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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 46160-2018 & 46161-2018
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NOS.
v.)	CR-2018-1037 & CR-2018-1195
)	
DAMEAN DEAN ESPINOZA,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
<hr/>		

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

HONORABLE JOHN T. MITCHELL
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Damean D. Espinoza challenges the district court's denial of his motion to suppress evidence following his warrantless arrest for a misdemeanor committed outside the police officer's presence. He argues this Court's decision in *State v. Clarke*, 165 Idaho 393, 446_P.3d 451 (2019), requires suppression because *Clarke* held a warrantless arrest for a misdemeanor committed outside the officer's presence violates Article 1, Section 17 of the Idaho Constitution. Due to the unconstitutional arrest, Mr. Espinoza submits the district court should have granted his motion and suppressed the evidence found during two searches arising from his arrest.

Statement of Facts and Course of Proceedings

On August 17, 2017, a man reported that Mr. Espinoza chased him and threatened to kill him for stealing money. (No. 46160 R.,¹ pp.64–65.) The man ran away from Mr. Espinoza, locked himself in a gas station bathroom, and called 911. (No. 46160 R., pp.64–65.) Officers Johnson and Koontz responded to the gas station. (No. 46160 R., p.64.) Neither officer observed the alleged assault. (No. 46160 R., p.64.) After interviewing the man and Mr. Espinoza, Officer Johnson arrested Mr. Espinoza for misdemeanor assault. (No. 46160 R., p.65; *see also* Tr. Vol. II,² p.8, Ls.12–25.) Officer Johnson searched Mr. Espinoza and found heroin. (No. 46160

¹ There are two clerk's records on appeal. Each record will be cited with reference to the Supreme Court docket number.

² There are three transcripts cited on appeal. The first, cited as Volume I, contains the transcript of the preliminary hearing, held on February 1, 2018. This electronic document is titled, "Appeal Volume 1 Transcript EXH.pdf," and it contains other documents as well as this transcript. The transcript begins on page eight and ends of page twenty-three of the electronic document, but citations here will refer to the transcript's internal pagination. The second transcript, cited as Volume II, contains the motion to suppress hearing, held on April 25, 2018. This transcript is contained in its own electronic document titled, "46160.PDF." The third transcript, cited as Volume III, contains the change of plea and sentencing hearing, held on May 16, 2018. This

R., p.65.) Officer Johnson did not charge Mr. Espinoza with possession of a controlled substance at this time. (No. 46160 R., p.65.)

About five months later, on January 19, 2018, Detective Williamson got an arrest warrant for Mr. Espinoza for possession of a controlled substance with intent to deliver. (No. 46160 R., p.65.) The heroin found by Officer Johnson during the August 17 search incident to arrest provided probable cause for Detective Williamson's arrest warrant. (No. 46160 R., p.65; Tr. Vol. I, p.45, Ls.2–22.) Detective Williamson stopped Mr. Espinoza as he was driving, arrested him, and searched him and the car. (No. 46160 R., p.65; Tr. Vol. I, p.32, L.22–p.33, L.2, p.37, L.2–p.38, L.12.) Detective Williamson found more heroin and other contraband on Mr. Espinoza and in the car. (No. 46160 R., p.65; *see also* Tr. Vol. I, p.34, L.21–p.35, L.6.)

The same day as this second arrest, the State filed a Criminal Complaint alleging Mr. Espinoza committed the crime of possession of a controlled substance with intent to deliver for the heroin found by Officer Johnson on August 17. (No. 46160 R., pp.21–22.) Three days later, on January 22, the State filed a Criminal Complaint alleging Mr. Espinoza committed the crime of trafficking in heroin for the heroin found by Detective Williamson on January 19. (No. 46161 R., pp.11–12.) The magistrate consolidated the cases. (No. 46160 R., pp.24–25; No. 46160 R., p.23) After a preliminary hearing, the magistrate found probable cause for the offenses and bound Mr. Espinoza over to district court. (*See* Tr. Vol. I, p.28, Ls.16–24, p.48, L.12–p.49, L.9; No. 46160 R., p.32; Aug. R., p.1.³) The State filed an Information charging Mr. Espinoza with possession of a controlled substance with the intent to deliver in one case and trafficking in

transcript is also contained in its own electronic document titled, “Docket #46106; 46161-Damean Espinoza-5-16-18-COP.PDF.”

³ The magistrate's orders binding Mr. Espinoza over to district court incorrectly state that he waived a preliminary hearing. (No. 46160 R., p.32; Aug. R., p.1.)

heroin, along with two misdemeanors, in another case. (No. 46160 R., pp.40–41; No. 46161 R., pp.25–26.)

Mr. Espinoza filed a motion to suppress in both cases. (No. 46160 R., pp.35–36; Aug. R., pp.2–3.) He argued the evidence must be suppressed because his arrest was in violation of Article 1, Section 17 of the Idaho Constitution. (No. 46160 R., pp.35–36.) In a memorandum in support, Mr. Espinoza asserted Officer Johnson arrested him in violation of Article 1, Section 17 because Officer Johnson arrested him for a misdemeanor assault committed outside the officer’s presence (also known as a completed misdemeanor⁴). (No. 46160 R., pp.48–52.) He further argued Detective Williamson’s basis for the arrest warrant was the information obtained from his unconstitutional arrest. (No. 46160 R., pp.52–53.) Due to the unconstitutional arrest, Mr. Espinoza maintained all evidence obtained after his arrest must be suppressed. (No. 46160 R., p.53.)

The State filed a memorandum in opposition.⁵ (No. 46160 R., pp.58–63.) The State argued Officer Johnson had probable cause to arrest Mr. Espinoza for the misdemeanor assault. (No. 46160 R., pp.60–61.) The State also argued Officer Johnson lawfully arrested Mr. Espinoza pursuant to I.C. § 19-603(6). (No. 46160 R., p.62.)

In late April 2018, the district court held a hearing on Mr. Espinoza’s motion. (*See generally* Tr. Vol. II, p.3, L.3–p.35, L.24.) Officer Johnson testified, and the district court took judicial notice of the preliminary hearing transcript. (Tr. Vol. II, p.4, L.13–p.26, L.10.) After argument by the parties, the district court stated it had recently denied a motion to suppress in

⁴ A completed misdemeanor has also been described as “is one which is no longer in progress when the officer arrives on the scene.” *Clarke*, 446 P.3d at 454 n.6.

⁵ The State filed its memorandum before the hearing on Mr. Espinoza’s suppression motion, but the conform copy was delayed due to the implementation of e-filing. (Tr. Vol. II, p.27, L.18–p.28, L.24.)

Clarke, 165 Idaho 393 (Kootenai County No. CR-2016-14857), that presented a issue argument, and it would deny this motion for the same reasons. (Tr. Vol. II, p.35, Ls.2–12.) The district court noted its decision in *Clarke* was currently on appeal. (Tr. Vol. II, p.35, Ls.5–6.) The district court also informed the parties that it would issue a written decision. (Tr. Vol. II, p.35, Ls.11–12.)

A few days later, the district court issued a memorandum decision and order denying Mr. Espinoza’s motion. (No. 46160 R., pp.64–75.) First, the district court reviewed its decision in *Clarke* and took judicial notice of the record, including the motion to suppress hearing. (No. 46160 R., pp.67–68.) The district court then rejected Mr. Espinoza’s argument that Officer Johnson’s arrest for a completed misdemeanor was unconstitutional. (No. 46160 R., pp.68–72.) The district court determined Officer Johnson’s arrest was reasonable under the Idaho Constitution. (No. 46160 R., pp.68–72.) In addition, the district court reasoned:

The fact remains that this was a misdemeanor not committed in the officer’s presence, but the time period from the event to police being on scene and encountering and arresting [Mr. Espinoza] was very short. This is important, as mentioned above, Idaho Code § 19-603(6) provides a peace officer an arrest without a warrant, “When upon immediate response to a report of a commission of a crime there is probable cause to believe, that the person arrested has committed a violation of section 18-902 (assault) . . . ” The Court makes the finding that Officer Johnson and Officer Koontz an immediate response to the report of a commission of a crime, and that they had probable cause to believe had committed an assault.

(No. 46160 R., p.73.) In short, the district court held the arrest complied with I.C. § 19-603(6). The district court also ruled Officer Johnson had probable cause for the arrest. (No. 46160 R., pp.73–74.) Lastly, the district court agreed “the basis for the arrest warrant was the evidence discovered as a result of a search incident to” Mr. Espinoza’s arrest on August 17. (No. 46160 R., pp.74–75.) “However,” because the district court held the arrest “was lawful, it follows that any evidence collected as a result of that warrantless arrest was properly seized.” (No. 46160

R., p.75 (footnote omitted).) For these reasons, the district court denied Mr. Espinoza's motion. (No. 46160 R., p.75.)

In May 2018, the district court held a joint entry of plea and sentencing hearing for both cases. (No. 46160 R., pp.76–78.) Pursuant to a plea agreement, Mr. Espinoza pled guilty to possession of a controlled substance with the intent to deliver and an amended charge of possession of a controlled substance (amended down from trafficking in heroin). (No. 46160 R., p.79; No. 46161 R., pp.30–31; Tr. Vol. III, p.2, Ls.6–13, p.14, Ls.3–17.) The State agreed to dismissal of the two misdemeanors. (No. 46160 R., p.79; No. 46161 R., pp.33–34; Tr. Vol. III, p.13, Ls.9–10.) Mr. Espinoza reserved his right to appeal the district court's denial of his motion to suppress. (Tr. Vol. III, p.13, Ls.20–21; No. 46160 R., p.79.) The district court imposed concurrent sentences of six years, with three years fixed, for each offense. (Tr. Vol. III, p.30, Ls.14–20, p.31, Ls.9–14; No. 46160 R., pp.80–82.)

In both cases, Mr. Espinoza timely appealed from the district court's judgment of conviction.⁶ (No. 46160 R., pp.83–85; Aug. R., pp.4–6.)

⁶ This Court consolidated the cases on appeal and later, on Mr. Espinoza's motion, suspended the appeal pending its decision in *Clarke. State v. Espinoza*, Nos. 46160-2018 & 46161-2018, Order to Consolidate Appeals for All Purposes (July 23, 2018); *State v. Espinoza*, Nos. 46160-2018 & 46161-2018, Order Granting Motion to Suspend the Appellate Proceedings (Dec. 27, 2018). After this Court's decision in *Clarke*, this Court denied Mr. Espinoza's stipulated motion to vacate the judgment of conviction, reverse the district court's order on his motion to suppress, and remand these cases. *State v. Espinoza*, Nos. 46160-2018 & 46161-2018, Order Denying Stipulated Motion (Sept. 9, 2019).

ISSUE

Did the district court err by denying Mr. Espinoza's motion to suppress evidence obtained from his warrantless arrest for a completed misdemeanor?

ARGUMENT

The District Court Erred By Denying Mr. Espinoza's Motion To Suppress Evidence Obtained From His Warrantless Arrest For A Completed Misdemeanor

A. Introduction

Article 1, Section 17 of the Idaho Constitution prohibits warrantless arrests for completed misdemeanors. *Clarke*, 446 P.3d at 457. Here, Officer Johnson arrested Mr. Espinoza in violation of Article 1, Section 17 because Officer Johnson arrested Mr. Espinoza for a completed misdemeanor. All evidence obtained by Officer Johnson during the search incident to arrest, and later obtained by Detective Williamson via an arrest warrant premised on the evidence found by Officer Johnson, was subject to suppression as the fruit of the unconstitutional arrest. Therefore, Mr. Espinoza submits the district court erred by denying his motion to suppress. He respectfully requests this Court reverse the district court's order denying suppression and vacate his judgments of conviction.

B. Standard Of Review

In reviewing an order denying a motion to suppress evidence, this Court applies a bifurcated standard of review. *State v. Purdum*, 147 Idaho 206, 207 (2009). This Court will accept the trial court's findings of fact unless they are clearly erroneous but will freely review the trial court's application of constitutional principles to the facts found. *Id.*

State v. Lee, 162 Idaho 642, 646–47 (2017).

C. Officer Johnson's Warrantless Arrest Of Mr. Espinoza For A Completed Misdemeanor Violated Mr. Espinoza's Idaho Constitutional Protection Against Unreasonable Seizures

Article 1, Section 17 of the Idaho Constitution states:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant

shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized.

IDAHO CONST. art. I, § 17. “In some instances,” this Court has “construed Article I, section 17, to provide greater protection than is provided by the United States Supreme Court’s construction of the Fourth Amendment.” *State v. Koivu*, 152 Idaho 511, 519 (2012). The Court provides “greater protection to Idaho citizens based on the uniqueness of our state, our Constitution, and our long-standing jurisprudence.” *Id.* (quoting *State v. Donato*, 135 Idaho 469, 472 (2001)); *see also State v. Guzman*, 122 Idaho 981, 987–88 (1992) (discussing the Court’s power to interpret the Idaho Constitution independently and grant Idaho citizens more protection).

In *Clarke*, the Court interpreted the protections provided to Idaho citizens in Article 1, Section 17 for warrantless arrests. First, the Court recognized Article 1, Section 17 had “long been interpreted in conjunction with Idaho Code section 19-603 and its predecessor statutes, which were in place at the time of the adoption of the Idaho Constitution.” *Clarke*, 446 P.3d at 454 (citing *State v. Green*, 158 Idaho 884, 888 (2015)). Idaho Code § 19-603 and its predecessors outlined the statutory guidelines for a warrantless arrest:

Until 1979, the interpretation of the Constitution and the statutes that preceded Idaho Code section 19-603 largely echoed the general rule of federal cases—that a warrantless arrest was lawful if the arresting officer had probable cause to believe a felony had been committed or if the offender had committed a misdemeanor in the presence of the officer.

Clarke, 446 P.3d at 454 (citations omitted). Then, in 1979, the legislature added subsection 6 to I.C. § 19-603. *Id.* This subsection allowed warrantless arrests for certain misdemeanors committed outside the officer’s presence, provided the officer had probable cause to believe the arrestee committed the misdemeanor and the arrest was in “immediate response to a report of a commission of a crime.” I.C. § 19-603(6). Thus, “the constitutional standard and the statutory standard” for warrantless arrests “diverged.” *Clarke*, 446 P.3d at 454. Article 1, Section 17

prohibited warrantless arrests for completed misdemeanors, but I.C. § 19-603(6) allowed them for certain enumerated misdemeanors, including assault.⁷

In light of this tension between Article 1, Section 17 and I.C. § 19-603, the Court turned to its recent interpretation of the Idaho Constitution in *Green*. See *Clarke*, 446 P.3d at 454–55 (discussing *Green*). In *Green*, the Court held the violation of a statutory right on arrests did not violate Article 1, Section 17 because the legislature enacted the statute after the adoption of the Idaho Constitution and the statute was never incorporated into the Idaho Constitution. *Green*, 158 Idaho at 888–89. The statute, therefore, could not “be considered part of the constitutional standard for what constitutes a reasonable seizure of the person.” *Green*, 158 Idaho at 888–89. “As a corollary, *Green* held ‘[b]ecause the constitutional guarantee against unreasonable seizure of the person includes an arrest, the Idaho Constitution incorporated the principles regarding

⁷ I.C. § 19-603 currently states in full:

A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person:

1. For a public offense committed or attempted in his presence.
2. When a person arrested has committed a felony, although not in his presence.
3. When a felony has in fact been committed and he has reasonable cause for believing the person arrested to have committed it.
4. On a charge made, upon a reasonable cause, of the commission of a felony by the party arrested.
5. At night, when there is reasonable cause to believe that he has committed a felony.
6. When upon immediate response to a report of a commission of a crime there is probable cause to believe that the person has committed a violation of section 18-901 (assault), 18-903 (battery), 18-918 (domestic violence), 18-7905 (first-degree stalking), 18-7906 (second-degree stalking), 39-6312 (violation of a protection order), 18-920 (violation of a no contact order), or 18-3302I (threatening violence upon school grounds--firearms and other deadly or dangerous weapons), Idaho Code.
7. When there is reasonable cause to believe, based upon physical evidence observed by the officer or statements made in the presence of the officer upon immediate response to a report of a commission of a crime aboard an aircraft, that the person arrested has committed such a crime.

arrest in the Idaho statutory and common law in 1890 when the constitution was adopted.” *Clarke*, 446 P.3d at 455 (quoting *Green*, 158 Idaho at 888). Yet, in *Clarke*, the Court narrowed *Green*’s corollary holding. The Court determined *Green*’s language was “overbroad,” and the Court limited *Green* to “the principle that preexisting statutes and the common law may be used to help inform our interpretation of the Idaho Constitution, but they are not the embodiment of, nor are they incorporated within, the Constitution.” *Clarke*, 446 P.3d at 455.

After limiting *Green*, the Court examined the common law practices and statutes at the time of the Idaho Constitution’s adoption in 1890 to determine the framers’ intent for the rights guaranteed by Article 1, Section 17. *Clarke*, 446 P.3d at 455. The Court’s review of the common law showed a police officer could not make a warrantless arrest for a misdemeanor committed outside the officer’s presence. *Id.* at 455–57. The Court concluded, “based upon the state of the common law in 1889, we conclude that the framers of the Idaho Constitution understood that Article I, section 17 prohibited warrantless arrests for completed misdemeanors.” *Id.* at 457. While the Court was “fully mindful of the significance of this conclusion,” the Court determined the “extremely powerful policy considerations” to support upholding I.C. § 19-603(6) “must yield to the requirements of the Idaho Constitution.” *Id.* at 457–58.

As interpreted by *Clarke*, Article 1, Section 17’s prohibition of warrantless arrests for completed misdemeanors controls this case. The district court found Officer Johnson arrested Mr. Espinoza for the completed misdemeanor of assault. (No. 46160 R., pp.64, 73.) Relying on I.C. § 19-603(6), the district court determined Officer Johnson’s arrest was reasonable. (No. 46160 R., pp.68–74.) However, even though Officer Johnson’s arrest was permissible under I.C. § 19-603(6), the arrest was prohibited by Article 1, Section 17 of the Idaho Constitution. *Clarke*, 446 P.3d at 457. In light of *Clarke*, Officer Johnson’s warrantless arrest of Mr. Espinoza for a

completed misdemeanor violated his state constitutional right to be free from unreasonable seizures. Therefore, the district court erred by holding the arrest was reasonable under the Idaho Constitution.

D. Idaho's Exclusionary Rules Requires Suppression Of All Evidence Obtained By Officer Johnson And Detective Williamson Following Mr. Espinoza's Unconstitutional Arrest

Due to the unconstitutional arrest, the exclusionary rule requires suppression of the evidence obtained by Officer Johnson and Detective Williamson. "The value of the exclusionary rule was recognized by this Court long before the United States Supreme Court required it for fourth amendment violations." *State v. Rauch*, 99 Idaho 586, 592 (1978). "Idaho had clearly developed an exclusionary rule as a constitutionally mandated remedy for illegal searches and seizures in addition to other purposes behind the rule such as recognizing the exclusionary rule as a deterrent for police misconduct." *Donato*, 135 Idaho at 472. "The rule is well settled in this state that evidence, procured in violation of defendant's constitutional immunity from search and seizure, is inadmissible and will be excluded if request for its suppression be timely made." *Koivu*, 152 Idaho at 516 (quoting *State v. Conner*, 59 Idaho 695, 703 (1939)). Accordingly, Idaho's exclusionary rule requires suppression of the evidence procured in violation of Mr. Espinoza's state constitutional rights.

Applying the exclusionary rule, the evidence obtained from Officer Johnson's search incident to Mr. Espinoza's arrest and Detective Williamson's search upon service of the arrest warrant must be suppressed. To determine whether evidence should be excluded, the question is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Wong Sun v. United States*, 371

U.S. 471, 488 (1963) (citation and quotation marks omitted); *State v. Bishop*, 146 Idaho 804, 811 (2009) (same). Here, Officer Johnson and Detective Johnson both obtained the evidence from Mr. Espinoza by exploitation of the unconstitutional arrest. Officer Johnson found the evidence during his search incident to the unconstitutional arrest. (No. 46160 R., p.65; Tr. Vol. I, p.8, Ls.3–17; Tr. Vol. II, p.16, Ls.11–16.) Moreover, Detective Williamson’s only basis for probable cause for the arrest warrant was the evidence found by Officer Johnson. (No. 46160 R., pp.74–75; Tr. Vol. I, p.45, Ls.2–22.) In sum, all evidence obtained by Officer Johnson and Detective Williamson should have been suppressed as “fruit of the poisonous tree.” *Clarke*, 446 P.3d at 453 n.2. Therefore, the district court erred by denying Mr. Espinoza’s motion to suppress.

CONCLUSION

Mr. Espinoza respectfully requests this Court reverse the district court’s order denying his motion to suppress, vacate his judgment of conviction⁸ in No. 46160 and No. 46161, and remand these cases for further proceedings.

DATED this 15th day of October, 2019.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

⁸ In *Clarke*, after holding that the officer’s arrest of the defendant violated Article 1, Section 17, the Court simply vacated the defendant’s judgment of conviction—likely because the evidence subject to suppression was necessary for the State to prove the drug-related charges. 446 P.3d at 453, 458.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October, 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

JCS/eas