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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 47332-2019
)	
v.)	MINIDOKA COUNTY NO.
)	CR34-18-3711
ROBERT HENRY WELIEVER,)	
)	REPLY BRIEF
)	
Defendant-Appellant.)	
<hr/>		

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF MINIDOKA**

COUNTY OF MINIDOKA

**HONORABLE ERIC WILDMAN
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

Robert Henry Weliever appeals the district court's order denying his motion to suppress evidence found after police officers impounded and conducted a warrantless search of his car, and the court's order denying his motion for reconsideration. On appeal he asserts the district court erred in upholding the search under the inventory-search exception to the Fourth Amendment's warrant requirement because, contrary to the district court's findings, the officers did not conduct the inventory search in compliance with the established police procedures.

This Reply Brief addresses only the State's threshold claims regarding the district court's order denying reconsideration of its original suppression order, and to demonstrate that (1) as stated in his Appellant's Brief, Mr. Weliever's conditional guilty plea reserved his right to appeal both the order denying suppression and the order denying reconsideration of that order; and (2) because the same legal standards apply to both of the district court's decisions, Mr. Weliever's appellate argument that "the district court erred in failing to suppress the evidence gathered in violation of his Fourth Amendment rights," presents an adequate challenges to both decisions.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Weliever's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Did the district court err in failing to suppress the evidence gathered in violation of Mr. Weliever's Fourth Amendment rights?

ARGUMENT

The District Court Erred In Failing To Suppress The Evidence Gathered In Violation Of Mr. Weliever's Fourth Amendment Rights

As set forth in the Appellant's Brief, police officers violated Mr. Weliever's Fourth Amendment rights when they conducted a warrantless search of his vehicle. (Appellant's Br., pp.5-10.) The district erred when it ruled that the search was valid under the inventory-search exception because, contrary to the district court's findings, the officers did *not* conduct the search in compliance with the standard and established police procedures, and suppression should have been granted. (Appellant's Br., pp.5-11.) The State's arguments to the contrary are unremarkable, and Mr. Weliever respectfully refers this Court to the arguments in his Appellant's Brief as his arguments in reply.

However, in response to the State's claim that Mr. Weliever reserved his right to appeal *only* the district court's order denying his motion to suppress but *not* the right to appeal the order denying his motion to reconsider (Resp.Br.,p.10), Mr. Weliever asserts, as he did in his Appellant's Brief, (Appellant's Br., p.3), that he reserved his right to appeal *both* the order denying his motion to suppress *and* the order denying his motion for reconsideration.

A. Mr. Weliever Reserved His Right To Appeal Both Of The Decisions Denying Suppression

Contrary to the State's assertion, Mr. Weliever reserved his right to appeal the district court's adverse decisions on his motion to suppress, including the denial of his motion for reconsideration. The record shows that the district court's order denying the motion to reconsider was decided May 16, 2019. (R., p.104.) That same day, Mr. Weliever completed and signed a "guilty plea advisory" form stating that as a term of his plea agreement, "I reserve my right to appeal decision of suppression proceedings." (R., pp.112-18.) Also that day,

Mr. Weliever changed his plea to “guilty,” and at his plea hearing, counsel for Mr. Weliever informed the court of the plea agreement, and “that Robert [Weliever] reserves a right to appeal the motion to suppress.” (Tr., p.173, Ls.15-12.)

The State has paraphrased the remarks counsel made at the plea hearing, and claims Mr. Weliever “preserved [sic] his right to appeal *the denial* of ‘the motion to suppress’” (Respondent’s Br., p.10 (emphasis added).) However, and contrary to the State’s claim, trial counsel did *not* state that Mr. Weliever’s appellate rights were limited to the order that denied his motion to suppress, but referred generally to the denial of his motion to suppress. (Tr., p.173, Ls.15-12.) When read together with Mr. Weliever’s written reservation of the “right to appeal decision of suppression proceedings,” and the fact Mr. Weliever signed that writing and entered his conditional plea reserving the right to appeal on the same day the court issued its decision denying his motion for reconsideration, it is clear the appeal right reserved includes the right to appeal the court’s order denying suppression *and* the subsequent decision denying reconsideration of that order.

B. The Argument Mr. Weliever Presented Challenges Both Decisions Denying Suppression

Additionally, and contrary to the State’s assertions, Mr. Weliever’s appellate argument – that the district court erred in failing to suppress the evidence gathered in violation of his Fourth Amendment rights (Appellant’s Br., pp.4-10) – adequately challenges both of the district court’s decisions denying suppression. In denying Mr. Weliever’s request for reconsideration, the district court ruled that, upon considering¹ the testimony provided in the preliminary hearing transcript, “no further analysis is required.” (R., p.106.) The court explained that it was denying

¹ The district court stated in a footnote: “The Court notes that the preliminary hearing transcript is not newly discovered evidence. . . .” (R., p.104.) However, and contrary to the State’s suggestion (Resp.Br., p.5), the court did *not* hold that because the evidence was not newly discovered, it could not support a motion for reconsideration. (R., p.104.)

reconsideration “for the reasons previously set forth in its Order Denying Amended Motion to Suppress.” (R., p.106.) Moreover, and while there is no criminal rule governing a motion for reconsideration in a criminal case, in the analogous civil context the Idaho Supreme Court has explained:

A motion for reconsideration need not be supported by any new evidence or authority. When deciding the motion for reconsideration, the district court must apply the same standard of review that the court applied when deciding the original order that is being reconsidered. In other words, if the original order was a matter within the trial court's discretion, then so is the decision to grant or deny the motion for reconsideration. If the original order was governed by a different standard, then that standard applies to the motion for reconsideration. Likewise, when reviewing a trial court's decision to grant or deny a motion for reconsideration, this Court utilizes the same standard of review used by the lower court in deciding the motion for reconsideration.

Fragnella v. Petrovich, 153 Idaho 266, 276 (2012).

Thus, Mr. Weliever’s appellate argument is not dependent upon making a separate and distinct legal analyses to challenging the district court’s same failure to suppress.

CONCLUSION

For the reasons set forth in his Appellant’s Brief, Mr. Weliever respectfully requests that this Court reverse the district court’s denials of his motion to suppress, vacate his judgment of conviction, and remand the case to the district court to allow him to withdraw his conditionally-entered guilty plea, in accordance with the plea agreement.

DATED this 12th day of August, 2020.

/s/ Kimberly A. Coster
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of August, 2020, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

KAC/eas