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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**Nos. 44948 & 44949**
Plaintiff-Respondent,	)	
	)	**Canyon County Case Nos.**
v.	)	**CR-2016-15050 & CR-2016-15466**
	)	
JESSICA JEAN IBARRA	)	
AKA JESSICA JEAN DELEON,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HONORABLE CHRISTOPHER S. NYE
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Jessica Jean Ibarra appeals from the district court's partial denial of her motion to suppress in Canyon County case no. CR-2016-15466. Additionally, she claims the district court abused its discretion by imposing excessive sentences in Canyon County case nos. CR-2016-15466 and CR-2016-15050.[1]

Statement Of The Facts And Course Of The Proceedings

Ibarra was arrested for possession of methamphetamine and possession of drug paraphernalia in CR-2016-15050. (R., p. 8.) She was booked into jail on or about August 27, 2016, and "[a]s part of the booking in process a drug detection dog sniffed" her. (Tr. vol. I, p. 16, Ls. 2-4; R., p. 126.) Ibarra was then strip searched, and required to "squat down and cough." (R., pp. 126-27.) Approximately two days later jail officials again ran a drug detection dog through Ibarra's cell. (R., p. 127.) None of these searches revealed any contraband. (R., p. 127.)

Approximately five days later, officers received a tip from another inmate that Ibarra had contraband. (See Def's Ex. A.) Ibarra was handcuffed, with her hands behind her back, and was taken from her jail cell to the "booking area of the jail." (R., p. 127.) While in the booking area, Ibarra was strip searched and questioned. (R., p. 128.) No drugs were found during the strip search. (Tr. vol. I, p. 26, Ls. 7-9.) Ibarra requested to

[1] CR-2016-15466 and CR-2016-15050 have been consolidated on appeal as Docket No. 44948. (R., p. 218.)

use the restroom, which officers accommodated by providing a makeshift "port-a-toilet." (Tr. vol. I, p. 26, L. 10 – p. 27, L. 7; R., p. 129.) Her waste was inspected and no drugs were found. (R., p. 129.) Jail officials never performed a cavity search of Ibarra. (Tr. vol. I, p. 16, Ls. 7-10; see R., pp. 126-30.)

Ibarra was handcuffed in the booking area for approximately two-and-a-half hours. (Tr. vol. I, p. 25, Ls. 3-7; R., p. 129) At some point during that time, Ibarra stood up and threw an object across the room, and sat back down. (Tr. vol. I, p. 17, L. 21 – p. 18, L. 3; p. 29, Ls. 5-23; State's Ex. 3.) Officers later discovered the object on the floor: it was a "white plastic thing and inside it was a clear crystal substance." (Tr. vol. I, p. 16, L. 11 – p. 17, L. 2.) The crystal substance later tested presumptive positive for methamphetamine. (Tr. vol. I, p. 17, Ls. 15-20.)

The state charged Ibarra with possession of methamphetamine and with introduction of contraband into a correctional facility in CR-2016-15466. (R., pp. 83-86.) Ibarra then filed a motion to suppress evidence in CR-2016-15466. (R., pp. 101-31.) At the suppression hearing Ibarra argued that, while the precursory strip search and other investigative actions were proper, she was unlawfully detained after her waste was inspected and nothing was found:

> Whatever probable cause they had or reasonable suspicion for a matter of fact to detain my client is fine. Do their strip search is fine. That's fine. But they simply at that point did not have enough if they would have presented all of that information to a magistrate to actually get a search warrant….
>
> Your Honor, the moment she went to the bathroom and nothing was found, *I would argue to you that any longer than that is now violating her constitutional rights to be free from an unreasonable seizure.*…

> The bottom line is a neutral magistrate based with all this information that should have been provided to him would never have granted a search warrant. *So detaining her any longer than they had once that—once the waste had been inspected and processed is an illegal seizure, Your Honor, and we're asking that as a result that you suppress the evidence that they obtained after that process of inspecting the waste and being stripped searched [sic] had been completed.*

(Tr. vol. I, p. 37, L. 18 – p. 39, L. 1 (emphasis added).) The state argued that Ibarra had abandoned the container with methamphetamine, and therefore had no expectation of privacy in it, and that "[n]o search was ever conducted of the defendant in regards to a body cavity search so there is [sic] no suppression issues here." (Tr. vol. I, p. 40, Ls. 5-13.)

The district court denied Ibarra's motion with respect to the plastic container,[2] finding the officers' "conduct was reasonable under the circumstances," and that the container was abandoned. (Tr. vol. I, p. 40, L. 14 – p. 41, L. 7.)

Pursuant to a plea agreement, Ibarra pleaded guilty to possession of methamphetamine in CR-2016-15050 and possession of contraband in prisons CR-2016-15466. (Tr. vol. II, p. 3, L. 15 – p. 4, L. 1; p. 6, L. 2 – p. 12, L. 1.) Ibarra was sentenced to a seven-year sentence with seven years fixed in CR-2016-15050 and a consecutive five-year sentence with zero years fixed in CR-2016-15466. (Tr. vol. III, p. 30, Ls. 10-23; R. pp. 34, 187.)

[2] Ibarra also made a claim, based on Miranda v. Arizona, 384 U.S. 436 (1966), to suppress Ibarra's statements to officers after the container was found (See R., pp. 112-15, 118-19, 129.) The state had "no objection" to suppression of those statements (R., pp. 138-39), and the district court accordingly granted Ibarra's motion with respect to Ibarra's statements (Tr. vol. I, p. 4, Ls. 2-11).

As part of the plea agreement, Ibarra reserved the right to appeal the district court's partial denial of her motion to suppress evidence. (R., p. 164; Tr. vol. II, p. 4, L. 16 – p. 5, L. 1.) Ibarra timely appealed from the judgments of conviction. (R., pp. 34-35, 43-46, 187-88, 197-200.)

ISSUES

Ibarra states the issues on appeal as:

> I. Whether the district court erred by denying Ms. Ibarra's motion to suppress in the contraband case.
>
> II. Whether the district court abused its discretion in both cases by imposing excessive sentences on Ms. Ibarra.

(Appellant's brief, p. 7.)

The state rephrases the issues as:

I. Because Ibarra was not unlawfully seized, and abandoned the baggy of methamphetamine, has she failed to show the district court erred in partially denying her motion to suppress?

II. Has Ibarra failed to show the district court abused its discretion in sentencing?

ARGUMENT

I.
Because Ibarra Was Not Unlawfully Seized, And Abandoned The Container Of Methamphetamine, The District Court Correctly Denied Her Motion To Suppress With Respect To The Plastic Container

A. Introduction

Ibarra contends the district court erred when it denied her motion to suppress with respect to the plastic container because she was "unlawfully restrained" when she discarded it. (Appellant's brief, p. 1.) Additionally, Ibarra claims that her "decision to discard the container was caused by the continuing detention." (Appellant's brief, pp. 9-10 (citing Tr. vol. I, p. 41, Ls. 2-6).) Thus, Ibarra argues, abandoning the container "would not have been voluntary" and she "would still be able to challenge the seizure and subsequent search of the plastic container." (Appellant's brief, p. 10.)

These arguments fail. Ibarra fails to show that the district court erred by concluding that the officers' conduct during the detention was constitutionally reasonable under the circumstances. (See Tr. vol. I, p. 40, L. 14 – p. 41, L. 1.) Ibarra also fails to show the district court erred in concluding that the container was abandoned. (See Tr. vol. I, p. 41, Ls. 2-6.) Because the detention was constitutionally proper and because Ibarra voluntarily abandoned the container, Ibarra fails to show the district court erred in partially denying her motion to suppress.

B. Standard Of Review

On review of a ruling on a motion to suppress, the appellate court defers to the trial court's findings of fact unless clearly erroneous, but exercises free review of the trial court's determination as to whether constitutional standards have been satisfied in light of

the facts. State v. Willoughby, 147 Idaho 482, 485-86, 211 P.3d 91, 94-95 (2009); State v. Fees, 140 Idaho 81, 84, 90 P.3d 306, 309 (2004). If findings are supported by substantial evidence in the record, those "[f]indings will not be deemed clearly erroneous." State v. Stewart, 145 Idaho 641, 648, 181 P.3d 1249, 1256 (Ct. App. 2008) (quoting State v. Jaborra, 143 Idaho 94, 98, 137 P.3d 481, 485 (Ct. App. 2006)).

C. Ibarra Was Not Unlawfully Seized

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons … against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause … particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. In certain circumstances police officers may make a warrantless arrest, based on probable cause. See State v. Jenkins, 143 Idaho 918, 920–21, 155 P.3d 1157, 1159–60 (2007) (citing United States v. Watson, 423 U.S. 411, 424 (1976)); State v. Julian, 129 Idaho 133, 136–37, 922 P.2d 1059, 1062–63 (1996); I.C. § 19-603.

Following a lawful warrantless arrest, "the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest." Gerstein v. Pugh, 420 U.S. 103, 114 (1975). In these circumstances "[a] person lawfully committed to pretrial detention has not been adjudged guilty of any crime. He has had only a 'judicial determination of probable cause as a prerequisite to [the] extended restraint of [his] liberty following arrest.'" Bell v. Wolfish, 441 U.S. 520, 536–37 (1979) (quoting Gerstein, 420 U.S. at 114); see Virginia v. Paul, 148 U.S. 107, 119 (1893)). Nevertheless, "[u]nder such circumstances, the Government concededly

may detain him to ensure his presence at trial and may subject him to the restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment, or otherwise violate the Constitution." Bell, 441 U.S. at 536-37.

Applying those standards here, the district court found that the jail officials struck the proper balance and the seizure of Ibarra was constitutionally proper:

> All right. Thank you. So folks in county jail have limited Fourth Amendment rights. They do have Fourth Amendment rights nonetheless and there's a balancing test of whether the officers were reasonable under the Fourth Amendment as against an invasion of personal rights that any search might entail. There was no search here. There's no body cavity search here. We do have a defendant that was kept in—held in an area two and a half hours or thereabouts. The jail does have a reasonable interest in making sure there's no contraband. The officer's conduct must be reasonable under the circumstances to justify the interest by the government and I find that their conduct was reasonable under the circumstances.

(Tr. vol. I, p. 40, L. 14 – p. 41, L. 1.)

Ibarra has failed to show that this conclusion was erroneous. Ibarra's challenge below was to the "continued detention" that occurred *after* she used the "port a potty" provided by officers. (See, e.g., Tr. vol. I, p. 38, Ls. 5-8.) This occurred during the approximately two-and-a-half hours when she was handcuffed in an intake area. (Tr. vol. I, p. 26, L. 19 – p. 27, L. 7.) Officers did not perform a body cavity search of Ibarra. (Tr. vol. I, p. 16, Ls. 7-10; see R., pp. 126-30.) The question on appeal, therefore, is whether the *seizure* of Ibarra—having her sit in the booking area while handcuffed—was supported by probable cause.

Handcuffing an already-detained inmate for approximately two and a half hours would not violate the Fourth Amendment. At the time she was handcuffed, Ibarra had already been arrested for CR-2016-15050 and was a jail inmate. (See R., p. 126.) The

record contains the officer's sworn affidavit of probable cause for that case, as well as the magistrate's notation of "PC found" on the same. (R., pp. 7-8.) Based on that affidavit, the magistrate found "that the following crime or crimes were committed *and probable cause that the defendant committed them*…." (R., p. 6 (emphasis added) (showing the minutes of the magistrate's telephonic "IN CUSTODY PROBABLE CAUSE" hearing).) The magistrate later found probable cause existed to bind Ibarra over into district court. (R., p. 19.)

Moreover, Ibarra has never challenged the probable cause underlying CR-2016-15050, or the propriety of the arrest in that case, and does not challenge the propriety of that arrest on appeal. (See generally, Appellant's brief.) And Ibarra has not shown that some heightened standard, beyond probable cause, is required before a jail detainee may be handcuffed and moved to a separate area inside the jail. To the contrary, because Ibarra was incarcerated, it did not violate the Fourth Amendment to "seize" her by handcuffing her while she was already properly arrested and detained in jail to begin with. Bell, 441 U.S. at 536-37 (holding "the Government concededly may detain" a pretrial detainee "to ensure his presence at trial and may subject him to the restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment, or otherwise violate the Constitution").

On appeal, Ibarra argues that officers "had done everything they were reasonably allowed to do, and so, by continuing to restrain her in order to go further, beyond what was reasonable, they exaggerated their response." (Appellant's brief, p. 12.) She

contends that after an allegedly "unlawful interrogation," not at issue in this appeal,[3] the officers "continued to keep Ms. Ibarra in the booking area in a way which aggravated the documented issues with her back." (Appellant's brief, p. 12.) Citing Bell v. Wolfish, 441 U.S. 520, and State v. Henage, 143 Idaho 655, 657-58, 152 P.3d 16, 18-19 (2007), Ibarra claims that "the continued restriction of Ms. Ibarra's already-limited liberty was not *reasonably* related to a legitimate goal," and "amounted to unconstitutional punishment." (Appellant's brief, pp. 13-17 (emphasis in original).)

These arguments fail. As she did below, Ibarra continues to differentiate between the prior police actions—"everything they were reasonably allowed to do"—and the "continued detention" which she claims is illegal. (Appellant's brief, pp. 5, 12.) This echoes her argument below: that everything prior to the search of her waste was reasonable, but continuing to detain her afterwards was not. (Tr. vol. I, p. 37, Ls. 18-23 ("Whatever probable cause they had or reasonable suspicion for a matter of fact to detain my client is fine. Do their strip search is fine. That's fine."); p. 38, Ls. 5-8 ("Your Honor, the moment she went to the bathroom and nothing was found, I would argue to you that any longer than that is now violating her constitutional rights to be free from an unreasonable seizure.").) But Ibarra fails to provide authority showing that the "continued detention"—i.e., having her sit in the booking area in handcuffs—would be an unconstitutional seizure of an already-incarcerated inmate.

[3] The district court granted Ibarra's suppression motion with respect to her statements, and her Miranda claims below are therefore not at issue on appeal. (Tr. vol. I, p. 4, Ls. 2-11). Moreover, a Miranda violation is not, on its own, grounds for suppressing physical evidence. See, e.g., State v. Garcia, 143 Idaho 774, 781–82, 152 P.3d 645, 652–53 (Ct. App. 2006).

Henage does not support Ibarra's claim, because the defendant there was pulled over for a routine traffic stop, and challenged the warrantless pat search of his person. See Henage, 143 Idaho at 657-58, 152 P.3d at 18-19. Ibarra fails to show how this case has any bearing on the propriety of handcuffing an inmate, properly arrested with probable cause, and moving her to a different area.

Bell is likewise inapplicable here, as it details the Fifth Amendment standards relating to punishment and exaggerated jail official responses, and Fourth and Fifth Amendment standards relating to "visual body-cavity inspections" and unannounced living-area searches. Bell, 441 U.S. at 536-48, 555-57, 558-563. None of these standards are at issue in this case. Below, Ibarra never claimed there was a Fifth Amendment violation or an unlawful search (See R., pp. 122-23, 129-30; see also Tr. vol. I, p. 37, Ls. 18-20 ("Do their strip search is fine. That's fine.").) Because Ibarra failed to raise Fifth Amendment or illegal search claims below, she cannot do so for the first time on appeal. State v. Garcia–Rodriguez, 162 Idaho 271, ___, 396 P.3d 700, 704 (2017) ("Issues not raised below will not be considered by this court on appeal, and the parties will be held to the theory upon which the case was presented to the lower court.").

To the extent Ibarra raises Fifth Amendment claims now (see Appellant's brief, p. 13), or alludes that the searches preceding the handcuffing were improper (see Appellant's brief, p. 14), even if such claims have been preserved, they fail on the merits. Given the ubiquitous use of handcuffs in jail, Ibarra fails to show that simple handcuffing here—even granting the allegation that it aggravated her back—would have qualified as an "exaggerated" police response prohibited by the Fifth Amendment. Cf. Limbert v. Twin Falls Cty., 131 Idaho 344, 348, 955 P.2d 1123, 1127 (Ct. App. 1998) (examining

defendant's challenge to being handcuffed while transported to jail, and concluding that, despite the defendant's claims of pain and preexisting medical conditions, "that the minor inconvenience suffered by Limbert was justified by the important interests of officer safety and jailhouse order. A policy requiring officers to handcuff arrestees when they take them to the jail so that the suspect may not grab a weapon, fight with officers, or cause damage to county property is inherently reasonable").

Moreover, assuming *arguendo* that handcuffing Ibarra was an exaggerated response, and therefore an unconstitutional punishment, Ibarra has not articulated how a Fifth Amendment violation here would result in a suppression of evidence. State v. Schrecengost, 134 Idaho 547, 549, 6 P.3d 403, 405 (Ct. App. 2000) ("Not all evidence obtained by the police after an unconstitutional action is suppressible, even if it would not have been obtained without the illegal action."); State v. Bainbridge, 117 Idaho 245, 249, 787 P.2d 231, 235 (1990).

Finally, regarding the propriety of the strip search, the Bell Court itself held that requiring pretrial detainees "to expose their body cavities for visual inspection as a part of a strip search" violated neither the Fourth nor the Fifth Amendment. Bell, 441 U.S. at 558-62. The Supreme Court later clarified that permissible strip searches may also include requirements to shower, instructions to disrobe and submit to visual checks for contraband, and requirements to "cough in a squatting position as part of the process." Florence v. Board of Chosen Freeholders of the Cnty. of Burlington, 566 U.S. 318, 323-34 (2012). This is exactly what took place here, and Ibarra conceded below that the strip search was proper. (R., p. 127; Tr. vol. I, p. 37, Ls. 18-23 ("Whatever probable cause

they had or reasonable suspicion for a matter of fact to detain my client is fine. Do their strip search is fine. That's fine.").)

This leaves the question of Bell's relevance to the merits of Ibarra's only preserved claim: whether it was an unconstitutional *seizure* to continue to handcuff Ibarra while she was in the booking area. Bell does not set forth a Fourth Amendment seizure standard that already-detained inmates may not be subsequently handcuffed. See generally Bell, 441 U.S. 520. Nor does Bell set forth a higher standard than probable cause for handcuffing an already-incarcerated inmate. While Bell certainly suggests that in some circumstances handcuffing could be *relevant* in a Fifth Amendment inquiry, it does not suggest that handcuffing a properly detained inmate would be an illegal *seizure* under the Fourth Amendment, given that the inmate is already legally seized.

Ibarra therefore fails to show the district court's decision was incorrect. She has not shown that any actions preceding the handcuffing violated her Fourth Amendment rights, and she conceded below that the pre-handcuffing actions were reasonable in these circumstances. Nor has Ibarra shown that anything more than the probable cause justifying her original arrest would be required to handcuff her. Moreover, she fails to show that Bell would even apply here, or if it would, that it would show any constitutional violation on the merits. The court correctly concluded that the officers' conduct "was reasonable under the circumstances." (Tr. vol. I, p. 40, L. 23 – p. 41, L. 1.)

D. Ibarra Abandoned The Plastic Container And Accordingly Has No Standing To Challenge Its Recovery

"One who challenges the legality of a search must establish that he or she had a legitimate expectation of privacy in the thing searched." State v. Harwood, 133 Idaho 50,

52, 981 P.2d 1160, 1162 (Ct. App. 1999) (citing Rawlings v. Kentucky, 448 U.S. 98, 104 (1980)). An individual who "voluntarily abandons property prior to the search cannot be said to possess the requisite privacy interest" in the property. Harwood, 133 Idaho at 52, 981 P.2d at 1162 (citing Abel v. United States, 362 U.S. 217, 241 (1960)). Abandonment in this context "occurs through words, acts, and other objective facts indicating that the defendant voluntarily discarded, left behind, or otherwise relinquished his interest in his property." Harwood, 133 Idaho at 52, 981 P.2d at 1162 (citing United States v. Ramos, 12 F.3d 1019, 1023 (11th Cir. 1994); Bond v. United States, 77 F.3d 1009, 1013 (7th Cir. 1996); United States v. McDonald, 100 F.3d 1320 (7th Cir. 1996)). The Harwood Court cautioned that "[i]f the abandonment is caused by illegal police conduct, however, the abandonment is not voluntary." 133 Idaho at 52, 981 P.2d at 1162; see also United States v. Roman, 849 F.2d 920, 923 (5th Cir. 1988); United States v. Tolbert, 692 F.2d 1041, 1045 (6th Cir. 1982).

Here, the district court denied Ibarra's motion to suppress on the further grounds that she abandoned the plastic container. The decision was correct, as the video exhibit plainly shows Ibarra standing up, and, despite being handcuffed, throwing the container away. (State's Ex. 3, 00:32-00:43.) The act of throwing the container away was plainly voluntary, and *prima facie* evidence of Ibarra's intent to relinquish her interest in it.

Ibarra argues that Ibarra's abandonment was "caused by the continuing detention." (Appellant's brief, pp. 9-10.) She cites to State v. Ross, 160 Idaho 757, 759, 378 P.3d 1056, 1058 (Ct. App. 2016), and the district court's conclusion that "the property seeking [sic] to be suppressed was not found as a result I assume of a detention for two and a half

hours and then property that was discarded on the floor." (Appellant's brief, pp. 9-10 (quoting Tr. vol. I, p. 41, Ls. 2-6).)

But Ibarra fails to show the abandonment was caused by illegal police action. First, the police action here was not illegal, as explained above. Alternatively, even if the police action was illegal, the jail video clearly shows that Ibarra threw the container by her own free will, and did so with the officers hardly noticing her, much less coercing her. (State's Ex. 3, 00:00-00:43.)

Moreover, handcuffing and moving Ibarra would not have caused Ibarra to throw the container. By definition, handcuffs do not facilitate one's ability to manipulate objects and throw them; they impede it. And handcuffing someone's hands behind his or her back, Houdini-style, only decreases the detainees' odds of successfully dredging up, holding on to, and flinging secreted items across the room. The video shows that had Ibarra not been constrained to a handcuffed Hail-Mary lateral, she could have properly thrown the container, and perhaps even lobbed it into the laundry bin she barely missed. (See State's Ex. 3, 00:41-00:43; Tr. vol. I, p. 18, Ls. 4-7.) Because the handcuffing did not cause Ibarra to abandon the container—and in fact only made abandonment more difficult—Ibarra fails to show the abandonment was caused by police action, or otherwise involuntary.

All of this is in stark contrast to the abandonment in Ross, where Ross only disclaimed ownership of the duffle bag *after* it had been seized by officers who refused to return it to him:

> Ross's abandonment of the duffle bag followed the officers' refusal to allow him to take the duffle bag and officers notifying Ross that the duffle bag would be searched and inventoried. As conceded by the state, the

> seizure of Ross's duffle bag was illegal. It is clear from the video of the stop that Ross became agitated when the officer refused to allow him to take his luggage. Ross became further agitated when the officers similarly refused to give the passenger his bags and the passenger consented to a search of his bags. Based upon the state's concessions that the officers' conduct with regard to Ross's luggage was illegal, we hold that Ross's abandonment was the result of illegal police activity.

Ross, 160 Idaho at 760, 378 P.3d at 1059 (Ct. App. 2016). Unlike the already-seized duffel bag in Ross, the container was under Ibarra's complete control at the time she threw it away. (See State's Ex. 3, 00:00-00:43.) And in the span of time in which Ibarra was handcuffed, the officers did not apply any pressure, much less unlawful pressure, that *caused* her to throw the container away. Accordingly, when Ibarra stood up and threw the container away it was a voluntary act—as the video clearly shows.

Finally, the district court's finding that "the property seeking to be suppressed [sic] was not found as a result I assume of a detention for two and a half hours and then property that was discarded on the floor" does not show that the district court found the abandonment was involuntary. (Appellant's brief, pp. 9-10 (quoting Tr. vol. I, p. 41, Ls. 2-6).) Here the court was clarifying that the container was found not after a search, but after a detention. (See Tr. vol. I, p. 40, Ls. 19-20 ("There was no search here. There's no body cavity search here.").) Simply because the container was found following a detention, and in the circumstance of a detention, does not mean that the detention itself, or the police action during the detention, was what caused the abandonment to occur. The video shows Ibarra was acting completely voluntarily: she stood up, inched toward the laundry bin, threw the container away, and sat back down. (See State's Ex. 3, 00:41-00:43.) This was a plain abandonment of the container and a relinquishment of any privacy interest in it. The district court correctly concluded the same.

II.
Ibarra Fails To Show The District Court Abused Its Discretion In Sentencing Ibarra

A. Introduction

Ibarra contends the district court imposed an excessive sentence in two respects: "the seven-year fixed term in the possession case is excessive, and the decision to make the five-year sentence in the contraband case consecutive to the sentence in the possession case is excessive." (Appellant's brief, p. 18.) Ibarra has failed to show an abuse of sentencing discretion.

B. Standard Of Review

"Sentencing decisions are reviewed for an abuse of discretion." State v. Anderson, 131 Idaho 814, 823, 965 P.2d 174, 183 (1998) (citing State v. Wersland, 125 Idaho 499, 873 P.2d 144 (1994)).

C. The District Court Properly Reached A Sentencing Conclusion Within The Bounds Of Its Discretion

Where a sentence is within statutory limits, an appellant is required to establish that the sentence is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden, Ibarra must show that her sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable if appropriate to achieve the primary objective of protecting society, and any or all of the related sentencing goals of deterrence, rehabilitation, or retribution. State v. Wolfe, 99 Idaho 382, 384, 582 P.2d 728, 730 (1978). The Court reviews the whole sentence on appeal and presumes that the fixed portion of the sentence will be the defendant's

probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). In deference to the trial judge, the Court will not substitute its view of a reasonable sentence where reasonable minds might differ. State v. Toohill, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982).

Ibarra's sentence here was reasonable and appropriate to achieving the goals of sentencing. At the time of sentencing Ibarra was awaiting sentencing in four felony cases, including the two cases consolidated on appeal. (PSI, p. 23.) In one of those cases Ibarra pleaded guilty to possessing methamphetamine while incarcerated. (Tr. vol. II, p. 11, Ls. 11-15.) The PSI described Ibarra as a documented gang member "with a lengthy criminal history that began in her early adolescence." (PSI, p. 23.) According to the PSI, Ibarra's criminal history went back approximately 16 years, and included three commitments to DJC, a "multitude" of drug court violations, probation violations, multiple periods of imprisonment, during which time she incurred 24 disciplinary offenses, for disobedience, sexual activity, battery, harassment, and possession of alcohol, among other things. (PSI, pp. 6-13, 24.) Ibarra was accordingly placed in the "high risk category" for reoffense, and, based on "the defendant's criminal history and continuous criminal conduct in which she incurred four (4) felony cases one (1) year after being released from prison," the presentence investigator recommended incarceration. (PSI, pp. 21, 24.)

Ibarra fails to show that the district court's sentence of seven years fixed in CR-2016-15050, and five years indeterminate in CR-2016-15466, was an abuse of discretion. With particular regard to CR-2016-15050, Ibarra fails to show that a sentence of six years and six months—her requested sentence below and on appeal (Tr. vol. III, p. 25, Ls. 21-

24; Appellant's brief, p. 21)—would have been appropriate, but the seven years that were imposed somehow crossed the line into a "clear abuse of discretion."

While Ibarra notes the mitigating factors before the court, she does not address the litany of aggravating factors that justified the court's sentence. (See Appellant's brief, pp. 18-21.) The sentence that was imposed was well within the court's discretion.

CONCLUSION

The state respectfully requests this Court affirm the district court's partial denial of Ibarra's motion to suppress, and affirm the judgments of conviction.

DATED this 27th day of February, 2018.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 27th day of February, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

KDG/dd