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

STATE OF IDAHO,	)	
	)	<b>NO. 46487-2018</b>
Plaintiff-Respondent,	)	
	)	<b>TWIN FALLS COUNTY</b>
v.	)	<b>NO. CR42-18-3057</b>
	)	
HOLLIE WINNETT,	)	
	)	
Defendant-Appellant.	)	

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**BRIEF OF APPELLANT**

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**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF TWIN FALLS**

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**HONORABLE THOMAS J. RYAN  
District Judge**

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## STATEMENT OF THE CASE

### Nature of the Case

Hollie Winnett appeals from her judgment of conviction, challenging the district court's denial of her motion to suppress. The district court correctly concluded Ms. Winnett was not subject to a Fourth Amendment waiver as a condition of her probation in an earlier case, because she did not receive notice of that waiver at sentencing. The district court erred, however, in concluding a search of a camper at Ms. Winnett's new residence was reasonable. The warrantless search of the camper violated Ms. Winnett's Fourth Amendment rights and the district court erred in denying her motion to suppress.

### Statement of Facts and Course of Proceedings

Ms. Winnett was placed on probation after being convicted of vehicular manslaughter, a misdemeanor, and leaving the scene of an accident resulting in injury or death, a felony, in CR-42-16-5585 ("the accident case"). (State's Ex. 2.) In the accident case, the district court placed Ms. Winnett on misdemeanor probation for two years, starting on March 17, 2017, followed by felony probation for five years.<sup>1</sup> (State's Ex. 2, pp.3-4.)

On March 14, 2018, probation officers Bulzomi and French attempted to perform a residence check on Ms. Winnett at her known address, 2435 Oakley Avenue in Hollister, Idaho. (7/13/18 Tr., p.13, Ls.3-14, p.27, L.25 – p.28, L.4.) When the officers arrived at that address, Ms. Winnett's daughter answered the door, and told the officers Ms. Winnett was living with her mother at 2312 Main Street in Hollister ("the Main Street address"), and was currently at work. (7/13/18 Tr., p.14, Ls.19-25, p.27, L.25 – p.28, L.6.) The officers went to the gas station where

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<sup>1</sup> The district court took judicial notice of the record in the accident case at the hearing on Ms. Winnett's motion to suppress. (7/13/18 Tr., p.65, Ls.18-23.)

Ms. Winnett worked “[t]o ask her why she hadn’t told [them] about the change in address.” (7/13/18 Tr., p.15, Ls.5-11, p.28, Ls.7-11.) The officers found Ms. Winnett at the gas station, working, and Ms. Winnett confirmed she was now living with her mother at the Main Street address. (7/13/18 Tr., p.15, Ls.12-18, p.28, Ls.12-16.) The officers left the gas station and went to the Main Street address to do a “residence verification.” (7/13/18 Tr., p.15, Ls.19-21.)

At the suppression hearing, Officer Bulzomi was asked on direct examination, “[H]ow do you verify a residence?” and he answered, “We go up to the door, state who we are, why we’re there, and we verify with the people we’re talking to at the residence if this is true that they’re living there.” (7/13/18 Tr., p.15, L.22 – p.16, L.3.) Officer Bulzomi testified that he and Officer French found Ms. Winnett’s mother and a man they believed to be Ms. Winnett’s stepbrother at the Main Street address. (7/13/18 Tr., p.16, Ls.6-10.) The mother and stepbrother both confirmed Ms. Winnett lived there, and told the officers “she was staying on a couch in the living room.” (7/13/18 Tr., p.16, Ls.11-15, p.29, Ls.10-17.)

Although they had completed the task of verifying Ms. Winnett’s residence, the officers did not leave, but went with Ms. Winnett’s stepbrother to search a camper located on the property, where Ms. Winnett’s mother said Ms. Winnett was keeping her belongings. (7/13/18 Tr., p.17, Ls.7-14, p.29, L.25 – p.30, L.12.) Officer Bulzomi described the camper as an old “bumper pull” that was not connected to a truck. (7/13/18 Tr., p.18, Ls.9-16.) Officer French described the camper as “very small” meaning only one person could fit inside. (7/13/18 Tr., p.30, Ls.14-19.) Officer French testified he opened the door of the camper, entered the camper, and saw a spoon “poking out of” a handbag, and other items he believed to be indicative of drug use. (7/13/18 Tr., p.30, L.20 – p.31, L.21.)

Officers Bulzomi and French requested assistance from law enforcement. (7/13/18 Tr., p.31, Ls.18-21.) Officer White from the Twin Falls County Sheriff's Office arrived with his drug dog approximately 30 minutes later. (7/13/18 Tr., p.31, Ls.22-24, p.41, L.21 – p.42, L.4.) Officer White testified Ms. Winnett was not there when he arrived, but he advised Ms. Winnett's mother and stepbrother he was there at the request of probation and parole to "use [his] K9 partner." (7/13/18 Tr., p.42, Ls.5-21.) Officer White told Ms. Winnett's mother and stepbrother that Ms. Winnett had waived her Fourth Amendment rights and he "would be running his dog." (7/13/18 Tr., p.42, L.22 – p.43, L.3.) Officer White asked if there was anything illegal, and Ms. Winnett's mother provided Officer White with marijuana and drug paraphernalia. (7/13/18 Tr., p.32, Ls.10-20, p.43, Ls.4-20.) Officer White then entered the camper, and located inside Ms. Winnett's purse some small plastic bags with methamphetamine residue. (7/13/18 Tr., p.44, L.18 – p.45, L.13.)

Ms. Winnett arrived at the Main Street address, accompanied by additional probation officers, when Officer White was exiting the camper. (7/13/18 Tr., p.21, Ls.11-14; p.53, Ls.19-22.) Officers Bulzomi and French swabbed Ms. Winnett's mouth, and the swab tested positive for methamphetamine/amphetamine and opiates. (7/13/18 Tr., p.21, L.23 – p.22, L.8, p.56, L.24 – p.57, L.2, p.59, Ls.4-6.) Officer White testified he placed Ms. Winnett in handcuffs and advised her of her rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1996). (7/13/18 Tr., p.47, Ls.17-20.) Officer White then questioned Ms. Winnett, and she said the illegal items in the camper belonged to her. (7/13/18 Tr., p.49, Ls.8-14.)

The State charged Ms. Winnett by Information with one count of possession of a controlled substance. (R., pp.43-45.) The State subsequently amended the Information to add one count of misdemeanor possession of a controlled substance, and two counts of possession of drug

paraphernalia.<sup>2</sup> (R., pp.55-58.) Ms. Winnett filed a motion to suppress and/or dismiss, arguing the warrantless search of her residence and the camper violated her rights under the Fourth Amendment, and the incriminating statements she made should be suppressed because she was not provided with the *Miranda* warnings. (R., pp.60-63.) The district court held a hearing on Ms. Winnett’s motion, and the parties submitted supplemental briefing following the hearing. (R., pp.68-79, 83-94.)

The district court denied Ms. Winnett’s motion to suppress. (R., p.95.) The district court said it was relying on the “uncontradicted testimony” of Officers Bulzomi and French with regard to the factual findings. (7/30/18 Tr., p.3, Ls.18-24.) The district court found, “there is no Fourth Amendment waiver,” relying on *State v. Santana*, 162 Idaho 79 (Ct. App. 2017). (7/30/18 Tr., p.6, L.23 – p.7, L.4.) The district court nonetheless concluded the warrantless search of the camper did not violate Ms. Winnett’s rights under the Fourth Amendment because it was reasonable. (7/30/18 Tr., p.7, L.5 – p.8, L.5.)

Following the denial of her motion to suppress, Ms. Winnett entered into a plea agreement with the State, pursuant to which she agreed to plead guilty to the charged crimes and reserved her right to appeal from the denial of her motion to suppress. (8/6/18 Tr., p.3, L.15 – p.4, L.5; R., pp.101-10, 113-14.) The district court accepted Ms. Winnett’s guilty plea. (8/6/18 Tr., p.9, Ls.17-25.) The district court sentenced Ms. Winnett to a unified term of seven years, with three years fixed, and then suspended the sentence and placed Ms. Winnett on probation for five years. (10/15/18 Tr., p.12, Ls.6-16, R., pp.134-35.) The judgment of conviction was entered on October 18, 2018, and Ms. Winnett filed a timely notice of appeal. (R., pp.134-41, 152-55.)

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<sup>2</sup> The State subsequently filed a Second Amended Information, but did not allege any new or additional charges. (R., pp.96-99.)

ISSUE

Did the district court err in denying Ms. Winnett's motion to suppress?

## ARGUMENT

### The District Court Erred In Denying Ms. Winnett's Motion To Suppress

#### A. Introduction

The district court erred in concluding the search of a camper at Ms. Winnett's new residence was reasonably related to her disclosure that she had violated her probation by changing her residence. The warrantless search of the camper violated Ms. Winnett's rights under the Fourth Amendment of the United States Constitution and the district court erred in denying her motion to suppress.

#### B. Standard Of Review

"In reviewing a district court order granting or denying a motion to suppress evidence, the standard of review is bifurcated." *State v. Purdum*, 147 Idaho 206, 207 (2009) (citation omitted). "This Court will accept the trial court's findings of fact unless they are clearly erroneous. However, this Court may freely review the trial court's application of constitutional principles in light of the facts found." *Id.* (citations omitted). "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. Aguirre*, 141 Idaho 560, 562 (Ct. App. 2005) (citations omitted).

#### C. The Warrantless Search Of The Camper At Ms. Winnett's New Residence Violated Ms. Winnett's Rights Under The Fourth Amendment Because It Was Not Reasonably Related To Her Disclosure That She Had Violated Her Probation By Changing Her Residence

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. U.S. Const., amend. IV. "Warrantless searches are presumed to be unreasonable and therefore violative of the Fourth Amendment." *State v. Santana*, 162 Idaho 79, 85 (Ct. App.

2017) (citation omitted). “The State may overcome this presumption by demonstrating that a warrantless search either fell within a well-recognized exception to the warrant requirement or was otherwise reasonable under the circumstances.” *Id.* (citation omitted).

Here, the district court correctly concluded that Ms. Winnett did not validly waive her Fourth Amendment rights as a condition of her probation in the accident case because she did not have notice at sentencing that a Fourth Amendment waiver would be a condition of her probation, and only the sentencing court may set the substantive conditions of probation. (7/30/18 Tr., p.6, L.23 – p.7, L.4.) Absent a valid Fourth Amendment waiver, “a parole or probation officer may conduct a search of a parolee or probationer and his or her residence if the officer has reasonable grounds to believe that the parolee or probationer has violated a parole or probation condition and the search is reasonably related to the disclosure or confirmation of that violation.” *Santana*, 162 Idaho at 85; *see also United States v. Knights*, 534 U.S. 112, 121 (2001) (holding a probationer’s residence may be searched based on reasonable suspicion rather than probable cause). The search of the camper at Ms. Winnett’s residence was not reasonably related to the disclosure or confirmation that she had violated probation by changing her residence.

In *Santana*, the Court of Appeals held a warrantless search of a probationer’s residence was reasonable under the Fourth Amendment because the probationer’s underlying charge involved substance abuse and the probationer had admitted to ongoing substance abuse. 162 Idaho at 84-85. The *Santana* Court noted that in *State v. Klingler*, 143 Idaho 494, 498 (2006), the Idaho Supreme Court upheld a warrantless search of an unsupervised probationer’s residence based upon a tip from the police that the probationer might be dealing drugs, coupled with the probationer’s drug history. *Santana*, 162 Idaho at 85. The reasoning of *Santana* and *Klingler*

does not support the search of the camper in this case, as Ms. Winnett's underlying conviction did not involve substance abuse, and she had not admitted to using drugs prior to the search.

It is undisputed that Ms. Winnett violated the terms of her probation by changing her residence. The probation officers knew she violated her probation when they went to the address they had on file, and learned from Ms. Winnett's daughter that Ms. Winnett had moved to the Main Street address. (7/13/18 Tr., p.14, Ls.19-25, p.27, L.25 – p.28, L.6.) The officers confirmed the probation violation when they visited Ms. Winnett at her workplace, and Ms. Winnett said she now lived with her mother. (7/13/18 Tr., p.15, Ls.12-18, p.28, Ls.12-16.) The officers confirmed the violation again when they went to the Main Street address and met Ms. Winnett's mother and stepbrother, who both said Ms. Winnett lived there. (7/13/18 Tr., p.16, Ls.11-15, p.29, Ls.10-17.) The officers did not need to do anything further to confirm Ms. Winnett's probation violation.

At the suppression hearing, Officer Bulzomi was asked on direct examination, "[H]ow do you verify a residence?" and he answered, "We go up to the door, state who we are, why we're there, and we verify with the people we're talking to at the residence if this is true that they're living there." (7/13/18 Tr., p.15, L.22 – p.16, L.3.) The probation officers had finished verifying Ms. Winnett's new residence when they confirmed with Ms. Winnett's mother and stepbrother that Ms. Winnett was living at the Main Street address. The probation officers searched Ms. Winnett's new residence and the camper for drugs, relying on the Fourth Amendment waiver, but the district court correctly held there was no valid Fourth Amendment waiver.

The district court concluded the probation officers had reasonable grounds to search the camper because, "they were securing that residence to make sure that they could approve her moving to that new residence." (7/30/18 Tr., p.7, L.18 – p.8, L.1.) The district court erred in

upholding the search on this basis. The probation officers did not have reasonable suspicion of criminal activity and had already confirmed Ms. Winnett's probation violation, and thus had no legally valid basis for conducting a search. The warrantless search of the camper violated Ms. Winnett's rights under the Fourth Amendment and the district court erred in denying her motion to suppress.

#### CONCLUSION

Ms. Winnett respectfully requests that the Court vacate her conviction, reverse the district court's order denying her motion to suppress, and remand this case to the district court for further proceedings.

DATED this 7<sup>th</sup> day of May, 2019.

/s/ Andrea W. Reynolds  
\_\_\_\_\_  
ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7<sup>th</sup> day of May, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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/s/ Kylie M. Fournier  
\_\_\_\_\_  
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