1-3-2019

State v. Pylican Respondent's Brief Dckt. 45999

Electronically Filed
1/3/2019 10:10 AM
Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	**NO. 45999**
	)	
v.	)	**ADA COUNTY NO. CR01-17-41881**
	)	
JENNIE LYNN PYLICAN,	)	**RESPONDENT'S BRIEF**
	)	
Defendant-Respondent.	)	
	)	

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 JONATHAN MEDEMA
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Jennie Pylican asserts that the State has failed to demonstrate error in the district court's order granting her motion to suppress. The district court suppressed evidence found after Ms. Pylican was unlawfully seized and her personal property and car searched, absent reasonable and articulable suspicion of criminal wrongdoing.

Statement of the Facts and Course of Proceedings

At 12 o'clock in the evening, Deputy Geisel observed a car registered to Jennie Pylican entering a business containing storage units. (3/21/18 Tr., p.36, Ls.20-25.) She entered through the front gate. (3/21/18 Tr., p.36, Ls.22-25.) Deputy Geisel believed that the storage facility had closed for the evening, as the hours posted on the gate indicated the business closed at 10:00 p.m. (3/22/18 Tr., p.9, Ls.1-11.) After he saw Ms. Pylican's car go into the facility through the gate, he heard from another officer that there was another vehicle inside the storage facility with Ms. Pylican's car. (3/21/18 Tr., p.38, L.25 – p.39, L.8.) Although Ms. Pylican's car appeared to legitimately gain admittance to the facility by means of the entryway gate, Deputy Geisel became suspicious that Ms. Pylican was breaking into storage units or "doing other type of activity that's obviously not conducive to the safe neighborhood." (3/21/18 Tr., p.39, Ls.12-20.)

Once Ms. Pylican's car left the facility, Officer Geisel waited until she committed a traffic violation before he stopped her to investigate what he suspected might be a theft. (3/22/18 Tr., p.17, Ls.14-15.) He pulled the car over inside the driveway of an apartment complex. (3/21/18 Tr., p.71, Ls.18-20.) He spoke with her about the reason for the stop—her failure to signal her turn—and the reason why she was in the storage facility after hours. (State's Exhibit

2, 0:44-1:19.) After obtaining Ms. Pylican and her passenger's information, he told her he would take just a few minutes and then he would "cut you guys loose." (State's Exhibit 2, 1:20-3:33.) Then he noticed the drug dog had arrived. (State's Exhibit 2, 3:35.) After conferring with the dog officer and confirming that he should "just get them out now," he asked both Ms. Pylican and her passenger to get out of the car so he could run the dog around it. (State's Exhibit 2, 3:40-4:07.) Deputy Geisel explained that the reason he had Ms. Pylican and her passenger get out of the car was for everyone's safety related to the dog sniff. (State's Exhibit 2, 3:45-3:52.) Over the next few minutes, he watched while the other officer conducted the drug dog sniff, before beginning to call the information in to dispatch. (3/21/18 Tr., p.79, L.21 – p.80, L.22; 3/22/18 Tr., p.27, Ls.10-23; State's Exhibit 2, 4:19-5:48.)

After the dog alerted, the officers searched Ms. Pylican's car and her purse. (State's Exhibit 2, 6:40-29:08; 3/21/18 Tr., p.6, Ls.14-19.) The officers located drug paraphernalia and methamphetamine residue. (State's Exhibit 2, 23:20-23:25.) Based on these facts, Ms. Pylican was charged by Information with one count of possession of methamphetamine and one count of misdemeanor possession of drug paraphernalia. (R., pp.19-20.)

Ms. Pylican moved to suppress the evidence obtained during and after the search of the vehicle. (R., p.26.) Ms. Pylican filed a brief in support of her motion, arguing that her car and her bag were searched in violation of her rights under the Fourth and Fourteenth Amendments of the United States Constitution, and Article I, Section 17 of the Idaho Constitution, as she was unlawfully seized, and the evidence gathered against her should be suppressed as fruits of the unlawful seizure and subsequent search.[1] (R., pp.26-38, 44-46.)

[1] Although the attorney who presented and argued Ms. Pylican's suppression motion asserted that the State had violated both her Fourth and Fourteenth Amendment rights and her rights under Article I § 17 of the Idaho Constitution, no specific argument was made asserting the

The State opposed the motion. (R., pp.40-43.)

The district court held a hearing on the motion to suppress. The State stipulated that Ms. Pylican was seized and a warrantless search was conducted in a place which Ms. Pylican had a protected privacy interest—her car and her bag. (3/21/18 Tr., p.6, Ls.1-18.) At the suppression hearing, Deputy Geisel testified regarding the circumstances surrounding the seizure, search of the car and bag, and arrest of Ms. Pylican. (*See generally*, 3/21/18 Tr.)

After the hearing, the district court took the matter under advisement. (3/21/18 Tr., p.95, L.7 – p.96, L.1.) The next day, the district court held a continued pre-trial conference in which it orally granted the motion to suppress, finding that Ms. Pylican's seizure was justified to investigate the traffic infraction but that she was unlawfully seized and searched absent reasonable and articulable suspicion of criminal wrongdoing when the purpose of the investigation changed from traffic stop to an investigation for theft relating to her presence in the storage facility after hours. (3/22/18 Tr., p.18, L.18 – p.19, L.17; R., pp.71-75.) In granting the motion to suppress, the district court made detailed findings of fact as to what the officer knew at the time he seized Ms. Pylican, and ultimately concluded that Deputy Geisel delayed the purpose of the traffic stop to investigate another potential crime absent reasonable articulable suspicion to justify the second seizure. (3/22/18 Tr., p.8, L.15 – p.19, L.17.) Alternatively, the court held that the officer's exit order given for safety purposes for the dog sniff, unlawfully extended the duration of the traffic stop.[2] (3/22/18 Tr., p.27, L.4 – p.28, L.8.) The State appealed. (R., pp.77-80.)

Idaho Constitution. (R., pp.26-38; *see* 3/21/18 Tr.) Therefore, Ms. Pylican will rely upon Fourth Amendment jurisprudence in this appeal.

[2] The district court also analyzed and rejected the State's contention that the doctrine of inevitable discovery—that the existence of the passenger's warrant would have served as an independent objectively reasonable basis for the officer to detain them, had he known about it.

ISSUE

Did the district court err when it granted Ms. Pylican's motion to suppress?

(3/22/18 Tr., p.30, L.2 – p.32, L.19.) However, the State has abandoned this argument on appeal. *See State v. Zichko*, 129 Idaho 259, 263 (1996) (holding a party waives an issue cited on appeal if either authority or argument is lacking).

ARGUMENT

The District Court Correctly Granted Ms. Pylican's Motion To Suppress

A. Introduction

Ms. Pylican moved the district court to suppress the evidence seized in violation of her constitutional rights. In granting the motion to suppress, the district court carefully set forth the facts known to the officer to determine whether he had reasonable articulable suspicion of other criminal wrongdoing to extend the duration of the stop beyond that necessary to investigate the traffic violation. The district court correctly concluded that he did not, and granted the motion to suppress. This Court should affirm the order granting Ms. Pylican's motion to suppress.

B. Standard Of Review

This Court uses a bifurcated standard to review a district court's order on a motion to suppress. *State v. Danney*, 153 Idaho 405, 408 (2012); *see also State v. Hunter*, 156 Idaho 568, 571 (Ct. App. 2014) (same). This Court will accept the trial court's findings of fact "unless they are clearly erroneous." *State v. Wulff*, 157 Idaho 416, 418 (2014). "At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court." *State v. Ellis*, 155 Idaho 584, 587 (Ct. App. 2013). This Court exercises free review of "the trial court's application of constitutional principles to the facts found." *Danney*, 153 Idaho at 408.

C. The District Court Correctly Granted Ms. Pylican's Motion To Suppress

The State has not challenged any of the district court's factual findings in this appeal. As such, the question for this Court is whether, in light of the facts found by the district court, the district court erred in granting Ms. Pylican's motion to suppress. Ms. Pylican submits that the

district court's ruling granting her motion to suppress was amply supported both by the evidence and by governing case law, and that this Court should therefore affirm the district court.

The Fourth Amendment of the United States Constitution secures to the people the right to be free from unreasonable searches and seizures. *State v. Willoughby*, 147 Idaho 482, 486 (2009). It guarantees, "[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. "Evidence obtained in violation of the Fourth Amendment is subject to the exclusionary rule, which requires unlawfully seized evidence to be excluded." *State v. Lee*, 162 Idaho 642, 647 (2017) (citing *Wong Sun v. United States*, 371 U.S. 471, 484–85 (1963); *State v. Page*, 140 Idaho 841, 846 (2004)). "Searches conducted without a warrant are considered *per se* unreasonable unless they fall into one of the specifically established and well-delineated exceptions to this general rule." *Id.* (quotation marks omitted) (quoting *State v. Bishop*, 146 Idaho 804, 815 (2009)). The State bears the burden to show the warrantless search falls within a well-recognized exception to the Fourth Amendment's warrant requirement. *Halen v. State*, 136 Idaho 829, 833 (2002).

"When a defendant moves to exclude evidence on the grounds that it was obtained in violation of the Fourth Amendment, the government carries the burden of proving that the search or seizure in question was reasonable." *Bishop*, 146 Idaho at 811. In addition, even brief detentions of individuals must meet the Fourth Amendment's requirement of reasonableness. *Id*. This means that the detention must be both justified at its inception and reasonably related in scope to the circumstances that originally justified the interference in the first place. *Id*.

When the discovery of the evidence to be used against a defendant was the product of his illegal seizure, it is rightfully suppressed as "fruit of the poisonous tree." *See Wong Sun v. United States*, 371 U.S. 471, 478-488 (1963).

1. Deputy Geisel Had No Reasonable And Articulable Suspicion To Seize Ms. Pylican To Investigate Her Admittance Into A Storage Facility

In this case, Deputy Geisel seized Ms. Pylican pursuant to a valid traffic stop. However, he expanded his investigation of the traffic infraction in order to determine whether she was engaged in criminal wrongdoing surrounding her admittance to the storage facility. Although Ms. Pylican was observed gaining admittance into a storage facility after Deputy Geisel believed the facility had closed for the evening, such did not give rise to reasonable and articulable suspicion of criminal conduct. At most, Deputy Geisel had an unsubstantiated hunch.

The touchstone of Fourth Amendment analysis is always "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Terry v. Ohio*, 392 U.S. 1, 19 (1968). Reasonableness hinges on "on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975).

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.* Reasonable suspicion must be based on specific, articulable

facts considered with objective and reasonable inferences that form a basis for particularized suspicion. *State v. Sheldon*, 139 Idaho 980, 983-84 (Ct. App. 2003). Particularized suspicion consists of two elements: (1) the determination must be based on a totality of the circumstances, and (2) the determination must yield a particularized suspicion that the particular individual being stopped is engaged in wrongdoing. *United States v. Cortez*, 449 U.S. 411, 418 (1981). "An officer may draw reasonable inferences from the facts in his or her possession, and those inferences may be drawn from the officer's experience and law enforcement training." *State v. Swindle*, 148 Idaho 61, 64 (Ct. App. 2009). However, the officer "must be able to articulate more than an 'inchoate and unparticularized suspicion' or 'hunch' of criminal activity." *Illinois v. Wardlow*, 528 U.S. 119, 123-124 (2000) (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)).

The State contends that Deputy Geisel had reasonable articulable suspicion to investigate Ms. Pylican's presence at the storage facility. (Appellant's Brief, pp.1-8.) However, in arguing that Deputy Geisel has reasonable articulable suspicion that Ms. Pylican was in the process of committing a crime, the State relied on information the deputy learned only in his conversation with her—a conversation the district court found unlawfully extended the duration of the stop. (Appellant's Brief, pp.6-8.) The district court concluded that the few questions Deputy Geisel put to Ms. Pylican regarding her activities at the storage facilities unlawfully delayed the purpose of the traffic stop. (3/22/18 Tr., p.17, L.16 – p.19, L.14.) Further, the State's assertion that the two vehicles were inside the business "when even a customer of the facility should not have been

able to get access through the gate," is a conclusion contrary to the district court's findings of fact.[3] (Appellant's Brief, p.7.)

At the continued pre-trial conference, the district court made the following findings of fact:

> The initial question then, as the State argues and as Deputy Geisel articulated, absent probable cause for the traffic violation, does Deputy Geisel have a reasonable articulable suspicion that Ms. Pylican has been engaging in some wrongdoing that would justify him stopping her vehicle absent a traffic infraction. I conclude there is not. This is two hours after this storage facility is closed. And that is essentially all that Deputy Geisel knows. He knows that Ms. Pylican has accessed this facility apparently using the gate. There's no indication that she broke into the facility or hopped over the fence or jimmied [the] gate in order to get it to work. What he knows is that she is entering the facility after its normally posted business hours.
>
> The State has proffered no argument that the mere act of doing so would be a violation of the law. Nonetheless, I have considered that. There is, of course, a statute that prohibits people from trespassing on property. Generally that involves a question about permission by the owner. There is a similar county code that involves or prohibits people from remaining on property after that property has closed without permission from the owner.
>
> In the case of a storage facility where renters are given means by which to access the facility even in the absence of the owners or the owner's agent, I cannot conclude that Deputy Geisel's suspicion that this vehicle was able to access the facility after the normal operating hours was a reasonable basis to conclude that that person would be committing a crime even if it were a crime to remain on a private place without the owner's permission.
>
> Deputy Geisel reached that suspicion because he had, as I indicated before, at least one, perhaps more than one person tell him that they were renters in this facility and their codes didn't work after 10:00. Those people, of course, could certainly have been lying to Deputy Geisel to explain why they were trying to access a facility they had no business to access after it was closed.

[3] In fact, the district court did not find reliable the information Deputy Geisel used to formulate his belief that customers of the business could not access the gates after hours. Deputy Geisel testified that he had conversations with individuals he encountered trying to gain entry and they told him they were renters and their codes did not work after hours. (3/22/18 Tr., p.9, Ls.17-25; p.13, Ls.11-19.) The district court also noted that Deputy Geisel had never contacted the owners or managers of the storage facility to determine if people are eligible to be in the facility after hours. (3/22/18 Tr., p.13, Ls.20-25.)

> Deputy Geisel has had no contact with anyone associated with the facility itself. He has no independent basis to understand how this facility operates or whether its owners restrict the renters of those units to not access the facility after 10:00 o'clock.
>
> Even if I were to conclude that it is a reasonable belief based on his contracts with these other people trying to get in after hours, even if his assumption that the business essentially shuts the key codes off at 10:00 is a reasonable one, I cannot extend his logic to reach the conclusion that the fact someone is in the facility after 10:00 o'clock necessarily means they were doing so without the permission of the owner.

(3/22/18 Tr., p.11, L.24 – p.14, L.9.)

The district court concluded that Deputy Geisel was justified in seizing Ms. Pylican after he observed her committing a traffic infraction by failing to signal before a turn. (3/22/18 Tr., p.8, Ls.15-20.) The court analyzed the facts known to the officer at the time he began investigating Ms. Pylican's actions at the storage facility after hours and concluded that the State had not met its burden to show that the continued seizure of Ms. Pylican was reasonable. The district court held Deputy Geisel did not have reasonable articulable suspicion to detain Ms. Pylican to investigate her presence in the storage facility after hours. (3/22/18 Tr., p.8, L.21 – p.12, L.6.) Deputy Geisel stopped Ms. Pylican's vehicle to investigate what he suspected was a burglary where he observed Ms. Pylican's car enter a business two hours after that business had closed. (3/22/18 Tr., p.12, Ls.5-8.) The court analyzed the facts known to Deputy Geisel, and concluded that he had no additional information, other than she apparently accessed the facility using the gate; there was no indication that she broke into the facility or hopped over the fence or jimmied the gate in order to get in. (3/22/18 Tr., p.12, Ls.8-15.) The district court considered whether the mere act of entering the facility after its normally posted business hours would be a violation of a law such as trespassing or remaining on a closed property without permission. (3/22/18 Tr., p.12, Ls.13-25.) However, the district court concluded that in the case

of a storage facility whereby renters are provided means by which to access the facility even in the absence of owners or an agent, Deputy Geisel's suspicions were unsubstantiated as he had never made contact with the owners or managers to determine if people are eligible to be in the facility after hours. (3/22/18 Tr., p.13, Ls.1-25.)

The district court evaluated the requirement that a reasonable suspicion must be a particularized one, considering: (1) the assessment must be based on the totality of the circumstances; and (2) the assessment must yield a particularized suspicion that the particular individual being stopped is engaged in wrongdoing. (3/22/18 Tr., p.15, Ls.12-18.) The district court concluded that Deputy Geisel did not have a reasonable suspicion that the individuals inside the closed storage facility were engaged in some kind of theft, where there was no indication that they broke into the facility or any storage units. (3/22/18 Tr., p.16, Ls.2-11.) The court concluded that the officer only saw two vehicles parked, people get into the vehicles, and the vehicles drive away, which is an insufficient basis to form a reasonable suspicion that the individuals are engaged in theft.[4] (3/22/18 Tr., p.16, Ls.11-15.)

The district court analyzed the information Deputy Geisel had within the requirement that reasonable suspicion be particularized and found that Deputy Geisel's suspicion here appeared to be wrongdoing consisting of theft, in addition to his general statement that he believed they were engaged in "other types of activities that are not conductive to the safety of the neighborhood." (3/22/18 Tr., p.15, Ls.7-24.) The district court found that, "the mere fact that these vehicles are in a storage unit after the storage unit has been closed for business – is [not] a sufficient basis

[4] Although the court considered Deputy Geisel's testimony that he saw Ms. Pylican in an area of the county which has an unusually high number of calls related to thefts, he clarified that those were vehicle burglaries and residential thefts. (3/22/18 Tr., p.10, Ls.10-16.) Thus, this information would not support his suspicion regarding this commercial business. (3/22/18 Tr., p.10, Ls.16-17.)

from which the officer could draw a reasonable suspicion that the individuals inside were engaged in some act of theft." (3/22/18 Tr., p.16, Ls.2-7.)

The State has failed to show the district court erred in concluding that Deputy Geisel did not have a reasonable articulable suspicion that Ms. Pylican was engaged in criminal wrongdoing regarding her admittance to the storage facility.

2. Deputy Geisel Unlawfully Extended The Duration Of The Stop By Ordering Ms. Pylican And Her Passenger To Exit The Car Due To His Safety Concern For The Officer Running The Drug Dog Around The Car

Although the district court held that the stop was unlawfully extended in order to conduct an investigation unrelated to the traffic stop, the court also addressed the officer's exit order—the other constitutional violation "independent" of the first unlawful extension. (3/22/18 Tr., p.27, L.4 – p.28, L.8.) The district court found, and the State did not challenge the finding, that Officer Geisel only ordered Ms. Pylican and her passenger to exit the car in preparation for the dog sniff—to ensure the safety of the officers while the dog sniff was performed. (3/22/18 Tr., p.25, L.8 – p.27, L.3.) The district court found "that officer safety concern arose from the decision to walk the dog around the car." (3/22/18 Tr., p.24, Ls.20-22.) "When the officers in this case chose to walk the dog around the car, they created the officer safety concern that they then had." (3/22/18 Tr., p.26, Ls.17-19.) The district court determined that officer who decide to undertake an investigation for which they have no reasonable articulable suspicion of criminal conduct cannot then create a danger to themselves and then use that danger to justify extending the scope or duration of the seizure. (3/22/18 Tr., p.26, L.23 – p.27, L.3.)

Thus, the district court correctly found, consistent with the holding in *Rodriguez*, that the officer unlawfully extended the scope and duration of the stop for the safety of the officers while they conducted a detour from the purpose of the stop. (3/22/18 Tr., p.27, L.4 – p.28, L.8.) The

court concluded that the exit command to Ms. Pylican and her passenger was an unconstitutional extension of the scope of the detention apart from its duration. (3/22/18 Tr., p.27, Ls.4-9.) Further, the court found that the exit command unlawfully extended the duration of the seizure which should have been limited to investigating the traffic offense. (3/22/18 Tr., p.27, L.10 – p.28, L.8.)

In support of its argument that the officer's exit order during the traffic stop did not violate the Fourth Amendment, the State relied on the holding of *Pennsylvania v. Mimms*, 434 U.S. 106, 111 n.6 (1977) (holding that once a motor vehicle had been lawfully detained for a traffic violation, police officers could constitutionally order the driver out of the vehicle due to legitimate concerns for officer safety). (Appellant's Brief, pp.9-10.) The State asserted that the language of *Rodriguez v. United States*, 135 S. Ct. 1609, 1611 (2015) (holding that officer safety to conduct a search unrelated to the purpose of the stop was not a legitimate basis for extending the detention), did not alter the holdings of *Mimms* and its progeny. (Appellant's Brief, pp.9-11.) The State asserted that the district court erred in interpreting *Rodriguez* as limiting *Mimms*' general rule permitting an exit order during a traffic stop. (Appellant's Brief, p.10; 3/22/18 Tr., p.25, L.12 – p.26, L.19.)

In the portion of *Rodriguez* relied upon by the State, the *Rodriguez* Court was addressing the lower court's decision necessitating its grant of certiorari. *Rodriguez*, 135 S. Ct. at 1611. After noting that "a dog sniff is not fairly characterized as part of the officer's traffic mission," the Court distinguishing its holding in *Mimms*: "The officer-safety interest recognized in *Mimms*, however, stemmed from the danger to the officer associated with the traffic stop itself," and concluded:

> On-scene investigation into other crimes, in contrast, detours from that [traffic-control] mission. So too do safety precautions taken in order to facilitate such

> detours. Thus, even assuming that the imposition here was no more intrusive than the exit order in *Mimms,* the dog sniff could not be justified on the same basis. Highway and officer safety are interests different in kind from the Government's endeavor to detect crime in general or drug trafficking in particular.

Rodriguez, 135 S. Ct. at 1616 (internal citations omitted). During a lawful traffic stop, the officer may instruct the driver to exit the vehicle, and this procedure is within the police officer's discretion and is not otherwise unlawful. *Mimms*, 434 U.S. at 111 n. 6; *State v. Parkinson*, 135 Idaho 357, 363 (Ct. App. 2000). However, *Mimms* was a case in which the officer routinely asked every driver to exit the vehicle during a traffic stop. *Id*. 434 U.S. at 109-110. Here, the district court found that Deputy Geisel asked Ms. Pylican and her passenger to exit the vehicle not as a routine part of a traffic stop, but for officer safety concerns pertaining only to the dog sniff. (3/21/18 Tr., p.23, L.17 – p.24, L.22.)

The district court correctly suppressed the evidence seized as the result of the unlawful detention of Ms. Pylican and the unlawful search of her bag and her car. For these reasons, Ms. Pylican respectfully requests that this Court affirm the district court's order suppressing the evidence unlawfully obtained.

CONCLUSION

Ms. Pylican respectfully requests that this Court affirm the district court's Order Granting Defendant's Motion to Suppress.

DATED this 3rd day of January, 2019.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of January, 2019, I caused a true and correct copy of the foregoing RESPONDENT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

SJC/eas