

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

STATE OF IDAHO, )  
 ) No. 46905-2019  
 Plaintiff-Respondent, )  
 ) Kootenai County Case No.  
 v. ) CR28-18-15314  
 )  
 BRYAN LEE STRAW, )  
 )  
 Defendant-Appellant. )  
 \_\_\_\_\_ )

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**BRIEF OF RESPONDENT**  
\_\_\_\_\_

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

\_\_\_\_\_  
**HONORABLE SCOTT L. WAYMAN**  
District Judge  
\_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature Of The Case

Bryan Lee Straw appeals from the judgments of conviction entered after Straw pled guilty to possession of a controlled substance and obstructing an officer on the condition that he could appeal the district court's denial of his motion to suppress. "Mindful of the case law on abandonment" (Appellant's brief, p.1), Straw argues that the district court erred when it refused to suppress the methamphetamine he discarded as he ran away from a law enforcement officer.

### Statement Of The Facts And Course Of The Proceedings

On September 15, 2018, Bryan Lee Straw, a parolee, had an encounter with Officer Mauri at a gas station. (Tr., p.116, L.12 – p.119, L.19.<sup>1</sup>) Officer Mauri initiated a conversation with Straw's father regarding a missing license plate on their vehicle. (Tr., p.117, L.22 – p.118, L.10.) Straw joined the conversation and confirmed that he was on parole.<sup>2</sup> (Tr., p.118, L.17 – p.119, L.14.) Officer Mauri "looked at [Straw's] driver's license . . . to confirm who he was dealing with" and then "returned the driver's license to [Straw]." (Tr., p.120, Ls.2-5.)

During the conversation, "it was clear to the officer that [Straw] was hiding something." (Tr., p.120, Ls.12-14.) Straw "kept putting his hands into and out of his pockets," "looked and acted very nervous," and "was not being cooperative." (Tr., p.120, Ls.14-21.) Straw "indicated that he might have had a knife, that the knife may have been in the car." (Tr., p.120, Ls.16-18.) Throughout the conversation, Straw "was not restrained in any way by the circumstances" or "by anything the officer did." (Tr., p.121, Ls.2-4.)

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<sup>1</sup> All citations to the transcript refer to the transcript of the hearing on the motion to suppress.

<sup>2</sup> The district court used parole and probation interchangeably in its findings of fact, but Straw was on parole. (Tr., p.125, Ls.3-11.)

Officer Mauri asked for Straw's consent to search "without calling the [parole] officer." (Tr., p.121, L.24 – p.122, L.1.) Straw refused to consent, so Officer Mauri contacted the on-duty parole officer. (Tr., p.122, Ls.1-2.) The parole officer informed Officer Mauri that Straw was on parole and had "the classic search conditions." (Tr., p.123, Ls.10-20.) He also gave Officer Mauri permission to search Straw as an agent of the Department of Corrections. (Tr., p.123, Ls.13-22.)

After receiving permission to search Straw, Officer Mauri informed Straw that he was not free to leave. (Tr., p.123, Ls.21-25.) Officer Mauri "attempted to place [Straw's] hands behind [Straw's] back and interlock his fingers in order to do a search." (Tr., p.124, Ls.4-7.) But a "scuffle then ensued and resulted in a foot pursuit where [Straw] fled the scene." (Tr., p.124, Ls.8-9.) During the chase, Straw discarded a baggy containing a white substance that later tested positive for methamphetamine. (Tr., p.124, Ls.17-20, p.126, L.23 – p.127, L.13.)

Straw moved to suppress the bag of methamphetamine. (R., pp.64-65.) The district court denied his motion. (R., p.113.) The district court reasoned that Straw was not detained up until the point when Officer Mauri had permission to search Straw from the parole officer and that permission made the detention permissible. (Tr., p.128, L.22 – p.129, L.12.) The district court also found that the Fourth Amendment did not require suppression of the methamphetamine because "[t]he finding of the drugs . . . was not the result of any unlawful activity by the State." (Tr., p.130, L.6 – p.131, L.7.)

Straw entered conditional guilty pleas to possession of methamphetamine and obstructing an officer. (R., pp.117-18.) The district court sentenced Straw to three years, with one and one-half years fixed, for the possession conviction and a sentence of thirty days, with thirty days for credit for time served, for the obstruction conviction. (R., pp.121, 126.)

Straw timely appealed. (R., pp.36-39.)

ISSUE

Straw states the issue on appeal as:

Did the district court err when it denied Mr. Straw's motion to suppress?

(Appellant's brief, p.5.)

The state rephrases the issue as:

Has Straw failed to show that the district court erred when it denied Straw's motion to suppress?

## ARGUMENT

### Straw Has Failed To Show The District Court Erred When It Denied His Motion To Suppress

#### A. Introduction

The district court did not err when it denied Straw's motion to suppress. Both U.S. Supreme Court and Idaho precedent clearly establish that drugs discarded by someone running from the police are not subject to suppression under the Fourth Amendment. Because Straw discarded the bag of methamphetamine as he ran away from Officer Mauri, the district court properly denied Straw's motion to suppress the methamphetamine.

#### B. Standard Of Review

"When this Court reviews a district court's order granting or denying a motion to suppress evidence, the standard of review is bifurcated." State v. Skurlock, 150 Idaho 404, 405, 247 P.3d 631, 632 (2011). "The Court will accept the trial court's findings of fact unless they are clearly erroneous, but may freely review the trial court's application of constitutional principles in light of the facts found." Id.

#### C. The District Court Properly Found The Methamphetamine Was Not The Product Of Illegal Police Activity And Did Not Require Suppression

The district court properly denied Straw's motion to suppress. The Fourth Amendment prohibits unreasonable seizures. U.S. Const. amend. IV. Evidence obtained as a result of an illegal seizure can be suppressed as "fruit of the poisonous tree." Wong Sun v. United States, 371 U.S. 471, 487-88 (1963). But an individual who is running from the police is not seized for purposes of the Fourth Amendment, which means any evidence discarded by an individual while running from the police is not the product of an illegal seizure and need not be suppressed. See California

v. Hodari D., 499 U.S. 621, 626-29 (1991); State v. Zuniga, 143 Idaho 431, 436-37, 146 P.3d 697, 702-03 (Ct. App. 2006).

For example, in Hodari D., officers gave chase to a number of youths, including the defendant, who all started running when they saw the police. 499 U.S. at 622-23. While running, the defendant “tossed away” a rock of crack cocaine. Id. at 623. The U.S. Supreme Court found that the defendant was not seized at the time he abandoned the cocaine because at the time he abandoned the cocaine he was fleeing from the police. Id. at 627-29. Accordingly, the Court held that “[t]he cocaine abandoned while he was running was in this case not the fruit of a seizure, and his motion to exclude evidence of it was properly denied.” Id. at 629. The Court further noted that the result would have been the same even if the officer “had laid his hands upon [the defendant] to arrest him, but [the defendant] had broken away and had *then* cast away the cocaine.” Id. at 625 (emphasis in original).

Similarly, in Zuniga, an officer approached the defendant and asked the defendant for his name and birthdate. 143 Idaho at 432-33, 146 P.3d at 698-99. The defendant gave the officer a fake name and birthdate. Id. The name and birthdate did not appear in the dispatch records, so the officer instructed the defendant to sit on a bench at a nearby picnic table. Id. at 433, 146 P.3d at 699. The defendant initially sat down on the bench but then jumped up and ran from the yard. Id. During the chase, the defendant threw a plastic baggie of methamphetamine on the ground. Id. The Idaho Court of Appeals found the initial detention of the defendant was illegal because the facts available to the officer did not establish reasonable, articulable suspicion. Id. at 436, 146 P.3d at 702. But the court also found that the methamphetamine dropped during the chase was not suppressible. Id. Specifically, the court reasoned that the defendant “chose to terminate the seizure through escape from [the officer’s] authority” and that “[i]t would be a fiction for us to hold that

[the defendant] was still under seizure by [the officer] while he was running away and no longer submitting or yielding to [the officer's] authority.” Id.

Hodari D. and Zuniga squarely foreclose Straw's only argument on appeal. Like the defendants in Hodari D. and Zuniga, who discarded drugs while they were running from the police, Straw discarded his methamphetamine as he ran from Officer Mauri. Under Hodari D. and Zuniga, Straw could not possibly have been seized for purposes of the Fourth Amendment when he discarded his methamphetamine because he was in the process of fleeing from Officer Mauri. See Zuniga, 143 Idaho at 436, 146 P.3d at 702 (“It would be a fiction for us to hold that Zuniga was still under seizure by [Officer] Lathrop when he was running away and no longer submitting or yielding to [Officer] Lathrop's authority.”). Thus, the discovery of the methamphetamine could not have been the result of an illegal seizure, and the district court properly denied Straw's motion to suppress.

Straw's argument that Officer Mauri illegally seized Straw before Straw decided to run misses the point. (Appellant's brief, pp.8-9.) Even if the initial seizure was illegal,<sup>3</sup> Straw “chose to terminate the seizure through escape,” which means he could not have been seized “while he was running away and no longer submitting or yielding to [Officer Mauri's] authority.” Zuniga, 143 Idaho at 436, 146 P.3d at 702. Illegal or not, Officer Mauri's seizure of Straw did not result in the discovery of the methamphetamine and, consequently, the methamphetamine was not suppressible. See id.

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<sup>3</sup> As the district court properly found, the initial seizure was not illegal because Officer Mauri seized Straw only to conduct a search pursuant to Straw's parole supervision agreement. (Tr., p.129, Ls.5-7; State's Ex. 2); see State v. Gawron, 112 Idaho 841, 843, 736 P.2d 1295, 1297 (1987) (upholding search conducted pursuant to consent in supervision agreement).

CONCLUSION

The state respectfully requests this Court affirm the judgments of conviction entered after Straw pled guilty to possession of a controlled substance and obstructing an officer.

DATED this 18th day of November, 2019.

/s/ Jeff Nye  
JEFF NYE  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 18th day of November, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Jeff Nye  
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JN/dd