10-13-2015

State v. Melling Respondent's Brief Dckt. 42666

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	NO. 42666
	)	
v.	)	CANYON COUNTY
	)	NO. CR 2014-16078
	)	
JEFFREY B. MELLING,	)	RESPONDENT'S BRIEF
	)	
Defendant-Respondent.	)	
	)	

BRIEF OF RESPONDENT

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

HONORABLE GEORGE A SOUTHWORTH
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Jeffrey B. Melling was arrested after a police officer's warrantless search of a lockbox uncovered drug paraphernalia inside. Following Mr. Melling's arrest, law enforcement found methamphetamine in his wallet. The State charged him with possession of a controlled substance.

Mr. Melling filed a motion to suppress the evidence in the lockbox and all subsequent evidence seized as a result of his arrest. The district court granted the motion, finding that Mr. Melling did not abandon his privacy interest in the lockbox even though he had denied ownership. Due to Mr. Melling's privacy interest in the lockbox, the district court determined Mr. Melling could challenge the warrantless search of the lockbox. The district court concluded that unlawful police conduct led to the search of the lockbox and thus, the evidence obtained from the lockbox and the subsequent arrest must be suppressed. The State appealed.

Statement of the Facts and Course of Proceedings

The facts leading up to the search of the lockbox and Mr. Melling's arrest were provided to the district court by stipulation:

> On July 13, 2014, Officer Harward responded to 24 Oak Street in Nampa, Idaho for the report of a fight. When Officer Harward arrived on scene, he observed two males arguing at the front of the residence standing in the grass. Officer Harward separated the males and spoke with Defendant Melling. Defendant identified himself verbally and stated that he and his girlfriend, later identified as Dawn C. Singleton had gotten into an argument earlier that day while they were at a park. Defendant further stated that he then got into an argument with his roommate, Brain Tait, over the fact that he and Singleton had been arguing. Defendant stated that Tait walked up behind him and punched him in the side of the head, leading to further fighting.

> While Officer Harward was speaking with Defendant, Singleton came outside and threw a lockbox on the grass, stating it belonged to Defendant. Defendant stated he had never seen the box before and had no idea who it belonged to; Officer Harward stated that Defendant began to get very nervous about the box and continued telling Officer Harward about the events of the day. Officer Harward then spoke with Singleton who stated the lockbox belonged to Defendant who brought it from California and that inside drug paraphernalia and a vape device were located inside the box. Singleton then showed Officer Harward where the box allegedly was previously located next to Defendant's wallet in the bedroom where Defendant and Singleton were staying.
>
> Officer Harward went back outside to speak with Defendant, who again told Officer Harward that nothing in the box was his. Officer Harward proceeded to open the lockbox because the passcode was properly set. Inside the lockbox, Officer Harward located a black scale, a pipe with white crystal substance and some matches, as well as two fake identification cards for Kristine Placentia and Mitchell Rob Douglas. Officer Harward asked Defendant again what was inside the box, and Defendant denied knowledge of the contents. Officer Harward then placed Defendant under arrest based on the testimony of Singleton; he placed Defendant into handcuffs and double checked them for tightness. As Officer Harward escorted Defendant to the patrol vehicle, he observed Defendant walking in a strange manner, keeping his legs tightly together and only bending at the [knees]. Officer Harward had Defendant separate his feet to search for weapons or other paraphernalia, and when doing so, a glass pipe fell out of Defendant's shorts and shattered on the ground. Defendant denied ownership and knowledge of the pipe.
>
> Officer Harward later NIK Kit U tested the shattered portion of the glass pipe that fell from Defendant's shorts; the portion tested presumptive positive for methamphetamine. Officer Harward then received a call from Officer T. Arnold who transported Defendant to the Canyon County Jail and advised Officer Harward that he had located a bag of white crystal substance inside Defendant's wallet, which later tested presumptive positive for methamphetamine and weighted .07 grams TPW.

(R., pp.51–53.) The following day, the State filed a Criminal Complaint alleging that Mr. Melling committed a felony for possession of a controlled substance, methamphetamine, in violation of Idaho Code § 37-2732(c)(1). (R., pp.8–9.)

Mr. Melling waived a preliminary hearing, and the magistrate bound him over to district court. (R., pp.13–14.) The State filed an Information charging Mr. Melling with possession of a controlled substance. (R., pp.15–16.)

Mr. Melling filed a motion to suppress the evidence obtained from the search of the lockbox and his subsequent arrest. (R., pp.21, 23–24, 26–31.) The State responded in opposition. (R., pp.33–38.) The district court held a hearing on the motion. (R., pp.39–41.) Neither party presented any evidence at the hearing except the stipulated facts provided above. (R., pp.39–40.) The district court took the matter under advisement. (R., p.41.)

According to the court minutes from a pre-trial conference, the district court orally announced its findings of fact and conclusions of law and granted the motion.[1] (R., p.46.) The district court subsequently issued a written Order Granting Motion to Suppress. (R., pp.51–59.) The State timely appealed. (R., pp.66–68.)

[1] The State has not provided a transcript of the pre-trial conference in the record on appeal.

ISSUE

The State frames the issue on appeal as:

> Did the district court err by granting Melling's motion to suppress after concluding that because Melling denied owning a lockbox in an apparent effort to avoid criminal liability for contraband contained within the lockbox, such abandonment did not divest him of his privacy interest related to that property?

Mr. Melling rephrases the issue as:

> Did the district court properly determine based on substantial and competent evidence that Mr. Melling had a reasonable expectation of privacy in the lockbox?

ARGUMENT

The District Court Properly Determined Based On Substantial And Competent Evidence That Mr. Melling Had A Reasonable Expectation Of Privacy In The Lockbox

A. Introduction

On appeal, the State argues that the district court erred by finding that Mr. Melling did not abandon his privacy interest in the lockbox. The district court did not err, however. The district court had substantial and competent evidence to find that, despite his denial of ownership, Mr. Melling had a reasonable expectation of privacy in the lockbox based on the totality of the circumstances. Therefore, Mr. Melling requests that the Court affirm the district court's order granting his motion to suppress.

B. Standard Of Review

The 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, 570 (Ct. App. 2014) (same). "The Court accepts the trial court's findings of fact if supported by substantial evidence." *State v. Watts*, 142 Idaho 230, 234 (2005). The Court "has defined 'substantial evidence as such relevant evidence as a reasonable mind might accept to support a conclusion; it is more than a scintilla, but less than a preponderance.'" *Id.* (quoting *Evans v. Hara's, Inc.*, 123 Idaho 473, 478 (1993)). "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." *Hunter*, 156 Idaho at 570. The 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 Had Substantial And Competent To Find That Mr. Melling's Conduct Did Not Demonstrate Abandonment

"The Fourth Amendment of the United States Constitution protects citizens from unreasonable search and seizure." *State v. Hansen*, 138 Idaho 791, 796 (2003). "Article I, Section 17 of the Idaho Constitution nearly identically guarantees 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.'" *State v. Green*, 158 Idaho 884, 886 (2015) (alteration in original). Under both the United States and Idaho Constitutions, "[w]arrantless searches and seizures are presumptively unreasonable . . . unless they come within one of the established exceptions to the warrant requirement." *Id.* at 886–87 (citing *California v. Acevedo,* 500 U.S. 565, 580 (1991); *State v. Henderson,* 114 Idaho 293, 295 (1988)). The State has the burden to show an exception to the warrant requirement. *State v. Pruss*, 145 Idaho 623, 628 (2008).

A threshold issue to challenge an unlawful search is a reasonable expectation of privacy. "A person challenging a search has the burden of showing that he or she had a legitimate expectation of privacy in the item or place searched." *Id.* at 626. Generally, the determination of a reasonable expectation of privacy involves a two-part inquiry: "(1) Did the person have a subjective expectation of privacy in the object of the challenged search? and (2) Is society willing to recognize that expectation as reasonable?" *Id.*

Abandonment of the item or place precludes an individual from claiming a reasonable expectation of privacy in the property. "One who voluntarily abandons property prior to the search cannot be said to possess the requisite privacy interest." *State v. Harwood,* 133 Idaho 50, 52 (Ct. App. 1999) (citing *Abel v. United States*, 362

U.S. 217, 241 (1960)). "Abandonment, in the Fourth Amendment context, occurs through words, acts, and other objective facts indicating that the defendant voluntarily discarded, left behind, or otherwise relinquished his interest in his property." *Id.* (citing *United States v. Ramos*, 12 F.3d 1019, 1023 (11th Cir. 1994); *Bond v. United States*, 77 F.3d 1009, 1013 (7th Cir. 1996); *United States v. McDonald*, 100 F.3d 1320 (7th Cir. 1996)).[2]

In this case, the only issue raised by the State on appeal is whether the district court erred by finding that Mr. Melling did not abandon the lockbox. The State puts forth no other arguments on appeal to justify the warrantless search of the lockbox. As it was the State's burden to raise these issues on appeal, any other justification for the warrantless search is waived. *State v. Zichko*, 129 Idaho 259, 263 (1996).

Despite the disclaimer of ownership, the district court properly found based on the totality of circumstances that Mr. Melling did not abandon his privacy interest in the lockbox. The stipulated facts provide three statements by Mr. Melling regarding the lockbox: (1) "he had never seen the box before;" (2) "he had no idea who it belonged

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[2] Although there is no Idaho case law on point, many courts place the burden on the State to establish the defendant abandoned the item or place. *See United States v. Fernandez*, 772 F.2d 495, 449–500 (9th Cir. 1985) (citing *United States v. Mendia*, 731 F.2d 1412, 1414 (9th Cir. 1984); *United States v. Freire*, 710 F.2d 1515, 1519 (11th Cir. 1983); *United States v. Alden*, 576 F.2d 772, 776 (8th Cir. 1978); *United States v. Colbert*, 474 F.2d 174, 177 (5th Cir. 1973); *United States v. Robinson*, 430 F.2d 1141, 1143 (6th Cir. 1970)). *See also United States v. Pitts*, 332 F.3d 449, 456 (7th Cir. 2003); *United States v. Cofield*, 272 F.3d 1303, 1306 (11th Cir. 2001); *State v. Carvajal*, 996 A.2d 1029, 1034 (N.J. 2010); *State v. Rynhart*, 125 P.3d 938, 943 (Utah 2005); *State v. Reynolds*, 27 P.3d 200, 205 (Wash. 2001) (en banc); *State v. Cook*, 34 P.3d 156, 160 (Or. 2001); *State v. May*, 608 A.2d 772, 774 (Me. 1992); *Watts v. Commonwealth*, 700 S.E. 2d 480, 485 (Va. Ct. App. 2010); *State v. Dennis*, 914 N.E. 2d 1071, 1079 (Ohio Ct. App. 2009); *Powell v. State*, 776 A.2d 700, 709 (Md. Ct. Spec. App. 2001); *State v. Clark*, 727 P.2d 949, 952 (N.M. Ct. App. 1986); *People v. Rooney*, 221 Cal. Rptr. 49, 55 (Cal. Ct. App. 1985). *But see People v. Taylor*, 655 N.W.2d 399, 406 (Mich. Ct. App. 2002) (burden on defendant).

to;" and (3) "nothing in the box was his." (R., p.52.) Mr. Melling's statements, however, are only one of the factors to be considered by the district court in making a determination of abandonment. *See Harwood*, 133 Idaho at 52. Other factors, such as Mr. Melling's "acts and other objective facts" at the time of the search, do not indicate that Mr. Melling abandoned his interest in the lockbox. *Id.*

The district court found that Mr. Melling "was noticeably upset by the circumstances that led to Officer Harward's arrival." (R., p.58.) He "began to get very nervous about the box." (R., p.52.) The district court also found that Mr. Melling's girlfriend "was visibly angry" with Mr. Melling. (R., p.58.) And, contrary to Mr. Melling's disclaimer of ownership, Mr. Melling's girlfriend told Officer Harward twice that the lockbox belonged to Mr. Melling. (R., p.52.) She even showed Officer Harward the location of the lockbox in Mr. Melling's bedroom, right next to Mr. Melling's wallet. (R., p.52.) The district court further found that Officer Harward not only had "reasonable indicia" that the lockbox belonged to Mr. Melling, but also believed Mr. Melling actually owned the lockbox, evidenced by his arrest. (R., p.58.) After "significant consideration to the facts at hand," the district court determined that Mr. Melling's "conduct did not significantly constitute abandonment as is required by the Fourth Amendment to allow for a warrantless search." (R., p.58.) Based on its factual findings, the district court had substantial and competent evidence to find that Mr. Melling did not voluntarily abandon his privacy interest in the lockbox.

The unusual facts of this case provide important context for the district court's findings on Mr. Melling's disclaimer of ownership. The intent to abandon "may be inferred from words spoken, acts done, and other objective facts, and all the relevant

circumstances at the time of the alleged abandonment should be considered." *State v. Evans*, 150 P.3d 105, 109 (Wash. 2007) (*en banc*). As the trier of fact on a motion to suppress, the district court is vested with the discretion to weigh evidence, resolve conflicts, and draw factual inferences. *Hunter*, 156 Idaho at 570. Unlike most abandonment cases,[3] Mr. Melling did not initially have the lockbox in his physical possession and then discard it upon Officer Harward's arrival at the residence. Instead, Mr. Melling's girlfriend took the lockbox out of Mr. Melling's bedroom without his permission, threw it on the front lawn, and stated that it belonged to Mr. Melling. (R., p.52.) The girlfriend then alleged that the lockbox contained drug paraphernalia. (R., p.52.) It was in this context that Mr. Melling denied ownership. Even though he denied ownership, the district found that Mr. Melling did not abandon his privacy interest. (R., p.58.) As the finder of fact, the district court properly exercised its discretion to determine whether Mr. Melling's disclaimer of ownership was an abandonment "through the words, acts, and other objective facts" at the time of the warrantless search. *Harwood,* 133 Idaho at 52. Likewise, the district court had the discretion to give Mr. Melling's statements little to no weight in comparison to the other objective evidence of Mr. Melling's expectation of privacy in the lockbox. The State has failed to show error in the district court's factual findings on Mr. Melling's statements and its ultimate finding of no abandonment.

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[3] "The great majority of the court decisions having to do with the abandonment of effects in a search and seizure context are similar . . . in that it appears the defendant tried to dispose of certain incriminating objects upon the lawful approach of or pursuit by the police." 1 WAYNE R. LAFAVE, SEARCH & SEIZURE § 2.6(b) (5th ed.), Westlaw (database updated October 2014).

Moreover, *State v. Zaitseva*, 135 Idaho 11 (2000), does not provide a bright-line rule for abandonment. In *Zaitseva*, the Court held that a search of a container in a vehicle was lawful because the police officer obtained consent to search the vehicle from: (1) the driver of the vehicle; (2) the defendant, a passenger in the vehicle; and (3) the absentee apparent owner of the vehicle. 135 Idaho at 13. The Court then held that the search was proper because the police officer had consent. *Id.* During its discussion of consent, the Court noted, "Furthermore, by denying ownership of the bag in response to the officer's inquiry prior to the search, [the defendant] essentially relinquished or abandoned any privacy interest in the contents of the bag." *Id.* (citing *Harwood*, 133 Idaho 50). Although the Court noted this alternative, supplemental means to uphold the search, the focus of the Court's discussion was on consent.[4] *Id.* In other words, the defendant's abandonment of the bag was not the essential or primary reason to uphold the search of the container. *Zaitseva* therefore does not stand for a bright-line rule that a disclaimer of ownership equals abandonment under any and all circumstances.

Further, any rule from *Zaitseva* is not binding on this case because abandonment is a fact-specific inquiry. *See United States v. Morgan*, 936 F.2d 1561, 1576 (10th Cir. 1991) ("the inquiry as to whether a defendant voluntarily abandoned property is particularly fact-based"); *United States v. Levasseur*, 816 F.2d 37, 44 (2d Cir. 1987) ("Abandonment is a question of fact, to be decided in objective terms on the basis of all the relevant facts and circumstances."); *United States v. Morales*, 737 F.2d 761, 763 (8th Cir. 1984) (abandonment is a question of fact). The facts of *Zaitseva* and the case

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[4] That the defendant abandoned the bag was raised only by the State in a footnote in its brief. Brief of Respondent at p.11 n.3, *State v. Zaitseva*, 135 Idaho 11 (2000) (No. 24986), 1999 WL 33913713 ("The state submits that Zaitseva abandoned any privacy interest in the bag when she denied that interest to the officer.").

at bar have significant distinctions. In *Zaitseva*, a police officer searched a container in a vehicle, in which an individual has a diminished expectation of privacy. *California v. Carey*, 471 U.S. 386, 391–92 (1985); *State v. Gosch*, 157 Idaho 803, 808 (Ct. App. 2014). Here, Officer Harward searched a lockbox on the front lawn of Mr. Melling's residence, in which an individual has a greater expectation of privacy. *State v. Webb*, 130 Idaho 462, 465 (1997); *State v. Johnson*, 110 Idaho 516, 523 (1986); *State v. McBaine*, 144 Idaho 130, 133 (Ct. App. 2007). In *Zaitseva*, both the driver of the vehicle and the defendant denied ownership of the bag, so there was some doubt as to ownership, especially in light of the absentee owner of the vehicle. Here, there is no evidence that more than one individual denied ownership of the lockbox. Instead, there was "reasonable indicia" showing that Mr. Melling owned the lockbox, and Officer Harward in fact believed that Mr. Melling owned it. (R., p.58.) In light of these factual differences between *Zaitseva* and the case at hand, *Zaitseva* does not provide a bright-line rule in this case that a disclaimer of ownership equates to an abandonment.

Consistent with the district court's decision in this case, a denial of ownership is not a per se abandonment of the property. Although "[a] number of courts have held that an abandonment may arise out of a disclaimer of ownership made in response to police questioning," "it should not be assumed . . . that a disclaimer of ownership always constitutes an abandonment for Fourth Amendment purposes." 1 WAYNE R. LAFAVE, SEARCH & SEIZURE § 2.6(b) (5th ed.), Westlaw (database updated October 2014). For example, a defendant's disclaimer of ownership of items that he pulled out of dumpster did not establish abandonment in light of the other facts of the case. *State v. Cook*, 34 P.3d 156, 160–61 (Or. 2001). Similarly, a defendant's initial disclaimer of ownership of a

purse did not show abandonment when the defendant's subsequent conduct "strongly indicated" the defendant's privacy interest in the item. *United States v. Burnette*, 698 F.2d 1038, 1048 (9th Cir. 1983). Likewise, after the Washington Supreme Court surveyed the case law, it joined the prevailing view "that disclaiming ownership is not sufficient, by itself, to constitute abandonment." *Evans*, 150 P.3d at 111; *see also id.* at 110–11 (discussing similar case law in various jurisdictions). Hence, "[a]bandonment is different than a disclaimer of ownership made to the police prior to the search, which should not (but sometimes is held to) defeat standing." 6 LAFAVE, SEARCH & SEIZURE § 11.3(e). What is more, "a 'mere denial of ownership' cannot constitute abandonment when 'the police are on notice that a person has a reasonable expectation of privacy in property based on something other than ownership.'" *Id.* (quoting *United States v. Scott*, 987 A.2d 1180, 1190 (D.C. 2010)). Here, the district court found that Officer Harward had more than mere "notice" of Mr. Melling's reasonable expectation of privacy. The district court found that Officer Harward in fact believed that the lockbox belonged to Mr. Melling based on the totality of the circumstances, such as the girlfriend's statements. (R., p.58.) Thus, in accordance with the authority on this issue, the district court properly reasoned that Mr. Melling's disclaimer, standing alone, did not show his abandonment of a privacy interest in the lockbox. *See Evans*, 150 P.3d at 107–08, 111 (holding defendant's denial of ownership of briefcase, found in defendant's truck in his garage, insufficient to establish abandonment).[5]

[5] LaFave also recognized that in certain cases a disclaimer "plus a bit more" may establish abandonment. 6 LAFAVE, SEARCH & SEIZURE § 11.3(f). Here, however, the State has not identified any additional evidence besides the disclaimer to show abandonment. Nor was any additional evidence presented to the district court. Although

Along the same lines, the district court was correct in relying on *State v. Isom*, 641 P.2d 417 (Mont. 1982), for its finding that Mr. Melling's disclaimer was intended to avoid incrimination, not abandon his privacy interest in the lockbox. "[A] mere disclaimer of ownership in an effort to avoid making an incriminating statement in response to police questioning should not alone be deemed to constitute abandonment." 6 LAFAVE, SEARCH & SEIZURE § 11.3(f). The Montana Supreme Court adopted this rule in *Isom*. 641 P.2d at 422. The Montana Supreme Court explained:

> Given the position that a defendant does not otherwise have to incriminate himself to preserve his Fourth Amendment rights, as in *Simmons v. United States*, 390 U.S. 377 (1986), it is difficult to understand how a refusal to make incriminating admissions in response to police interrogation can be held to deprive a person of Fourth Amendment standing.

Id. In light of the totality of circumstances showing a "custodial interrogation," the court in *Isom* held that the defendant's disclaimer of ownership of a car did not amount to an abandonment of his privacy interest in the item. *Id.*

The State argues here that Mr. Melling was not in custody at the time of his disclaimer of ownership so "the custodial interrogation rationale from *Isom* is inapplicable." (Appellant's Br. at 7.) But the principle applied in *Isom* does not require that the defendant be subject to a "custodial interrogation" when he makes a disclaimer to avoid incrimination. In *State v. Johnson*, 940 A.2d 1185 (N.J. 2008), there was no claim that the defendant was subject to a custodial interrogation when he denied ownership of a duffel bag to avoid incrimination. *Id.* at 1197–98. In that case, the defendant was asked by a police officer to leave an apartment, and the defendant took a duffel bag (containing a firearm) with him on his way out. *Id.* at 1197. As the defendant

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Mr. Melling disclaimed ownership, all other evidence indicated his reasonable expectation of privacy in the item.

was walking out of the apartment, the police officer asked the defendant if the duffel bag was his. *Id.* The defendant at first "mumbled 'yes,'" but then denied ownership. *Id.* at 1190, 1197–98. The Supreme Court of New Jersey held, "[W]e cannot conclude that defendant should be stripped of standing because he disclaimed ownership of the duffel bag in response to police questioning." *Id.* at 1198. The court reasoned:

> Assuming that he knew the contents of the bag, if we follow the way suggested by the State, defendant would be presented with a Catch–22: either he could admit that the duffel bag was his and incriminate himself, in which case his oral admission and the gun, if lawfully obtained pursuant to a search warrant, would be used against him at trial, or he could deny ownership of the bag, in which case he would not have standing to challenge an unlawful search. Those are hardly the circumstances that would allow for a voluntary disclaimer of a possessory interest in the bag for standing purposes.

Id. In short, the court explained, "a defendant should not have to sacrifice his right against self-incrimination to assert his constitutional right to be free from an unlawful search." *Id.* The *Johnson* Court characterized the defendant's disclaimer as involuntary, but not because the defendant was subject to a "custodial interrogation." Rather, the court focused on whether the defendant intended to voluntarily abandon his privacy interest in the item or place based on his statements and other relevant facts.

As illustrated by the case law, a disclaimer of ownership to avoid incrimination, standing alone, does not demonstrate abandonment because the intent of the disclaimer is not to voluntarily relinquish a privacy interest. The intent is to avoid arrest and criminal prosecution. At the same time, however, a disclaimer to avoid incrimination should not create an automatic exception to abandonment in every case: whether a disclaimer of ownership to avoid incrimination shows an intent to abandon depends on the specific facts of the case. Under the circumstances here, the district court had the

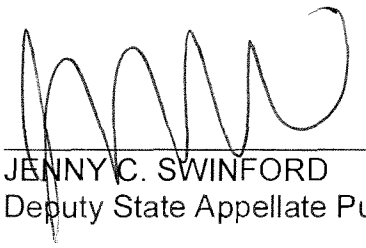
discretion to find that Mr. Melling's disclaimer was not intended as a voluntarily relinquishment of his privacy interest in the lockbox. After Mr. Melling's girlfriend told Officer Harward that the lockbox belonged to Mr. Melling and had drug paraphernalia inside, Mr. Melling could either admit ownership (and incriminate himself) or deny ownership (and potentially lose "standing" to challenge an unlawful search). By denying ownership, the district court reasoned that Mr. Melling's intent was not to give up his privacy interests, but rather to deny "involvement in felonious activity" and "incrimination" in response to the girlfriend's allegations. (R., p.58.) The district court properly determined based on the totality of circumstances that Mr. Melling's disclaimer of ownership to avoid incrimination, in and of itself, did not establish a voluntary intent to abandon his privacy interest in the lockbox.

In summary, the district court had substantial and competent evidence to find that Mr. Melling did not voluntarily abandon his privacy interest in the lockbox. Without a warrant for the search of the lockbox, the discovery of evidence in the lockbox was "the result of unlawful police conduct," which the State does not challenge on appeal. (R., p.59.) In light of the unlawful search, the district court suppressed the evidence found in the lockbox and all subsequent evidence resulting from Mr. Melling's arrest. (R., p.59.) The State does not raise any issue with respect to these rulings, other than abandonment, and therefore Mr. Melling respectfully requests that the district court's order be affirmed.

CONCLUSION

Mr. Melling respectfully requests that this Court affirm the district court's order granting his motion to suppress.

DATED this 13th day of October, 2015.



JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of October, 2015, I served a true and correct copy of the foregoing RESPONDENT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JEFFREY B MELLING
8194 E DUNBAR COURT
NAMPA ID 83687

GEORGE A SOUTHWORTH
DISTRICT COURT JUDGE
E-MAILED BRIEF

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