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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

<b>STATE OF IDAHO,</b>	)	
	)	<b>NOS. 46286-2018 &amp; 46287-2018</b>
<b>Plaintiff-Respondent,</b>	)	
	)	<b>CANYON COUNTY NOS.</b>
<b>v.</b>	)	<b>CR14-17-18782 &amp; CR14-18-2468</b>
	)	
<b>TERA LEE BAXTER,</b>	)	<b>APPELLANT'S BRIEF</b>
	)	
<b>Defendant-Appellant.</b>	)	
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**BRIEF OF APPELLANT**

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**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF CANYON**

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**HONORABLE GEORGE A. SOUTHWORTH**  
**District Judge**

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## STATEMENT OF THE CASE

### Nature of the Case

Tera Lee Baxter appeals from her judgments of conviction for felony possession of marijuana and misdemeanor possession of paraphernalia, and asserts that the district court erred by denying her motion to suppress because she did not voluntarily consent to the search of her bedroom. This Court should vacate Ms. Baxter's judgments of conviction and reverse the orders denying her motion to suppress.

### Statement of Facts and Course of Proceedings

Officer Davis went to Ms. Baxter's home at 8:45 one October evening to do a welfare check on Ms. Baxter's children. (R.,<sup>1</sup> p.146.) Ms. Baxter's ex-husband had requested the welfare check because his oldest son told him that Ms. Baxter was selling drugs from the home. (*Id.*) As Officer Davis approached, Ms. Baxter stepped out of her front door. (*Id.*) Officer Davis explained why he was there, and asked if he could step inside. (R., pp.146-47.) Ms. Baxter "lifted her hands, turned, and walked in the front door to the middle of the living room, leaving the door open behind her," and Officer Davis followed her inside. (R., p.147.) Several adults and children were in the living room. (*Id.*) Once in the living room, Officer Davis said he could smell fresh and burnt marijuana, but Ms. Baxter denied having any drugs. (*Id.*) Ms. Baxter asked Officer Davis to leave, but he said either Ms. Baxter could allow him to search the home or he would get a warrant. (*Id.*) Tensions escalated and Officer Davis asked for backup. (*Id.*)

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<sup>1</sup> Some of the documents in this case are contained within the clerk's record of only one of the cases, though they list both case numbers.

When backup arrived, two officers did a protective sweep looking for a man they believed was in the basement, and saw drug paraphernalia. (R., p.148.) Officer Davis began taking photos for a search warrant, and Corporal Schreiber worked on getting consent from Ms. Baxter. (*Id.*) As found by the district court:

7. Corporal Schreiber asked for Baxter's consent to search the house without a warrant. In an exchange captured by his bodycam, Schreiber asked Baxter if she knew why they were there and she said she did. Baxter said, "Just because I like to smoke doesn't mean that I'm dealing" and went on to describe in great detail her drug use habits including how much, in what form, how often, why she smokes, and that she feels like "if I want to smoke a bowl instead of drink a beer, it's my right as an adult."

8. Schreiber told Baxter that marijuana was illegal in Idaho, that they were responding to a child welfare check, and that he could smell marijuana. Schreiber said, "We have work to do and you want to get back to your evening. What it comes down to is once he can smell the marijuana in the house—and all of us can—he can restrict the movement of the people in the house and if he decides he wants to go get a search warrant he can . . . or you can give consent and we can take care of it that way." Schreiber said if she had less than three ounces, "it's just a ticket and we'll be on our way."

9. Baxter asked for an attorney and Schreiber said she could talk to an attorney but not immediately. Schreiber assured her he was not going to take her kids, but that "Davis is adamant that he is willing to go get a search warrant. If you'd rather him do that, he will, or we can take care of this in about 15 minutes." Baxter asked them to just write her a ticket and Schreiber told her he needed to get the weed first and asked where she kept it. Baxter replied it was in her bedroom. Schreiber said, "If it's OK we can go into your room we'll get what you've got then we'll be done." Baxter replied, "I'll give you what I got." She then asked Schreiber to accompany her into the bedroom while she retrieved it.

10. Baxter then changed her mind, saying she felt her rights were being violated and that she wanted to think about it. Schreiber allowed her outside to smoke a cigarette. Outside, Schreiber again pressed Baxter for permission to allow an officer into her bedroom to retrieve that marijuana. Eventually, Baxter consented by telling Schreiber, "I'll go with them."

(R., pp.148–49; *see also* State's Ex. 5 (video from Corporal Schreiber's body camera.) Once in her bedroom, Ms. Baxter gave officers three jars of marijuana, pipes, and a vape pen. (R., p.149.) When asked about a suitcase and safe on her bed, she told the officers it was time

for them to leave. (*Id.*) Officers later got a search warrant and found additional marijuana and paraphernalia. (*Id.*)

The State charged Ms. Baxter with felony possession of marijuana over three ounces, misdemeanor possession of paraphernalia, and misdemeanor resisting and obstructing.<sup>2</sup> Ms. Baxter moved to suppress all of the evidence against her. (R., pp.45–61, 100–18.) She argued that she did not consent to the initial warrantless entry into her home, she revoked any consent not long Officer Davis went inside, any later consent to search her home was involuntary, any statements she made to the officers while they attempted to get her consent should be excluded because officers did not give her *Miranda* warnings, and that no other exception to the warrant requirement applied. (R., pp.101–13.) The State disagreed, asserting that Ms. Baxter consented to Officer Davis entering her home, once inside he could lawfully stay even when Ms. Baxter revoked consent because he had probable cause to believe there was marijuana in the home, Ms. Baxter validly consented to the search of her room, the inevitable discovery doctrine allowed the admission of the evidence regardless of any constitutional violations, and Ms. Baxter was not in custody so *Miranda* did not apply. (R., pp.120–37.)

The court denied Ms. Baxter’s motion. (R., pp.145–55.) It concluded Ms. Baxter impliedly consented to Officer Davis’s initial entry, Officer Davis lawfully secured the premises even though Ms. Baxter revoked her consent, Ms. Baxter’s later-given consent was not coerced,

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<sup>2</sup> The State initially charged Ms. Baxter with felony possession of marijuana, misdemeanor possession of paraphernalia, and misdemeanor resisting and obstructing in case number CR-17-18782. (R., pp.10–12, 23–24.) After the magistrate court found the State had failed to prove probable cause for the possession of marijuana charge (R., p.27), the State charged Ms. Baxter with felony possession of marijuana in CR-18-2468 and the court bound her over on that charge (R., pp.77–78, 90, 92–93.) The district court later consolidated the two cases. (R., pp.64, 89.)

and Ms. Baxter was not in custody for *Miranda* purposes. (R., pp.150–55.) As a result, it did not address the State’s claim of inevitable discovery. (*See generally* R., pp.150–55.)

Ms. Baxter later entered a conditional guilty plea to felony possession of marijuana over three ounces and misdemeanor possession of paraphernalia, reserving the right to challenge the denial of her motion to suppress on appeal. (R., pp.69, 159–70.) The State dismissed the resisting and obstructing charge. (*Id.*) The court withheld judgment and placed Ms. Baxter on probation in both cases. (R., pp.67, 193–95.) Ms. Baxter timely appealed. (R., pp.179–81.)



ISSUE

Did the district court err by denying Ms. Baxter's motion to suppress because she did not voluntarily consent to the search of her bedroom?

## ARGUMENT

### Because Ms. Baxter Did Not Voluntarily Consent To The Search Of Her Bedroom, The District Court Erred By Denying Her Motion To Suppress

The United States and Idaho Constitutions prohibit unreasonable searches and seizures. U.S. CONST. amend. IV; ID. CONST. art. I, § 17. Warrantless searches are presumptively unreasonable, unless the State proves that the search falls within a well-recognized exception to the warrant requirement. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973); *State v. Weaver*, 127 Idaho 288, 290 (1995). The Court must exclude evidence discovered during an unlawful search as the “fruit of the poisonous tree.” *Wong Sun v. United States*, 371 U.S. 471, 488 (1963); *see also State v. Koivu*, 152 Idaho 511, 519 (2012).

A search conducted with voluntary consent is one exception to the warrant requirement. *Schneckloth*, 412 U.S. at 219; *State v. Turek*, 150 Idaho 745, 747 (Ct. App. 2011). Voluntary consent is “the product of an essentially free and unconstrained choice,” while consent granted when a defendant’s “will has been overborne and his capacity for self-determination critically impaired” is involuntary. *Id.* at 225. Mere acquiescence does not constitute knowing, intelligent, and voluntary consent. *Bumper v. North Carolina*, 391 U.S. 543, 548–49 (1968); *State v. Jaborra*, 143 Idaho 94, 98 (Ct. App. 2006).

Whether consent was the product of coercion is a factual determination. *Schneckloth*, 412 U.S. at 229. “Factors to be considered include whether there were numerous officers involved in the confrontation, the location and conditions of the consent, including whether it was at night, whether the police retained the individual’s identification, whether the individual was free to leave, and whether the individual knew of his right to refuse consent.” *Jaborra*, 143 Idaho at 97 (internal citations omitted). “The state has a heavy burden to prove that consent was given freely and voluntarily,” *State v. Zavala*, 134 Idaho 532, 536 (Ct. App. 2000), and that

it was not “coerced, by explicit or implicit means, by implied threat or covert force,” *Schneckloth*, 412 U.S. at 228.

The standard of review of a suppression motion is bifurcated. This Court accepts the trial court’s findings of fact if they are supported by substantial evidence, but freely reviews the application of constitutional principles to the facts. *State v. Page*, 140 Idaho 841, 843 (2004) (citing *State v. Holland*, 135 Idaho 159, 161 (2000)).

Ms. Baxter asserts that the district court erred by denying her motion to suppress because she did not voluntarily consent to the search of her bedroom. It was dark outside when Officer Davis asked to step inside because he was concerned she was selling drugs. (R., pp.146–57.) When Ms. Baxter asked him to leave not long after he first went inside, Officer Davis attempted to physically control and handcuff Ms. Baxter, ultimately pinning her to the ground. (R., p.147; State’s Ex. 3, file labeled “Davis 6,” at 2:30–5:30.) The living room became very chaotic, with Officer Davis yelling orders, Ms. Baxter’s guests trying to intervene, a child crying, and Ms. Baxter crying and telling Officer Davis that she just had lung surgery. (State’s Ex. 3, file labeled “Davis 6,” at 3:30–5:00.) At least five officers showed up, instructed everyone to stay in the living room, and did a protective sweep of her basement. (R., pp.147–48; Tr., p.107, Ls.7–12.) Corporal Schreiber told Ms. Baxter they would get a search warrant if she did not consent to a search, and repeatedly reiterated that she needed to make a decision because they didn’t have all night and had other things to do. (R., pp.148–49; *see generally* State’s Ex. 5.) He was persistent, continuing to seek consent for at least twenty minutes, despite Ms. Baxter’s hesitation and insistence that her rights were being violated. (*See generally* State’s Ex. 5.) In fact, Ms. Baxter initially consented but changed her mind before eventually allowing officers into her bedroom. (R., p.149.) Moments before she finally said she would go into her bedroom with the

officers, Ms. Baxter started to cry. (State’s Ex. 5 at 19:50–24:00.) Considering the totality of these circumstances, her consent was not voluntary and thus the district court erred by denying her motion to suppress.

CONCLUSION

Ms. Baxter respectfully requests that this Court vacate her judgments of conviction and reverse the orders denying her motion to suppress.

DATED this 17<sup>th</sup> day of April, 2019.

/s/ Maya P. Waldron  
MAYA P. WALDRON  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17<sup>th</sup> day of April, 2019, I caused a true and correct copy of the foregoing APPELLANT’S BRIEF, to be served as follows:

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

MPW/eas