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State v. Brown Appellant's Brief Dckt. 48221

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE

STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. MATTHEW K. BROWN, Defendant-Appellant.	)	DOCKET NO. 48221-2020 Boundary County Case No. CR11-19-0783 APPELLANT'S BRIEF

APPELLANT'S BRIEF

Appeal from the District Court of the First Judicial District of the State of Idaho, in and for the County of Boundary

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THE HONORABLE LANSING HAYNES PRESIDING, DISTRICT JUDGE

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STATEMENT OF CASE

(i) Nature of Case.

Law enforcement made a warrantless search of the Defendant's blood. The Defendant moved to suppress the evidence gathered in the search. Defendant contends that the initial warrantless search of the Defendant's blood was in violation of the State of Idaho and United States Constitutions and asks the Court to reverse the District Court and exclude all the evidence.

The Defendant changed his plea from not guilty to guilty and stipulated to restitution. The District judge imposed a sentence that was too harsh.

(ii) Course of Proceedings.

An Information was filed charging the Defendant with aggravated driving under the influence causing injuries to a victim in a crash.

A vehicle collision occurred between the Defendant and another driver in Boundary County, Idaho. The State police made a warrantless draw of the Defendant's blood. The Blood test results disclosed intoxicating drugs in the Defendant's person.

The Defendant filed a Motion To Suppress on September 23, 2019 seeking to exclude all of the State's evidence collected from the blood draw on the basis that all of evidence was gained as a result of the initial warrantless search. Further, the information obtained in the initial

warrantless search led to the issuance of search warrants.

The Court entered a Memorandum Decision RE: Defendant's Motion To Suppress and denied the Defendant's Motion to Suppress. (R. Vol. II, Pgs. 260-269).

After denial of the Motion to Suppress, the parties entered into a Plea Agreement where the state agreed to make certain recommendations.

The Defendant entered a plea of guilty to the charge and was sentenced by the District Judge. The sentence was too harsh in this case.

(iii) Statement of Facts.

On September 19, 2018, MATTHEW K. BROWN was involved in a motor vehicle collision located on U.S. 95 near milepost 504 in Boundary County, Idaho.

After a prolonged extrication time, the unconscious Defendant was transported to Kootenai Health via Life Flight in critical condition.

The Defendant, MATTHEW K. BROWN, was admitted to the ICU at Kootenai Health.

Idaho State Police Master Corporal Charles Robnett was asked to respond to Kootenai Health to assist with a crash investigation. Upon M. Cpl. Robnett's arrival at Kootenai Health, the Defendant was getting a CAT Scan. As admitted in Idaho State Police Supplemental Report C18002238 No. 1, upon the Defendants return to his room, M. Cpl. Robnett

asked the nurse to get blood drawn from the unconscious Defendant. M. Cpl did not read Idaho Department's ALS form to the Defendant, nor did M. Cpl. Robnett apply for a warrant.

After the warrantless blood collection by M. Cpl. Robnett, he proceeded to take the vials of blood to the Idaho State Police District One office and booked the blood into evidence.

A forensic toxicolgy analysis of the warrantless blood collection interpreted the presence of Methamphetamine, Amphetamine, Lorazepam, Ketamine, and Fentanyl.

No conversation was had with Mr. Brown.

Idaho State Police Master Corporal Robnett drew and seized blood withdrawn from the Defendant, MATTHEW K. BROWN, without a warrant.

ISSUES PRESENTED ON APPEAL

a. Whether the District Court erred in denying the Defendant's Motion To Suppress?

b. Whether the sentence was unreasonable or cruel and unusual punishment?

ARGUMENT

I. The District Court should have excluded the evidence from the warrantless blood draw

The standard of review of a suppression motion is bifurcated. When a decision on a suppression motion is challenged, we accept the trial court's findings of fact that are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct.App.1996).

A warrantless search is presumptively unreasonable unless it falls within certain special and well-delineated exceptions to the warrant requirement in the Fourth Amendment of the United States Constitution and Article I, Section 17 of the Idaho Constitution. *State v. Cruz*, 144 Idaho 906, 174 P.3d 876, (App. 2007).

In the present case, there is no well delineated exception to the warrant requirement.

If evidence is not seized pursuant to a warrant or a recognized exception to the warrant requirement, the evidence discovered as a result of the warrantless search must be excluded as the fruit of the poisonous tree. *State v. Zapata-Reyes*, 144 Idaho 703, 169 P.3d 291 (App. 2007).

The recent United States Supreme Court case Missouri v. McNeely, 569 U.S., 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013) places new limits on the ability of law enforcement to conduct a blood test without a warrant. *State v. Wulff*, 157 Idaho 416, 337 P.3d 575, (2014).

Requiring that a person submit to a blood alcohol test is a search and seizure under the Fourth Amendment to the United States Constitution and Article I Section 17 of the Idaho Constitution. Schmerber v. California, 384 U.S. 757, 767, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966); State v. Diaz, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007). " Like the Fourth Amendment, the purpose of Art. I, § 17 is to protect Idaho citizens' reasonable expectation of privacy against arbitrary governmental intrusion." State v. Holton, 132 Idaho 501, 503, 975 P.2d 789, 791 (1999). **State** *v. Wulff*, 157 Idaho 416, 337 P.3d 575, (2014)

The Fourth Amendment provides: [337 P.3d 578] 157 Idaho 419 The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. Const. amend. IV. Warrantless searches and seizures are presumptively unreasonable under the Fourth Amendment. Coolidge v. New Hampshire, 403 U.S. 443 454-55, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971); Diaz, 144 Idaho at 302, 160 P.3d at 741. To overcome this presumption of unreasonableness, the search must fall within a well-recognized exception to the warrant requirement. Coolidge, 403 U.S. at 455; Diaz, 144 Idaho at 302, 160 P.3d at 741.

Exigency and consent are two well-recognized exceptions to the warrant requirement. Kentucky v. King, 131 S.Ct. 1849, 179 L.Ed.2d 865 (2011); Diaz, 144 Idaho at 302, 160 P.3d at 741. *State v. Wulff*, 157 Idaho 416, 337 P.3d 575, (2014)

Missouri v. McNeely indicates that Idaho cannot use a per se exigency exception to the warrant requirement based upon the natural dissipation of alcohol in the bloodstream. *State v. Wulff*, 157 Idaho 416, 337 P.3d 575, (2014)

McNeely repeatedly indicated that " [w]hether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances." Id. at 1563. Here, the district court determined that McNeely applied to all warrantless blood draws, stating " [McNeely] places new limits on the ability of law enforcement to conduct a blood test without a warrant." **S***tate v. Wulff*, 157 Idaho 416, 337 P.3d 575, (2014).

Thus, according to the Court, " [i]n those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so." Id. After that, the Court discussed technological advances that allow for warrants to be processed faster, which also would be involved in the analysis. Id. at 1561-62. This discussion

ended with the Court stating, " Whether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances." *State v. Wulff*, 157 Idaho 416, 337 P.3d 575, (2014)

In the present case, Trooper Mattilla simply told dispatch that he would need the Defendant's blood.

Trooper Robnett went to the hospital and did not seek consent to draw the blood.

Trooper Robnett assumed the Defendant could be taken away at any time, but did not ask the on duty staff if his assumption was correct.

Trooper Robnett did not seek a search warrant.

Finally, irrevocable implied consent operates as a per se rule that cannot fit under the consent exception because it does not always analyze the voluntariness of that consent. Voluntariness has always been analyzed under the totality of the circumstances approach: " whether a consent to a search was in fact 'voluntary' . . . is a question of fact to be determined from the totality of all the circumstances." Schneckloth v. Bustamonte, 412 U.S. 218, 227, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). Further, the State has the burden to prove that " consent was, in fact, freely and voluntarily given." Id. at 222 (quoting Bumper v.

N. Carolina, 391 U.S. 543, 548, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968)). Consent is not voluntary if it is " the product of duress or coercion, express or implied." Schneckloth, 412 U.S. at 227. When the Court has determined whether a suspect's consent was voluntary or coerced, its decisions " each reflected a careful scrutiny of all the surrounding circumstances" and " none of them turned on the presence or absence of a single controlling criterion." Id. at 226. The Court has also stated The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable. Thus, we have long approved consensual searches because it is no doubt reasonable for the police to conduct a search once they have been permitted to do so. The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of " objective" reasonableness-what would the typical reasonable person have understood by the exchange between the officer and the suspect? Florida v. Jimeno, 500 U.S. 248, 250-51, 111 S.Ct. 1801, 114 L.Ed.2d 297 (1991) (internal citations omitted). Given that " [t]he touchstone of the Fourth Amendment is reasonableness," id. at 250, and that the United States Supreme Court has repeatedly emphasized a totality of the circumstances approach is necessary to determine voluntariness for consent, requiring a totality of the circumstances approach to determine a driver's consent fits within the Court's

existing precedent. *State v. Wulff*, 157 Idaho 416, 337 P.3d 575, (2014).

Idaho's implied consent statute was not a valid exception to the warrant requirement. *State v. Wulff*, 157 Idaho 416, 337 P.3d 575, (2014)

Ample time to seek a warrant for a blood draw existed in this case.

There is no factual basis upon which the court can determine that exigence circumstances existed to draw the blood without a warrant.

Given the totality of the circumstances, the evidence is the fruit of the illegal search of Defendant by law enforcement.

The bloodtest results should be excluded.

Kootenai Health medical records should be excluded, its fruit of the poisonousness tree.

II. Matt Brown's sentence was too harsh and was unreasonable and cruel and unusual punishment.

Matt Brown's sentence imposed was unreasonable and amounts to cruel and unusual punishment.

In reviewing the reasonableness of a sentence, we are exercising our authority as an appellate court to determine whether the trial court abused its discretion. State v. Wolfe, 99 Idaho 382, 384-85, 582 P.2d 728, 730-31 (1978). In deciding whether a sentence is cruel and unusual, we must decide whether it is proportional. In determining whether a sentence is excessive or is cruel and unusual punishment,

we review all the facts and circumstances in the case and focus on whether the trial court abused its discretion in fixing the sentence. State v. Stormoen, 103 Idaho 83, 84-85, 645 P.2d 317, 318-19 (1982); State v. Seifart, 100 Idaho 321, 323-24, 597 P.2d 44, 46-47 (1979); Wolfe, 99 Idaho at 384-85, 582 P.2d at 730-31; State v. Prince, 97 Idaho 893, 894, 556 P.2d 369, 370 (1976); State v. Iverson, 77 Idaho 103, 111-12, 289 P.2d 603, 607 (1955). In Wolfe, the Court restated the four objectives of criminal punishment: "(1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrong doing." 99 Idaho at 384, 582 P.2d at 730. The Court pointed out: "Appellate review of a sentence is based on an abuse of discretion standard." Id. The Court also stated that the general objectives of sentence review are: (i) to correct the sentence which is excessive in length, having regard to the nature of the offense, the character of the offender, and the protection of the public interest; (ii) to facilitate the rehabilitation of the offender by affording him an opportunity to assert grievances he may have regarding his sentence; (iii) to promote respect for law by correcting abuses of the sentencing power and by increasing the fairness of the sentencing process; and [814 P.2d 404] 120 Idaho 144 (iv) to promote the development and application of criteria for sentencing which are both rational and just. 99 Idaho at 384, 582 P.2d at 730 (quoting ABA Standards Relating to Appellate Review of Sentences at 7 (Approved Draft 1968)).

State v. Broadhead, 120 Idaho 141, 814 P.2d 401, (Idaho 1991)

In the present action, this was Matt's first felony. Matt has demonstrated an ability to rehabilitate his conduct to fit within the law and demonstrated an ability to remain clean and sober by taking pretrial testing and not having any failures of testing. With substance abuse under control Matt is not a danger to society.

Matt agreed to pay restitution to the Defendant and restitution was ordered. By the District Judge imposing sentence, the victim will not receive any restitution until after Matt is released.

The Sentence is unreasonable and amounts to cruel and unusual punishment.

CONCLUSION

All evidence obtained as a result of the warrantless search of Matt Brown's blood should have been excluded. The District Court should be reversed and the evidence excluded. The Sentence was too harsh, is unreasonable and constitutes cruel and unusual punishment.

RESPECTFULLY SUBMITTED this 30 day of November, 2020.

/s/ Rex A. Finney
Rex A. Finney
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 30 day of November, 2020, I filed and served the Appellant's Brief on the Icourt system which served copies to:

Lawrence Wasden
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OFFICE OF THE ATTORNEY GENERAL

/s/ Rex A. Finney