UIdaho Law
Digital Commons @ UIdaho Law

Not Reported
Idaho Supreme Court Records & Briefs

12-7-2020

State of Idaho v. Natalie J. Miramontes Appellant's Brief Dckt. 47628

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation
"State of Idaho v. Natalie J. Miramontes Appellant's Brief Dckt. 47628" (2020). *Not Reported*. 6581.
https://digitalcommons.law.uidaho.edu/not_reported/6581

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

Electronically Filed
12/7/2020 9:08 AM
Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
By: Brad Thies, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 47628-2019**
Plaintiff-Respondent,	)	
	)	**BANNOCK COUNTY NO. CR-2018-4106**
v.	)	
	)	
NATALIE J. MIRAMONTES,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

HONORABLE STEPHEN S. DUNN
District Judge

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

SALLY J. COOLEY
Deputy State Appellate Public Defender
I.S.B. #7353
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

ATTORNEYS FOR
DEFENDANT-APPELLANT

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEY FOR
PLAINTIFF-RESPONDENT

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

Nature of the Case 1

Statement of the Facts and
Course of Proceedings 1

ISSUE PRESENTED ON APPEAL 6

ARGUMENT 7

The District Court Erred When It Denied Ms. Miramontes's
Motion To Suppress 7

A. Introduction 7

B. Standard Of Review 7

C. The District Court Erred When It Denied Ms. Miramontes's
Motion To Suppress Because Law Enforcement Lacked
Reasonable Articulable Suspicion Of Criminal Conduct 7

D. The State's Proposed Exceptions To The Exclusionary Rule
Do Not Apply 13

CONCLUSION 17

CERTIFICATE OF MAILING 17

TABLE OF AUTHORITIES

Cases

Bailey v. United States, 568 U.S. 186 (2013) 11

Brown v. Texas, 443 U.S. 47 (1979) 8

Florida v. Jimeno, 500 U.S. 248 (1991) 11

Halen v. State, 136 Idaho 829 (2002) 10

Illinois v. Wardlow, 528 U.S. 119 (2000) 9

Michigan v. Summers, 452 U.S. 692 (1981) 10

Padilla v. State, 158 Idaho 184 (Ct. App. 2014) 9

Segura v. United States, 468 U.S. 796 (1984) 13

State v. Cohagan, 162 Idaho 717 (2017) 13

State v. Danney, 153 Idaho 405 (2012) 7

State v. Davis, 158 Idaho 857 (Ct. App. 2015) 10

State v. Downing, 163 Idaho 26 (2017) 15, 16

State v. Fairchild, 164 Idaho 336 (Ct. App. 2018) 15

State v. Gonzales, 165 Idaho 667 (2019) 9

State v. Hansen, 138 Idaho 791 (2003) 10

State v. Henage, 143 Idaho 655 (2007) 12

State v. Hunter, 156 Idaho 568 (Ct. App. 2014) 7, 10

State v. Maxim, 165 Idaho 901 (2019) 13

State v. Page, 140 Idaho 841 (2004) 13

State v. Phipps, 166 Idaho 1 (2019) 3, 10, 11

State v. Robinson, 152 Idaho 961 (Ct. App. 2012) 14

State v. Sheldon, 139 Idaho 980 (Ct. App. 2003) 8

State v. Swindle, 148 Idaho 61 (Ct. App. 2009) 8

State v. Turek, 150 Idaho 745 (Ct. App. 2011) 11

State v. Watts, 142 Idaho 230 (2005) 7

State v. Williams, 162 Idaho 56 (Ct. App. 2016) 4, 12

Terry v. Ohio, 392 U.S. 1 (1968) 8, 12

United States v. Brignoni-Ponce, 422 U.S. 873 (1975) 8

United States v. Cortez, 449 U.S. 411 (1981) 8, 9

United States v. Sokolow, 490 U.S. 1 (1989) 9

Wong Sun v. United States, 371 U.S. 471 (1963) 13

Additional Authorities

MAGUIRE, EVIDENCE OF GUILT, 221 (1959) 13

STATEMENT OF THE CASE

Nature of the Case

The police detained Natalie Miramontes while they conducted a residence check on another female probationer. During the detention, an officer searched a purse he knew belonged to Ms. Miramontes, without her consent, and found baggies, syringes, and a crystalline substance that tested presumptively positive for methamphetamine inside the purse. Ms. Miramontes moved to suppress the evidence obtained as a result of her detention and the search of her purse. The district court denied her motion, and Ms. Miramontes entered a conditional guilty plea, reserving her right to appeal the district court's denial of her motion. On appeal, Ms. Miramontes contends the district court erred by denying her motion where her purse was searched absent reasonable and articulable suspicion of criminal wrongdoing, and the probationer's Fourth Amendment waiver did not make lawful the search of Ms. Miramontes's purse. The evidence found in the purses and the during the subsequent search of the room in which Ms. Miramontes had stayed at the home should have been suppressed as the fruits of an unlawful search, and this Court should reverse the district court's order.

Statement of Facts and Course of Proceedings

On April 10, 2018, Parole Officers Raynee Myler and Matt LaVallee arrived at Christine Evans's home to do a residence check. (11/27/18 Tr., p.9, L.7 – p.10, L.17.) Ms. Evans was on felony probation, and she was being supervised by Officer Myler. (11/27/18 Tr., p.6, Ls.12-13.) Ms. Evans was on the phone when Officer Myler knocked and, before she opened the door for Officer Myler, she walked to the back of the house and then came back to the front door. (11/27/18 Tr., p.6, Ls.10-19.) When she opened the door for the officers, Officer Myler immediately walked to the back of the house, where she saw through an open window a different

female, later identified as Natalie Miramontes, hunched over and moving away from the back of the house. (11/27/18 Tr., p.6, Ls.18-19; p.8, L.17 – p.9, L.24.) Ms. Miramontes was in the yard near a shed, approximately ten feet from the house. (11/27/18 Tr., p.26, Ls.10-21; p.48, L.11 – p.49, L.22; State's Exhibit 2.) Officer Myler yelled for Ms. Miramontes to "stop" three times. (11/27/18 Tr., p.9, L.25 – p.10, L.22.) Officer Myler saw Ms. Miramontes was carrying a backpack, which she dropped before coming back into the house. (11/27/18 Tr., p.9, Ls.23-24; p.45, Ls.1-10.)

Officer Myler questioned Ms. Miramontes, and learned her identity. (11/27/18 Tr., p.12, L.3 - p.13, L.4.) Ms. Miramontes said she had stayed at the house with Ms. Evans for one night. (11/27/18 Tr., p.12, Ls.2-6.) Officer Myler asked Ms. Miramontes for her identification, which Ms. Miramontes said was in her purse. (11/27/18 Tr., p.12, Ls.15-16; p.13, Ls.23-25.) Ms. Miramontes tried to go get the purse, but Officer Myler did not allow her to do so, and instead asked Officer LaVallee to retrieve the purse for Ms. Miramontes. (11/27/18 Tr., p.13, L.25 – p.14, L.8; p.36, L.21 – p.37, L.2.) Ms. Miramontes described her purse as a floral, patterned bag. [1] (11/27/18 Tr., p.14, Ls.3-5.) When Officer LaVallee opened one of the three cosmetic bags he had located amongst the things Ms. Miramontes dropped in the yard, a bag printed with palm trees, he saw what appeared to be illegal drugs and paraphernalia. (11/27/18 Tr., p.15, L.12 – p.16, L.4; p.42, Ls.2-8.) Ms. Miramontes's identification was not in the print bag with the palm trees. (11/27/18 Tr., p.46, Ls.19-24.) The probation officers stopped searching and called the police department. (11/27/18 Tr., p.16, Ls.2-17.) While waiting for the other officers to arrive, Officer Myler handcuffed Ms. Miramontes, but told her that she was not

[1] Ms. Miramontes apparently was referring to one of the three cosmetics bags as her "purse," and her identification was located inside a wallet in the large floral print cosmetics bag. (11/27/18 Tr., p.16, Ls.2-17; State's Exhs. 3-6.)

under arrest. (11/27/18 Tr., p.17, Ls.4-12.) During Ms. Miramontes's detention, all three of the cosmetics bags that had been in Ms. Miramontes's possession in the yard were searched. (11/27/18 Tr., p.41, L.4 – p.46, L.4; State's Exhibit 2.) Officers found methamphetamine and drug paraphernalia in the bags. (11/27/18 Tr., p.18, Ls.11-24; State's Exhs. 3- 6.)

Ms. Miramontes identified the room in the home where she had slept, and a search of that room yielded a syringe and a container that held suspected methamphetamine. (11/27/18 Tr., p.18, L.3 – p.19, L.25; p.70, L.11 – p.71, L.3; R., p.14.).) Based on the items found in the purses and the room, the State charged Ms. Miramontes by Information with felony possession of a controlled substance with intent to deliver. (R., pp.41-42.)

Ms. Miramontes moved to suppress the drug-related evidence on the grounds that it was obtained in violation of her Fourth Amendment rights. (R., pp.63-65; 73-80.) Specifically, she asserted that both her seizure and the subsequent search of her purses and the room in which she slept violated the Fourth Amendment.[2] (R., pp.63-65; 75-79.) The State filed a response asserting the seizure of Ms. Miramontes was justified by reasonable suspicion, and the search of the purse was likewise justified by reasonable suspicion, since Ms. Miramontes was carrying the purse when she left the house. (R., pp.97-98.) The State claimed that the initial detention of Ms. Miramontes was permissible because the probation officers were present at Ms. Evans's residence, who was on probation at the time and had agreed to submit to searches of her residence and belongings, and one term of Ms. Evans's probation was not to have unapproved

[2] After the district court's determination that Ms. Miramontes' detention was lawful, the Idaho Supreme Court issued its decision in *State v. Phipps*, 166 Idaho 1, 454 P.3d 1084, 1085 (2019), *cert. denied*, No. 19-1309, 2020 WL 5882265 (U.S. Oct. 5, 2020). In *Phipps*, the Court held parole officers may detain a non-parolee while performing a routine search of a parolee's residence. As such, Ms. Miramontes does not challenge her warrantless, suspicionless detention while the residence check at Ms. Evans's home was conducted. She challenges only the warrantless search of her purses and the room in which she slept.

individuals residing at the residence. (R., p.97.) The State argued, alternatively, that the doctrines of attenuation, independent source and/or inevitable discovery rendered the search results not excludable as fruits of the poisonous tree. (R., pp.128-31.)

On November 27, 2018, the district court held a hearing on the motion. (*See generally* 11/27/18 Tr., p.4, L.7 – p.97, L.13.) Thereafter, district court entered a written order denying Ms. Miramontes's motion to suppress. (R., pp.133-44.) The court found that the detention and subsequent seizure of Ms. Miramontes was not in violation of her Fourth Amendment rights. (R., p.136.) The court held that, during the efforts to verify Ms. Miramontes's identity, Officer LaVallee opened the purse and did not permit Ms. Miramontes to retrieve her own identification card for officer safety reasons. (R., p.142.) The court's decision discussed the search using the *State v. Williams*, 162 Idaho 56, 63 (Ct. App. 2016), factors, finding that it was a *de minimus* invasion of Ms. Miramontes's privacy interests, which did not overcome the more weighty law enforcement interests. (R., pp.142-43.) The district court balanced Ms. Miramontes's privacy interests with the interests of the government and concluded that the detention of Ms. Miramontes to confirm her identity was *de minimus* and constitutionally permissible. (R., p.142.) "Additionally, the detention of the Defendant via handcuffs upon the discovery of drug related items was also *de minimus* and constitutionally permissible." (R., p.143.) The court concluded that the intrusion to Ms. Miramontes's liberty did not overcome the more weighty law enforcement interests regarding the need to control the scene for officer safety, as well as prevent the detained individual from concealing or disposing of any evidence. (R., pp.142-43.)

Ms. Miramontes entered a conditional guilty plea to an amended information charging her with possession of a controlled substance. (11/22/19 Tr., p.20, L.21 – p.22, L.24; p.25, Ls.2-4; R., pp.158-67.) The State agreed to dismiss the sentencing enhancement. (11/22/19 Tr., p.21,

Ls.5-25; R., pp.168-69.) As part of the plea agreement, Ms. Miramontes reserved her right to appeal the district court's order denying her motion to suppress. (11/22/19 Tr., p.29, Ls.12-22; R., p.162.)

The district court sentenced Ms. Miramontes to three years, with two years fixed, suspended execution of the sentence, and placed Ms. Miramontes on probation for three years.[3] (11/25/19 Tr., p.42, L.23 – p.43, L.4; R., pp.182-85.) Ms. Miramontes timely appealed from the district court's judgment of conviction. (R., pp.186–88, 192-96.)

[3] Ms. Miramontes' sentence in this case was ordered to be served concurrently with her sentence in Bannock County case number CR-2017-3019, a case in which Ms. Miramontes pled guilty to grand theft. (11/25/19 Tr., p.36, Ls.4-18.)

ISSUE

Did the district court err when it denied Ms. Miramontes's motion to suppress?

ARGUMENT

The District Court Erred When It Denied Ms. Miramontes's Motion To Suppress

A. Introduction

Ms. Miramontes asserts that the district court erred when it denied her motion to suppress because her purse was searched, absent reasonable and articulable suspicion of criminal wrongdoing. Further, neither officer safety nor the probationer's Fourth Amendment waiver authorized the search of Ms. Miramontes's purses or the room in which she slept. Finally, the State's asserted exceptions to the exclusionary rule are inapplicable to this case.

B. Standard Of Review

The 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); *State v. Hunter*, 156 Idaho 568, 571 (Ct. App. 2014). "The Court accepts the trial court's findings of fact if supported by substantial evidence." *State v. Watts*, 142 Idaho 230, 234 (2005). "At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence and draw factual inferences is vested in the trial court." *Hunter*, 156 Idaho at 570. This Court exercises free review of "the trial court's application of constitutional principles to the facts found." *Danney*, 153 Idaho at 408.

C. The District Court Erred When It Denied Ms. Miramontes's Motion To Suppress Because Law Enforcement Lacked Reasonable Articulable Suspicion Of Criminal Conduct

In this case, Officer Myler seized Ms. Miramontes because she was on the premises during a probationer's residence check. However, although Ms. Miramontes was observed

leaving the probationer's residence out the back door, such did not give rise to reasonable and articulable suspicion of criminal conduct. At most, Officer Myler had an unsubstantiated hunch.

The touchstone of Fourth Amendment analysis is always "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Terry v. Ohio*, 392 U.S. 1, 19 (1968). Reasonableness hinges on "on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975).

The United States Supreme Court has stated that a seizure under the Fourth Amendment "must be based on specific, objective facts indicating that society's legitimate interests require the seizure *of the particular individual*, or that seizure must be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers." *Brown v. Texas*, 443 U.S. 47, 51 (1979) (emphasis added). The *Brown* Court went on to note "we have required the officers to have a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity." *Id.* Reasonable suspicion must be based on specific, articulable facts considered with objective and reasonable inferences that form a basis for particularized suspicion. *State v. Sheldon*, 139 Idaho 980, 983-84 (Ct. App. 2003). Particularized suspicion consists of two elements: (1) the determination must be based on a totality of the circumstances, and (2) the determination must yield a particularized suspicion that the particular individual being stopped is engaged in wrongdoing. *United States v. Cortez*, 449 U.S. 411, 418 (1981). "An officer may draw reasonable inferences from the facts in his or her possession, and those inferences may be drawn from the officer's experience and law enforcement training." *State v. Swindle*, 148 Idaho 61, 64 (Ct. App. 2009). However, the officer "must be able to articulate more than an 'inchoate and unparticularized suspicion' or 'hunch' of criminal activity."

Illinois v. Wardlow, 528 U.S. 119, 123-124 (2000) (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). As the Idaho Supreme Court concluded in *State v. Gonzales*:

> The fatal flaws in the State's case are that Officer Scholten never *articulated* what *criminal* suspicion he had of Gonzales' behavior, other than the fact that Gonzales was perhaps hiding from him. As we have iterated above, an officer must "have a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. Cortez,* 449 U.S. at 417-418, 101 S.Ct. 690. Here, the officer failed to articulate what suspicion of criminal behavior he had that led him to direct the flashlight onto himself and detain Gonzales.

State v. Gonzales, 165 Idaho 667, 674 (2019) (emphasis in original).

Flight is not, standing alone, a basis for reasonable articulable suspicion, "the United States Supreme Court had declined to adopt per se rules regarding flight, but retained the totality of circumstances analysis when considering whether reasonable suspicion existed." *Padilla v. State*, 158 Idaho 184, 189 (Ct. App. 2014). The *Padilla* Court was referring to *Illinois v. Wardlow*, 528 U.S. 119, 124-25 (2000), in which the United States Supreme Court held that the defendant's "presence in an area of heavy narcotics trafficking" combined with "his unprovoked flight upon noticing the police" provided reasonable suspicion under the totality of the circumstances such that an investigatory stop was warranted. *Id.* at 124-25. The *Wardlow* majority explained that "[h]eadlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Id.* at 124.

The State contended that Ms. Miramontes's flight provided Officer Myler with reasonable articulable suspicion to detain Ms. Miramontes to investigate her for purposes of identification, safety, and to investigate her potential involvement in criminal activity. (R., p.86.) On appeal, Ms. Miramontes does not challenge the officers' authority to enter and look over Ms. Evans's residence based upon Ms. Evans's Fourth Amendment waiver. (*See* State's Exhibit 1.) Recent Idaho case law has also affirmed the constitutionality of Ms. Miramontes's detention

due to her presence at the home of such a probationer during a routine probation search of the home. *See State v. Phipps*, 454 P.3d 1084, 1087 (2019). However, Ms. Evans's Fourth Amendment waiver did not provide authority for the officers to search Ms. Miramontes or her personal property. Although the district court did not address the lawfulness of the search of Ms. Miramontes's purse,[4] Ms. Miramontes argues on appeal that her purse was unlawfully searched without her consent and absent a warrant or reasonable suspicion (much less the probable cause necessary to have obtained a warrant).

"The Fourth Amendment of the United States Constitution protects citizens from unreasonable search and seizure." *State v. Hansen*, 138 Idaho 791, 796 (2003). "A search and seizure, conducted without a warrant issued on probable cause, is presumptively unreasonable." *Hansen*, 138 Idaho at 796. "When a warrantless search or seizure is challenged by the defendant, the State bears the burden to show that a recognized exception to the warrant requirement is applicable." *Halen v. State*, 136 Idaho 829, 833 (2002); *State v. Hunter*, 156 Idaho 568, 570 (Ct. App. 2014) (same).

One exception allows law enforcement to detain individuals while executing a search warrant. "When law enforcement officers are executing a search warrant on a premises, officers are allowed to briefly detain the occupants of the premises described in the warrant." *State v. Davis*, 158 Idaho 857, 860 (Ct. App. 2015) (citing *Michigan v. Summers*, 452 U.S. 692, 705 (1981)). The *Summers* rule "extends farther" than others "because it does not require law

---

[4] There were three patterned cosmetics bags recovered from the armful of items Ms. Miramontes dropped in the yard. (11/27/18 Tr., p.41, L.4 – p.42, L.15; State's Exhibit 4.) Ms. Miramontes described her "purse" as the floral print bag. (11/27/18 Tr., p.14, Ls.3-5; p.43, Ls.1-3 p.75, L.5 – p.76, L.4.) Officer LaVallee opened a purse printed with palm leaves, not flowers, and observed drug items. (11/27/18 Tr., p.15, Ls.12-19; p.42, Ls.2-24; p.76, Ls.2-18; p.78, Ls.1-3.) Regardless of which purse Ms. Miramontes meant, all three purses or bags were in her possession and she did not deny ownership or responsibility for any of them. Herein, Ms. Miramontes shall refer to her "purse" as the cosmetic bag with palm leaves printed on it.

enforcement to have particular suspicion that an individual is involved in criminal activity or poses a specific danger to the officers." *Bailey v. United States*, 568 U.S. 186, 193 (2013). In *State v. Phipps*, the Idaho Supreme Court addressed the constitutionality of a suspicionless detention of a third party during a routine parole search. 454 P.3d 1084, 1087 (2019). The Court held, "when an individual is being lawfully detained during such a search, their rights under the Fourth Amendment are not infringed by an officer's questioning, even if unrelated to the detention or the search . . . officers have the categorical authority to detain all occupants of a residence incident to a lawful parole or probation search and to question them as long as the detention is not prolonged by the questioning." *Id.* at 1091.

A felony probationer's consent to searches as a condition of probation provides justification for warrantless searches of the probationer's home. *State v. Turek*, 150 Idaho 745, 747 (Ct. App. 2011). However, when the basis for a search is consent, the State must conform its search to the limitation placed upon the consent. *Id.* 150 Idaho at 749. "The standard for measuring the scope of consent under the Fourth Amendment is that of objective reasonableness." *Id.* (citing *Florida v. Jimeno*, 500 U.S. 248, 251 (1991)).

In this case, Officer Myler spoke to Ms. Miramontes and asked her name and to see her identification. (11/27/18 Tr., p.12, L.3 – p.13, L.4; p.12, Ls.15-16; p.13, Ls.23-25.) Ms. Miramontes identified herself as Natalie Miramontes. (11/27/18 Tr., p.12, L.3 - p.13, L.4.) However, when Ms. Miramontes tried to go to her purse to obtain her identification, Officer Myler stepped in front of her, preventing Ms. Miramontes from performing the task, "She attempted to retrieve her ID when I asked her for it, and I did step in front of her way. And I -- at that time I told her that Mr. LaVallee would go and get that for her. And she stepped back." (11/27/18 Tr., p.36, L.24 – p.37, L.2.) Neither officer asked Ms. Miramontes for permission to

open her purse. (11/27/18 Tr., p.36, L.17 – p.37, L.11.) Officer LaVallee found a printed purse and opened it outside of Ms. Miramontes's presence. (11/27/18 Tr.,p.75, L.11 – p.76, L.9.) Upon opening the purse, he saw drug-related items. (11/27/18 Tr., p.15, Ls.12-19; p.42, Ls.2-8.) The State has not claimed that Ms. Miramontes consented to the search of her purse. (*See* R., pp.86-98.) Nor is the State's purported "safety concern" justification for the search of Ms. Miramontes's purse.[5] And, contrary to the State's argument, the identification of Ms. Miramontes in order to determine Ms. Evans's compliance on probation does not give rise to an exception to the warrant requirement such that the officer lawfully searched Ms. Miramontes's purse to retrieve her driver's license. (R., pp.97-98.) Although the district court seemed to discuss the lawfulness of the search using the *Williams* factors, concluding there was a *de minimus* invasion of Ms. Miramontes's privacy interests which did not overcome the more weighty law enforcement interests (R., pp.142-43), *Williams* was a case in which the Court of Appeals analyzed the lawfulness of the defendant's detention during the execution of a search warrant. *Id.* 162 Idaho at 63-64. A search of the defendant's personal possessions was not at issue in *Williams*. *Id.* Finally, the State has not claimed and the district court did not find that Ms. Evans had actual or apparent authority over Ms. Miramontes's purse or the items in the room Ms. Miramontes had been sleeping in. (R., pp.73-144.)

It is clear that Ms. Miramontes displayed ownership of the purse and an intent to maintain control over the purse by attempting to obtain her identification without assistance from law enforcement. (11/27/18 Tr., p.36, L.24 – p.37, L.2.) She was prevented from doing so, and the

[5] Officer safety is not an exception to the search warrant requirement, but may warrant a *Terry* frisk, or pat-down search of the suspect's clothing. *See State v. Henage*, 143 Idaho 655, 662 (2007) (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968) in holding a pat-down may be justified following an objective determination as to "whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.")

purse was opened by law enforcement absent a warrant, absent consent, and absent reasonable suspicion or probable cause.

D. The State's Proposed Exceptions To The Exclusionary Rule Do Not Apply

Ms. Miramontes asserts that suppression is required, because the State's claimed exceptions to the exclusionary rule are inapplicable where they do not sufficiently purge the evidence of its primary taint. "Generally, evidence obtained as the result of an unlawful search may not be used against the victim of the search." *State v. Page*, 140 Idaho 841, 846 (2004). "The exclusionary rule requires the suppression of both 'primary evidence obtained as a direct result of an illegal search or seizure' and, pertinent here, 'evidence later discovered and found to be derivative of an illegality,' the proverbial 'fruit of the poisonous tree.'" *State v. Cohagan*, 162 Idaho 717, 720 (2017) (quoting *Segura v. United States*, 468 U.S. 796, 804 (1984)). "To determine whether to suppress evidence as 'fruit of the poisonous tree,' the court must inquire whether the evidence has been recovered as a result of the exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Page*, 140 Idaho at 846 (citation omitted); *see also Wong Sun v. United States*, 371 U.S. 471, 488 (1963) (quoting MAGUIRE, EVIDENCE OF GUILT, 221 (1959) ("[T]he more apt question . . . is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint."). The question then becomes whether the State can prove that the evidence in question was recovered as a result of the exploitation of that illegality or whether it would have been obtained even if the police illegality is removed from the equation. *See State v. Maxim*, 165 Idaho 901, 909 (2019) (holding State failed to meet its burden to show the evidence would have inevitably been discovered).

Here, the district court did not reach the question of whether an exception to the exclusionary rule—the inevitable discovery, independent source, or attenuation doctrines—applied because it found no Fourth Amendment violation. (R., pp.136-43.) However, this Court should reach that question because the search of Ms. Miramontes's purse clearly violated her Fourth Amendment rights.

The officers were aware that there were three bedrooms in the house, with one being used by Ms. Miramontes. (11/27/18 Tr., p.33, Ls.5-19.) Thus, after the purse was opened and drug-related items identified, Ms. Miramontes's other purses were searched, as was the room where Ms. Miramontes slept, with the understanding that the officers were searching Ms. Miramontes's belongings—there was no evidence or argument that either officer believed the items they were searching were owned by Ms. Evans or were in common area. *See State v. Robinson*, 152 Idaho 961, 969 (Ct. App. 2012) (holding district court did not err by concluding that Daigneau lacked actual authority to consent to a search of Robinson's private bedroom and bathroom even though other residents could access the bathroom). Nor was there evidence or argument that the officers reasonably believed at the time of the search that Ms. Evans was in control of the purses or the area in which Ms. Miramontes had been sleeping. *See Robinson*, 152 Idaho at 966 ("[T]he analysis related to a determination of whether a third party had apparent authority to consent to a search of premises is limited to what officers knew prior to a search of such premises.").

The State asserted that the discovery of controlled substances in the purses and later in the room in which Ms. Miramontes slept was sufficiently attenuated from the officer's search for identification.[6] (R., pp.118, 124-25.) The State asserted that the search of Ms. Miramontes's

[6] The State did not initially assert attenuation or any other exceptions to the exclusionary rule, instead the district court asked the parties to address the issue in post-hearing briefing. (2/25/19 Tr., p.16, L.24 – p.17, L.11.)

purses and the room Ms. Miramontes had been occupying would have been searched by the officers as part of the residence check. (R., p.127.) However, the record is contrary to the State's claims.

Officer Myler testified that she was there to perform a routine residence check on Ms. Evans. (11/27/18 Tr., p.6, Ls.12-13.) Typically these residence checks involve "visual contact, a small overlook of the house. We make sure that there's no alcohol in the fridge, that the place is in order. That's basically it." (11/27/18 Tr., p.7, Ls.6-14.) Upon seeing the drug-related items in the purse, Officer Myler called the police department. (11/27/18 Tr., p.16, Ls.1-10.) Officer Myler testified that she did not think there was a problem with Ms. Evans's probation—the residence check was standard policy. (11/27/18 Tr., p.34, Ls.3-20.) Officer Myler did not testify that she intended to search the residence before seeing the drug-related items in Ms. Miramontes's purse. (*See* 11/27/18 Tr., p.5, L.8 – p.54, L.4.)

Ms. Miramontes contends that the State failed to meet its burden of proving the "attenuation" exception to the exclusionary rule where the discovery of the contraband in the purses and the discovery of the drug-related items in Ms. Miramontes's room "flowed directly from the illegal search, with no intervening factors to consider." *State v. Downing*, 163 Idaho 26, 31 (2017). The officers did not discover the contraband in the room Ms. Miramontes had been sleeping in by means sufficiently distinguishable to be purged of the taint of the unlawful search of her purses. The unlawful search provided the sole basis for Ms. Miramontes's continued detention and the subsequent search of the room in which she had slept, revealing additional drug-related items, thus, there was no intervening circumstance to attenuate the unlawful behavior from the discovery of evidence. *See State v. Fairchild*, 164 Idaho 336 (Ct. App. 2018) (holding dispatch's confirmation of valid arrest warrant did not arise until after

the first baggie of methamphetamine was discovered, thus, the causal chain between the officer's unlawful frisk and the discovery of the first baggie of methamphetamine remained intact).

Likewise, the State failed to meet its burden of proving the "inevitable discovery" exception to the exclusionary rule. The State argued that, because Ms. Evans had waived her Fourth Amendment rights and her residence was subject to search at any time, "it would be inevitable that controlled substances . . . would be discovered in the residence." (R., p.130.) However, the State points to no evidence supporting its assertion that the officers intended to search the residence during their routine residence verification check. (11/27/18 Tr., p.7, Ls.6-14.) If the officers had not unlawfully searched Ms. Miramontes's purse, the other drug-related items would not have inevitably been discovered—there would have been no basis to look into the other purses or to rifle through the room she had slept in had the officers not searched her purse. *See Downing*, 163 Idaho at 32 (holding the doctrine of inevitable discovery "must presuppose inevitable hypotheticals running in parallel to the illegal actions, not in series flowing directly from the officers' unlawful conduct").

Finally, the State failed to meet its burden of proving the "independent source" exception to the exclusionary rule. The State claimed "it can be determined by a preponderance of evidence that the evidence of Defendant Miramontes's possession with intent to deliver methamphetamine would have been inevitably discovered during a lawful search of the residence and that the search would be an independent source." (R., p.131.) However, there was no independent source of the drug-related items found in either the purses or the bedroom where a lawful search of Ms. Miramontes's possessions at Ms. Evans's home did not take place. *See id.*, 163 Idaho at 31 ("The independent source doctrine is where a lawful approach *actually taken* leads to the discovery of evidence that was also derived from unlawful means.").

CONCLUSION

Ms. Miramontes respectfully requests that this Court reverse the district court's order denying her motion to suppress, vacate her judgment of conviction, and remand this case for further proceedings.

DATED this 7th day of December, 2020.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of December, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

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

SJC/eas