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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 43805**
Plaintiff-Respondent,	)	
	)	**ADA COUNTY NO. CR 2015-7022**
v.	)	
	)	
ANTHONY ROBERT BONILLA,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
_____	)	

_____

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 LYNN G. NORTON
District Judge

_____

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STATEMENT OF THE CASE

Nature of the Case

Following the denial of his motion to suppress, Anthony Robert Bonilla pled guilty to possession of a controlled substance with intent to deliver and unlawful possession of a firearm, and was sentenced to a unified term of ten years, with two years fixed, and a concurrent unified term of five years, with two years fixed. In this appeal, he contends the district court erred in denying his motion to suppress because the police officer's act of lifting up his T-shirt to search for weapons during the course of a routine traffic stop was not a permissible pat down under *Terry v. Ohio*, 392 U.S. 1 (1968), and thus exceeded the scope of his consent. The district court should have suppressed the baggie of marijuana discovered in Mr. Bonilla's pocket, along with the additional evidence discovered in the search of Mr. Bonilla's vehicle and the statements he made to the police. Mr. Bonilla also contends the district court abused its discretion at sentencing and failed to take proper account of the mitigating factors that exist in this case.

Statement of Facts and Course of Proceedings

On May 18, 2015, at approximately 6:30 p.m., Will Reimers, a police officer with the Boise Police Department, stopped a Chevrolet Blazer on the on-ramp of Interstate 84 after observing the vehicle travel approximately 40 miles per hour in a 35 mile per hour zone and change lanes without signaling for a sufficient period of time. (Presentence Investigation Report ("PSI"), pp.169, 172; 6/17/15 Tr., p.2, Ls.13-16, p.3, L.18 – p.4, L.4; 10/8/15 Tr., p.27, Ls.15-24.) Officer Reimers testified at the preliminary

hearing that this was a random traffic stop.[1] (6/17/15 Tr., p.15, Ls.3-6.) When Officer Reimers approached the vehicle, he observed tools and loose stereo equipment in the backseat. (6/17/15 Tr., p.5, Ls.6-15; 10/18/15 Tr., p.28, Ls.17-23.) Officer Reimers learned from dispatch that the driver and sole occupant of the vehicle, Mr. Bonilla, had previously been arrested for burglary in Elmore County. (6/17/15 Tr., p.5, Ls.18-23.) Officer Reimers testified that this information "peaked [his] interest" and he was "suspicious there might be something related to vehicle burglaries or residential burglaries" in Mr. Bonilla's vehicle. (6/17/15 Tr., p.5, L.18 – p.6, L.4.)

At this point, another vehicle—a white Honda—pulled up and parked in front of Mr. Bonilla's vehicle. (6/17/15 Tr., p.7, Ls.13-18.) Officer Reimers called for backup and within a few minutes, two other officers arrived on scene—Shane Williams and Brian Jones.[2] (6/17/15 Tr., p.7, Ls.7-14, p.24, Ls.14-21; 10/8/15 Tr., p.30, Ls.8-11.) Officer Williams approached the Honda and spoke to the female driver of the Honda. (6/17/15 Tr., p.7, Ls.9-14.) Officer Williams asked the driver what she was doing there, and she replied she did not know. (6/17/15 Tr., p.7, Ls.15-17, p.22, Ls.17-22.) Officer Williams asked her to leave and she left. (6/17/15 Tr., p.7, Ls.15-17, p.22, Ls.17-22.)

Officer Reimers testified at the preliminary hearing that he wanted to search Mr. Bonilla's vehicle because of what he had observed in the vehicle. He testified, "Well, again, based on his previous—or the record I learned about through dispatch of the burglary, I wanted to get him out of the vehicle, ask—I asked Officer Jones to issue

[1] Officer Reimers' police report is consistent with his testimony at the preliminary hearing in describing his initial response/contact with Mr. Bonilla as resulting from an observed traffic violation. (PSI, p.169.)

a citation for the traffic violation, so I could get a closer look at things in the vehicle." (6/17/15 Tr., p.8, Ls.8-13.) Officer Reimers asked Mr. Bonilla to exit the vehicle. Mr. Bonilla asked why, and Officer Reimers replied, "[B]ecause I said so." (10/8/15 Tr., p.38, L.18 – p.39, L.2.) Mr. Bonilla complied and exited the vehicle. (6/17/15 Tr., p.8, Ls.14-16.)

As Mr. Bonilla was exiting the vehicle, Officer Reimers observed a D-cell Maglite "between the space where the driver's seat is and the door frame." (6/17/15 Tr., p.8, Ls.19-24.) Officer Reimers asked Mr. Bonilla "if he had any other weapons on his person." (6/17/15 Tr., p.8, Ls.22-24.) Officer Reimers then asked Mr. Bonilla if he could pat him down for weapons and Mr. Bonilla consented. Officer Reimers testified at the suppression hearing, "I asked him if I could check his person and he said, yes, you can pat me—or pat me down." (10/8/15 Tr., p.33, Ls.9-11.)

Officer Reimers did not pat Mr. Bonilla down, but instead lifted his T-shirt, and observed a plastic baggie containing a green leafy substance sticking out of the right pocket of Mr. Bonilla's pants. (6/17/15 Tr., p.9, L.18 – p.10, L.1; 10/8/15 Tr., p.33, L.12 – p.34, L.23.) Officer Reimers asked Mr. Bonilla if this was marijuana and Mr. Bonilla said it was marijuana. (10/8/15 Tr., p.34, Ls.20-23.) Officer Reimers placed Mr. Bonilla under arrest, deployed his drug dog, and searched Mr. Bonilla's vehicle, ultimately discovering several baggies of methamphetamine, a digital scale, several pills, and a shotgun. (6/17/15 Tr., p.10, L.4 – p.11, L.14, p.12, L.22 – p.13, L.3, p.23, L.2 – p.24, L.3.)

---

[2] Officer Reimers testified at the suppression hearing that he may have called for backup earlier simply because the traffic stop was on the interstate. (10/8/15 Tr., p.42, Ls.7-14.)

Following a preliminary hearing, Mr. Bonilla was charged by Amended Information with the following: (1) possession of a controlled substance (methamphetamine) with intent to deliver; (2) possession of a controlled substance (hydrocodone); (3) unlawful possession of a firearm; (4) possession of a controlled substance (marijuana); (5) possession of a controlled substance (temazepam); (6) possession of a legend drug (quetiapine); and (7) possession of drug paraphernalia. (R., pp.20-21, 26-28.)

Mr. Bonilla filed a motion to suppress arguing Officer Reimers did not have a reasonable basis for conducting a pat down of Mr. Bonilla, and did not have a reasonable basis for expanding the scope of the pat down by lifting Mr. Bonilla's T-shirt. (R., pp.39-50.) The district court denied the motion following a hearing. (R., pp.80-81, 100-09.) The district court concluded that Mr. Bonilla consented to the pat down, and that Officer Reimers did not exceed the scope of Mr. Bonilla's consent when he lifted up Mr. Bonilla's T-shirt. (R., pp.107-08.) The district court stated:

> The Court agrees that in general, the search of [Mr. Bonilla's] pockets when there was no reason to suspect there was a weapon in them would have gone beyond the scope of the consent, and have been impermissible. But this is not a plain feel case—it is plain view at that point because [Mr. Bonilla] had a baggie of marijuana sticking out of his pocket.

(R., p.108.) The district court did not consider whether the information discovered in Mr. Bonilla's vehicle after he was placed under arrest would have inevitably been discovered.

Following the district court's denial of his motion to suppress, Mr. Bonilla entered into an agreement with the State pursuant to which he agreed to plead guilty to possession of a controlled substance with intent to deliver and unlawful possession of a

firearm in exchange for dismissal of the remaining counts. (R., p.110.) Mr. Bonilla reserved his right to appeal from the denial of his motion to suppress. (R., pp.111, 115, 120; Mot. to Augment, Ex. A, p.12, Ls.9-20.[3])

The district court accepted Mr. Bonilla's guilty plea and sentenced him to a unified term of ten years, with two years fixed, for possession with intent to deliver, and a unified term of five years, with two years fixed, for unlawful possession of a firearm, to be served concurrently. (R., pp.111, 123.) The judgment was entered on December 14, 2015. (R., pp.122-25.) Mr. Bonilla filed a timely notice of appeal on December 14, 2015.[4] (R., pp.130-32.)

[3] Simultaneously with the filing of this Brief, Mr. Bonilla is filing a Motion to Augment to include in the Clerk's Record copies of the Transcript of Change of Plea Hearing held on October 22, 2015 and the Order Denying Motion for Reconsideration of Sentence, dated March 7, 2016.

[4] On December 14, 2015, Mr. Bonilla filed a motion pursuant to Idaho Criminal Rule 35 ("Rule 35") for reconsideration of sentence. (R., p.133.) The district court denied Mr. Bonilla's Rule 35 motion on March 7, 2016. (*See* Mot. to Augment, Ex. B.) Mr. Bonilla does not challenge the district court's denial of his Rule 35 motion in light of *State v. Huffman*, 144 Idaho 201, 203 (2007).

ISSUES

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

2. Did the district court abuse its discretion when it sentenced Mr. Bonilla to a unified term of ten years, with two years fixed, for possession with intent to deliver, and to five years, with two years fixed, for unlawful possession of a firearm, to be served concurrently?

ARGUMENT

I.

The District Court Erred When It Denied Mr. Bonilla's Motion To Suppress

A. Introduction

The Fourth Amendment to the United States Constitution prohibits unreasonable searches. "A search conducted by law enforcement officers without a warrant is per se unreasonable unless it falls within one of the narrowly drawn exceptions to the warrant requirement." *State v. Henage*, 143 Idaho 655, 660 (2007) (citation omitted). "One such exception allows an officer to conduct a limited self-protective pat down search of a detainee in order to remove any weapons." *Id.* (citation omitted); *see also Terry v. Ohio*, 392 U.S. 1 (1968). "A warrantless search may also be permissible when conducted pursuant to an individual's consent." *State v. Tyler*, 153 Idaho 623, 626 (Ct. App. 2012) (citations omitted).

Mr. Bonilla does not contest that he consented to a limited pat down search of his person to check for weapons. *See Terry*, 392 U.S. at 30 (stating a police officer may conduct "a carefully limited search of the outer clothing of [a] person[ ] in an attempt to discover weapons which might be used to assault him"). However, Officer Reimers did not conduct a carefully limited search of Mr. Bonilla's outer clothing in an attempt to discover a weapon. Instead, he simply lifted up Mr. Bonilla's T-shirt, which led to the discovery of a baggie of marijuana in Mr. Bonilla's pocket. Officer Reimers' search exceeded the scope of Mr. Bonilla's consent and violated Mr. Bonilla's rights under the Fourth Amendment. The district court erred in denying Mr. Bonilla's motion to suppress and its order must be reversed.

B. Standard Of Review

This 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). The Court will accept the trial court's findings of fact "unless they are clearly erroneous." *State v. Wulff*, 157 Idaho 416, 418 (2014). However, the Court exercises free review of "the trial court's application of constitutional principles to the facts found." *Danney*, 153 Idaho at 408.

C. Because Mr. Bonilla Consented To A *Terry* Pat Down And The Lifting Of His T-Shirt Was Not A Permissible *Terry* Pat Down, It Exceeded The Scope Of Mr. Bonilla's Consent And Thus Violated His Rights Under The Fourth Amendment

"It is well settled that when the basis for a search is consent, the State must conform its search to the limitations placed upon the right granted by the consent." *Tyler*, 153 Idaho at 626 (citations omitted). "The standard for measuring the scope of consent under the Fourth Amendment is that of objective reasonableness, or in other words what a reasonable person would have understood by the exchange between the officer and the suspect." (citations omitted). "The scope of a search is generally defined by its expressed object." *Florida v. Jimeno*, 500 U.S. 248, 251 (1991) (citation omitted); *see also State v. Thorpe*, 141 Idaho 151, 154 (Ct. App. 2004).

Here, Mr. Bonilla consented to a *Terry* pat-down to check for weapons. In his police report, Officer Reimers wrote, "I asked [Mr. Bonilla] if he had any other weapons on his person. He told me he did not have any other weapons. I asked him if I could check his person. He told me, 'yes, you can pat me down.'" (PSI, pp.169-70.) Officer Reimers testified at the suppression hearing, "I asked [Mr. Bonilla] if I could check his person and he said, yes, you can pat me—or pat me down." (10/18/15 Tr., p.33, Ls.9-

11.) Officer Reimers referred to the search as a "terry-pat." Officer Weir testified at the suppression hearing, "As I got on scene, Officer Reimers explained to me, as he was conducting his terry-pat, that there was a Baggie of marijuana in the suspect's pocket." (10/8/15 Tr., p.19, Ls.8-12.) There is absolutely no evidence that Mr. Bonilla consented to a search that was more intrusive than a *Terry* pat down.

The lifting of Mr. Bonilla's T-shirt was not a permissible *Terry* pat down. In *State v. Watson*, the Idaho Court of Appeals held "the permissible scope of a pat-down search for weapons is limited to the minimum intrusion necessary to reasonably assure the officer that the suspect does not have a weapon." 143 Idaho 840, 845 (Ct. App. 2007). The *Watson* Court explained "[a] protective frisk is designed to allow the officer to conduct his investigation without fear of violence and must be strictly limited to that which is necessary for the discovery of weapons." *Id.* at 844 (citations omitted). An officer can further invade a person's privacy after feeling a bulge under a person's clothing only "[i]f the officer is unable to make an objectively reasonable determination that [the object] is not a weapon . . . ." *Id.* at 845.

Officer Reimers did not conduct a pat down of Mr. Bonilla—he did not feel the outside of Mr. Bonilla's clothing to determine whether he might have a weapon on his person. Instead, Officer Reimers simply lifted up Mr. Bonilla's T-shirt so that he could observe the waistline of his pants. The following exchange took place at the suppression hearing between the prosecutor and Officer Reimers:

> Q. And so based on your concerns about weapons and his consent, did you pat him down?
>
> A. I did. Yes, sir.
>
> Q. And tell us about the process that you used.

A. He was wearing a shirt that was—fell below his waistline, I would say, probably, down to his pockets, right in there.

Q. Could you stand for us and then—

A. Sure.

Q. --approximate?

A. Yeah; so I would say, probably, six inches, five or six inches below his belt line.

Q. Thank you.

A. Yes. So, initially, I lifted his shirt to check his belt, his waistline. That's the most common place that people keep weapons, knives, guns, things like that.

(10/8/15 Tr., p.33, L.12 – p.34, L.3.) Officer Reimers later explained, "I felt that I needed to lift the shirt before I put my hands where I couldn't see and to confirm there's no weapons there." (10/8/15 Tr., p.46, Ls.11-14.) It is beyond dispute that Officer Reimers did not conduct a pat down, but simply lifted Mr. Bonilla's T-shirt.

Relying largely on *United States v. Hill*, 545 F.2d 1191, 1193 (9th Cir. 1976) (per curiam), the district court concluded that the lifting of Mr. Bonilla's T-shirt "would be reasonable without consent and there is nothing in the evidence to indicate that it was beyond the scope of [Mr. Bonilla's] consent." (R., pp.107-08.) The district court's reliance on *Hill* is misplaced. In *Hill*, a police officer encountered the defendant close to the scene of an armed bank robbery within a short time of its commission. 545 F.2d at 1193. The officer testified that "while conversing with the [defendant] he noticed a large bulge at [the defendant]'s waistband which he suspected of being caused by a weapon." *Id.* at 1192. The officer raised the defendant's shirt, "exposing his waistband and revealing four to six rolls of currency." *Id.* at 1192–93. The Ninth Circuit concluded that

the lifting of the defendant's shirt was permissible under *Terry* because "the officer's investigation was wholly confined to the area of the bulge in question and was a direct and specific inquiry." *Id.* at 1193.

Here, Officer Reimers did not observe a bulge under Mr. Bonilla's T-shirt; nor was the lifting of Mr. Bonilla's shirt a direct and specific inquiry. That alone distinguishes this case from *Hill.* Moreover, the Ninth Circuit has made clear subsequent to *Hill* that lifting a suspect's shirt exceeds the constitutional scope of *Terry* "unless the officer previously identified (and testified to) what he suspected to be a weapon or contraband." *United States v. Ortiz*, 54 F. Supp. 3d 1081, 1093 (N.D. Cal. 2014). In *United States v. I.E.V.*, the Ninth Circuit held that a police officer exceeded the scope of a permissible *Terry* pat down where he lifted the defendant's shirt after feeling a brick-shaped object during a frisk, but did not testify that he believed the object he felt was a weapon. 705 F.3d 430, 440 (9th Cir. 2012). The Ninth Circuit cautioned in *I.E.V.* that a pat down cannot be a search for a "needle in a haystack." *Id*. In *Ortiz*, the federal district court for the Northern District of California held that a police officer "exceeded the scope of a permissible *Terry* Frisk by lifting [the defendant's] shirt" and specifically rejected the officer's argument that it was appropriate to lift the defendant's T-shirt because it was "baggy." 54 F.Supp.3d at 1092-93.

The district court erred as a matter of law in concluding that Officer Reimers' act of lifting Mr. Bonilla's T-shirt was a permissible *Terry* pat down. It is clear from the case law cited above that Officer Reimers' act of lifting Mr. Bonilla's T-shirt was not authorized by *Terry*, and thus exceeded the scope of Mr. Bonilla's consent.

D. All The Evidence Discovered In Mr. Bonilla's Vehicle And The Incriminating Statements Made By Mr. Bonilla Subsequent To the Discovery Of The Marijuana Must Be Suppressed

All the evidence discovered in Mr. Bonilla's vehicle and the incriminating statements made by Mr. Bonilla subsequent to the discovery of marijuana in his pocket resulted from the discovery of that marijuana and cannot be purged of the primary taint of the wrongfulness of that search. As a result, the evidence and statements must be suppressed as fruit of the poisonous tree. *See Wong Sun v. United States*, 371 U.S. 471, 488 (1963); *see also State v. Hoak*, 107 Idaho 742, 749 (1984). The prosecutor argued at the suppression hearing that "assuming for the sake of argument, the terry-pat was not legally done, all the other stuff, the dog sniff, the subsequent search, the subsequent Mirandizing and statements by Mr. Bonilla, are all independent of that." (10/8/15 Tr., p.48, Ls.8-12.) The prosecutor argued the dog sniff was "an independent source for the evidence in this case with the exception of the marijuana in Mr. Bonilla's pocket." (10/8/15 Tr., p.48, Ls.13-18.) The district court did not reach this argument, but it is legally flawed for two reasons, and must be rejected.

First, as counsel for Mr. Bonilla pointed out at the suppression hearing, Officer Reimers did not have reasonable suspicion for a drug investigation prior to the discovery of the marijuana in Mr. Bonilla's pocket. Counsel argued, "at that point in time [prior to the discovery of the marijuana], there was no indication that there were necessarily drugs in the vehicle. Mr. Bonilla didn't appear to be under the influence of anything. There were no drugs seen in plain sight . . . ." (10/8/15 Tr., p.51, L.13 – p.52, L.5.) Officer Reimers could have conducted a dog sniff of Mr. Bonilla's vehicle even absent reasonable suspicion, but the dog sniff could not have prolonged or added time

to the stop. *See Rodriguez v. United States*, __ U.S. __, 135 S.Ct. 1609, 1616 (2015); *see also State v. Linze*, No. 42321, 2016 WL 90669, at *2 (Ct. App. Jan. 8, 2016). Authority for the seizure of Mr. Bonilla would have ended when the tasks tied to the traffic infraction were, or reasonably should have been, completed. *See Rodriguez*, 135 S.Ct. at 1616, *Linze*, 2016 WL 90669, at *3. It is the State's burden to demonstrate that a seizure was sufficiently limited in scope and duration, and the State did not meet its burden in this case.

Second, a dog sniff inside a vehicle constitutes a search that must be supported by probable cause when the dog's entry inside the vehicle is facilitated by law enforcement. *See United States v. Sharp*, 689 F.3d 616, 619-20 (7th Cir. 2012); *United States v. Pierce*, 622 F.3d 209, 214 (10th Cir. 2010). Here, as discussed above, Officer Reimers did not have reasonable suspicion, let alone probable cause, to search for drugs in Mr. Bonilla's vehicle. And the entry of Officer Reimers' dog into Mr. Bonilla's vehicle was clearly facilitated by law enforcement. Officer Reimers testified at the preliminary hearing that, after he placed Mr. Bonilla under arrest, he walked his dog around Mr. Bonilla's vehicle *with the door still open*, and the dog "jumped into the vehicle" and placed his nose on a bag behind the center console in the backseat. (6/17/15 Tr., p.10, Ls.4-18.) The dog did not alert until he was inside the vehicle. Officer Reimers facilitated the dog's search inside Mr. Bonilla's vehicle, which is impermissible. *See, e.g.*, *United States v. Winningham*, 140 F.3d 1328, 1331 (10th Cir. 1998) (holding dog sniff in vehicle's interior was impermissible where, absent reasonable suspicion, the officers opened the vehicle's door and unleashed the dog near the open door).

Because the dog sniff could not serve as an independent source for the evidence found and statements made subsequent to the discovery of marijuana in Mr. Bonilla's pocket, the evidence and statements made must be suppressed.

II.

The District Court Abused Its Discretion When It Sentenced Mr. Bonilla To A Unified Term Of Ten Years, With Two Years Fixed, For Possession With Intent To Deliver, And To Five Years, With Two Years Fixed, For Unlawful Possession Of A Firearm, To Be Served Concurrently

Mr. Bonilla asserts that, given any view of the facts, the sentences he received are excessive. Where, as here, a sentence imposed by the district court is within statutory limits, "the appellant bears the burden of demonstrating that it is a clear abuse of discretion." *State v. Miller*, 151 Idaho 828, 834 (2011) (quoting *State v. Windom*, 150 Idaho 873, 875 (2011)). "When a trial court exercises its discretion in sentencing, 'the most fundamental requirement is reasonableness.'" *Id.* (quoting *State v. Hooper*, 119 Idaho 606, 608 (1991)). "A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution." *Id.* (citation omitted). "When reviewing the reasonableness of a sentence this Court will make an independent examination of the record, 'having regard to the nature of the offense, the character of the offender and the protection of the public interest.'" *Id.* (quoting *State v. Shideler*, 103 Idaho 593, 594 (1982)).

The sentences the district court imposed upon Mr. Bonilla were not reasonable considering the nature of his offenses, his character, and the protection of the public interest. Possession with intent to deliver and unlawful possession of a firearm are

certainly serious crimes. But Mr. Bonilla was stopped in a traffic stop that was not so serious, and he did not pose a danger to anyone at any time during his encounter with the police. Moreover, the firearm he possessed was a 1950 single-shot bolt action shotgun which "was strictly a bird hunting gun." (Mot. to Augment, Ex. A, p.24, L.21 – p.25, L.11.) Mr. Bonilla is deserving of some punishment, but not to the extent of the sentences imposed by the district court.

The sentences were also not reasonable considering Mr. Bonilla's character. Mr. Bonilla was 32 years old at the time of sentencing. (PSI, p.1.) He was addicted to methamphetamine and marijuana at the time he committed the instant offenses, but had benefitted from the time he spent in jail prior to his sentencing. As he explained to the presentence investigator, "After being incarcerated and being sober for the last 6 months I have had the opportunity to have [an] eye opener in realizing my drug problem and use." (PSI, p.23.) He begged the court to "give [him] the chance and opportunity to become a better man, better father and a productive member to society." (PSI, p.24.) He expressed deep affection for his two young children and a desire to be there for them in a meaningful way. (PSI, p.18.) Mr. Bonilla's own childhood was fraught with challenges. He is a self-described "crack baby" who was exposed to drugs and alcohol at a young age, and was placed in a group home at the age of nine or ten. (PSI, p.15.) Mr. Bonilla apologized at sentencing to the court, his community and his family. (12/10/15 Tr., p.63, Ls.18-20.) And he explained that he knew he could be successful if given the chance:

> I am a hard-working, motivated husband and a father of a two-and-a-half year old daughter and my one-and-a-half-year-old son. I got involved into drugs resulting in losing control of myself and allowed my drug addiction to get the best of me. I became self-centered and was not thinking clearly. I

> was not able to see all of the problems I was causing, not just to my family but in my life all around. I have lost almost everything in my life. I know that I still have my recovery and a long life of sobriety ahead of me and the possibility of getting my kids back.

(12/10/15 Tr., p.63, L.23 – p.64, L.13.) All of these factors should have resulted in lesser sentences.

The sentences imposed by the district court were also not necessary to protect the public interest. Mr. Bonilla was an inmate worker during his presentence incarceration. (PSI, p.27, 12/10/15 Tr., p.62, Ls.4-5.) His counsel informed the district court at sentencing that Mr. Bonilla had four potential job opportunities waiting for him upon release. (12/10/15 Tr., p.61, Ls.22-24.) Mr. Bonilla had also been accepted into two substance abuse programs. (PSI, p.17; 12/10/15 Tr., p.56, Ls.4-6.) Counsel for Mr. Bonilla recommended an aggregate unified sentence of three or four years, with one year fixed, and the presentence investigator recommended a period of retained jurisdiction. (12/10/15 Tr., p.63, Ls.3-5; PSI, p.28.) The district court abused its discretion when it imposed two far lengthier sentences and did not retain jurisdiction.

In sentencing Mr. Bonilla, the district court placed great, and undue, emphasis on Mr. Bonilla's children. The district court asked Mr. Bonilla when he could first recall his parents' drug use, and he replied he was probably four or five years old. (12/10/15 Tr., p.66, Ls.6-11.) The district court said, "I want you to remember that because your children are 1 and 2 now, and I'll tell you, I'm not going to place you on probation, and I'm not going to give you a rider, but I'll let you know, about the time you finish your fixed sentence is about that time in your child's life." (12/10/15 Tr., p.66, Ls.13-18.) The district court later said it believed Mr. Bonilla was "naïve" in believing he had kept his children away from his drug use. (12/10/15 Tr., p.67, Ls.11-12.) The district court said,

"If you want a better upbringing than you had yourself, if you want your children to be somewhere else other than in a group home when they're 9 years old, you've got to have some success in this." (12/10/15 Tr., p.67, Ls.12-16.) Mr. Bonilla certainly wanted—and wants—to be there for his children. But his children will not benefit from having their father incarcerated for a minimum of two years. What would benefit Mr. Bonilla's children most is to have their father present in their lives, drug-free. The district court abused its discretion when it sentenced Mr. Bonilla to a lengthy term of incarceration, without retaining jurisdiction, that will harm, rather than help, his children, and is not warranted by the statutory sentencing considerations.

CONCLUSION

Mr. Bonilla respectfully requests that this Court vacate his conviction, reverse the district court's order denying his motion to suppress, and remand this case for further proceedings. Alternatively, if this Court affirms the district court's order denying his motion to suppress, Mr. Bonilla respectfully requests that this Court reduce his sentences as it deems appropriate or vacate his sentences and remand this case to the district court for resentencing.

DATED this 2nd day of August, 2016.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of August, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

ANTHONY ROBERT BONILLA
INMATE #117647
SICI
PO BOX 8509
BOISE ID 83707

LYNN G NORTON
DISTRICT COURT JUDGE
E-MAILED BRIEF

CRAIG A STEVELEY
ATTORNEY AT LAW
E-MAILED BRIEF

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DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas