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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 45993
 Plaintiff-Respondent,)
) Ada County Case No.
 v.) CR01-2017-3101
)
 KELLY LUCAS JOHNSON,)
)
 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**

HONORABLE NANCY A. BASKIN
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

MARK W. OLSON
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

**ATTORNEYS FOR
PLAINTIFF-RESPONDENT**

BEN P. MCGREEVY
Deputy State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712
E-mail: documents@sapd.state.id.us

**ATTORNEY FOR
DEFENDANT-APPELLANT**

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STATEMENT OF THE CASE

Nature Of The Case

Kelly Lucas Johnson appeals from the judgment of conviction entered upon her conditional guilty plea to possession of methamphetamine. On appeal, Johnson challenges the district court's order denying her motion to suppress.

Statement Of The Facts And Course Of The Proceedings

Boise dispatch received a report about a possible domestic disturbance at a Boise residence. (9/22/17 Tr., p.15, Ls.8-16.) Officers Will Reimers and David Baughman responded to that address. (Id.) Upon their arrival, Officer Baughman heard yelling coming from inside the residence. (9/22/17 Tr., p.48, L.24 – p.49, L.2.) Officer Baughman knocked on the door. (9/22/17 Tr., p.15, Ls.17-20.) A woman, later identified as Kelly Johnson, answered and let the officers inside the residence. (9/22/17 Tr., p.15, L.21 – p.16, L.2.)

The officers investigated the basis of the domestic disturbance report by interviewing Johnson, a male who was also at the residence, and Johnson's sister – who had reported the domestic disturbance and who was residing in the residence's detached garage. (9/22/17 Tr., p.17, Ls.4-14; p.28, L.14 – p.29, L.5; p.35, Ls.7-23; p.49, L.17 – p.51, L.17; p.53, Ls.3-20.) The officers determined that no crime had been committed with respect to the reported domestic disturbance. (9/22/17 Tr., p.51, Ls.18-24.)

As the officers initially entered the residence, they noticed the odor of marijuana. (9/22/17 Tr., p.16, Ls.19-25; p.51, L.25 – p.52, L.5.) After investigating the basis of the domestic disturbance report, Officer Reimers asked Johnson about the marijuana odor. (9/22/17 Tr., p.18, Ls.17-19.) Johnson eventually acknowledged that she had smoked marijuana in the house earlier that day. (9/22/17 Tr., p.19, Ls.16-19.) Officer Reimers requested consent to

search Johnson's residence. (9/22/17 Tr., p.20, Ls.2-4.) Johnson asked Officer Reimers if he needed a warrant to conduct such a search, and Officer Reimers replied they did not need a warrant if she provided consent to search. (9/22/17 Tr., p.20, Ls.20-25.) Johnson initially denied consent. (9/22/17 Tr., p.20, L.25 – p.21, L.1.) Officer Reimers then told Johnson that he was not planning on arresting her, and that he would obtain a search warrant if Johnson did not consent. (9/22/17 Tr., p.21, Ls.3-13.) The officers also indicated to Johnson that they would be more likely to work with her if she consented, but that they would be more likely to arrest her if they had to obtain a warrant. (9/22/17 Tr., p.39, L.7 – p.40, L.17; p.57, L.2 – p.58, L.5.) Johnson eventually stood up, told Officer Reimers that she would retrieve her marijuana, and entered her bedroom to do so. (9/22/17 Tr., p.23, L.21 – p.24, L.3.) Officer Reimers followed Johnson into her bedroom, where Johnson handed him two small containers of what Officer Reimers believed to be marijuana. (9/22/17 Tr., p.24, Ls.4-17.)

In the bedroom, Officer Reimers also observed a propane torch, which he knew was commonly used to smoke methamphetamine. (9/22/17 Tr., p.25, L.11 – p.26, L.8.) Officer Reimers repeated his assurance that he did not plan to arrest Johnson, and asked her for consent to search the rest of her bedroom. (9/22/17 Tr., p.24, L.20 – p.25, L.5.) Johnson consented to the search. (9/22/17 Tr., p.25, Ls.1-5.) Officer Reimers searched the bedroom and located an eyeglasses container which held a small baggy with a white crystal substance consistent with methamphetamine. (9/22/17 Tr., p.26, Ls.9-21.) Johnson admitted ownership of the methamphetamine. (9/22/17 Tr., p.26, L.22 – p.27, L.4.) Consistent with Officer Reimers' assurances made to Johnson, and despite recovering the methamphetamine, the officers did not arrest Johnson. (9/22/17 Tr., p.27, Ls.5-9; p.55, Ls.15-18.) Later, the state charged Johnson with possession of methamphetamine and possession of marijuana. (R., pp.24-25.)

Johnson filed a motion to suppress the evidence obtained from her residence. (R., pp.30-37.) Johnson argued that the consent she gave the officers to search her bedroom was invalid because it was the result of police duress and/or coercion. (R., pp.33-35.) Specifically, Johnson took issue with the officers' "threats" to obtain a search warrant if she did not consent to the search, and their statements indicating that she was more likely to be arrested if she refused consent. (Id.)

Johnson and both responding officers testified at the hearing on the motion to suppress. (See generally 9/22/17 Tr.) Bodycam footage of the encounter from both officers was admitted into evidence. (9/22/17 Tr., p.29, L.12 – p.31, L.3; p.48, Ls.8-16; State's Exhibit 1.¹) At the conclusion of the hearing, the court denied Johnson's motion. (9/22/17 Tr., p.66, L.7 – p.74, L.23.) The court first noted that much of Johnson's suppression hearing testimony and many of the allegations made in the motion to suppress were disproven by the officers' bodycam footage. (9/22/17 Tr., p.66, L.23 – p.68, L.10.) Then, the court, citing relevant caselaw, concluded that the officers' statements to Johnson indicating that if Johnson did not consent, they would obtain a search warrant and be more likely to arrest her, did not render Johnson's consent involuntary. (9/22/17 Tr., p.68, L.10 – p.74, L.23.) The court also found that the officers' demeanor throughout their encounter with Johnson was calm and professional. (9/22/17 Tr., p.71, Ls.1-12.)

Johnson entered an I.C.R. 11 conditional guilty plea to possession of methamphetamine, specifically preserving her right to appeal from the district court's denial order. (R., pp.62-63; 1/31/18 Tr., p.5, L.13 – p.7, L.1.) The state agreed to dismiss the marijuana charge and to recommend probation. (R., pp.62-63; 1/31/18 Tr., p.5, L.13 – p.7, L.1) The district court

¹ The bodycam footage for both officers was admitted collectively as State's Exhibit 1. (9/22/17 Tr., p.29, L.12 – p.31, L.3; p.48, Ls.8-16.)

accepted Johnson's guilty plea. (1/31/18 Tr., p.7, L.5 – p.17, L.24.) Consistent with the agreement, the district court imposed a unified five-year sentence with one year fixed, but suspended the sentence and placed Johnson on probation for five years. (R., pp.66-73; 4/11/18 Tr., p.15, L.16 – p.23, L.11.) Johnson timely appealed. (R., pp.74-77.)

ISSUE

Johnson states the issue on appeal as:

Did the district court err when it denied Ms. Johnson's motion to suppress?

(Appellant's brief, p.7.)

The state rephrases the issue as:

Has Johnson failed to show error in the district court's denial of her suppression motion?

ARGUMENT

Johnson Has Failed To Show Error In The District Court's Denial Of Her Suppression Motion

A. Introduction

Johnson contends that the district court erred by denying her motion to suppress evidence obtained from her residence. (Appellant's brief, pp.8-11.) While acknowledging relevant authority to the contrary, Johnson contends that the officers unconstitutionally coerced her consent to search the residence through their statements indicating that if she did not consent, they would obtain a search warrant and possibly arrest her. (Id.) A review of the record and relevant caselaw reveals that the district court properly analyzed the issue and correctly concluded that Johnson's consent was valid.

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. Page, 140 Idaho 841, 843, 103 P.3d 454, 456 (2004).

C. Johnson Voluntarily Consented To The Officers' Search Of Her Residence

The Fourth Amendment of the United States Constitution provides that "[t]he 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. Warrantless searches are "*per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." Katz v. United States, 389 U.S. 347, 357 (1967). A search done pursuant to consent is one such well-established exception to the warrant requirement.

Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) (citations omitted); State v. Hansen, 138 Idaho 791, 796, 69 P.3d 1052, 1057 (2003). Freely and voluntarily given consent validates a search. Bustamonte, 412 U.S. at 222 (citations omitted).

The voluntariness of an individual's consent is a question of fact to be determined based upon the totality of the circumstances. State v. Varie, 135 Idaho 848, 852, 26 P.3d 31, 35 (2001) (citing Bustamonte, 412 U.S. at 248-49). An individual's consent is involuntary "if his will has been overborne and his capacity for self-determination critically impaired." State v. Garcia, 143 Idaho 774, 778, 152 P.3d 645, 649 (Ct. App. 2006) (quoting Bustamonte, 412 U.S. at 225). "Importantly, the trial court is the proper forum for the 'careful sifting of the unique facts and circumstances of each case' necessary in determining voluntariness." Garcia, 143 Idaho at 778-779, 152 P.3d at 649-650 (citing Bustamonte, 412 U.S. at 233).

In this case, below and on appeal, Johnson did not challenge the officers' initial entry into the house, the lawful scope of any consent given, or that the officers had probable cause to obtain a search warrant to search the residence. (Appellant's brief, pp.8-10.) Instead, Johnson contends that the officers unconstitutionally coerced her consent by making statements indicating that if she did not consent, they would obtain a search warrant and be more likely to arrest her. In denying the motion to suppress, the district court correctly recognized the relevant issue and the applicable caselaw. The court applied this law to the undisputed facts, considered the totality of the circumstances, and correctly concluded that the officers' statements and conduct did not render Johnson's consent invalid.

The district court referenced an Idaho Court of Appeals case, State v. Ballou, 145 Idaho 840, 186 P.3d 696 (Ct. App. 2008), as being directly on point. Ballou fled chasing police officers on foot following an attempted traffic stop. Ballou, 145 Idaho at 843, 186 P.3d at 699.

Officers knocked on Ballou's apartment door in attempt to locate him. Id. at 844, 186 P.3d at 700. Ballou's wife opened the door. Id. An officer told Ballou's wife that Ballou was wanted for questioning, and that if she refused consent to enter the apartment to search for him, they could detain her in handcuffs, put her in a patrol car, and watch the house until they got a warrant. Id. Ballou's wife allowed officers to enter the residence just as officers saw Ballou fleeing it. Id. Officers returned later, after they had arrested Ballou, and requested consent to search the residence to obtain the clothes that Ballou had been wearing at the time of the attempted traffic stop. Id. An officer again informed Ballou's wife that she could either consent to the search, or the officers could take her to another location while a warrant was obtained. Id. Ballou's wife consented to the search. Id. Ballou filed a motion to suppress the evidence obtained from his residence. Id. The district court denied the motion to suppress and Ballou's motion for reconsideration. Id. at 844-845, 186 P.3d at 700-701.

In affirming the district court, the Court of Appeals summarized cases from appellate courts in other jurisdictions which have concluded, "if officers have probable cause to obtain a warrant, telling a suspect that they will obtain a warrant if consent is refused does not vitiate the suspect's consent to search." Id. at 848, 186 P.3d at 704 (citing United States v. Marshall, 348 F.3d 281, 286 (1st Cir. 2003); United States v. Meza-Corrales, 183 F.3d 1116, 1125 (9th Cir. 1999); United States v. Salvo, 133 F.3d 943, 954 (6th Cir. 1998); United States v. Evans, 27 F.3d 1219, 1231 (7th Cir. 1994); United States v. Calvente, 722 F.2d 1019, 1023 (2nd Cir. 1983); State v. Owens, 418 N.W.2d 340, 344 (Iowa 1988); State v. Brown, 783 P.2d 1278, 1285 (Kan. 1989); State v. Tucker, 636 N.W.2d 853, 860 (Neb. 2001)); see also State v. Smith, 144 Idaho 482, 489, 163 P.3d 1194, 1201 (2007) ("the well founded advice of a law enforcement agent that, absent a

consent to search, a warrant can be obtained does not constitute coercion.” (quoting United States v. Faruolo, 506 F.2d 490, 495 (2nd Cir. 1974)).

The Court of Appeals next concluded that the officer’s statement to Ballou’s wife that, if she refused consent to search, she would be detained and handcuffed, also did not render her consent involuntary. Ballou, 145 Idaho at 848-849, 186 P.3d at 704-705 (citing United States v. Agosto, 502 F.2d 612, 614 (9th Cir. 1974) (noting that an officer’s statement that the premises will be secured while a warrant is obtained does not render a subsequent consent per se involuntary)); see also Garcia, 143 Idaho at 779-780, 152 P.3d at 650-651 (“an officer’s implied or explicit offer not to arrest a suspect if he ‘turns over what he has’ is not coercive if it merely informs the suspect of the officer’s intention to do something that is within the officer’s authority based on the circumstances.”).

The district court correctly recognized and applied these legal concepts and concluded that the officers did not unconstitutionally coerce Johnson’s consent. (9/22/17 Tr., p.68, L.10 – p.74, L.23.) Johnson does not dispute that her admissions to the officers and the odor of marijuana in the residence gave the officers probable cause to obtain a search warrant had they chosen to do so. The officers also had the lawful authority to detain and arrest Johnson had they obtained a search warrant and recovered controlled substances. I.C. § 19-603(2). Finally, and contrary to Johnson’s assertion in her motion to suppress that the officers “badger[ed] and cajol[ed] [her] over the course of more than 2 hours” (R., p.35), a review of the officers’ bodycam footage instead reveals: (1) the entire conversation regarding the issue of consent to search the room lasted approximately two minutes and thirty seconds; and (2) the officers’ demeanor was calm, professional, and cordial throughout the encounter. (State’s Exhibit 1.)

Therefore, nothing about the officers' statements, demeanor, or manner in which they conducted the investigation rendered Johnson's consent invalid due to coercion or duress.

The consent given by Johnson to search her residence was voluntarily given and not made under coercion or duress. Johnson has failed to demonstrate that the district court erred. This Court should therefore affirm the district court's order denying Johnson's motion to suppress.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Johnson's motion to suppress.

DATED this 18th day of January, 2019.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 18th day of January, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

BEN P. McGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

MWO/dd