. Swindle now appeals from the district court's Memorandum Opinion and Order in Re: Defendant's Motion to Suppress. On appeal, Ms. Swindle contends that, although the district court correctly found that she was detained by the deputies, the district court erred when it found that there was reasonable suspicion to detain her while the deputies looked around and subsequently search the residence she was a visitor in. Therefore, the evidence seized and her statements made should have been suppressed because they were the products of her illegal detention.

Statement of the Facts and Course of Proceedings

On March 3, 2007, Ms. Swindle was visiting Kristine Bear at Ms. Bear's residence in Post Falls, Idaho. (Tr. 6/15/07, p.54, Ls.5-6; R., p.108.) Earlier that day, Deputies Patrick Meehan and Charles Sciortino of the Kootenai County Sheriff's Department had received reports from two of Ms. Bear's neighbors stating they were concerned that there was drug activity occurring in Ms. Bear's home. (Tr. 6/15/07, p.10, Ls.7-10, p.11, Ls.3-6, p.29, Ls.18-25; R., p.108.) Deputy Meehan had been informed by one of Ms. Bear's neighbors that the neighbor felt there was drug activity going on at her residence. (Tr. 6/15/07, p.10, Ls.1-10.) When Deputy Meehan went to Ms. Bear's home to investigate with Deputy Sciortino, another neighbor informed them that Ms. Bear was not home, and that he also felt there was drug activity going on at the residence. (Tr. 6/15/07, p.11, Ls.2-11.) That neighbor then called the deputies when Ms. Bear arrived home and the deputies returned to Ms. Bear's residence. (Tr. 6/15/07, p.11, Ls.7-11.)

Ms. Bear allowed the deputies to enter her home and gave her consent for the deputies to look around. (Tr. 6/15/07, p.12, Ls.6-11, p.31, Ls.7-18; R., pp.108-09; Exhibits A & B.) Deputy Sciortino asked if there was anyone else in the residence and Ms. Bear informed him that there was one other person in the back room. (Tr.6/15/07, p.13, Ls.1-6; R., p.109; Exhibits A & B.) He then located Ms. Swindle in the back bedroom and brought her to the front living room. (Tr. 6/15/07, p.34, Ls.11-14; R., p.109.) He also asked Ms. Swindle if there was anyone else in residence, and Ms. Swindle replied that there was not, believing Deputy Sciortino was referring to the bedroom she was in. (Tr. 6/15/07, p.34, Ls.15-18, p.57, Ls.8-12, p.59, Ls.1-12;

R., p.109.) As Deputy Sciortino was escorting Ms. Swindle to the front of the residence, he noticed a woman hiding in another bedroom.[1] (Tr. 6/15/07, p.35, Ls.6-10; R., p.109.) He proceeded to escort both women to the living room, where Ms. Bear, her son, and Deputy Meehan were located. (Tr. 6/15/07, p.36, Ls.18-22; R., p.109.) Deputy Sciortino then received verbal consent from Ms. Bear to search the residence for drugs. (Tr. 6/15/07, p.49, Ls.2-9; R., p.109; Exhibits A & B.).

Sometime after Ms. Swindle was escorted to the living room, she asked if she could go to the bathroom to get a band-aid for her finger. (Tr. 6/15/07, p.42, Ls.8-20; R., p.109.) Deputy Sciortino advised her she could not, stating they would be done in a few minutes. (Tr. 6/15/07, p.42, Ls.8-20; R., p.109.) Deputy Sciortino also advised Ms. Bear why they were there and received her verbal consent to search the residence. (Exhibits A & B.) Deputy Meehan then asked for and obtained identification from Ms. Swindle, as well as the other individuals present, while Deputy Sciortino was searching the residence. (Tr. 6/15/07, p.21, Ls.14-22; R., p.109; Exhibits A & B.)

While searching the residence, Deputy Sciortino found a tinfoil bindle containing what he believed to be methamphetamine.[2] (Tr. 6/15/07, p.38, Ls.19-23, p.39, Ls.2-3,

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[1] This other woman initially gave Deputy Sciortino a false name, but Ms. Bear informed the deputies of her real name and that she had a warrant out for her arrest. (Tr. 6/15/07, p.14, Ls.20-22, p.35, L.24 – p.36, L.14; R., p.109; Exhibits A & B.)

[2] At the hearing on the Ms. Swindle's motion to suppress, both Deputies testified that the bindle was found near the bathroom sink; although, Deputy Meehan stated his police report mistakenly stated it was found by the kitchen sink. Tr. 6/15/07, p.38, Ls.19-23, p.39, Ls.2-3, p.46, L.15 – p.47, L.6; R., p.109.) Notably, in the audio recordings of the incident, Deputy Sciortino repeatedly states there is a bindle of methamphetamine "on the kitchen sink" rather than in the bathroom. (Exhibits A & B.) Because Ms. Swindle contends she was detained prior to the bindle being located, the exact location is not necessary to the issue raised on appeal. Therefore, she is not disputing where the bindle was found for the purposes of this appeal.

p.46, L.15 – p.47, L.6; R., p.109; Exhibits A & B.) According to Deputy Sciortino, the bindle appeared to have recently been used to ingest methamphetamine. (Tr. 6/15/07, p.38, L.22 – p.39, L.1; R., p.109.) Deputy Sciortino then returned to the living room, advised every one of their Miranda rights, and questioned them regarding who the bindle belonged to. (Tr. 6/15/07, p.39, Ls.7-21, p.47, Ls.3-16, R., p.109; Exhibits A & B.) He advised them "that somebody was going to admit to the bindle or everybody was going to be going to jail" and that "he would be performing drug tests on the arrested persons, but all that could be avoided if someone is honest." (R., pp.109-10; *see also* Exhibits A & B.) At that point, Ms. Swindle stated "'I'll take it. It doesn't matter. I'm not letting her (presumably Ms. Bear) with kids go to jail.'" (R., p.110; Exhibits A & B.) After Ms. Swindle was admonished not to make a false admission, Ms. Swindle again stated that she would take responsibility for the bindle. (Tr. 6/15/07, p.40, Ls.4-12; R., p.110; Exhibits A & B.) Ms. Swindle was then arrested. (R., p.110.) During the search incident to her arrest, seven pipes were discovered in her pockets and methamphetamine was discovered in her bra. (R., p.110.) Ms. Swindle was charged with possession of a controlled substance (methamphetamine) and possession of drug paraphernalia with intent to use. (R., pp.16-19, 63-64.)

Ms. Swindle subsequently filed a Motion to Suppress her statements and evidence seized, including all statements she made in the living room, and all evidence seized from her person, because she was illegally detained by the deputies and her statements and the evidence seized were the direct result of that illegal detention. (R., pp.74-75, 110.) Following a hearing and briefing on Ms. Swindle's Motion to Suppress, the district court issued a Memorandum Opinion and Order in Re:

Defendant's Motion to Suppress denying Ms. Swindle's Motion to Suppress, finding that, although Ms. Swindle was detained by the deputies, the deputies had a reasonable suspicion to detain her, and therefore, her detention was not illegal. (R., pp.82-15.)

Ms. Swindle subsequently entered a conditional guilty plea to possession of a controlled substance, reserving her right to appeal the district court's denial of her Motion to Suppress. (R., pp.121-25.) The remaining charge was dismissed by the State pursuant to the plea agreement. (R., pp.132-33.) The district court sentenced Ms. Swindle to four years, with two years fixed, and retained jurisdiction for 180 days. (R., pp.134-36.) Ms. Swindle filed a timely Notice of Appeal from the district court's Judgment-Retained Jurisdiction Order. (R., pp.138-41.) Following the period of retained jurisdiction, Ms. Swindle was placed on probation for three years. (See Register of Actions available on the ISTARS Judicial Data Repository at http://www.isc.idaho.gov/.)[3]

[3] Although the Order following Ms. Swindle's Retained Jurisdiction was requested by Ms. Swindle in her Motion to Augment and Suspend filed March 3, 2008, and ordered to be provided by the Supreme Court on April 4, 2008, a copy has not yet been provided by the district court. Counsel for Ms. Swindle has again requested a copy of the Order and will file a motion to augment the record as soon as it is received.

ISSUE

Did the district court err when it denied Ms. Swindle's motion to suppress her statements made and evidence seized because she was unlawfully detained?

ARGUMENT

I.

The District Court Erred When It Denied Ms. Swindle's Motion To Suppress Because She Was Unlawfully Detained Without Reasonable Suspicion

A. Introduction

In denying Ms. Swindle's Motion to Suppress, the district court found that Ms. Swindle was detained by the deputies during the search of Ms. Bear's residence; however, Ms. Swindle's detention was not illegal because the deputies had reasonable suspicion to detain her. Ms. Swindle contends that, although the district court correctly found that she was detained by the deputies, the district court erred when it found that there was reasonable suspicion to detain her while the deputies looked around and subsequently search the residence she was a visitor in. Therefore, the evidence seized and her statements made should have been suppressed because they were the products of her illegal detention.

B. Standard Of Review

"The standard of review of a suppression motion is bifurcated." *State v. Holland,* 135 Idaho 159, 161, 15 P.3d 1167, 1169 (2000). When a decision on a motion to suppress is challenged, the appellate court should "accept the trial court's findings of fact which were supported by substantial evidence, but freely review the application of constitutional principles to the facts as found." *Id.*

C. The District Court Erred When It Found There Was Reasonable Suspicion To Justify Ms. Swindle's Detention By The Deputies

The Fourth Amendment to the United States Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures..." U.S. Const. amend IV. Similarly, Article I, section 17 of the Idaho Constitution also prohibits unreasonable searches and seizures. *State v. Silva,* 134 Idaho 848, 852, 11 P.3d 44, 48 (2000). Under the United States and Idaho Constitutions warrantless searches and seizures are *per se* unreasonable unless they fall into one of the "'few specifically established and well delineated exceptions." *Minnesota v. Dickerson,* 508 U.S. 366, 372 (1993) (quoting *Thompson v. Louisiana,* 469 U.S. 17, 19-20 (1984)). Therefore, the State bears the burden of demonstrating a warrantless search or seizure falls into an exception to the warrant requirement. *State v. Worthington,* 138 Idaho 470, 472, 65 P.3d 211, 213 (Ct. App. 2002).

This prohibition against unreasonable searches and seizures applies to investigatory detentions of a person falling short of arrest, as well as formal arrests. *State v. Gutierrez,* 137 Idaho 647, 650, 51 P.3d 461, 464 (2002); *State v. Knapp,* 120 Idaho at 346, 815 P.2d at 1086. Although an arrest of an individual must be based on probable cause, police may seize a person through an investigatory stop without probable cause, provided there is a reasonable articulable suspicion of criminal activity. *Terry v. Ohio,* 392 U.S. 1, 30 (1968); *Knapp,* 120 Idaho at 346-47, 815 P.2d at 1085; *State v. Cook,* 106 Idaho 209, 677 P.2d 522 (1984). The standard of proof which an officer must satisfy in order to justify an investigatory stop is to be judged by the "totality of the circumstances." *State v. Haworth,* 106 Idaho 405, 679 P.2d 1123; *see United States v. Cortez,* 449 U.S. 411 (1981); *State v. Cowen,* 104 Idaho 649, 662 P.2d 230

(1983); *State v. Post,* 98 Idaho 834, 573 P.2d 153 (1978). The State bears the burden of proving that an investigatory stop or detention is based on reasonable suspicion and is limited in its scope and duration to the issue being investigated. *Florida v. Royer,* 460 U.S. 491, 500 (1983); *Gutierrez,* 137 Idaho at 651, 51 P.3d at 651. Here, the district court correctly found that Ms. Swindle was detained by the deputies. However, it erred when it found there was reasonable suspicion for her detention.

1. The District Court Correctly Determined That Ms. Swindle Was Detained By The Deputies

The district court was correct in finding that Ms. Swindle was in fact detained by Deputies Meehan and Sciortino. A seizure occurs when officers detain someone through physical force or show of authority. *State v. Page,* 140 Idaho 841, 843, 103 P.3d 454, 456 (2004). To determine if someone has been detained, the courts look at "'whether, under all the circumstances surrounding an encounter, a reasonable person would have felt free to leave or otherwise decline the officer's requests and terminate the encounter.'" *Id.* citing *State v. Reese,* 132 Idaho 652, 654, 978 P.2d 212, 214 (1999). An individual "may not be detained even momentarily without reasonable, objective grounds for doing so." *Royer,* 460 U.S. at 497.

In *State v. Page,* an officer approached the defendant while he was on a public street to ask a few questions and examined his identification, running it through dispatch to check for warrants. *Page,* 140 Idaho at 844, 103 P.3d at 457. The Idaho Supreme Court found that although the officer was justified in stopping the defendant to ask a few questions, he unlawfully detained the defendant when the officer obtained his drivers license and ran it to check for warrants. *Id.* The Court also noted the difference

between obtaining a driver's license from a person operating a vehicle, who is statutorily required to have a license and give it to police if asked, and identification obtained from a pedestrian. *Id.* at 845, 103 P.3d at 458. The Court stated "[t]he request for the license and action in running it through dispatch must be reasonable under the circumstances." *Id.*

Here, Ms. Swindle was escorted to the living room by the deputies and when she asked if she could go to the bathroom to get a band-aid for her finger, she was advised she could not. (Tr. 6/15/07, p.42, Ls.8-20; R., p.109.) Deputy Meehan also asked for and obtained identification from Ms. Swindle, as well as the other individuals present, while Deputy Sciortino was searching the residence. (Tr. 6/15/07, p.21, Ls.14-22; R., p.109; Exhibits A & B.) Deputy Meehan could not remember if he returned the identification after ascertaining who everyone was. (R., p.109.) In the audio recordings of the incident, a cell phone is also repeatedly ringing in the background and no one is allowed to answer it. (Exhibits A & B.) The facts that Ms. Swindle was escorted from the room she was in to another room, was not allowed to leave that room to go about her business, and her identification was taken from her after she was escorted to the living room, demonstrates that a reasonable person would not feel free to leave under the circumstances. Therefore, the district court correctly found that Ms. Swindle was detained by the deputies.

2. Ms. Swindle's Detention Was Unlawful Because The Deputies Did Not Have A Reasonable Articulable Suspicion That She Was Involved In Criminal Activity

The district court erred when it found that the deputies had a reasonable suspicion that Ms. Swindle had committed or was about to commit a crime when they

detained her; therefore, her detention was illegal. "In order to satisfy constitutional standards, an investigative stop must be justified by a reasonable suspicion on the part of the police, based upon specific articulable facts, that the person to be seized has committed or is about to commit a crime." *State v. Sevy,* 129 Idaho 613, 615, 930 P.2d 1358, 1360 (Ct. App. 1997). An officer can only seize a person for the purposes of an investigatory detention if there is a reasonable articulable suspicion of criminal activity. *Terry,* 392 U.S. at 30; *Knapp,* 120 Idaho at 346-347, 815 P.2d at 1085.

When determining whether an investigatory detention is unconstitutional, the courts will look at the "totality of the circumstances" to determine whether the officer had reasonable suspicion to believe that the person detained has committed or is about to commit a crime. *State v. Bromgard,* 139 Idaho 375, 379, 79 P.3d 734, 738 (Ct. App. 2003.) However, the officers' suspicion must be more than a hunch. *State v. Schumacher,* 136 Idaho 509, 515, 37 P.3d 6, 11 (2001). "'Based upon the whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Wilson v. Idaho Transportation Department,* 136 Idaho 270, 274, 32 P.3d 164, 168 (Ct. App. 2001) (quoting *United States v. Cortez,* 499 U.S. 411, 417-418 (1981)).

Here, the district court erred in finding that there was reasonable suspicion to detain Ms. Swindle because they did not have an individualized, particularized suspicion that she was involved in criminal activity. Furthermore, even if a generalized suspicion related to the home was sufficient, the information provided by the known citizens failed to provide that reasonable suspicion.

a. The Deputies Lacked An Individualized Suspicion Specifically Related To Ms. Swindle To Justify Her Detention

Much of the deputies' suspicions in this case came from the information provided by the citizen informants and was related strictly to the residence in general, rather than specifically to Ms. Swindle. (Tr. 6/15/07, p.27, L.19 – p.28, L.1, p.45, L.3 – p.46, L.11; R., pp.112, 114.) The United States Supreme Court has stated that a seizure under the Fourth Amendment "must be based on specific, objective facts indicating that society's legitimate interests require the seizure **of the particular individual**, or that seizure must be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers." *Brown v. Texas,* 443 U.S. 47, 51 (1979) (emphasis added). The *Brown* Court went on to note "we have required the officers to have a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity." *Id. See also U.S. v. Martinez-Fuerte,* 428 U.S. 543 (1976) (upholding brief questioning routinely conducted at permanent checkpoints absent an individualized suspicion, as detentions are carried out pursuant to a routine plan with explicit and neutral guidelines). Although the courts have allowed the occupants of a home who are present when a search warrant is being executed to be detained during the search, these holdings have still recognized that an individualized suspicion is required, finding that the individualized suspicion to detain the occupants comes from the detached judicial officer's finding of probable cause to search the residence. *Michigan v. Summers,* 452 U.S. 692 (1981); *State v. Kester,* 137 Idaho 643, 51 P.3d 457 (Ct. App. 2002).

In *Summers,* the United States Supreme Court was asked whether the Fourth Amendment was violated when officers stopped an individual who was exiting a

residence where they were about to execute a search warrant for narcotics. *Id.* at 693. The Court held that, "for Fourth Amendment purposes . . . a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted." *Id.* at 705 (emphasis added). In that case, the owner of the home that was subject to a valid search warrant, was leaving the home when officers arrived and was detained by the officers while the search was conducted. *Id.* at 693. In reaching its decision, the Supreme Court emphasized that:

> **Of prime importance** in assessing the intrusion is the fact that the police had obtained a warrant to search respondent's house for contraband. **A neutral and detached magistrate had found probable cause** to believe that the law was being violated in that house and had authorized a substantial invasion of the privacy of the persons who resided there.

Id. at 701 (emphasis added). In other words, the finding of probable cause to search the home, by a neutral and detached magistrate, implicitly carried with it, the authority to detain the owner of the home during the course of the search. This statement is also consistent with the Supreme Court's concern in *Brown,* that when balancing the public's interests with the individual's right to be free from unlawful seizures, the court's must "assure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field." *Brown,* 443 U.S. at 50-51.

Similarly, in *State v. Kester,* 137 Idaho 643, 51 P.3d 457 (Ct. App. 2002), the Idaho Court of Appeals "recognize[d] that the articulable and individualized suspicion to support the detention is found in the issuance of a search warrant by a judicial officer based upon probable cause." *Id.* Following the rationale of *Michigan v. Summers,* 452

U.S. 692 (1981), and the California Supreme Court opinion in *People v. Glaser,* 11 Cal. 4th 354, 902 P.2d 729 (Cal. 1995), the *Kester* Court held the officers in that case were justified in stopping a person approaching a house where a search warrant was being executed to identify the person and his connection to the premises being searched. *Id.*

In *Glaser,* the California Supreme Court was similarly asked whether a police officer searching a private home pursuant to a search warrant, may briefly detain a person who enters onto the premises at the same time as officers are beginning the search. *Glaser,* 11 Cal.4th at 359. Relying on *Summers*, the California Supreme Court concluded that the officer's brief detention of the defendant, who appeared to be more than a stranger or casual visitor of the residence, was justified to determine the defendant's identity and his connection to the residence. *Id.* at 365.

The instant case is distinguishable from *Kester, Summers,* and *Glasser.* The officers were not executing a "search warrant," but instead were conducting a search of pursuant to the homeowner's consent. A detached judicial officer had not made a determination of probable cause to search the residence. Therefore, there was no articulable and individualized suspicion to support Ms. Swindle's detention based on the citizens' generalized complaints regarding Ms. Bear's residence. The neighbors also did not give a description of anyone matching Ms. Swindle's being involved in any drug activity at the residence. (Tr. 6/15/07, p.19, Ls.19-22.) Therefore, the generalized complaints by the citizens could not provide an individualized suspicion that Ms. Swindle was involved in criminal activity.

Although the district court also found that the reasonableness of the deputies suspicions were enhanced by Deputy Sciortino's finding the other woman hiding in the

bedroom, believing Ms. Swindle lied about her presence, and by Ms. Swindle requesting to go to the bathroom to get a band-aid for her finger, these findings do not amount to an objectively reasonable suspicion that Ms. Swindle was involved in criminal activity. (R., pp.112, 114.) Ms. Swindle was already being taken from the room she was in to the living room when the other woman was found, and Ms. Swindle was detained in the living room when she asked to go to the restroom. Additionally, not knowing or mentioning where someone else is located and requesting to go to the bathroom to get a band aid, even if it is not warranted, does not provide a reasonable suspicion that criminal activity is afoot. Finally, all of the individuals present in the home were detained while officers conducted the search; consequently, the suggestion that Ms. Swindle herself was deemed suspicious soley because of her behavior, is contradicted by the deputies' conduct in detaining everyone while searching the home. Therefore, the officers did not possess a particularized suspicion related specifically to Ms. Swindle that she was involved in criminal activity.

b. The State Failed To Establish That The Information Provided By The Citizen Informants Provided Reasonable Suspicion

Assuming *arguendo* that the generalized suspicions officers obtained from the citizen informants could be imputed to Ms. Swindle as a visitor, the information still did not provide a reasonable articulable suspicion criminal activity was afoot. When officers receive information "from a known citizen informant rather than an anonymous tipster, the citizen's disclosure of her identity, which carries the risk of accountability if the allegations turn out to be fabricated is generally deemed adequate to show veracity and reliability." *Wilson,* 136 Idaho at 274, 32 P.3d at 168; *Larson,* 135 Idaho at 101, 15 P.3d

at 336. In some instances, an informant's tip may not warrant police response or may require further investigation before an investigatory stop would be authorized. *Adams v. Williams,* 407 U.S. 143, 147 (1972). The more specific the information received, the greater the weight to be given the information. *Wilson,* 136 Idaho at 275, 32 P.3d at 169. Whether the information provided is sufficient to create a reasonable suspicion by itself depends on both the reliability and the content of the information presented. *State v. Zapata-Reyes,* 144 Idaho 703, 708, 169 P.3d 291, 296 (2007).

At the suppression hearing, the deputies testified that the neighbors were concerned about drug activity in part because of the amount of traffic at the trailer. (Tr. 6/15/07, p.19, Ls.13-18.) However, the only information provided at the hearing to support this claim was that there was a lot of traffic at the home and that the prior morning someone knocked on one of the neighbor's doors asking for drugs. (Tr. 6/15/07, p.45, Ls.3-14.) This last statement was never linked specifically to Ms. Bear's home. There was never any testimony that the individuals knocking on the door, then went to Ms. Bear's residence or asked for Ms. Bear. (Tr. 6/15/07, p.45, Ls.3-14.) Additionally, high traffic at a residence can be attributed to other causes and does not by itself provide a reasonable suspicion of drug activity. Therefore, the information provided by the citizen informants was not specific enough to provide a reasonable suspicion of criminal activity without further investigation.

D. The Statements And Evidence Obtained As A Result Of Ms. Swindle's Unlawful Detention Should Be Suppressed Because They Are The Fruits Of Her Illegal Detention

Any evidence seized, including statements made, during the illegal detention of Ms. Swindle, and subsequent arrest, should be excluded because they are the fruits of

her illegal detention. The exclusionary rule prohibits the use of evidence, obtained either directly or indirectly from an unlawful search or seizure against the defendant. *Wong Sun v. United States,* 371 U.S. 471, 484-485 (1963); *State v. Schrecengost,* 134 Idaho 547, 549, 6 P.3d 403, 405 (Ct. App. 2000). However, evidence will not be excluded if the causal connection between the police action and the acquisition of the evidence has been broken, and therefore, the evidence was not obtained through the exploitation of the initial illegality. *Schrecengost,* 134 Idaho at 549, 6 P.3d at 406. Here Ms. Swindle contends this causal connection between the illegal detention, her statements and the subsequent seizure of evidence was not broken; therefore, her statements and evidence seized should be suppressed.

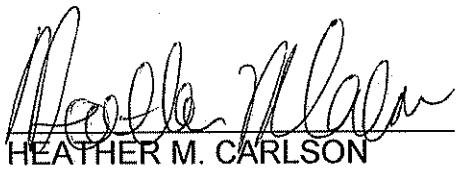
In *Florida v. Royer,* the United States Supreme Court suppressed the subsequent search of the defendant's bags despite his consent, because the consent had been given during an illegal detention and was tainted by the illegality. *Royer,* 460 U.S. at 507-08; *see also State v. Kerley,* 134 Idaho 870, 11 P.3d 489 (Ct. App. 2000). The Court found that evidence and statements obtained as a result of an illegal detention by police is not admissible even if the statements and evidence are freely given to police because they are not the product of "an independent act of free will." *Royer,* 460 U.S. at 501. Here Ms. Swindle was being illegally detained when she was approached and questioned about the bindle in bathroom. Therefore, her statements that the bindle belonged to her, as well as any other statements made during this time, should be suppressed. Additionally, her arrest, the search incident to her arrest, and the statements made during her arrest and subsequent search directly resulted from her

statement that the bindle belonged to her and should have been suppressed as a fruit of her illegal detention.

CONCLUSION

Ms. Swindle respectfully requests that this Court vacate the district court's judgment and commitment order and order placing her on probation and reverse the order denying her Motion to Suppress.

DATED this 17th day of July, 2008.



HEATHER M. CARLSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of July, 2008, 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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PO BOX 83720
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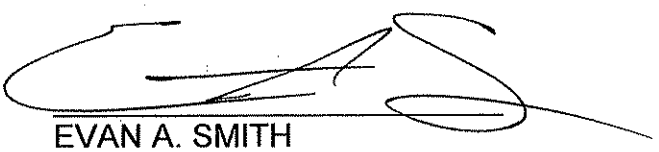
Hand deliver to Attorney General's mailbox at Supreme Court



EVAN A. SMITH
Administrative Assistant

HMC/eas