

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

9-10-2019

### State v. Winnett Appellant's Reply Brief Dckt. 46487

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"State v. Winnett Appellant's Reply Brief Dckt. 46487" (2019). *Not Reported*. 5664.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/5664](https://digitalcommons.law.uidaho.edu/not_reported/5664)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

**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.	)	
_____	)	

\_\_\_\_\_  
**REPLY BRIEF OF APPELLANT**  
\_\_\_\_\_

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

\_\_\_\_\_  
**HONORABLE THOMAS J. RYAN**  
**District Judge**  
\_\_\_\_\_

**ERIC D. FREDERICKSEN**  
State Appellate Public Defender  
I.S.B. #6555

**ANDREA W. REYNOLDS**  
Deputy State Appellate Public Defender  
I.S.B. #9525  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985  
E-mail: [documents@sapd.state.id.us](mailto:documents@sapd.state.id.us)

**ATTORNEYS FOR  
DEFENDANT-APPELLANT**

**KENNETH K. JORGENSEN**  
Deputy Attorney General  
Criminal Law Division  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

**ATTORNEY FOR  
PLAINTIFF-RESPONDENT**

**TABLE OF CONTENTS**

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE .....	1
Nature of the Case .....	1
Statement of Facts and Course of Proceedings .....	1
ISSUE PRESENTED ON APPEAL.....	2
ARGUMENT.....	3
The District Court Erred In Denying Ms. Winnett’s Motion To Suppress .....	3
A. The District Court Erred In Concluding A Probation Search Of A Camper At Ms. Winnett’s New Residence Was Reasonably Related To Her Probation Violation.....	3
B. If This Court Concludes The District Court Erred, The Proper Remedy Is For This Court To Reverse The District Court’s Order Denying Ms. Winnett’s Motion To Suppress.....	4
1. Standing .....	5
2. Fourth Amendment Waiver.....	6
3. Consent .....	7
CONCLUSION.....	8
CERTIFICATE OF SERVICE .....	8

**TABLE OF AUTHORITIES**

Cases

*Hutchins v. State*, 100 Idaho 661 (1979).....4

*State v. Barker*, 136 Idaho 728 (2002) .....7

*State v. Hoskins*, 165 Idaho 217 (2019) .....4, 5, 7

*State v. Klingler*, 143 Idaho 494 (2006).....3

*State v. Santana*, 162 Idaho 79 (Ct. App. 2017).....3, 4

*United States v. Knights*, 534 U.S. 112 (2001).....4

## 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. She argued in her Appellant's Brief that the district court erred in denying her motion to suppress because it erred in concluding a probation search of a camper at her new residence was reasonable under the Fourth Amendment. The State argues in its Respondent's Brief that the search was reasonable because it was reasonably related to Ms. Winnett's probation violation. The State argues that, if the district court did err, the appropriate remedy is to remand this case to the district court so that it can consider various alternate grounds for suppression. Ms. Winnett submits this Reply Brief primarily to respond to the State's request for remand.

### Statement of Facts and Course of Proceedings

Ms. Winnett included a statement of facts and course of proceedings in her Appellant's Brief, which she relies on and incorporates herein. (Appellant's Br., pp.1-4.)

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. The District Court Erred In Concluding A Probation Search Of A Camper At Ms. Winnett's New Residence Was Reasonably Related To Her Probation Violation

Ms. Winnett argued in her Appellant's Brief that the district court erred in concluding a probation search of a camper at her new residence was reasonably related to her disclosure that she had changed her residence without permission, in violation of the terms of her probation. (Appellant's Br., pp.6-9.) The State argues in its Respondent's Brief that the search of Ms. Winnett's new residence and the camper at the residence "was reasonably related to her probation violation . . . because the officers needed to inspect and approve the new residence and to confirm that she did, in fact, now reside at the new residence." (Respondent's Br., pp.11-12.) The State does not cite any authority for this proposition, and does not attempt to distinguish the cases Ms. Winnett relied on in her Appellant's Brief, specifically, *State v. Santana*, 162 Idaho 79 (Ct. App. 2017), and *State v. Klingler*, 143 Idaho 494 (2006). (Appellant's Br., pp.7-8.) Moreover, the State's argument does not withstand logical scrutiny.

The probation officers confirmed Ms. Winnett was living at a new residence when they were given that information by Ms. Winnett's daughter, by Ms. Winnett, and then by Ms. Winnett's mother and stepbrother. The officers did not need to search the residence in order to confirm Ms. Winnett had moved. Unlike in *Santana* and *Klinger*, the officers did not have reasonable suspicion to believe Ms. Winnett was using drugs, and the offense for which Ms. Winnett was on probation was not drug-related. Even if the officers could somehow justify a search of Ms. Winnett's new residence, the officers had absolutely no basis to search the camper. Ms. Winnett's mother told the officers that Ms. Winnett was not living in the camper, and the

officers had no information to the contrary. (7/13/18 Tr., p.17, Ls.7-14.) The camper is not part of the residence, and would not be included in the scope of a residence search.

The probation officers conducted their search of Ms. Winnett's new residence and the camper at the residence in reliance on a Fourth Amendment waiver that the district court found Ms. Winnett was not advised of in open court. (7/30/18 Tr., p.6, L.23 – p.7, L.4.) The search was not reasonably related to the disclosure or confirmation of a probation violation and thus was not reasonable under the Fourth Amendment. *See Santana*, 162 Idaho at 85; *see also United States v. Knights*, 534 U.S. 112, 121 (2001). The district court erred in concluding otherwise.

B. If This Court Concludes The District Court Erred, The Proper Remedy Is For This Court To Reverse The District Court's Order Denying Ms. Winnett's Motion To Suppress

The State asserts in its Respondent's Brief that, if this Court concludes the district court erred in determining the search of a camper at Ms. Winnett's new residence was reasonable, "the proper remedy is to remand to the district court for consideration of the remaining suppression issues, including standing, the validity of Winnett's Fourth Amendment waiver, and whether Winnett's brother gave valid consent."<sup>1</sup> (Respondent's Br., p.13.) In support of this assertion, the State cites only one case, *Hutchins v. State*, 100 Idaho 661 (1979), which does not support its position. It is clear from recent case law that, if this Court concludes the district court erred, the proper remedy is for this Court to reverse the district court's order denying Ms. Winnett's motion to suppress and remand this case to the district court for entry of an order granting Ms. Winnett's motion.

---

<sup>1</sup> Notably, the State does not ask this Court to affirm under the "right-result, wrong-theory" rule. *See, e.g., State v. Hoskins*, 165 Idaho 217, 443 P.3d 231, 236-37 (2019) (discussing the right-result, wrong-theory rule). Instead, the State asks only that the case be remanded for further consideration of Ms. Winnett's motion to suppress. (Respondent's Br., pp.13-16.)

In a recent decision, *State v. Hoskins*, 165 Idaho 217, 443 P.3d 231 (2019), the Idaho Supreme Court “den[ie]d the State’s request that we remand this case for additional argument and factual findings in lieu of reversing the district court’s denial of [the defendant’s] motion to suppress.” 165 Idaho at \_\_\_, 443 P.3d at 240. The Court explained:

At a suppression hearing, the State must carry its burden to demonstrate that the search either fell within a well-recognized exception to the warrant requirement or was otherwise reasonable under the circumstances. Here, the State tells us that the proper exception is the plain-view theory. The State possessed the opportunity, facts, and evidence to present this theory when the matter was originally before the trial court. By its own admission, it failed to do this. Thus, the State did not meet its burden to demonstrate the well-recognized exception which applied in this case. Devising a “correct” theory for the first time on appeal does not give the State a legal mulligan when it concedes that its original theory did not carry the burden below.

*Id.* (quotation marks and citations omitted). The same reasoning applies in this case. The State had the burden in the district court of presenting evidence and argument supporting the warrantless search of the camper at Ms. Winnett’s new residence. The State does not get a second chance to present additional evidence and argument on standing, the validity of Ms. Winnett’s Fourth Amendment waiver, or whether Ms. Winnett’s stepbrother gave valid consent.

1. Standing

The State asserts in its Respondent’s Brief that it told the district court it had a “standing” issue, and that it was “prevented from pursuing” that issue in the district court. (Respondent’s Br., p.16.) This is not entirely true. The State challenged Ms. Winnett’s standing in the district court, and the defense called Ms. Winnett’s mother, Mary Pullin, to testify that Ms. Winnett was indeed living with her at her residence when the search at issue occurred. (Tr., p.12, Ls.7-19.) Counsel for Ms. Winnett argued, “I think that establishes the standing issue.” (Tr., p.12, Ls.20-

21.) The district court asked the prosecutor if he wanted to present any evidence as to standing and it elected not to do so. (Tr., p.14, Ls.5-9.) The prosecutor argued, “it doesn’t sound like she has standing to contest what was found in the camper” because “[t]here’s been no evidence proffered . . . to show that she had any kind of right to privacy with materials found in the camper.” (Tr., p.14, Ls.14-19.) The district court said it disagreed, and the prosecutor said, “Okay, I’m fine on the standing issue.” (Tr., p.14, Ls.20-25.) At a subsequent hearing, the prosecutor told the district court he wanted to file a motion to reconsider on standing, but he did not actually file a motion. (7/13/18 Tr., p.65, Ls.7-9.) The State contested Ms. Winnett’s standing in the district court, and the district court concluded Ms. Winnett had standing to challenge the search of the camper. The State should not now be given another opportunity to challenge Ms. Winnett’s standing.

## 2. Fourth Amendment Waiver

The State asserts in its Respondent’s Brief that the district court “did not rule on the validity of Winnett’s Fourth Amendment waiver.” (Respondent’s Br., p.8.) But the State acknowledges that the district court found “persuasive” the Court of Appeals’ holding in *Santana* that “if a Fourth Amendment waiver was not signed in open court or if the sentencing court fails to orally advise the defendant of those rights, there is no Fourth Amendment waiver.” (Respondent’s Br., p.9 (quoting 7/30/18 Tr., p.6, L.23 – p.7, L.4).) The State also acknowledges that, like in *Santana*, the district court decided Ms. Winnett’s motion to suppress without relying on the Fourth Amendment waiver. (Respondent’s Br., p.10.) The State had the opportunity to argue in the district court that Ms. Winnett validly waived her Fourth Amendment rights as a condition of her probation, and in fact submitted her agreement of supervision to the district court to consider with respect to the suppression motion. (*See* State’s Ex. 2.) The district court

did not agree with the State that Ms. Winnett waived her Fourth Amendment rights, and the State should not be given another opportunity to argue the issue.

3. Consent

The State also asks this Court to remand this case to the district court so that the district court “can decide the consent issue.” (Respondent’s Br., p.16.) The State points out that the district court recognized that Ms. Winnett’s brother consented to the search of the camper. (Respondent’s Br., p.16.) Notably, however, the State never argued in the district court that the search of the camper was valid because of the stepbrother’s consent. (*See generally* R., pp.83-94.) And the State did not present any evidence that the stepbrother possessed common authority or other sufficient relationship to the camper to make his consent valid. *See State v. Barker*, 136 Idaho 728, 730 (2002) (discussing the consent exception to the warrant requirement). The State had the burden of presenting evidence in the district court supporting the warrantless search of the camper, and never argued consent. As our Supreme Court said in *Hoskins*, it “has placed a premium on counsel presenting the facts and law that it chooses to support its position in the trial court.” 165 Idaho at \_\_\_, 443 P.3d at 240 (citation omitted). The State did not argue the consent exception below, and should not be allowed to make that argument for the first time following this appeal.

CONCLUSION

For the reasons stated above, as well as those set forth in her Appellant's Brief, 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 10<sup>th</sup> day of September, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10<sup>th</sup> day of September, 2019, I caused a true and correct copy of the foregoing APPELLANT'S REPLY 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

AWR/eas