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# State v. Kaneaster Appellant's Brief Dckt. 47475

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IN THE SUPREME COURT OF THE STATE OF IDAHO

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| STATE OF IDAHO,<br><br>Plaintiff-Respondent.<br>vs.<br><br>CURTIS JAMES KANEASTER,<br><br>Defendant-Appellant, | S.Ct. No. 47475-2019<br>Kootenai CR-2017-6184 |

# OPENING 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 BENJAMIN J. CLUFF
Presiding Judge

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### A. *Introduction.*

The trial court denied Curtis Kaneaster's Motion to Suppress the evidence found during the search of his vehicle. It found that he had no standing to challenge the search because he had waived his Fourth Amendment rights when he accepted the terms and conditions of parole. After that decision, the Supreme Court decided *State v. Maxim*, 454 P.3d 543 (Idaho 2019), which held that parolees like Mr. Kaneaster do have standing. However, the state failed to argue any other exception to the warrant requirement to justify the search. And, the evidence considered by the district court does not establish one. Finally, under *Maxim*, the parole search provision did not salvage the unreasonable search of the vehicle because there is no evidence that the officer had knowledge of the search provision much less the specific contents of the provision here.

### B. *Statement of the Case.*

Mr. Kaneaster was charged with Possession of a Controlled Substance, to wit Methamphetamine and/or Amphetamine. R 23-24. The substance was found in the burnt residue of a meth pipe found within a black box, which was inside a duffle bag located in the back-storage area of the Chevy Trail Blazer driven by Mr. Kaneaster. R 13.

Officer Nikola Gumeson stated in his Affidavit in Support of Complaint that on February 5, 2019, at approximately 2:00 a.m., he saw "Curtis Kaneaster driving

a black Chevrolet Trail Blazer, bearing Idaho plate 2G47598 in the 800 block of Blue Lakes Blvd. N." in Twin Falls, Idaho R 13. When he ran Mr. Kaneaster's information, he learned that he had an IDOC warrant for his arrest. He conducted a traffic stop of the vehicle. R 13.

According to the Affidavit, dispatch informed Officer Gumeson "that the warrant was confirmed[.]" *Id.* He then made Mr. Kaneaster step out of the vehicle and placed him in custody. The officer "asked [the passenger] to step out of the vehicle so I could search it based on both individuals being on parole." *Id.* He located a "small butane torch in Mr. Kaneaster's pocket when I searched him incident to arrest." *Id.* Officer Gumeson said, "I know through my experience that butane torches are often used when individuals smoke methamphetamine." *Id.*

The officer continued:

> The officer then searched the passenger compartment of the Trailblazer. When I looked in the back, I saw a black plastic "Apache" box sitting on top of a black duffle bag. The duffel bag was open and I could see a black shoulder holster for a handgun right next to the black box. I could also see men's cologne and male clothing inside duffel bag.
>
> . . . . Inside the side pocket of the black duffle bag, were several butane torch stems. I looked inside the black Apache box that was on top of all these items and located a multi colored glass pipe, With white burnt residue in the bowl portion. I recognized this to be a smoking device for methamphetamine. There was also 19 small plastic baggies inside the black box. These are commonly used in drug sales.

*Id.*, pg. 14.

Mr. Kaneaster was taken to the Twin Falls County Jail where he was booked for the warrant and for possession of the methamphetamine. The officer field tested

the pipe at the police department and obtained a presumptively positive result. "The pipe was submitted into evidence and asked to be sent to the state lab for further testing." R 14.

At the preliminary hearing, the officer testified that he saw Mr. Kaneaster in a gas station parking lot. He "was able to run his information and learned that he had an IDOC warrant." Preliminary Hearing Transcript ("PHT") p. 5, ls. 20-21. Mr. Kaneaster began driving down Blue Lakes Boulevard and the officer made a traffic stop. PHT p. 6, ls. 1-5. After a second unit arrived, the officer ordered Mr. Kaneaster out the vehicle and patted him down. The passenger was also patted down. PHT p. 7, ls. 7-19. During the pat down of Mr. Kaneaster, the officer found a butane lighter in his shirt pocket. The officer said that some people use butane lighters to smoke illegal drugs "because they are a hotter heat source." PHT p. 8, ls. 1-6. "Once [Mr. Kaneaster] was secured in the back [of his patrol vehicle] and once the passenger was in the back of the other cop's car, [the officer] then searched the vehicle for any drugs, illegal items." PHT p. 8, ls. 10-12. The officer found a "glass pipe with white reside inside" in the back of the vehicle, located in a plastic box, which was stored inside a duffle bag. *Id.,* ls. 13-19.

There was no evidence that the officer was aware that Mr. Kaneaster had signed a search provision as part of his parole agreement. See PHT pgs. 1-21; CR 13-15 (Officer's Affidavit).

C. *Proceedings Below.*

Mr. Kaneaster filed a Motion to Suppress and Memorandum in Support. R 41-64. He argued that the warrantless search of the vehicle after Mr. Kaneaster's arrest on the warrant violated *Arizona v. Gant*, 556 U.S. 332 (2009). R 59. He also argued that there were no other exceptions to the warrant requirement to justify the search, such as probable cause to believe there would be evidence of a crime therein. R 62-63.

The state opposed the motion arguing that Mr. Kaneaster did not have standing to bring the motion. The state's entire argument is set forth below:

> Only a person whose rights are infringed may obtain suppression of evidence. *State v. Luna*, 126 Idaho 235, 236, 880 P.2d 265 (Ct. 1994). A defendant thus attempting to suppress evidence obtained from a search must first demonstrate standing to challenge the search. *See State v. Holland*, 135 Idaho 159, 162, 15 P.3d 1167 (2000).
>
> The defendant's motion to suppress fails because he waived his constitutional rights concerning searches. In fact, as part of his parole agreement, the defendant *consented* to searches by law enforcement officers of both his person of places over which the defendant was exercising controlling authority.
>
> That is what happened here: the officer stopped a vehicle that the defendant was driving, in other words exercising controlling authority, and subsequently searched the defendant's person and vehicle. It does not matter how the officer confirmed the defendant's identity.

R 69 (emphasis original).

The motion was set for hearing, prior to which the court met with counsel in chambers. T (6/29/19) p.3. ln. 19-19-22. At that time, defense counsel stipulated

that Mr. Kaneaster was on parole and stipulated to his parole agreement. *Id.*, p. 5, ln. 16-20. The parole agreement states, in relevant part, that:

> **Search**: I consent to the search of my person, residence, vehicle, personal property, and other real property or structures owned or leased by me, or for which I am the controlling authority conducted by any agent of IDOC or a law enforcement officer. I hereby waive my rights under the Fourth Amendment and the Idaho constitution concerning searches.

R 84.

Based upon the above, the court ruled as follows:

> Under the Constitution, everybody has a reasonable expectation of privacy, and that is what requires that either articulable suspicion or probable cause, I should say, for a search or requires a warrant from a magistrate to proceed with a search. And that is also the reasonable expectation of privacy, is also what provides you standing to challenge whether or not the search was appropriately done.
>
> In this case, the Agreement of Supervision that you signed, that the Court is adopting and has been stipulated to as a correct Agreement -- or I should say as an accurate and correct copy of the Agreement of Supervision that you signed, Paragraph No. 5 of that agreement provides that -- and I will just read it – "I," which is you, "I consent to the search of my person, residence, vehicle, personnel -- and personal property and other real property or structures owned or leased by me for which I am the controlling authority conducted by any agent of the IDOC or a law enforcement officer. I hereby waive my rights under the Fourth Amendment and Idaho Constitution concerning searches.
>
> . . . .
>
> The Court finds that in Idaho the Supreme Court has determined that a probationer or parolee's consent to searches, that constitutes a waiver of the Fourth Amendment rights. That has been the case in Idaho since 1987. Under *State vs. Gawron*, G-a-w-r-o-n, at 112 Idaho 841 [(1987)], was recently upheld -- not recently but more recently upheld. In *State vs. Perdum*, 147 Idaho 206 [(2009)], the Court finds that there was a voluntary waiver of the -- of the defendant's Fourth Amendment rights and that he consented to the search and so that the defendant does not have standing to challenge the search of the vehicle where the controlled substances were found.

T (6/29/2019) p. 7, l. 16 - p.8, l. 9; p. 10, l. 23 - p. 11, l. 10.

The court held a hearing to reconsider the above ruling. T (7/15/2019), p. 5, l. 12. At the hearing, the court took judicial notice of the affidavit of probable cause and the preliminary hearing transcript. T (7/15/2019) p. 18, l. 14-20. It then denied the motion to reconsider, stating:

> The Court is not going to overrule its prior ruling. I will, however -- well, I'll set my ruling on the record at this time as well.
>
> . . . .
>
> Because you had an outstanding warrant, the officer clearly had reasonable and articulable suspicion to stop you. That issue has been addressed for probably over 30 years in the State of Idaho, that a warrant is a sufficient reason for pulling you over.
>
> And then further, upon effecting that arrest warrant and arresting you, the officer did have the right to search the vehicle in which you were located. That's the Armstrong case, 158 Idaho and 364, where you have waived your Fourth Amendment rights. That waiver is valid. And the -- however, that waiver can only be exercised to the extent you have waived your Fourth Amendment rights.
>
> In the Agreement of Supervision, which was admitted at the last hearing without objection, the Agreement of Supervision that you signed indicated that you consent to the search of your person, residence, vehicle, personal property, and other real property or structures that are owned or leased by you, or for which you are the controlling authority, and conducted by any agent of IDOC or a law enforcement officer.
>
> It further provides -- and I quote -- I hereby waive my rights under the Fourth Amendment and the Idaho Constitution concerning searches, closed quote.
>
> Pursuant to that waiver, you did waive your right to be free of unreasonable searches and seizures pursuant to the Fourth Amendment. And pursuant to your waiver, any law enforcement officer could have effectuated that search, as happened in this case.

> And so the stop was legally valid. The search was legally valid. You waived your Fourth Amendment rights, and so your motion to suppress the subsequent drugs that were found is denied.

T (7/15/2019) p. 18, l. 21 – p. 20, l. 18

Trial began on July 30, 2019 (R 99) and a guilty verdict was returned on July 31, 2019. R 138. The Judgment was entered on October 1, 2019 (R 145) and a Notice of Appeal was filed on October 11, 2019. R 156. On December 4, 2019, this Court decided *State v. Maxim*, 454 P.3d 543 (Idaho 2019), where it found a parolee who had signed an agreement identical to the one here had standing to challenge a warrantless search of his home.

## III. ISSUES PRESENTED ON APPEAL

A. Considering *State v. Maxim*, did the court err in denying the motion to suppress based upon the finding that Mr. Kaneaster did not have standing?

B. Was the search of the interior of the vehicle unreasonable?

C. Does the search provision of the parole agreement salvage the unreasonable search?

D. Can the state show the error in denying the motion to suppress was harmless beyond a reasonable doubt?

## IV. ARGUMENT

### A. *Under* Maxim, *Mr. Kaneaster has Standing to Bring the Motion to Suppress.*

As set forth above, this Court found a parolee to have standing to bring a motion to suppress in *Maxim*. That holding controls this case too, as Mr. Kaneaster's search provision is identical to the one in *Maxim*. *Compare* R 84 with

454 P.3d at 552. And *Maxim* applies to this case under *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987).

In finding that standing existed, this Court in *Maxim* rejected the standing argument made by the state in this case.

> The State is correct that this is a broad grant of consent. It is not conditioned on the "at the request of" language like that of *Jaskowski*. *See id.* Rather, it is like the language in *State v. Gawron*, 112 Idaho 841, 843, 736 P.2d 1295, 1297 (1987). But these Fourth Amendment waivers do not eviscerate Fourth Amendment rights, they only tip the scales of the reasonableness analysis. In *Gawron*, this Court responded to the defendant's argument that such broad waivers are an unreasonable invasion of Fourth Amendment rights by recognizing that "such persons conditionally released to societies have a reduced expectation of privacy, thereby rendering intrusions by government authorities 'reasonable' which otherwise would be unreasonable or invalid under traditional constitutional concepts." *Id.* As a result, the State's suggestion that such a waiver categorically precludes a probationer from succeeding in a motion to suppress is incorrect. To be sure, the challenge is more difficult, but not impossible.

*State v. Maxim*, 454 P.3d at 549-50. As is manifest, the district court's denial of the motion to suppress was in error because Mr. Kaneaster does have standing to bring the motion.

Standing was the only theory raised by the state in defense of the warrantless search. R67-69. Thus, it failed to argue or establish an exception to the warrant requirement below and the denial of the Motion to Suppress should be reversed. In addition, an analysis of the evidence before the district court shows there was no such exception.

B. *The Search of the Interior of the Vehicle was Unreasonable Because There was no Warrant or Probable Cause to Search the Interior and the Search Exceeded the Scope of a Search Incident to Arrest.*

Mr. Kaneaster argued that the search of the interior of the vehicle was constitutionally unreasonable. R 41-63. He was correct. First, there was no warrant authorizing the search. The warrant here was an arrest warrant, not a search warrant. The "basic rule" of the Fourth Amendment is "that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment --subject only to a few specifically established and well-delineated exceptions.'" *Arizona v. Gant*, 556 U.S. 332, 338 (2009), *quoting Katz v. United States,* 389 U.S. 347, 357 (1967). "[T]he State has the burden of proving the facts necessary to establish an exception to the warrant requirement." *State v. Jenkins*, 143 Idaho 918, 920 (2007).

Second, assuming Mr. Kaneaster was validly arrested, the results of the search of Mr. Kaneaster's person incident to arrest did not establish probable cause to search inside the vehicle. One exception to the warrant requirement is the so-called "automobile exception, under which police officers may search an automobile and the containers within it when they have probable cause to believe that the automobile contains contraband or evidence of a crime." *State v. Kelley*, 159 Idaho 417, 427 (Ct. App. 2015), *citing Carroll v. United States*, 267 U.S. 132, 153 (1925); *State v. Gallegos*, 120 Idaho 894, 898 (1991). "Probable cause is a flexible, common sense standard. A practical, nontechnical probability that incriminating evidence is

present is all that is required." *Id., citing Texas v. Brown*, 460 U.S. 730, 742 (1983); *State v. Johnson*, 152 Idaho 56, 61 (Ct. App. 2011).

All that was found on Mr. Kaneaster's person was a butane torch, a perfectly legal item to possess. That and the existence of the parole arrest warrant does not suggest there would be evidence of a crime within the vehicle, much less establish that to a probability. Thus, the facts failed to establish this possible exception to the warrant requirement.

The final possible exception to the warrant requirement would be under the "search incident to arrest" doctrine. However, the search of the vehicle exceeded the scope of a valid search incident to arrest. "Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." *Arizona v. Gant*, 556 U.S., at 351. Here, Mr. Kaneaster was in a patrol car when the vehicle was searched and there was no reason to believe the vehicle contained evidence regarding the offense of arrest, which was not an offense at all, but the arrest warrant.

In short, the state failed to even argue, much less demonstrate, any of the possible exceptions to the warrant requirement to justify the search of the vehicle.

### C. *Under* Maxim, *the Search Provision Cannot Salvage the Otherwise Unreasonable Entry and Search of the Vehicle because there is no Evidence the Officers were Aware of the Waiver at the Time of the Search.*

The *Maxim* Court also wrote:

> We hold that a Fourth Amendment waiver cannot salvage an otherwise unreasonable entry into a home under the Fourth Amendment *if the police officers were unaware of the waiver at the time of the unconstitutional search.* We are not alone in this common-sense approach. The discovery of a Fourth Amendment waiver after the fact should not serve as a deus ex machina allowing the State to rewrite the story in the courtroom when the police's actions were unconstitutional outside of it.

*Id.,* 454 P.3d at 550 (internal citations omitted) (emphasis added). Here, the court never found that the officer was aware of the search waiver, as distinct from Mr. Kaneaster's parole status, at the time of the search. Nor is there any evidence of such knowledge in the officer's Affidavit of Probable Cause or in the Preliminary Hearing Transcripts. Moreover, the state has never even claimed that the officer was aware of the existence of the search provision. See R 65-69. (State's Response to Defendant's Motion to Suppress). Thus, the state has failed to meet its burden and the evidence from the vehicle search should have been suppressed. *State v. Guzman*, 122 Idaho 981, 993 (1992).

### D. *The State Cannot Show the Error in Denying the Motion to Suppress was Harmless Beyond a Reasonable Doubt.*

In *State v. Perry*, 150 Idaho 209 (2010), this Court decided to "employ the *Chapman* [*v. California*, 386 U.S. 18 (1967)] harmless error test to all objected-to error." *Id.*, at 222.

> A defendant appealing from an objected-to, non-constitutionally-based error shall have the duty to establish that such an error occurred, at which point

> the State shall have the burden of demonstrating that the error is harmless beyond a reasonable doubt.

*Id.* The state cannot meet its burden under *Chapman*/*Perry*. When the evidence from the unreasonable search of the vehicle is suppressed, there is no evidence that Mr. Kaneaster possessed the methamphetamine found therein. Thus, the conviction should be reversed, and the matter remained for the entry of a judgment of acquittal.

## V. CONCLUSION

The order Denying the Motion to Suppress should be reversed and the matter remanded for further proceedings.

Respectfully submitted this 13th day of July 2019.

/s/ Dennis Benjamin
Dennis Benjamin
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CERTIFICATE OF COMPLIANCE AND SERVICE

The undersigned does hereby certify that the electronic brief submitted complies with all the requirements set out in I.A.R. 34.1, and that an electronic copy was served on each party at the following email address(es):

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Dated and certified this 13th day of July 2020.

/s/Dennis Benjamin
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