3-13-2012

State v. Mangum Respondent's Brief Dckt. 38294

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 38294
	)	
vs.	)	
	)	
RODERICK RAINGER MANGUM,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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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District Judge

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **PAGE**

STATUTES

STATEMENT OF THE CASE

Nature of the Case

Roderick Rainger Mangum appeals from the judgment entered upon his conditional guilty plea to forgery of a financial transaction card. On appeal, Mangum challenges the district court's denials of his motion to dismiss and motion to suppress.

Statement of Facts and Course of Proceedings

Idaho law enforcement officers suspected Mangum of using stolen credit card numbers to purchase prepaid gift cards, lottery tickets, and other items. (PSI, pp.2-3; 8/10/10 Tr., p.139, L.5 – p.140, L.13.) Mangum also had an outstanding warrant out of California for fraud-related charges. (PSI Attachments pp.8, 46-52; 8/10/10 Tr., p.144, L.24 – p.145, L.6.) On November 10, 2008, officers approached Mangum outside of his Boise apartment complex and inquired about his identity. (PSI, p.2; PSI Attachments p.8.) Mangum told them that he had identification in his apartment. (PSI, p.2; PSI Attachments p.8.) The officers followed Mangum to his apartment and arrested him on the California warrant after he presented his driver's license. (PSI, p.2; PSI Attachments p.8.)

Inside Mangum's apartment, officers observed numerous receipts, gift cards, and bank information lying on the kitchen table. (PSI, p.2; PSI Attachments p.8.) Based in part on this evidence they observed in plain view, the officers obtained a warrant to search the remainder of the apartment. (PSI, pp.2-3; PSI Attachments p.8; 8/3/10 Tr., p.44, Ls.6-12.) In executing that

warrant, the officers recovered approximately 75 stolen credit card numbers and other evidence. (PSI, pp.2-3; PSI Attachments pp.4, 11-12.) Mangum was transported to California, and the Idaho authorities continued to investigate Mangum's Idaho crimes. (PSI Attachments, pp.8-45.)

On January 12, 2009, while Mangum was being held in the Orange County jail awaiting trial on his California charges, Idaho charged him, by criminal complaint, with two counts of Grand Theft by Unauthorized Control. (R., pp.8-9.) The district court issued an arrest warrant, which the Ada County Prosecutor's Office faxed to the Orange County Sheriff's Office on June 7, 2009. (R., pp.37-39.)

While still housed in the Orange County jail, Mangum became aware of the Idaho charges and active arrest warrant. (8/3/10 Tr., p.57, L.15 – p.58, L.18.) He began sending letters to the Ada County Prosecutor's Office, Ada County district court, and to Orange County jail staff, demanding transport to Idaho and final resolution of his Idaho charges, pursuant to the Interstate Agreement on Detainers (hereinafter "IAD"). (R., pp.11-14, 19, 102-105, 125-132, 136-139; 8/3/10 Tr., p.61, L.15 – p.64, L.12.)

At some point, Mangum reached a plea agreement and pled guilty to three California felonies. (R., pp.15-18.) On June 30, 2009, he was sentenced on the California charges. (R., pp.93-94.) On July 22, 2009, Mangum was transferred from the Orange County jail to a California state prison to serve his sentence.

(8/3/10 Tr., p.66, Ls.12-17.) On October 19, 2009, he was transferred to another California correctional facility. (8/3/10 Tr., p.81, Ls.19-20.)

While in prison, Mangum continued to send letters and inmate communications to various parties demanding transport to Idaho. (8/3/10 Tr., p.67, L.5 – p.76, L.8; R., pp.20-22, 24-29, 97-100, 110-124, 133-135, 140-141.) Mangum's father also exchanged phone calls with the Ada County Prosecutor's Office on the issue. (Defendant's Exhibit O;[1] see 8/3/10 Tr., p.3, L.21 – p.4, L.3.) In August 2009, California prison officials informed Mangum that his requests were premature because Idaho had not yet placed a detainer on him. (Defendant's Exhibit N; R., p.118.) On October 19, 2009, the Ada County district court conducted a status hearing on the matter. (R., p.23; see generally 10/19/09 Tr.) At that hearing, an Ada County Deputy Prosecutor indicated he had been in contact with the California Department of Corrections regarding Mangum's requests to be transported to Idaho, and that he anticipated receiving the appropriate forms from California to complete the IAD process "within the next few weeks." (See generally 10/19/09 Tr.)

On October 23, 2009, California prison officials generated a "detainer summary," which acknowledged receipt of an Idaho detainer. (Defendant's Exhibit K; 8/3/10 Tr., p.81, L.5 – p.83, L.22.) As a result of the detainer, the

[1] By its order dated November 7, 2011, the Idaho Supreme Court granted Mangum's motion to augment the appellate record with Exhibits J-O admitted at the August 3, 2010 hearing.

California Department of Corrections placed Mangum in administrative segregation. (Defendant's Exhibit J; 8/3/10 Tr., p.81, L.5 – p.83, L.22.)

On December 16, 2009, the California Department of Corrections prepared and executed the relevant IAD forms and forwarded them, with Mangum's notice and trial demand, to the Ada County Prosecutor's Office and Ada County district court, which received them on December 28, 2009. (PSI Attachments, pp.175-179; R., pp.35-36, 142-143, 233.)

Mangum was thereafter transported to Idaho, and was initially arraigned on his Idaho charges on February 5, 2010. (R., pp.33-34, 40.) A preliminary hearing, scheduled for February 19, 2010, was postponed due to Mangum's appointed counsel's conflict of interest. (R., pp.47-48.) Conflict counsel entered a notice of appearance on February 23, 2010. (R., pp.49-50.) On March 4, 2010, Idaho filed an amended complaint charging Mangum with one count of forgery of a financial transaction card, three counts of criminal possession of a financial card, and one count of misappropriation of personal identifying information, all felonies. (R., pp.54-56.) Mangum waived the preliminary hearing, and was bound over and arraigned on the new charges. (R., p.57; see generally 3/16/10 Tr.) A jury trial was scheduled for May 12, 2010. (R., p.67; 3/16/10 Tr., p.3, L.24 – p.4, L.2.)

At a March 16, 2010 hearing, Mangum indicated that he would be filing motions to suppress and dismiss. (3/16/10 Tr., p.4, L.10 – p.5, L.23.) The district court rescheduled the jury trial for August to accommodate these motions

and the district court's determination of them. (See generally, 4/27/10 Tr.) On April 27, 2010, Mangum filed a motion to dismiss, arguing that the state violated the IAD by failing to bring him to trial within 180 days of his informal notice and demand for a jury trial that he sent directly to the Ada County Prosecutor's Office and Ada County district court. (R., pp.73-75, 78-87.) Mangum also filed a motion to suppress evidence law enforcement officers recovered in his apartment. (R., pp.76-77, 148-151.)

Prior to the district court's ruling on his motions, Mangum entered a conditional guilty plea to one count of forgery of a financial transaction card, preserving his right to appeal if the district court denied either his motion to suppress or motion to dismiss. (R., pp.158-161; see generally 8/17/10 Tr.) Following two hearings, the district court denied both motions. (R., pp.218-224, 229-234; see generally 8/3/10 Tr; 8/10/10 Tr.) The district court then entered a unified sentence of 14 years with five years fixed on the forgery of a financial transaction card charge. (R., pp.242-245.) Mangum timely appealed. (R., pp.246-249.)

ISSUES

Mangum states the issues on appeal as:

1. Whether the district court erred in denying Mr. Mangum's motion to dismiss based on the State's failure to comply with the IAD's 180 day deadline?

2. Whether the district court erred in concluding Mr. Mangum impliedly consented to law enforcement officers' warrantless entry into this apartment?

(Appellant's brief, p.9)

The state rephrases the issues on appeal as:

1. Has Mangum failed to establish that the district court erred in determining that the state did not violate the Interstate Agreement On Detainers?

2. Has Mangum failed to show that the district court erred in denying his motion to suppress?

ARGUMENT

I.
Mangum Has Failed To Establish That The District Court Erred In Determining That The State Did Not Violate The Interstate Agreement On Detainers

A. Introduction

Mangum contends that the district court erred in denying his motion to dismiss and by concluding that the state did not violate the Interstate Agreement on Detainers. (Appellant's brief, pp.10-28.) Specifically, Mangum contends that he "substantially complied" with the IAD procedural requirements by demanding a trial on his Idaho charges directly to the Ada County prosecutor, and that the state thus violated the 180-day IAD statute of limitations when it did not arrange for Mangum's transport back to Idaho until it received a formal notice and demand through the California Department of Corrections several months later. (Id.)

Mangum's argument fails because the 180-day IAD statute of limitations did not begin to run until the Ada County Prosecutor's Office received Mangum's IAD notice and demand through the California Department of Corrections on December 28, 2010. Mangum's jury trial was scheduled to occur within 180 days of this date, until the statute of limitations was tolled for Mangum to pursue pretrial motions.

B. Standard Of Review

The interpretation and construction of a statute present questions of law over which the appellate court exercises free review. State v. Thompson, 140

Idaho 796, 798, 102 P.3d 1115, 1117 (2004); State v. Dorn, 140 Idaho 404, 405, 94 P.3d 709, 710 (Ct. App. 2004).

C. The State Did Not Violate The Interstate Agreement On Detainer's Statute Of Limitations

The Interstate Agreement on Detainers ("IAD") is an interstate compact creating uniform procedures among the joining parties for lodging and processing of "detainers," or legal orders requiring a state imprisoning an individual to hold that person after completion of his sentence so that another state may receive that person into its custody to be tried for a different crime. Arizona v. Bozeman, 533 U.S. 146, 149 (2001); I.C. § 19-5001. The provisions of the IAD only apply to prisoners who have been convicted, sentenced, and are currently serving time in a penal or correctional institution of a state. I.C. § 19-5001(c)(1); State v. Breen, 126 Idaho 305, 307, 882 P.2d 472, 474 (Ct. App. 1994). Idaho and California are parties to the IAD. I.C. § 19-5001; Cal. Penal Code § 1389.

The basic purpose of the IAD is to encourage disposition of charges outstanding against a prisoner and to provide co-operative procedures among member states to facilitate such disposition. I.C. § 19-5000(a). Other basic purposes of the IAD include preventing detainers from interfering with a prisoner's rehabilitation, and protecting the right to a speedy trial. Id.

Appellate courts in other jurisdictions have varied as to whether prisoners are required to "strictly comply" or merely "substantially comply" with the provisions of the IAD, and whether exceptions to these standards apply. See

Johnson v. People, 939 P.2d 817, 821, n.4 (Colo. 1997) (reviewing standards of required prisoner IAD compliance in different jurisdictions but noting that "[b]ecause interstate arrangements must be made for the transfer, transport, and trial of a prisoner in the custody of another jurisdiction, application of a strict compliance requirement promotes interstate reliance on the terms of the compact and lends stability to fulfilling its objectives," and that "[a]cccordingly, federal appellate decisions hold that prisoners must strictly comply with the procedures set forth in the IAD.") (citations omitted). The Idaho appellate courts have not specifically discussed the degree of required prisoner compliance with the IAD.

By the language of the IAD, four events must occur for a defendant to invoke the statute and effectuate transfer to another state for trial. First, the receiving state must place a detainer on a prisoner in another state. I.C. § 19-5001(c)(1). Second, the warden or custodial official of the sending state is required to notify the prisoner of the source and contents of the detainer and his right to make a request for final disposition on the untried charge. I.C. § 19-5001(c)(3). Third, the prisoner must deliver to the warden or custodial official holding custody over him a written notice and request for final disposition. I.C. § 19-5001(c)(2). Fourth, the warden or custodial official must promptly forward the prisoner's request, and a certificate containing "the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to

the prisoner" to the appropriate prosecutor and district court in the receiving state. I.C. § 19-5001(c)(1), (2).

Once these procedures are completed, the IAD requires that a defendant be brought to trial within 180 days of the appropriate prosecutor's and district court's receipt of the defendant's notice, request, and certificate containing the required information from the warden or custodial official. I.C. § 19-5001(c)(1), (2); Fex v. Michigan, 507 U.S. 43, 45-52 (1993). A receiving state's failure to provide a timely trial under the IAD results in dismissal of the charges with prejudice. I.C. § 19-5001(c)(4).

In this case, the district court correctly concluded that the 180-day IAD statute of limitations did not commence until December 28, 2009, the date the Ada County Prosecutor's Office received the required notice, demand, and certificate from the California Department of Corrections. (R., pp.229-234.) The statute of limitations was then tolled within 180 days of this date, when Mangum began to pursue his dismissal and suppression motions. U.S. v. Odom, 674 F.2d 228, 331 (4th Cir. 1982) (A defendant's pretrial motions toll the IAD statute of limitations because "[d]elay that is lawful under the Speedy Trial Act generally will comply with the mandate of [IAD].")

Mangum contends that through his letter writing campaign and communications with California prison authorities, he "substantially complied" with the IAD requirements prior to December 28, 2009, and that the IAD 180-day statute of limitations commenced when the Ada County Prosecutor's Office

obtained adequate notice of his demand for trial. (Appellant's brief, pp.10-28.) However, Mangum's claim fails because he did not comply, substantially or otherwise, with the language of the IAD, and because by the language of the statute, the 180-day statute of limitations simply did not begin to run until December 28, 2009, when the IAD procedures were finally completed.

1. Idaho Did Not Place A Detainer On Mangum Until September Or October 2009

As discussed above, provisions of the Interstate Agreement on Detainers are only triggered when a state places a detainer on an inmate serving a sentence in a prison in another state. State v. Bronkema, 109 Idaho 211, 213, 706 P.2d 100, 102 (Ct. App. 1985) (citing United States v. Mauro, 436 U.S. 340, 343 (1978); I.C. § 19-5001(c)(1)). Therefore, for a prisoner to initiate a request for disposition pursuant to the IAD, the receiving state must first place a detainer on the prisoner. I.C. § 19-5001(c)(1); New York v. Hill, 528 U.S. 110, 112 (2000).

Mangum asserts that that an arrest warrant, faxed by the Ada County Prosecutor's Office to the Orange County Sheriff's Office on June 7, 2009, transformed into a detainer on July 22, 2009, when Mangum began serving his California sentence in a California prison. (Appellant's brief, pp.12-17.) Mangum thus contends that the IAD began to apply to him at that time. (Id.) Mangum's assertion fails, however, because the arrest warrant did not contain the characteristics of a detainer.

The term "detainer" is not defined in the Interstate Agreement on Detainers. However, in Bronkema, the Idaho Court of Appeals, citing the United States Supreme Court, defined the term "detainer," as used in I.C. § 19-5001, as:

> Entail[ing] some form of written communication initiated by the receiving state which is filed or lodged with the custodial or sending state requesting the sending state to notify the receiving state of the prisoner's imminent release from custody, or to hold the prisoner after his release for the receiving state.

Bronkema, 109 Idaho at 214, 705 P.2d at 103 (parentheticals and emphasis omitted) (citing Carchman v. Nash, 473 U.S 716 (1985); United States v. Mauro, 436 U.S. 340 (1978)).

At the hearing on the motion to dismiss, Idaho Department of Correction Interstate Detainer coordinator Cindy McDonald testified that "[a] detainer is a certified information, complaint, or indictment with a request to place a detainer." (8/3/10 Tr., p.11, Ls.7-12.)

In this case, the district court correctly recognized the arrest warrant was not a detainer because it did not contain either a certified charging document or a "request" for California to notify Idaho of Mangum's imminent release from custody, or to hold him after his release. (R., pp.229-234.) A warrant such as the one faxed in this case, unlike a detainer, does not even necessarily contemplate that the person subject to the warrant is in custody at the time.[2] When the Ada County Prosecutor's Office faxed the warrant to the Orange

[2]Laws other than the IAD govern procedures for the arrest and extradition of fugitives who are not covered by the IAD because of lack of current detention, or because of pretrial detainee status. See I.C. § 19-4501, *et seq.*

County Sheriff's office, Mangum was merely a pretrial detainee in a county jail – he could have subsequently bonded out, been acquitted of the charges, or been released after the prosecutor or a court dismissed the charges. Further, as McDonald testified, a "hold," which a prison may place on an inmate in response to receipt of an out-of-state arrest warrant, serves a different purpose than a formal "detainer," which is required to invoke the provisions of the IAD:

> [T]he reason we place the hold instead of possibly a detainer is because the inmate is going to be paroling within a short period of time or discharging his Idaho sentence, and the time frame for the Interstate Agreement on Detainers is not applicable for placing a detainer against him. Because once you place a detainer and the person goes to the other jurisdiction, they go to the receiving state. Once they're finished with all of their charges, they have to be sent back to the sending state.
>
> If they're paroling or they're discharging, we don't want them back. So that's why occasionally, if it's untried charges, we'll place a hold because there's imminent release from prison.

(8/3/10 Tr., p.28, L.24 – p.29, L.11.)

In addition, even if the arrest warrant could have operated as an IAD "detainer" had Mangum been convicted and serving his sentence at the time it was placed, the IAD contains no provisions allowing a receiving state to preemptively detain a prisoner – its only application is to those who have already been sentenced and are serving time.

Several jurisdictions have rejected the argument that Mangum makes here, that a hold or premature detainer can transform into an effective detainer the moment a defendant begins serving his criminal sentence in a correctional facility. See State v. Hargrove, 45 P.3d 376, 383-384 (Kan. 2002) ("Hargrove

contends in the alternative that the initial filing should be immediately transformed into a detainer under [the IAD] once sentencing occurs. Hargrove fails to recognize this would work an unnecessary hardship on a state which files detainers to have to constantly check on the status of all detained individuals. We reject this argument.") (citing United States v. Currier, 836 F.2d 11 (1st Cir. 1987); State v. Herrick, 686 A.2d 602 (Me. 1996)).

The district court concluded that Idaho did not lodge a detainer against Mangum in California until "about" September 11, 2009. (R., p.230). This conclusion was apparently based on a letter dated October 27, 2009, in which a California Department of Corrections official informed Mangum that an Idaho "hold" had been placed on him on September 11, 2009. (R., pp.194-195) However, the California Department of Corrections did not specifically acknowledge the existence of an Idaho detainer until October 23, 2009, when it generated a "detainer summary" form.[3] (Defendant's Exhibit K.) The district court recognized that, while the faxed arrest warrant did not constitute a detainer, California began "treating the Defendant as being subject to a detainer" around

[3] The date on which California recognized a detainer as being placed is relevant to the question of when a detainer was actually placed, since one of the purposes of the IAD is to prevent detainers from interfering with a prisoner's housing placement and programming options. I.C. § 19-4501(a). If a state department of corrections does not recognize the existence of a detainer, and does not house and program an inmate as if a detainer had been placed on him, then the inmate is spared one of the harms that the IAD seeks to prevent.

this time[4] (i.e., the California Department of Corrections placed Mangum in administrative segregation on October 23, 2009). (R., p.230; 8/3/10 Tr., p.82, L.13 – p.83, L.22; Defendant's Exhibits J, K.)

Because Idaho did not place a detainer on Mangum until, at the earliest, September or October 2009, the IAD was not applicable to Mangum until that time.

2. The California Department Of Corrections Notified Mangum Of The Idaho Detainer No Later Than December 16, 2009

The second step of the IAD procedure was completed no later than December 16, 2009, when the California Department of Corrections formally notified Mangum that Idaho had placed a detainer on him, and advised him of his rights under the IAD. (R., pp.142-143.)

3. Mangum Delivered Written Notice And Request For Final Disposition To California Prison Authorities On December 16, 2009

The third step of the IAD procedure was also completed no later than December 16, 2009, when Mangum signed and delivered his "Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictments, Informations or Complaints" to California Prison Authorities. (R., pp.35-36.)

[4] The district court acknowledged it was unclear from the record whether "Idaho sent new paperwork to California or [if] California, for the first time, treated the warrant faxed earlier as a detainer." (R., p.230.) It is possible Idaho *never* filed a detainer on Mangum in California, which would render the IAD inapplicable. However, this possibility was not raised by the state or considered by the district court below.

4. The California Department Of Corrections Forwarded Mangum's Notice, Request For Final Disposition, And Certificate With Required Supporting Documentation To The Ada County Prosecutor's Office And Ada County District Court On December 22, 2009

The fourth step of the IAD procedure was completed on December 22, 2009, when the California Department of Corrections forwarded Mangum's notice, request, and certificate with required supporting documentation to the Ada County Prosecutor's Office and Ada County district court. (Defendant's Exhibit K.) These documents were received by the Ada County Prosecutor's Office on December 28, 2009. (R., pp.230-233; PSI Attachments, p.179.)

On appeal, Mangum contends that this fourth step was not required before the 180-day IAD statute of limitations commenced in this case because he directly sent notice, request for final disposition, and most of the required supporting information directly to the Ada County Prosecutor's Office and Ada County district court prior to this date. (Appellant's brief, pp.17-28.)

However, as the district court properly concluded, Mangum's contention that the letters he sent directly to the Ada County Prosecutor's Office and the Ada County district court should trigger the 180-day statute of limitations is simply contrary to the plain language of the Interstate Agreement on Detainers. Idaho Code § 19-5001(c)(2) mandates that the written notice and request for final disposition "shall" be sent by the prisoner to the warden, who is then required to promptly forward it, along with the certificate with the required supporting

information, to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

Policy considerations support the strict compliance with and enforcement of this procedural requirement. The remedy for a state's violation of the 180-day statute of limitations, dismissal of the charges with prejudice, is severe. In light of that severe remedy, the IAD provides a clear, date certain for commencement of that statute of limitations – the prosecutor's receipt of the required documentation from the prison authority holding custody over the prisoner, sent by registered or certified mail, return receipt requested. I.C. § 19-5001(c)(2).

The present case illustrates the potential confusion where, instead of following the IAD procedure, the inmate, while moving between a county jail and multiple correctional facilities in another state as the criminal proceedings against him unfold, writes a large number of letters directly to prosecutors, public defenders, and courts, and utilizes third parties to further contact prosecutors by telephone. In circumstances such as these, Mangum's position that receiving states should be required to parse through these numerous communications and guess at whether or not a prisoner's request is "close enough" would "create a trap for unwary prosecuting officials." See Casper v. Ryan, 822 F.2d 1283, 1292-1293 (3rd Cir. 1987) (quoting Nash v. Jeffes, 739 F.2d 878, 884 (3rd Cir. 1984)). To further complicate matters, a state prosecutor who too liberally finds "substantial compliance" with the IAD in an inmate's communications may find

himself subject to the shorter 120-day statute of limitations for "state-initiated" IAD proceedings. I.C. § 19-5001(d).

The mandatory IAD procedures also provide clear direction to trial and appellate courts. Without the enforcement of such procedures, courts would be required to pinpoint a single day at which both "substantial compliance" with the IAD occurred, and at which the prosecutor of the receiving state obtained adequate "knowledge" of the defendant's trial demand. Courts would be required to identify this date from a series of often inartful prisoner letters, inmate requests, third party telephone calls, and other evidence. Even Mangum, on appeal, does not attempt to pinpoint a date at which the Ada County Prosecutor's Office had "adequate knowledge" of Mangum's notice and trial request, but instead contends that "as early as August 28th, but as late as October 19, 2009, both the court and the prosecutor's office had all of the information necessary under the IAD to address Mr. Mangum's request to have his Ada County charges resolved." (Appellant's brief, p.19.) The IAD procedures alleviate this uncertainty.

It is the preference for this "date certain" that convinced the United States Supreme Court, in Fex v. Michigan, to conclude that it was the court's and the prosecutor's receipt of the prisoner's notice, as opposed to any actions taken by the prisoner, which triggered the 180-day speedy trial provision of the IAD. Fex, 507 U.S. at 49 (recognizing that "[i]t seems unlikely that a legislature would select, for the starting point of a statute of limitations, a concept so indeterminate

as 'caused,'" and that delivery is a more likely choice for triggering a time limit because it is more readily identifiable as a point in time).

Several other jurisdictions require prisoners to strictly comply with their respective provisions of the IAD that require the notice, trial demand, certificate, and supporting information to be sent through the custodial official rather than directly from the prisoner to the appropriate prosecutor and district court, regardless of delay or lack of attention on the part of prison authorities. See State v. Smith, 669 P.2d 368, 369-370 (Or. App. 1983); State v. Pero III, 851 A.2d 41(N.J. Super. 2004); Schneider v. Commonwealth, 17 S.W.3d 530 (Ky. App. 2000); Johnson v. Stagner, 781 F.2d 758, 760, n.3 (9th Cir. 1986); U.S. v. Pardedes-Batista, 140 F.3d 367, 372-375 (2nd Cir. 1998); State v. Blackburn, 571 N.W.2d 695 (Wis. App. 1997); Matter of Shapiro v. Jones, 127 Misc.2d 935 (N.Y. Sup. Ct. 1985); People v. Jacobs, 596 P.2d 1187 (Colo. 1979); State v. Bass, 320 N.W.2d 824, 825-829 (Iowa 1982).

Mangum also appears to contend that even if the IAD procedure generally requires what the statute says it does, a prisoner still substantially complies with the IAD, and the 180-day IAD statute of limitations still commences, when the inmate does what he reasonably could be expected to do, and where procedural delays can be attributed to the sending state, in this case California. (Appellant's brief, p.17-28.) This contention fails for two reasons. First, the California Department of Corrections complied with the IAD when it promptly forwarded the required information to Idaho shortly after it recognized that a detainer had been

placed. Second, even if California's forwarding of the necessary information was not "prompt" as required by the IAD, such non-compliance does not implicate Mangum's Idaho charges.

The California Department of Corrections' processing and forwarding of appropriate IAD documentation was reasonably prompt. Though Mangum wrote many letters and expressed frustration, prison authorities consistently responded to his communications, while acknowledging that "[d]ue to reduced staffing levels" they were "behind in [their] responses." (R., pp.140-141.)

The California Department of Corrections informed Mangum, as late as August 2009, that he did not yet have any detainers filed on him. (R., p.118.) As discussed above, California recognized the existence of an Idaho detainer in either September or October 2009. The record indicates that the IAD forms were completed several weeks later, on December 16, 2009. (R., pp.35-36, 142-143.) The forms were forwarded to Idaho shortly thereafter, and received by the Ada County Prosecutor's Office on December 28, 2009. (R., p.233; PSI Attachments p.179.) Though the California Department of Corrections was perhaps not able to process Mangum's requests as instantaneously as Mangum may have liked, Mangum was not languishing for many months or years as the California Department of Corrections navigated the IAD procedures.

Even if Mangum could show that that California did not comply with "promptness" requirements of the IAD, he cannot show that any such non-compliance impacts the IAD statute of limitations or his Idaho charges. As the

Idaho Court of Appeals has recognized, "the 180-day [IAD] time limit does not commence until notice is delivered to the appropriate prosecutor and court despite what a defendant 'may or may not have done in an attempt to cause such a delivery or how much or little delay there is in the delivery.'" Peterson v. State, 139 Idaho 95, 99, 73 P.3d 108, 112 (Ct. App. 2003) (quoting United States v. Johnson, 196 F.3d 1000, 1002 (9th Cir. 1999)).

In Peterson, the Idaho Court of Appeals, in rejecting Peterson's "substantial compliance" argument, concluded that the IAD 180-day statute of limitations never commenced where Peterson provided IAD notice and demand for trial to the appropriate custodial authority in Washington, and where that custodial authority simply failed to forward the notice, trial demand, and appropriate supporting documentation to the appropriate Idaho prosecutor. Peterson, 139 Idaho at 96-98, 73 P.3d at 109-111; see also Fex, 507 U.S. at 52. If Mangum feels that that the California Department of Corrections violated his rights under federal or California law, he may pursue other remedies, including a civil action under 42 U.S.C. § 1983.

The 180-day IAD statute of limitations commenced on December 28, 2009. Shortly thereafter, Idaho arranged for Mangum's transport to Idaho. (R., pp.33-34.) The parties agreed to toll further running of the statute of limitations on March 4, 2010, so that Mangum could pursue pretrial motions.[5] (3/4/10 Tr.,

[5] In addition, Mangum requested and was granted a continuance on February 5, 2010, to obtain conflict counsel, a request which also tolled the IAD statute of limitations. (R., pp.47-48.)

p.13, L.11 – p.18, L.23.) Mangum has thus failed to show that that the district court erred in concluding that the statute of limitations had not expired, and that Idaho did not violate the IAD.

II.
Mangum Has Failed To Show That The District Court Erred In Denying His Motion To Suppress

A. Introduction

Mangum contends that the district court erred by denying his motion to suppress. (Appellant's brief, pp.28-33.) Specifically, Mangum contends that the district court erred in concluding that he gave law enforcement officers implied consent to enter his apartment, where they observed incriminating evidence in plain view. (Id.) Mangum's argument fails because the record reveals that the district court correctly concluded that Mangum impliedly consented to the law enforcement officers' entry into his apartment.

B. Standard Of Review

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts. State v. Diaz, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007).

C. The District Court Correctly Concluded That Mangum Consented To The Officers' Entry Into His Apartment

"Although a warrantless entry or search of a residence is generally illegal and violative of the Fourth Amendment, such an entry or search may be rendered reasonable by an individual's consent." State v. Staatz, 132 Idaho 693, 695, 978 P.2d 881, 883 (Ct. App. 1999) (citing State v. Johnson, 110 Idaho 516, 522, 716 P.2d 1288, 1294 (1986); State v. Abeyta, 131 Idaho 704, 707, 963 P.2d 387, 390 (Ct. App. 1998)).

Consent is valid if it is free and voluntary. State v. Varie, 135 Idaho 848, 852, 26 P.3d 31, 35 (2001). Consent may be either express or implied, and may be in the form of words, gestures, or conduct. Schneckloth v. Bustamonte, 412 U.S. 218, 221 (1973); State v. Knapp, 120 Idaho 343, 348, 815 P.2d 1083, 1088 (Ct. App. 1991). Whether consent is valid is a question of fact to be determined based upon the totality of the circumstances. Varie, 135 Idaho at 852, 26 P.3d at 35 (citing Schneckloth, 412 U.S. at 221). The standard for measuring the scope of consent under the Fourth Amendment is that of objective reasonableness, i.e., "what would the typical reasonable person have understood by the exchange between the officer and the suspect." Florida v. Jimeno, 500 U.S. 248, 251 (1991); State v. Frizzel, 132 Idaho 522, 523, 975 P.2d 1187, 1188 (Ct. App. 1999). The state bears the burden of proving the validity of consent by a preponderance of the evidence. Staatz, 132 Idaho at 695, 978 P.2d at 883; State v. Kilby, 130 Idaho 747, 749, 947 P.2d 420, 422 (Ct. App. 1997).

In this case, the sole issue before the district court on the motion to suppress was whether Mangum impliedly consented to the law enforcement officers' entry into his apartment, and thus whether law enforcement was legally present in Mangum's apartment while making plain view observations that ultimately helped to establish probable cause for a search warrant. (8/3/10 Tr., p.44, Ls.6-12.) Applying the correct legal standards, the district court properly concluded that Mangum impliedly consented to the officers' entry into his apartment. (R., pp.218-224.)

First, the district court made factual findings concerning the circumstances surrounding U.S. Chief Deputy Marshall Platts' contact with Mangum. (R., pp.218-224.) Deputy Platts approached Mangum outside of Mangum's apartment and identified himself as a U.S. Marshall. (8/10/10 Tr., p.148, Ls.14-16.) At this point, Mangum was aware that there was an active California warrant for his arrest. (8/3/10 Tr., p.50, Ls.5-21.) Thus, when Deputy Platts approached Mangum, Mangum appeared to be "extremely excited," but when Deputy Platts asked Mangum if his name was "Derrick," Mangum was visually relieved. (8/10/10 Tr., p.158, L.22 - p.159, L.12.) Indeed, as Deputy Platts testified, his purpose in deceiving Mangum was to both impress a sense of relief upon him, as well as to encourage him to admit his true identity, and to create a situation where Mangum was less likely to resist arrest. (8/10/10 Tr., p.159, L.19 – p.160, L.1.) Deputy Platts indicated to Mangum that if he could confirm that he was not in fact, "Derrick," he would be free to go. (8/10/10 Tr., p.149, L.18 – p.150, L.7.)

Following this exchange, Mangum told Deputy Platts, "let's go back to my apartment to get my license. It's in my wallet in my apartment." (R., pp.218-224; 8/10/10 Tr., p.160, Ls.10-13.) Deputy Platts interpreted this statement and Mangum's demeanor as an invitation to himself and the other law enforcement officers to enter into Mangum's apartment with him to retrieve his identification. (8/10/10 Tr., p.151, L.14 – p.152, L.13.) Mangum never told the officers that they were not allowed to enter his apartment. (8/10/10 Tr., p.160, Ls.2-9.) Mangum and the officers then walked to and entered the apartment, where Mangum produced his license and was arrested. (8/10/10 Tr., p.149, L.19 – p.152, L.17.)

The district court properly concluded that the circumstances, combined with Mangum's statements and demeanor, "would reasonably lead law enforcement to believe they could escort [Mangum] to retrieve his license when he actually did lead them back to his apartment." (R., p.222.) Mangum had a clear motivation to reveal his true identity to the law enforcement officers, so it was reasonable for those officers to interpret Mangum's statement as implied consent to enter, with him, into his apartment kitchen to retrieve his identification.

Mangum has failed to show that the district court erred in concluding that Mangum gave implied consent for the law enforcement officers to enter his apartment. This Court must thus affirm the district court's denial of Mangum's motion to suppress.

CONCLUSION

The state respectfully requests that this Court affirm the district court's denials of Mangum's motion to dismiss and motion to suppress, and Mangum's conviction for forgery of a financial transaction card.

DATED this 13th day of March 2012.

MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of March 2012, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

ERIC D. FREDERICKSEN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

MARK W. OLSON
Deputy Attorney General

MWO/pm