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State v. Miramontes Appellant's Reply Brief Dckt. 47628

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IN THE SUPREME COURT OF THE STATE OF IDAHO

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

REPLY 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

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STATEMENT OF THE CASE

Nature of the Case

The police detained Natalie Miramontes while they conducted a residence check on a female probationer. During the detention, an officer asked Ms. Miramontes for her identification. Ms. Miramontes said it was in her purse, but when she tried to go get the purse, she was stopped by the officer, and she was not permitted to retrieve the purse. Ms. Miramontes described her purse as a floral, patterned bag. When an officer 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 baggies, syringes, and a crystalline substance that tested presumptively positive for methamphetamine. The other purses/bags were searched, and additional drug paraphernalia was located. Ms. Miramontes also 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. Ms. Miramontes moved to suppress the evidence obtained as a result of her detention and the search of her purse(s). 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 should have been suppressed as the fruits of an unlawful search, and this Court should reverse the district court's order.

This Reply Brief is necessary to address the State's fallacious claim that Ms. Miramontes's "argument that the district court erred because the search of her purse was illegal is not preserved for appeal." (Resp. Br., p.13.) Ms. Miramontes also addresses the State's contention that the exclusionary rule is inapplicable because the evidence would have inevitably been discovered.

Statement of the Facts and Course of Proceedings

Ms. Miramontes articulated the relevant facts and proceedings in the Appellant's Brief. They are not repeated here, but are incorporated by reference.

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. The State's Argument Regarding Issue Preservation Fails, Because Ms. Miramontes Asserted That The Purse With The Palm Trees Was Searched Absent A Warrant And Absent Consent, And She Sought Suppression Of The Evidence Obtained From The Unlawful Searches Of Her Purses And The Bedroom In Which She Was Staying

The State asserts the Ms. Miramontes did not argue to the trial court that her purse with the palm trees was unlawfully searched, thus, the issue is unpreserved for appellate review. (Resp. Br., pp.6-13.) The State makes this argument despite citing, in its statement of facts (Resp. Br., p.3), the fact that another hearing was scheduled by the court in which the court asked for clarification from the prosecutor as to where the methamphetamine was located that it was prosecuting Ms. Miramontes for possessing. (2/25/19 Tr., p.6, L.24 – p.11, L.24.) The prosecutor represented to the district court that it had charged Ms. Miramontes with possessing both the methamphetamine in the purse, and the methamphetamine found in the search of the room in which Ms. Miramontes was staying. (2/25/19 Tr., p.11, L.25 – p.12, L.2.) Thereafter, defense counsel agreed that the officers could probably have detained Ms. Miramontes to determine her identity because she was present during the search. (2/25/19 Tr., p.13, L.24 – p.14, L.1.)

However, counsel argued that Ms. Miramontes did not consent to the search. (2/25/19 Tr., p.14, Ls.13-23.) Defense counsel asserted that Ms. Miramontes's purse was not found in plain view, where she was prevented from going to retrieve the purse by an officer. (2/25/19 Tr., p.14, Ls.4-23.) Defense counsel asserted that "[the State] searched without a warrant and without consent." (2/25/19 Tr., p.15, Ls.3-5.) To each of these statements, the district court affirmatively stated its understanding of the defense's arguments. (2/25/19 Tr., p.14, L.1 – p.15, L.13.) Thus, defense counsel argued that the search of Ms. Miramontes's belongings was absent

a warrant, and then eliminated several other exceptions to the warrant requirement by which the State would predictably seek to justify the warrantless search. (2/25/19 Tr., p.14, L.13 – p.15, L.5.) Defense counsel was not required to do more than that to preserve the issue for appeal. *See State v. Gonzalez*, 165 Idaho 95, 100 (2019) (addressing issue preservation and holding "it would be inappropriate for this Court to rule that the district court erred by not considering evidence or argument not presented to it.")

"A search and seizure, conducted without a warrant issued on probable cause, is presumptively unreasonable." *State v. Hansen*, 138 Idaho 791, 796 (2003). "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). Generally, evidence obtained from the result of an unlawful search must be excluded. *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)).

At the conclusion of the hearing to clarify the suppression issues, the district court said,

> The question is that even if I were to suppress the drugs they found in the purse, does that -- is the discovery of the drugs in the bedroom, which everybody acknowledge -- appeared to acknowledge that she was staying in sufficiently attenuated . . . from the discovery of the drugs in the purse so as to be a proper basis for these charges, regardless of what was in the purse? And you're saying it's fruit of the poisonous tree.

(2/25/19 Tr., p.16, L.24 – p.17, L.9.) Thus, the court recognized that Ms. Miramontes was perhaps seeking exclusion of the methamphetamine as "fruit of the poisonous tree." (2/25/19 Tr., p.17, Ls.22-24.) Thereafter, defense counsel submitted supplemental briefing in which

counsel argued, "It is Ms. Miramontes' position that the evidence obtained from Officer LaValee's search of the pink/salmon bag was the product of an illegal search, which was the conclusion of Ms. Miramontes' first Brief in Support of Motion to Suppress. It is also Ms. Miramontes' position that evidence obtained (physical evidence and statements) subsequent to the police search and investigation of Christine Evan[s]'s residence, as applied to Ms. Miramontes, should be suppressed based on the exclusionary rule and as fruit of the poisonous tree." (R., p.102.) Defense counsel cited *State v. Downing*, 163 Idaho 26 (2017) and *State v. Cohagan*, 162 Idaho 717 (2017), (amongst other cases) in support of its contention. (R., pp.102-03.)

Thus, the issue of suppression of the evidence obtained as the result of an unlawful search or unlawful searches was before the district court. For the State to argue on appeal that defense counsel never asserted that the search of the purse was unlawful—where the district court held a hearing centered around that very argument and additional briefing was submitted to address this question—is preposterous. (*See generally*, 2/25/19 Tr.; R., pp.102-32.) Contrary to the State's argument (Resp. Br., pp.11-13), the defense does not have to argue more than that to preserve the issue for appellate review. However, defense counsel did argue more.

In its briefing to the district court, defense counsel's first argument provided,

> It is the defense's position that the probation officers detained and searched Ms. Miramontes beyond what should have been allowable under the balancing test required in *State v. Williams*, 162 Idaho 56 ([Ct. App.] 2016), thus violating the Fourth Amendment and requiring suppression of all evidence as fruit of the unreasonable search and seizure.

(R., p.75.) In yet another instance, defense counsel asked the court to,

> [M]ake specific factual findings based on its record and analyze such findings using the *State v. Williams* factors to determine whether officers' intrusion of Ms. Miramontes' Fourth Amendment right by detaining and searching her property was constitutionally permissible.

(R., p.77.) Throughout its briefing to the district court, the defense argued that the officers "retrieved" and "searched Ms. Miramontes' property without consent or a warrant" and asked the court to "find that the intrusion was constitutionally impermissible." (R., p.81.) It is apparent from all of defense counsel's briefing, as well as the arguments made directly to the district court on February 25, 2019, that counsel for Ms. Miramontes asserted that she was unlawfully seized and the search of her purse and of the property in the room in which she was staying was unconstitutional.

Additionally, in briefing the issues, defense counsel relied upon Idaho decisions which addressed the suppression of evidence that was the fruit of an unlawful search. *See State v. Williams*, 162 Idaho 56 (Ct. App. 2016). Defense counsel discussed at length a case analyzed by the *Williams* Court, *State v. Valdez*, 68 P.3d 1052, 1056 (Utah Ct. App. 2003). *Valdez* was a case on point with the facts of this case where, "the Utah Court of Appeals ruled the simple detention to be permissible; however, the subsequent identification and search was not permissible and that court suppressed the contraband found on Mr. Valdez." (R., p.80 (citing *Williams*, 162 Idaho at 62).) Although, in *Williams*, the Court noted that the *Valdez* Court determined the detention of Mr. Valdez was necessary for the officer to exercise control of the situation,

> . . . [T]he court went on to note Valdez's seizure was limited to the reason justifying it—controlling the scene. As controlling the scene did not require any investigation into Valdez's identity, the officer's request for identification exceeded the scope of the reason justifying the initial detention and unnecessarily expanded both the duration and scope of the initial detention. As a result, the evidence obtained following the unreasonable expansion was correctly suppressed.

Williams, 162 Idaho at 62-63 (internal citations omitted).

In his briefing, defense counsel asked the district court to rule similarly to the *Valdez* Court and recognize that the officer did not have reasonable articulable suspicion that

Ms. Miramontes was committing or attempting to commit a crime, and to find "the initial seizure was constitutionally valid, although the subsequent search was not." (R., p.81 (quoting *Valdez*, 62 P.3d at 1059).) Ms. Miramontes asserts that the district court erred when it denied her motion to suppress because her purse with the palm trees was searched, absent reasonable and articulable suspicion of criminal wrongdoing. Further, the probationer's Fourth Amendment waiver did not authorize the search of Ms. Miramontes's purses or the room in which she slept.

B. Inevitable Discovery Does Not Apply Under These Facts And Circumstances

The State's asserted exception to the exclusionary rule, inevitable discovery (Resp. Br., pp.13-15), is inapplicable to this case as it is controverted by the facts of this case and the Idaho Supreme Court's decision in *State v. Garnett*, 165 Idaho 845 (2019). The State claimed that the evidence in Ms. Miramontes's bedroom "would have been inevitably discovered by the probation officers during the residence check regardless of Miramontes's seizure of the search of her purse." (Resp. Br., p.15.) However, consent is the applicable exception to the warrant requirement for the search of a probationer's home and their property as a condition of probation. *State v. Hansen*, 151 Idaho 342, 345 (2011). "The burden is on the State to show that the consent exception applies." *Id.* 151 Idaho at 346. Where the basis for the search of Ms. Evans's home was her consent to waive her rights to be free from governmental searches, the officer would have needed to possess "reasonable suspicion" that Ms. Evans owned or controlled or possessed Ms. Miramontes's purse and the belongings in her bedroom in order to lawfully search there. *See State v. Garnett*, 165 Idaho 845, 841 (2019). Because the officers were aware that the purse with the palm trees and the items found in the room she was staying belonged to Ms. Miramontes, this standard would not have been met.

The evidence in question was recovered as a result of the exploitation of the illegal search of the purses and the room in which Ms. Miramontes was staying—the State cannot prove that the evidence would have been obtained even if the police illegality was 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). The record is contrary to the State's claims that the search of Ms. Miramontes's purses and the room Ms. Miramontes had been occupying would have been searched by the officers. (Resp. Br., pp.13-15; R., p.127.) 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.) 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.) 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 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.)

Prior to the search of Ms. Miramontes's purse, the officers were aware that there were three bedrooms in the house, with one being used by Ms. Miramontes. (11/27/18 Tr., p.12, Ls.2-8; p.33, Ls.5-19.) Thus, after the purse was opened and drug-related items identified, Ms. Miramontes's other purses and the room where Ms. Miramontes slept were searched 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 a common area. 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 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"). The State failed to meet its burden of proving the "inevitable discovery" exception to the exclusionary rule. The officers would not have inevitably discovered the methamphetamine, because they did not possess "reasonable suspicion" that Ms. Evans owned or controlled or possessed Ms. Miramontes's purse and the belongings in her bedroom, such that a search of these items and this location would have been lawful. *See Garnett*, 165 Idaho at 841.

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 1st day of June, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of June, 2021, I caused a true and correct copy of the foregoing APPELLANT'S REPLY 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