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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46807-2019
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-18-34042
v.)	
)	
AARON SHANE TOWER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
<hr/>		

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE DEBORAH A. BAIL
District Judge

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

SALLY J. COOLEY
Deputy State Appellate Public Defender
I.S.B. #7353
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: 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**

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STATEMENT OF THE CASE

Nature of the Case

Aaron Shane Tower entered a conditional guilty plea to one count of possession of methamphetamine preserving his right to appeal the denial of his motion to suppress. Mr. Tower asserts that he was unlawfully arrested for trespassing absent probable cause or a warrant, and methamphetamine was discovered only after he was searched pursuant to his unlawful arrest. Thus, the methamphetamine is a fruit of the poisonous tree and suppression is warranted.

Statement of the Facts and Course of Proceedings

On July 12, 2018, at approximately 11 o'clock in the morning, officers responded to a complaint from an address at Bottle Brush Avenue. (Tr., p.8, L.12 – p.9, L.7; p.10, L.16 – p.14, L.8.) The complaining party indicated that Aaron Tower was on a lawn across the street from his mother and stepfather's house. (Tr., p.10, L.16 – p.14, L.8; p.13, Ls.20-24.) This was significant because Mr. Tower had been trespassed from his mother and stepfather's residence. (Tr., p.11, Ls.11-15.) Officers arrived at the neighbor's property and told Mr. Tower to leave. (Tr., p.13, L.18 – p.15, L.11.) Mr. Tower complied with their requests and was not cited or arrested. (Tr., p.15, Ls.7-25.)

At 9:44 a.m. the following day, Mr. Tower's mother called the police station to advise that her son was no longer trespassed from her home—he was allowed to go onto the property to get his car fixed and pick up some items from the house. (Tr., p.57, L.7 – p.60, L.11.) Later that day, at approximately six o'clock at night, officers were contacted by Mr. Tower regarding an aggravated battery. (Tr., p.10, Ls.4-9.) Mr. Tower asked for police assistance because his grandmother had pointed a gun at him. (Tr., p.10, Ls.6-7.) When the officers arrived at the residence, they saw Mr. Tower walking calmly down the driveway. (Tr., p.22, Ls.12-20.)

Officer Jeff Dustin immediately told Mr. Tower he was under arrest for trespassing. (Tr., p.22, L.24 – p.23, L.1.) Mr. Tower became agitated, saying he had a right to be there. (Tr., p.23, Ls.3-5.) Officer Dustin ordered Mr. Tower to the ground while pointing a Taser at him. (Tr., p.24, Ls.5-11; p.25, Ls.3-20.) Mr. Tower ultimately complied with Officer Dustin’s commands and was handcuffed. (Tr., p.25, L.3 – p.26, L.4.) During the entire encounter and subsequent struggle, Mr. Tower repeatedly told the officer that he had permission to be there.¹ (Tr., p.26, Ls.5-12.) During the search incident to the arrest of Mr. Towers, officers located a baggie containing a substance which tested presumptively positive for methamphetamine. (Tr., p.27, Ls.17-21; Presentence Investigation Report (*hereinafter*, PSI),² p.3.)

Based on these facts, the State filed an Information which alleged that Mr. Tower committed the crime of possession of methamphetamine.³ (R., pp.20-21.) Thereafter, Mr. Tower filed a Motion to Suppress and a Memorandum in Support of Motion to Suppress Evidence. (R., pp.43-44, 47-70.) He asserted that the evidence gathered against him should be suppressed because his arrest was unlawful, and there was not a good faith exception in Idaho. (R., pp.21-26, 47-70.) In support of his motion to suppress, Mr. Tower attached declarations and cellular telephone records from the homeowners, which showed their communications with the Boise Police Department the morning before Mr. Tower’s arrest. (R., pp.66-70.) The State filed a memorandum in opposition to Mr. Tower’s motion to suppress, and a hearing was held on the motion. (R., pp.75-82.)

¹ The computer call history was admitted at the suppression hearing as Defense Exhibit A. (Tr., p.28, Ls.19-24.) The call history indicates that the calling party “advised he previously not allowed on property. He is now, and she is not aware.” (Tr., p.32, Ls.8-10.)

² Appellant’s use of the designation “PSI” includes the packet of documents grouped with the electronic copy of the PSI, and the page numbers cited shall refer to the corresponding page of the electronic file.

³ Mr. Tower was also charged with misdemeanor resisting and obstructing an officer. (R., p.20.)

The district court ultimately denied Mr. Tower's motion to suppress finding that, based on the totality of the circumstances, the officers were justified in controlling the situation by arresting Mr. Tower and the search was lawful because it was done incident to arrest. (Tr., p.63, L.9 – p.68, L.14.)

Mr. Tower entered a conditional guilty plea, preserving his right to appeal the denial of the motion to suppress. (Tr., p.69, L.9 – p.70, L.13; p.76, L.17 – p.77, L.6; R., pp.85-93.) He was sentenced to a unified term of seven years, with two years fixed, but the district court retained jurisdiction.⁴ (Tr., p.96, L.21 – p.97, L.1; R., pp.96-98.) Mr. Tower filed a Notice of Appeal timely from the district court's Judgment of Conviction and Order Retaining Jurisdiction. (R., pp.103-105.)

⁴ Mr. Tower was placed on probation for a term of seven years, following his period of retained jurisdiction. (Aug., pp.3-5.)

ISSUE

Did the district court err by denying Mr. Tower's motion to suppress?

ARGUMENT

The District Court Erred By Denying Mr. Tower's Suppression Motion Because The Methamphetamine Was Discovered Only After Mr. Tower Was Unlawfully Arrested

A. Introduction

Mr. Tower moved to suppress the evidence obtained from his unlawful arrest and search. Mr. Tower asserts that he was unlawfully arrested for trespassing absent probable cause or a warrant where, seven hours before his arrest, the homeowners had contacted the Boise Police Department to advise that Mr. Tower was no longer trespassed from the property. (R., pp.66-70.) Further, there is no good-faith exception in this case because good-faith exceptions have been rejected by the Idaho Courts as violative of the Idaho Constitution.

B. Standard Of Review

In reviewing a district court's order granting or denying a motion to suppress evidence, the standard of review is bifurcated. *State v. Watts*, 142 Idaho 230, 232 (2005). The appellate court will accept the trial court's findings of fact unless they are clearly erroneous. *State v. Diaz*, 144 Idaho 300, 302 (2007). However, the court freely reviews the trial court's application of constitutional principles in light of the facts found. *Id.*

C. The District Court Erred By Denying Mr. Tower's Suppression Motion Because The Methamphetamine Was Found Only After Mr. Tower Was Unlawfully Arrested

The Fourth Amendment 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 Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV. “Warrantless searches and seizures are presumptively unreasonable under the Fourth Amendment.” *State v. Wulff*, 157 Idaho 416, 419 (2014). “When seizure occurs without a warrant, the government bears the burden of proving facts necessary to establish an exception to the warrant requirement.” *State v. Jenkins*, 143 Idaho 918, 920 (2007).

A warrantless arrest is unlawful unless it is supported by probable cause. *State v. Kysar*, 116 Idaho 992, 993 (1989) (“[R]easonable or probable cause for an arrest exists where the officer possesses information that would lead a person of ordinary care and prudence to believe or entertain an honest or strong suspicion that the person arrested is guilty.”). In the event of an unlawful arrest, all evidence obtained as a result of the unlawful arrest is subject to suppression. *State v. Pannell*, 127 Idaho 420, 425 (1995) (holding officers lacked probable cause to believe defendant had committed any offense at the point in time that he was handcuffed, thus arrest was unlawful and all evidence obtained as a result of the search must be suppressed).

In Idaho, criminal trespass includes the following acts:

A person commits criminal trespass when he enters and remains on the real property of another without permission, knowing or with reason to know that his presence is not permitted.

I.C. § 18-7008(2)(a).

In this case, Mr. Tower was unlawfully arrested for trespassing. Although Mr. Tower was trespassed from the property on July 12, 2018, the next morning, the homeowner contacted the Boise Police Department to advise them that Mr. Tower was at that time permitted to enter the property to retrieve some items. (R., pp.66-70.) However, the officer(s) responding to Mr. Tower’s 911 telephone call on the evening of July 13, 2018, did not make themselves aware of the changed status. Officer Dustin stepped out of his car, and, over Mr. Tower’s assurances that he *was* allowed to be on the property, arrested Mr. Tower for trespassing. (Tr., p.23, L.3 –

p.26, L.12.) Officer Dustin testified that, within 30 seconds of stepping out of the patrol car, he told Mr. Tower he was under arrest for trespassing, and that he was not arresting Mr. Tower for any crime other than trespassing. (Tr., p.43, Ls.1-23.) After Mr. Tower was told by Officer Dustin that he was (wrongfully) under arrest, he began to struggle. (Tr., p.23, L.3 – p.26, L.12.) Mr. Tower was subsequently searched incident to his arrest. (Tr., p.27, Ls.17-21; PSI, p.3.) Because Mr. Tower was unlawfully arrested, all evidence obtained as a result of the unlawful arrest is subject to suppression. *See Pannell*, 127 Idaho at 425. Further, a good-faith exception is unavailable to the officers for their failure to obtain accurate information as to the status of Mr. Tower’s invitation to be on the property.

D. There Is No Good Faith Exception In Idaho

In *United States v. Leon*, the United States Supreme Court held that a good faith exception to the federal exclusionary rule was available for the narrow purpose of deterring unlawful police conduct. 468 U.S. 897 (1984). The Supreme Court built on its prior decision in *United States v. Calandra*, 414 U.S. 338, 347-48 (1974),⁵ to announce a “good faith” exception. The *Leon* Court concluded that, so long as the officer was acting in a good faith reliance on a warrant, there was not police misconduct and therefore “nothing to deter.” 468 U.S. at 921. Therefore, because “deterrence of police misconduct is the only purpose justifying the

⁵ The Court in *Calandra* set forth the purpose of the exclusionary rule:

The purpose of the exclusionary rule is not to redress the injury to the privacy of the search victim. . . Instead, the rule’s prime purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures. . . In sum, the rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal right of the party aggrieved.

Id. 414 U.S. at 347-48.

exclusionary rule, the rule has no application in such cases.” *Id.* Since *Leon*, the Court has expanded the “good faith” exception to include illegal searches in good faith reliance upon an illegal statute. *See Illinois v. Krull*, 480 U.S. 340 (1987).

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. This section contains “nearly identical guarantees” as those in the Fourth Amendment of the United States Constitution. *State v. Green*, 158 Idaho 884, 886 (2015).

Although Article 1, Section 17 and the Fourth Amendment are similar, Idaho’s appellate courts “are not bound by the United States Supreme Court’s interpretations of the Fourth Amendment.” *State v. Agundis*, 127 Idaho 587, 592 (Ct. App. 1995). “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). As the Idaho Supreme Court stated:

“The similarity of language and purpose . . . does not require this Court to follow United States Supreme Court precedent in interpreting our own constitution.” *State v. Donato*, 135 Idaho 469, 471 (2001). “Long gone are the days when state courts will blindly apply United States Supreme Court interpretation and methodology when in the process of interpreting their own constitutions.” *Id.*

State v. Koivu, 152 Idaho 511, 518 (2012). The Idaho Supreme Court concluded it was “at liberty to find within the provisions of their constitutions greater protection than is afforded under the federal constitution as interpreted by the United States Supreme Court.” *Donato*, 135 Idaho at 471; *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). “Idaho has had an independent exclusionary rule based upon the state constitution for the past sixty-five years.” *Guzman*, 122 Idaho at 991. Thus, in some instances, the Idaho Supreme 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.” *Koivu*, 152 Idaho at 519. The Court has adjudicated “greater protection to Idaho citizens based on the uniqueness of our state, our Constitution, and our long-standing jurisprudence.” *Id.* (quoting *Donato*, 135 Idaho at 472).

The “greater protection” provided by Article 1, § 17 of the Idaho Constitution was examined by the Idaho Supreme Court in *Guzman*, a case in which the Court ultimately rejected *Leon’s* “good faith” exception to the exclusionary rule. 122 Idaho at 998 (“[W]e finally and unequivocally no longer adhere to a policy of sheepishly following in the footsteps of the U.S. Supreme Court in the area of state constitutional analysis.”) The Idaho Supreme Court concluded that Article 1, § 17 of the Idaho Constitution would no longer be limited by a good faith exception. *Guzman*, 122 Idaho at 993. The *Guzman* Court concluded that the United States Supreme Court had abandoned the original purposes of the exclusionary rule it announced in *Weeks v. United States*, 232 U.S. 383 (1914)—the same purposes which were adopted by the Idaho Supreme Court in *State v. Arregui*, 44 Idaho 43 (1927). *Id.* The *Guzman* Court made clear that it was returning to exclusive state analysis because the *Leon* Court had clearly rejected any purpose behind the exclusionary rule beyond deterring illegal police behavior. *Id.* The *Guzman* Court explained that the exclusionary rule should be applied to:

- 1) provide an effective remedy to persons who have been subjected to an unreasonable government search and/or seizure;
- 2) deter the police from acting unlawfully in obtaining evidence;
- 3) encourage thoroughness in the warrant issuing process;
- 4) avoid having the judiciary commit an additional constitutional violation by considering evidence which has been obtained through illegal means;
- and 5) preserve judicial integrity.

Id. 122 Idaho at 993.

In *State v. Pettit*, the Idaho Court of Appeals affirmed the district court's ruling suppressing the evidence after finding that the officer's mistake-of-law was insufficient to overcome the increased protections provided by Art. I, § 17 of the Idaho Constitution. 162 Idaho 849, 854-55 (Ct. App. 2017), *review denied* (Dec. 14, 2017). In *Pettit*, the officer conducted a traffic stop because he believed that Mr. Pettit was entering a highway and failed to signal, as required by I.C. § 49-808(1). *Id.* 162 Idaho at 852-53. The Court concluded that the officer made a mistake-of-law where the defendant was not turning onto a highway and thus was not violating the statute. *Id.* 162 Idaho at 853-54. Although the Court found that the officer's mistake was reasonable, it delineated that even a reasonable mistake-of-law does not amount to a good-faith exception to Idaho's independent exclusionary rule. *Id.* 162 Idaho at 853. The *Pettit* Court concluded that the traffic stop was invalid and exclusion was warranted under the Idaho Constitution. *Id.* 162 Idaho at 855.

Accordingly, Idaho's independent exclusionary rule requires suppression of the evidence procured in violation of Mr. Tower's state constitutional rights. Officer Dustin would not have found the evidence on Mr. Tower's person but for the unlawful arrest. *See Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963) (discussing "the fruit of the poisonous tree" under the Fourth Amendment exclusionary rule); *State v. Bishop*, 146 Idaho 804, 810-11 (2009) (same). Therefore, the district court erred when it denied Mr. Tower's motion to suppress. Mr. Tower respectfully requests this Court reverse the district court's suppression ruling.

CONCLUSION

Mr. Tower respectfully requests this Court reverse or vacate the district court's order denying his motion to suppress, vacate the judgment of conviction, and remand this case for further proceedings.

DATED this 16th day of January, 2020.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of January, 2020, 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

SJC/eas