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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NOS. 44948 & 44949
)	
v.)	CANYON COUNTY
)	NOS. CR 2016-15050 & CR 2016-15466
)	
JESSICA JEAN IBARRA AKA)	REPLY BRIEF
JESSICA JEAN DELEON,)	
)	
Defendant-Appellant.)	

REPLY BRIEF OF APPELLANT

**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 Ibarra raised two issues in these cases. First, she argued the district court should have suppressed the evidence found in Docket Number 44949 because the totality of the circumstances showed jail officials were unlawfully restricting her limited liberty rights at the time she discarded the evidence in question. Second, she contended the district court abused its discretion by imposing excessive sentences in both cases on appeal.

This reply is needed to address the State's response on the suppression issue, which threw out several red herrings which are not relevant to the issue Ms. Ibarra raised on appeal. It also failed to apply the proper test for evaluating the reasonableness of the officers' conduct, as it focused on individual factors in isolation, rather than assessing the totality of the circumstances. Similarly, its argument as to whether Ms. Ibarra's discarding of the container was the product of the unlawful police conduct fails to utilize the proper causation analysis. Instead, it used an analysis which several courts have explained is improper. As such, the State's arguments on the suppression issue are meritless.

Since the reasonable basis which had justified the officers' initial intrusion into Ms. Ibarra's rights had dissipated, they went beyond what was reasonable by continuing to subject her liberty to additional restrictions, and so, their actions were not permissible under the Fourth Amendment. As a result, Ms. Ibarra could properly assert that the evidence she discarded while she was being unlawfully detained should have been suppressed because that evidence was fruit of the officers' unlawful conduct. The district court erred by not suppressing that evidence.

Statement of the Facts and Course of Proceedings

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

ISSUES

- 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.

ARGUMENT

I.

The District Court Erred By Denying Ms. Ibarra's Motion To Suppress In The Contraband Case

A. Analyzed Under The Proper Standard, The Totality Of The Circumstances Reveal That The Officers' Decision To Continue Subjecting Ms. Ibarra To Additional Restrictions Of Her Limited Liberty Interest Was Not Reasonable

The State's myopic focus on the idea that, because Ms. Ibarra was already lawfully incarcerated, handcuffing her and keeping her in a different area of the jail was not an unconstitutional seizure, ignores the context in which that decision was made, and so, fails to apply the proper test and evaluate the *totality* of the circumstances. (*See* Resp. Br., pp.8-11.) Since its argument did not apply the proper test to assess the reasonableness of the officer's actions, its argument in that regard should be rejected.

While jail officials may impose additional restrictions on an inmate's limited liberty interests, the touchstone for judging the propriety of those additional restrictions is, as with any other intrusion into a person's Fourth Amendment rights, reasonableness – the additional restrictions need to *reasonably* serve the jail's interest to be permissible under the Fourth Amendment. *Florence v. Bd. of Chosen Freeholders of County of Burlington*, 566 U.S. 318, 339 (2012); *Bell v. Wolfish*, 441 U.S. 520, 560 (1979); *cf. State v. Rios*, 160 Idaho 262, 264 (2016) (reiterating the standard for evaluating Fourth Amendment issues). Violations of a detainee's Fourth Amendment rights, like any other violations of the Fourth Amendment, are evaluated based on the totality of the circumstances. *See Florence*, 566 U.S. at 327 (“there is no mechanical way to determine whether intrusions on an inmate's privacy are reasonable. The need for a particular search must be balanced against the resulting invasion of personal rights.”) (internal citation omitted). Thus, when the totality of the circumstances show such restrictions

do not reasonably serve the jail's security interests, when the restrictions are exaggerated beyond what is necessary, they "cannot be condoned." *Bell*, 441 U.S. at 560 (explaining such restraints are particularly troubling when the person is, like Ms. Ibarra was, a pre-trial detainee, because the unreasonable restraints amount to "punishment").

The State attempts to distinguish *Bell* based on the idea that *Bell* "details Fifth Amendment standards relating to punishment and exaggerated jail official responses," and "[Ms.] Ibarra never claimed there was a Fifth Amendment violation or an unlawful search." (Resp. Br., p.11.) That assertion wholly misunderstands the issue Ms. Ibarra raised on appeal, as well as *Bell* itself. As the United States Supreme Court has made clear, "[t]he Court's opinion in *Bell v. Wolfish*, . . . , is the starting point for understanding how this framework [regarding detainee's limited constitutional rights] applies to *Fourth* Amendment challenges." *Florence*, 566 U.S. at 326 (emphasis added). Within that Fourth Amendment framework, Ms. Ibarra is challenging the seizure and search of the plastic container that was found in the booking area because it was found as a result of the officers unlawfully continuing to subject her to additional restraints of her liberty. (*See, e.g.*, App. Br., p.17.) That claim is wholly a Fourth Amendment claim, and so, the State's arguments against *Bell* because there were no Fifth Amendment violation is a red herring.

Furthermore, all the State's arguments regarding the reasonableness of the jail officials' actions leading up to Ms. Ibarra's detention in the booking area, such as their decision to strip search Ms. Ibarra or the decision to have her use the port-o-potty, are also red herrings. (*See* Resp. Br., pp.8-11.) Ms. Ibarra is not challenging those actions as being unreasonable in and of themselves; rather, she is asserting that, once all those extensive searches revealed no evidence of contraband, the justification for detaining her, for infringing on her limited liberty rights,

dissipated. As a result, she is contending the officers' decision to *continue* to subject her to additional restrictions at that point was unlawful because *continuing* to impose those additional restrictions was arbitrary and amounted to punishment. *Cf. State v. Luna*, 126 Idaho 235, 238 (Ct. App. 1994) (explaining that, though the traffic stop in that case was initially valid, it devolved into an unlawful detention, and, as a result, the passenger could challenge the evidence found after the detention became unlawful). The arbitrariness of the officers' actions in this case is particularly evident when their treatment of Ms. Ibarra is compared to the treatment of their other two women they were investigating –the other two women were allowed to return to their cells otherwise unrestrained after being subjected to a similar battery of searches. *Bell*, 441 U.S. at 539 (“if a restriction is not reasonably related to a legitimate goal—if it is arbitrary and purposeless—a court may permissibly infer that the purpose of the governmental action is punishment that may not be constitutionally inflicted upon detainees *qua* detainees.”).

Accordingly, the proper inquiry in this case is whether the totality of the circumstances show the officers' decision to continue detaining Ms. Ibarra in handcuffs in the booking area were “reasonably related to legitimate penological interests.” *Florence*, 566 U.S. at 326 (internal quotation omitted). If they were not, those intrusions against Ms. Ibarra's admittedly-limited, but still-existent, expectation of privacy would violate the Fourth Amendment, and “[s]uch an abuse cannot be condoned.” *Bell*, 441 U.S. at 560.

Naturally, one of the circumstances to be considered in that evaluation is the jail's interest in institutional security and deterring possession of contraband in that facility. *Id.* at 328; *Hudson v. Palmer*, 468 U.S. 517, 528 (1984). However, the *totality* of the circumstances in this case reveals the jail officials did everything they lawfully could without a warrant, and there is no evidence were seeking or could have secured a warrant at that time. (*See App. Br.*, pp.15-16.)

Because they had conducted an extensive investigation of Ms. Ibarra and found no evidence of contraband, the jail's security interests were not *reasonably* served by continuing to subjecting her to the additional restrictions from that point forward.

The State's argument did not evaluate the totality of the circumstances. Rather, it evaluated the decision to handcuff and detain Ms. Ibarra in the booking area in isolation from the events leading up to it. (*See, e.g.*, Resp. Br., p.11 (arguing that, "[g]iven the ubiquitous use of handcuffs in jail, [Ms.] Ibarra fails to show that simple handcuffing here . . . would have qualified as an 'exaggerated' police response").) The premise of the State's argument is actually belied by the fact that the officers allowed the other two inmates they were investigating to return to their cells otherwise unrestrained after being similarly searched. (*See R.*, pp.127-28.) Therefore, despite the "ubiquitous use" of handcuffs in jails, they are not constantly used, nor are they necessary to promote jail security in scenarios such as Ms. Ibarra's.

The bigger problem with the State's argument, however, is its attempt to argue that, since each aspect of the officers' actions might be independently reasonable, their whole course of conduct must have been reasonable. (*See Resp. Br.*, pp.8-11.) That argument is not a proper application of the totality-of-the-circumstances framework. Just as a combination of individually-innocent factors may add up to reasonable suspicion when viewed in totality, *State v. Kelley*, 159 Idaho 417, 424 (Ct. App. 2015), a combination of individually-reasonable actions by the officer may add up to a Fourth Amendment violation when viewed in totality. It all depends on the context in which those otherwise-appropriate action occur. *See id.*

Therefore, considering the officers' actions in context, considering the *totality* of the circumstances, the decision to keep Ms. Ibarra handcuffed in the booking area was not reasonably connected to the interest of jail security after the officers had strip searched her

several times, had a drug dog sniff her and her cell, which they also searched themselves, collected her waste under supervision, and found no contraband. (*See* App. Br., p.12 (detailing the officer's actions leading up to the problematic actions).) At that point, Ms. Ibarra's rights had given way to the jail's security interest, and that interest had been reasonably addressed by the multitude of searches the officers conducted. Whatever reasonable suspicion they had to justify that intrusion on Ms. Ibarra's limited privacy right had dissipated at that point. Therefore, the *totality* of the circumstances shows there was no reasonable justification for continuing to impose on that right, which means continuing to do so violated the Fourth Amendment.

Thus, the State's myopic focus on just the use of handcuffs and placement within the facility, without considering the context in which those facts existed, represents a failure to apply the proper standard for evaluating Ms. Ibarra's Fourth Amendment claim, and so, should be rejected.

B. Using The Appropriate Analysis Reveals The Unreasonable Decision To Continue Subjecting Ms. Ibarra To The Additional Restrictions Caused Her To Discard The Plastic Container

The State's argument on the abandonment aspect of this issue also fails to apply the proper test. In fact, its argument ignores the warnings several courts have given about improperly conflating the concepts of "intentional" action and "coerced" action in the context of abandonment. (*See* Resp. Br., pp.15-16.) Nearly all abandonment cases involve "intentional" action on the defendant's part, as the defendant will intentionally decide to discard the property or disavow ownership of it. However, focusing on just that aspect of the case improperly ignores "the fact that an illegal seizure occurred." *United States v. Gallinger*, 227 F.Supp.3d 1163, 1172 n.2 (D. Idaho 2017). Rather, such an action, "which may in some sense be considered 'voluntary,' [does not] necessarily break the causal chain" between the unlawful police conduct

and the defendant's abandoning of the item. *United States v. Bailey*, 691 F.2d 1009, 1014 (1982) (in regard to the causation analysis, comparing this case to, *inter alia*, the abandonment case *United States v. Beck* (discussed *infra*), and holding the officer's unlawful arrest of the defendant caused his flight, though ultimately holding there was an independent basis to justify the subsequent search of his person), *cert. denied*.

As such, when the fact that a decision to discard or disavow property is made subsequent to unlawful police conduct, the court should evaluate whether those actions "reflect the mere coincidental decision of [the citizens] to discard their narcotics," and they do not, they are not "voluntary" in the sense abandonment law requires. *United States v. Beck*, 602 F.3d 726, 730 (5th Cir. 1979); *see State v. Schrecengost*, 134 Idaho 547, 550 n.2 (Ct. App. 2000) (distinguishing the facts of that case from other decisions, including *Beck*, which found intentional acts abandoning property in the face of unlawful conduct were not "voluntary" actions). "[I]t would be sheer fiction to presume they were caused by anything other than the illegal stop." *Beck*, 602 F.3d at 230 (holding that, when the officer conducted an unlawful traffic stop, the defendant's decision to throw the marijuana out of his car while he was stopping was the product of the unlawful police conduct, and so, could not be used to justify the subsequent police activity). In other words, "the abandonment must be *truly* voluntary and not merely the product of illegal police conduct," if it is to be the basis for allowing evidence to be admissible in the face of unlawful police conduct. *Gallinger*, 227 F.Supp.3d at 1172 (granting defendant's motion to suppress the contents of the discarded container) (emphasis added).

Thus, the question the courts evaluate when abandonment is an issue is whether there is a causal connection between the defendant's action and the unlawful police conduct, such that the defendant's action was the product of unlawful police conduct. *Schrecengost*, 134 Idaho at 549.

That evaluation looks at the temporal proximity between the unlawful conduct and the defendant's action, the intervening circumstances between the unlawful conduct and the defendant's action, and the flagrancy of the unlawful conduct. *Id.*

The State's argument does not evaluate any of those factors. (*See generally* Resp. Br., pp.15-16.) In fact, none weigh in the State's favor in this case. There was no temporal break between the unlawful conduct and Ms. Ibarra's action in this case because she acted while still being subjected to the unlawful additional restrictions. *Compare State v. Ross*, 160 Idaho 757, 759-60 (Ct. App. 2016) (holding the defendant could challenge the search of a bag even though he had disavowed ownership while the officer was continuing to hold onto the bag in question). Similarly, there were no intervening circumstances since her action occurred during while the unlawful conduct was ongoing. *Compare Bailey*, 691 F.2d at 1014 (explaining the mere fact that the defendant chooses to act is not a sufficient intervening fact to break the causal chain); *Gallinger*, 227 F.Supp.3d at 1172 (same). In fact, the video shows nothing else happened, since Ms. Ibarra was simply left to sit by herself in the booking area. (*See* State's Exhibit 3.)

The misconduct was particularly flagrant in this case because, not only had the officers done everything they were lawfully allowed to do, they had actually done some things the Constitution forbade them to do (namely, interrogated Ms. Ibarra in violation of her right to an attorney). (*See* R., pp.121, 138-39, Tr., Vol.1, p.4, Ls.5-10.) Even then, their extensive investigation found no evidence of contraband, and yet, they still continued to detain Ms. Ibarra. The flagrancy of that decision is highlighted by the fact that the officers did not continue to similarly restrain the other women who they had been investigating at the same time and in similar manner. (R., pp.127-28.) As such, Ms. Ibarra's decision to discard the container was

caused by the unlawful police conduct just as much as the defendant's decision to disavow ownership in *Ross* was.

The State tries to distinguish *Ross* on the basis that, in *Ross*, the officers had actually seized the bag before the defendant abandoned it. (Resp. Br., pp.15-16.) That argument is contrary to the decision in *State v. Zuniga*, 143 Idaho 431 (Ct. App. 2006). In *Zuniga*, the Court of Appeals held that, when the defendant "disobeyed [the officer's] order to remain seated and fled from the scene, he was no longer the subject of an unlawful detention," and so, he did not have the ability to challenge the search of the container he discarded while he was fleeing. *Id.* at 437. It was the fact that that he was not being subjected to the unlawful detention at the moment he discarded the container, not the fact that the officer had not yet taken the container from him, which rendered him unable to challenge the search of that container. *Id.*; *see also Schrecengost*, 134 Idaho at 550 (explaining that the defendant's attempt to discard the container after the officer had found and seized it was not caused by the unlawful conduct because the illegal search had effectively ended and the act of discarding was new conduct was sufficiently separate from that unlawful conduct); *but see, e.g., Gallinger*, 227 F.Supp.3d 1172 n.2 (explaining that even a defendant's actions after being subjected to unlawful conduct does not necessarily break the causal chain between the unlawful conduct and his actions because that would ignore the fact that unlawful conduct occurred). Therefore, the State's focus on whether the officer had already seized the container is contrary to the applicable precedent.

Ms. Ibarra was very clearly still being subjected to the unlawful detention at the moment she discarded the object because she was still being handcuffed and detained in the booking area without a reasonable basis at that time she acted. (*See State's Exhibit 3.*) Therefore, under *Zuniga*, the fact that the officer had not already seized the container is of no importance –

Ms. Ibarra's decision to discard it was still caused by the unlawful police conduct because that decision was made while she was being subjected to the unlawful police conduct. *See also Schrecengost*, 134 Idaho at 550 n.2 (distinguishing the facts from that case from those in several cases where other courts had found that, where the defendant had discarded the object while the unlawful police conduct was ongoing, the abandonment was the product of the unlawful conduct). As such, the totality of the circumstances reveal the State's argument that Ms. Ibarra voluntarily abandoned the container is, like the government's argument in *Beck*, one of "sheer fiction," and should be rejected. *Beck*, 602 F.3d at 730. Because her actions were caused by the officers' unlawful conduct, the fact that she discarded the container does not deprive her of the ability to challenge the search of that container.

Since the contents of that container were found as a result of the officers' violation of Ms. Ibarra's Fourth Amendment rights, the district court erred by denying her motion to suppress that evidence.

II.

The District Court Abused Its Discretion In Both Cases By Imposing Excessive Sentences On Ms. Ibarra

The State's responses concerning the excessiveness of Ms. Ibarra's sentences are not remarkable, and as such, no further reply is necessary in regard to those issues. Accordingly, Ms. Ibarra simply refers the Court back to pages 17-21 of her Appellant's Brief.

CONCLUSION

Ms. Ibarra respectfully requests that this Court reverse the decision denying her motion to suppress in the contraband case. She also respectfully requests this Court reduce both her sentences as it deems appropriate, or alternatively, remand these cases for a new sentencing hearing.

DATED this 1st day of May, 2018.

_____/s/_____
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1st day of May, 2018, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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