

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

STATE OF IDAHO, )  
 ) No. 46966-2019  
 Plaintiff-Respondent, )  
 ) Ada County Case No.  
 v. ) CR01-18-14614  
 )  
 MICAH AARON PITMAN, )  
 )  
 Defendant-Appellant. )  
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**BRIEF OF RESPONDENT**

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

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**HONORABLE NANCY A. BASKIN  
District Judge**

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## STATEMENT OF THE CASE

### Nature Of The Case

Micah Aaron Pitman appeals from the district court's denial of his motion to suppress evidence.

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

Boise Police officers responded to a report of a domestic disturbance at an apartment. (PSI, p.3.) They received information that Pitman was "possibly involved" and made contact with Pitman after he "opened the front door" of the apartment. (Tr., p.9, Ls.17-24; p.15, L.24 – p.17, L.5.) Officer Nick Peterson instructed Pitman, who was "acting weird," to "take his hands out of his pockets," due to a "concern[]" that he may have had some sort of weapon." (Tr., p.18, L.3 – p.19, L.15.)

Officer Peterson testified as to what happened next:

Q. Were you ever invited by Mr. Pitman to search him?

A. Yes.

Q. Did he ever demand that you do so?

A. Yes.

Q. Did he ever revoke his consent or his demand that you search him?

A. No, not that I believe.

Q. So skipping forward to the end of the situation, when you finally did search him, at that point to your knowledge had he ever revoked his consent or his demand that you search him?

A. No.

(Tr., p.21, Ls.7-19.)

Pitman then started walking towards another officer with his hands “[a]t his pockets”; he was ordered to sit down. (Tr., p.21, L.20 – p.22, L.9; p.24, Ls.2-10.) After Officer Peterson “grabbed [Pitman] by the right arm” and threatened to arrest him, Pitman finally sat down. (Tr., p.24, L.14 – p.26, L.6.)

At that point the tone of the conversation with Pitman got “pretty argumentative.” (Tr., p.26, Ls.19-21.) A female exited a neighboring apartment and Pitman stood up again. (Tr., p.27, L.2 – p.28, L.9.) After “multiple commands to sit down again,” Pitman sat. (Tr., p.28, Ls.10-17.) Pitman then stood up again and “told [Officer Peterson] to search him.” (Tr., p.29, Ls.4-8.) Officer Peterson decided to place Pitman in handcuffs to detain him—because “[a]t that point” Officer Peterson “had already asked him multiple times to stay seated,” yet Pitman was arguing and not complying. (Tr., p.29, Ls.8-16.) When Officer Peterson went to handcuff Pitman, Pitman “immediately tensed his muscles, pulled his hands in front of him,” and was “not complying at all.” (Tr., p.29, L.23 – p.30, L.3.) Officer Peterson then decided to arrest Pitman, and the officers “were eventually able to get his hands behind his back and place him in handcuffs.” (Tr., p.30, Ls.11-23.) The officers searched Pitman thereafter and found methamphetamine in his pocket. (Tr., p.31, Ls.2-5; PSI, p.3.)

The state charged Pitman with possession of methamphetamine and resisting arrest. (R., pp.27-28.) Pitman filed a motion to suppress, conceding that the “investigatory detention” of Pitman was “almost certainly” reasonable. (R., p.51.) However, Pitman argued that the arrest for resisting and obstructing was unlawful. (R., pp.51-54.) As he put it, “the issue becomes whether the officer, attempting to cuff Mr. Pitman for refusing to sit down, was attempting to perform an official act or duty of his office, and was therefore justified in arresting Mr. Pitman for resisting and obstructing, from which the methamphetamine was discovered.” (R., p.51.)

Pitman argued that “the methamphetamine located in Mr. Pitman’s pocket was the result of a search incident to an unlawful arrest and should be suppressed.” (R., p.54.)

After a hearing on the motion to suppress the district court denied Pitman’s motion. It concluded “there was probable cause that the facts and circumstances known to the officer warranting a prudent man in believing that the offence” of resisting and obstructing “has been or is being committed.” (Tr., p.117, L.20 – p.118, L.3.) The court accordingly found that “the arrest was lawful and that there were adequate facts as articulated by the officers and as shown on the video to allow this Court to conclude that the arrest was lawful”; thus, “because the arrest was lawful then the search incident to arrest is a recognized exception under the United States constitution as well as the Idaho constitution and that the drugs found on the defendant’s person were incident to arrest.” (Tr., p.118, Ls.4-18.) The court also found in the alternative that even if the handcuffing of Pitman “was not a lawful arrest,” “it would be lawful for the police to have handcuffed the defendant for officer safety reasons under the totality of circumstances presented in this case.” (Tr., p.119, L.18 – p.119, L.17.)

Finally, as yet another “alternative basis” to deny the motion, the district court found that Pitman consented to the search:

But in this case there is the additional fact that the defendant consented to the search of his person. Just before he was handcuffed Mr. Pitman told Officer Peterson, “Why don’t you search me then, that’s the first thing an officer does.” Immediately before Officer Peterson attempts to handcuff him Pitman stands up and says, “If you are going to search me, make sure I’m safe.”

...

In the Court’s review of the video the Court finds at least five times and I think more. Well, let me restate that. Well, let me just say at numerous times, I am not sure five. I was counting something else in my notes from the video. But on numerous times the defendant specifically asked to be searched and he never withdraws that consent to be searched from the very beginning of his encounter with the officer. *And that’s an alternative basis* to uphold or to deny the

*motion—to uphold the officer’s actions and to deny the motion to suppress in this case.*

(Tr., p.119, L.23 – p.121, L.2 (emphasis added).)

The district court denied the motion to suppress. (Tr., p.121, L.23 – p.122, L.4.) Pitman later entered into a conditional plea, pleading guilty to possession of methamphetamine, but reserving the right to appeal from the district court’s denial of his suppression motion. (Tr., p.156, Ls.10-13; p.164, Ls.10-13.) The district court sentenced Pitman to five years, with two years fixed, and placed him on probation. (R., p.117.) Pitman timely appealed. (R., pp.130-33.)

ISSUE

Pitman states the issue on appeal as:

Did the district court err in denying Mr. Pitman's motion to suppress?

(Appellant's brief, p.3.)

The state rephrases the issue as:

Must this Court affirm on the uncontested basis that Pitman's motion was denied because he consented to the search?

## ARGUMENT

### This Court Must Affirm On The Uncontested Basis That Pitman's Motion Was Denied Because He Consented To The Search

Pitman challenges the denial of his motion to suppress on a single ground: he “contends the district court erred in concluding he was searched incident to a lawful arrest” because, he purports, “Officer Peterson did not have probable cause to arrest him for resisting and/or obstructing.” (Appellant’s brief, pp.1, 6.) However, Pitman “makes this argument mindful of the alternative reason the district court gave for denying Mr. Pitman’s motion”—that Pitman consented to the search—“which he does not challenge on appeal.” (Appellant’s brief, p.1.)

As a procedural matter this is fatal to Pitman’s appeal. “Where a lower court makes a ruling based on two alternative grounds and only one of those grounds is challenged on appeal, the appellate court must affirm on the uncontested basis.” Rich v. State, 159 Idaho 553, 555, 364 P.3d 254, 256 (2015) (quoting State v. Grazian, 144 Idaho 510, 517-18, 164 P.3d 790, 797-98 (2007)). The district court below made an explicit alternative holding that it was denying Pitman’s motion because he consented to the search. (Tr., p.119, L.23 – p.121, L.2.) Because Pitman concedes he is not challenging this alternative holding on appeal, this Court must affirm the district court’s denial of the motion to suppress on this uncontested basis.<sup>1</sup>

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<sup>1</sup> To the extent Pitman’s merits argument on probable cause survives his failure to challenge the alternative basis for affirming the district court’s decision, that argument fails for all the reasons and findings set forth in the district court’s ruling denying the motion to suppress. (Tr., p.104, L.13 – p.122, L.4.)

CONCLUSION

The state respectfully requests this Court affirm the denial of Pitman's motion to suppress.

DATED this 2nd day of December, 2019.

/s/ Kale D. Gans  
KALE D. GANS  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of December, 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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