5-19-2021

State v. Martin Appellant's Brief Dckt. 48397

Electronically Filed
5/19/2021 11:24 AM
Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
By: Murriah Clifton, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 48397-2020**
Plaintiff-Respondent,	)	
	)	**NEZ PERCE COUNTY NO. CR35-19-6125**
v.	)	
	)	
LAYNE CURTIS MARTIN,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

HONORABLE JAY P. GASKILL
District Judge

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

BEN P. MCGREEVY
Deputy State Appellate Public Defender
I.S.B. #8712
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

Cases

Statutes

Constitutional Provisions

STATEMENT OF THE CASE

Nature of the Case

Layne Curtis Martin asserts that the district court erred when it denied his requests to suppress the evidence found as a result of the officers' warrantless search of his vehicle, and warrantless seizure of the items inside. The plain view doctrine and the automobile exception to the warrant requirement did not apply to justify the officers' actions.

Statement of the Facts and Course of Proceedings

Lewiston Police Department Officers Macuk and Moyle were on patrol around 11:30 pm one night, when they saw Mr. Martin in the parking lot of the Lewiston Red Lion Hotel. (*See* R., pp.16-17, 220.) Mr. Martin was walking around a silver SUV and looking in its windows while talking on a cell phone. (R., p.220.) Mr. Martin then watched some other people in the parking lot remove items from the bed of a pickup. (R., pp.220-21.) After those people left the area of the pickup, Mr. Martin opened and closed the back hatch of the SUV, got in the vehicle, and drove it towards the front entrance of the hotel. (R., p.221.) Officer Macuk followed the SUV, and the vehicle went to the entrance of the hotel, stopped, began moving again, stopped a second time, and then drove to a parking stall near where it had been originally parked. (R., p.221.)

Mr. Martin left the SUV and walked towards the hotel, and Officer Macuk spoke with him. (R., p.221.) Meanwhile, Officer Moyle went to the SUV and ran its plates through dispatch. (R., p.221.) Officer Macuk ended his conversation with Mr. Martin after Mr. Martin explained the SUV was his rental car, and Mr. Martin walked into the hotel. (R., p.221.)

Officer Macuk then walked towards the SUV, where Officer Moyle was standing. (R., p.221.) Officer Moyle had observed some items in the vehicle. (*See* R., p.221.) Exhibit A

to the motion to suppress, the video recording of the body camera footage from Officer Moyle, starts with him looking into the vehicle. (*See* Ex. A, 00:00-00:04; R., p.169.) Officer Moyle testified at the preliminary hearing that he could see what he believed to be a "dabs kit" used to "smoke marijuana products" in the vehicle, including a main body, a small green silicone container, and some glass piping. (*See* 1/8/20 Tr., p.43, L.9 – p.44, L.2.) Officer Macuk testified that he also looked into the vehicle and observed "a silicone circle container, which is commonly used to hold dabs, and miscellaneous glass piping." (*See* 1/8/20 Tr., p.13, Ls.2-5.)

The video recording shows that, immediately after Officer Moyle looked into the SUV, Mr. Martin and a woman walked out of a side exit towards the front entrance of the hotel. (*See* Ex. A, 00:04-00:25.) The officer approached them, giving verbal commands and asking about the alleged paraphernalia. (*See* Ex. A, 00:25-00:30.) Officer Moyle asked Mr. Martin about the dabs in the backseat, and Mr. Martin replied, "What dabs." (Ex. A, 00:30-00:36.) The officer then stated, "The little circular container and the glass bowl, sitting in the back," and Mr. Martin responded, "There are no dabs." (Ex. A, 00:36-00:40.) Mr. Martin also stated, "It's unused." (Ex. A, 00:40-00:42.) Officer Moyle told Mr. Martin, "Then go open it and get it for me, you know it's paraphernalia, right?" (Ex. A, 00:42-00:45.) Mr. Martin replied, "No it isn't, it's unused bro." (Ex. A, 00:45-00:47.)

The three walked towards the SUV, and Officer Moyle asked, "What else is in the car?" (*See* Ex. A, 01:00-01:12.) Officer Moyle then told Mr. Martin to unlock the car, and that he was going to search the car. (*See* Ex. A., 01:20-01:26.) Mr. Martin said no and started to back away, and the officers grabbed him, handcuffed him, and told him he was being detained for paraphernalia in the car. (Ex. A, 01:26-01:36.) Officer Moyle then took the keys and searched the vehicle. (*See* Ex. A, 04:00-42:00.)

The video recording shows that, well into the search of the vehicle after Officer Moyle took the alleged dabs kit out of the SUV, he held the items in front of himself, and asked, "What is all this stuff? What is this?" (Ex. A, 33:00-33:07; *see* R., pp.160, 228.) Officer Moyle then stated, "It's new." (Ex. A, 33:15-33:19; *see* R., p.228.) He stated, "It's enough for us," and Officer Macuk replied, "It's enough for paraphernalia." (Ex. A, 33:20-33:25.)

During the search of the SUV, the officers also found a firearm, as well as mail, checks, and a financial transaction card in the names of people other than Mr. Martin. (*See* Ex. A, 05:15-05:30, 07:25-07:40, 11:03-11:23, 17:45-18:16, 36:00-36:50.) Mr. Martin stated that he was a convicted felon. (*See* Ex. A, 08:00-08:06.)

The officers detained the woman with Mr. Martin while Officer Moyle searched the SUV. (R., p.222.) The officers ultimately received permission from the woman to enter their hotel room, and the Lewiston Police Department subsequently obtained a search warrant for the room. (R., p.222.) Inside the hotel room, officers found methamphetamine, heroin, counterfeit currency, and additional firearms. (*See* R., p.222. *See generally* 1/8/20 Tr., pp.91-100.)

After the State filed criminal complaints against Mr. Martin, the magistrate conducted a preliminary hearing. (*See* R., pp.23-24, 57-60, 115-18, 119-24.) The magistrate admitted into evidence Exhibit 6, a photograph of the alleged dabs kit in its packaging. (*See* 1/8/20 Tr., p.24, Ls.4-21.) On cross-examination, Officer Moyle testified that he did not know the names of the items in the alleged dabs kit. (*See* 1/8/20 Tr., p.58, Ls.8-15.) He also testified he knew the crescent moon-shaped piece of glass displayed in Exhibit 6 belonged to a dabs kit, "Because I've seen them used," but he then testified that he had not personally seen somebody use that item. (*See* 1/8/20 Tr., p.58, Ls.16-25.)

Additionally, Officer Moyle testified that he knew, based on his training and experience, that the yellow and green small circular silicone container was commonly used to contain paraphernalia. (*See* 1/8/20 Tr., p.59, Ls.1-12.) Further, the officer testified that the small metal piece among the items was used to smoke marijuana products, but he did not see a hole in it when he looked at it. (*See* 1/8/20 Tr., p.59, L.14 – p.60, L.7.) Officer Moyle testified that he did not know if that item or any of the items appeared to be used, because he did not look at them after he removed them from the vehicle. (*See* 1/8/20 Tr., p.60, L.8 – p.61, L.13.)

Moreover, Officer Moyle testified that he did not recall standing at the SUV and looking at the items in Exhibit 6 with Officer Macuk, as can be seen at about thirty-three minutes into the video recording. (*See* 1/8/20 Tr., p.63, Ls.8-13.) He also testified that he did not recall having a conversation with Officer Macuk at approximately the same time. (*See* 1/8/20 Tr., p.63, Ls.14-22.) Officer Moyle testified he had not reviewed the entirety of the video recording before the preliminary hearing. (*See* 1/8/20 Tr., p.63, Ls.5-7.)

On cross-examination, Officer Macuk testified the two glass shapes in Exhibit 6 appeared to belong to a type of bong, but he did not know how they were used. (*See* 1/8/20 Tr., p.26, Ls.16-25.) Regarding the upper glass shape, he testified that he had never seen that particular item used as a bong or part of a bong, because there was no bong attached, but it still appeared to be drug paraphernalia. (*See* 1/8/20 Tr., p.27, Ls.2-12.) As for the crescent moon-shaped glass shape, Officer Macuk testified that it was associated with marijuana devices, marijuana, and marijuana residue, but he had not seen that particular item before. (*See* 1/8/20 Tr., p.27, Ls.13-23.) He testified that he had seen similar items used. (*See* 1/8/20 Tr., p.28, Ls.1-14.)

The magistrate nonetheless bound Mr. Martin over to the district court. (R., p.127; *see* R., p.124.) The State charged Mr. Martin by Information with trafficking in methamphetamine,

forgery, two counts of possession of a controlled substance, and three counts of unlawful possession of a firearm, with a persistent violator sentencing enhancement. (R., pp.134-38.)

Mr. Martin filed a Defendant's Motion to Suppress. (R., pp.158-74.) He requested that the district court "suppress all evidence relating to the warrant-less seizure of the defendant, search of his motor vehicle and search of his hotel room; for the reasons that the initial seizure of the defendant and subsequent searches were conducted in violation of the Idaho Constitution Article I § 17, and the U.S. Constitution 4th Amendment." (R., p.158.)

Mr. Martin asserted that the seized items were not immediately apparent as evidence of a crime, and therefore, the search was unconstitutional. (R., p.162.) He asserted that the officers claimed that "they observed drug paraphernalia in plain view to justify the search of the vehicle." (R., p.162.) "Under the plain view doctrine, it must be immediately apparent that the items observed are evidence of a crime." (R., p.162.) Mr. Martin asserted that, "when the officers illuminated the interior of the car the only suspicious item[] they observed was a new foam package containing a silicon[e] container and glass piping." (R., p.162.)

Mr. Martin then asserted that, while Officer Moyle testified at the preliminary hearing "that the silicon[e] container was paraphernalia," he also testified that "he didn't know what any of the [items'] names were." (R., p.162.) Mr. Martin asserted that Officer Moyle referred to the items as a dabs kit, but the only item the officer could explain how he thought it might be used was the yellow and green container. (*See* R., p.162.) Per Mr. Martin, Officer Moyle testified that he did not know if any of the items appeared to be used, and he did not look at the items after removing them from the vehicle. (R., pp.162-63.) Based on the video recording of Officer Moyle looking at the items and asking what they were, Mr. Martin asserted that testimony was

not true. (*See* R., p.163.) He asserted, "Since Officer Moyle didn't immediately recognize the items were evidence of a crime, the Plain View doctrine does not apply." (R., p.163.)

Mr. Martin also asserted that the officers lacked probable cause to search the vehicle, and therefore the vehicle search violated his constitutional rights. (R., p.163.) He asserted that the magistrate's statement at the preliminary hearing, that paraphernalia "can be anything," was incomplete. (*See* R., p.165 (quoting 1/8/20 Tr., p.146, Ls.11-19.) Mr. Martin asserted, "The State must show objective facts that support the alleged item is paraphernalia; State must prove that the defendant intended to use that paraphernalia to introduce a controlled substance into the body." (R., p.165 (citing *State v. Mann*, 162 Idaho 36 (2017)).) According to Mr. Martin, "If this Court does not require [that the] police show specific and objective facts supporting that the defendant intended to use the item to introduce a controlled substance into the body, our 4th Amendment rights will cease to provide any protection, because 'anything can be paraphernalia.'" (R., p.165.) Further, he asserted, "The Court cannot accept the conclusory statement, 'Based on my training and experience,' when the officers are unable to explain to the court what the items are and how they are used." (R., p.166.)

Mr. Martin asserted, "What is missing here are those reasonable and objective facts, the probable cause to believe the vehicle here contains contraband which [the officer] is entitled to seize." (R., p.166.) He also asserted that "the Court [cannot] ignore that Officer Moyle asked what the items were and misled the Court when he told the Court he didn't know if they had been used because he never looked at them." (R., p.167.) Mr. Martin asserted that Officer "Moyle misled the Court because he purposely looked at the items and he knew or should have known the items had not been used." (R., p.167.)

Mr. Martin asserted, "Based on the foregoing, police lacked probable cause to search the defendant's vehicle and detain the defendant." (R., p.167.) He asserted that the district court "should suppress any evidence seized during the unconstitutional search of the defendant's vehicle and his detention," as well as "any evidence seized during the execution of the search warrant of the defendant's hotel room." (R., p.167.) The search of the hotel room "was conducted subsequent to the search of the vehicle and the probable cause to obtain the search warrant to the hotel room was based upon the illegal search of the vehicle." (R., p.167.) Thus, "Based upon the Fruit of the Poisonous Tree Doctrine all evidence seized during the search of the hotel room should be suppressed." (R., p.167.)

The State subsequently filed a State's Response to Defendant's Motion to Suppress. (R., pp.189-97, R., pp.198-207 (Amended State's Response to Defendant's Motion to Suppress, attaching Exhibit 6).) The State argued that the paraphernalia was in plain view and its incriminating nature was immediately apparent. (*See* R., pp.192-95.) The State also argued that the search of the car was valid based upon the automobile exception. (*See* R., pp.195-96.)

The district court conducted a hearing by Zoom on the motion to suppress, without taking any additional testimony. (*See* R., p.218. *See generally* 5/14/20 Tr.)[1] The court had read the preliminary hearing transcript and viewed the video recording.[2] (5/14/20 Tr., p.16, Ls.15-20.)

The district court then entered an Opinion and Order on Defendant's Motion to Suppress. (R., pp.220-25.) The court characterized Mr. Martin's assertions as the contention that "the items located in the backseat of the SUV were not immediately apparent as evidence of a crime,

[1] Please note that the transcript of the May 14, 2020 Zoom hearing on the motion to suppress appears to have reversed the names of defense counsel and the prosecutor. (*See, e.g.*, 5/14/20 Tr., p.7, Ls.11-13, p.12, Ls.18-20.)

[2] The district court did not consider an exhibit that Mr. Martin had attached to the motion to suppress, which was the subject of an objection by the State. (*See* 5/14/20 Tr., p.12, L.21 – p.13, L.3; R., pp.166, 172-74, 192.)

therefore the search of the vehicle pursuant to the plain view doctrine was unconstitutional." (R., p.223.) The district court determined, "In this case the officer was properly in a position to observe the paraphernalia that was sitting out in the back seat of the SUV, so the first prong of the plain view doctrine is not at issue." (R., p.223.) According to the court, Mr. Martin was challenging "the second prong of the test—that it must be immediately apparent that the items observed is evidence of a crime." (R., p.223.)

The district court determined that Officer Moyle testified that the items he observed in the backseat were a "dabs kit," the items were used as "a method to smoke marijuana products," and that it was immediately apparent that the items were evidence of the crime of possession of drug paraphernalia. (*See* R., pp.223-24.) The court then determined that Mr. Martin "asserts that Officer Moyle's body cam recording of the incident indicates that Officer Moyle did not know what the items were, but a review of the video does not support this assertion." (R., p.224.) Per the district court, "At approximately 33 minutes on the video, there is a conversation between the officers regarding an item from the car, but the video does not establish the conversation was about the dabs kit, nor does it show that Officer Moyle was unsure regarding the items he called a dabs kit." (R., p.224.) Further, the court determined, Mr. Martin "also asserts the items may have been used for other activity, but this argument is also unsupported in the record." (R., p.224.) The district court determined, "The evidence submitted indicates the incriminating nature of the items, as drug paraphernalia, was readily apparent to Officer Moyle." (R., p.224.) Thus, the court denied the motion to suppress. (R., pp.224-25.)

Mr. Martin subsequently filed a Defendant's Motion for Reconsideration. (R., pp.227-37.) He asserted that, contrary to the district court's determination on the officers' conversation in the video recording, the video "clearly shows there are actually at least two items seized from

the car that the Officers did not immediately recognize." (*See* R., p.227.) Mr. Martin asserted that Officer Moyle's questions at around thirty-three minutes into the video recording related to the items in the alleged dabs kit, and the questions on their identity "were made during the search of the vehicle not as he was originally viewing the items from outside the vehicle. This is stronger evidence the items were not immediately recognizable, even after he began his search." (*See* R., p.228.)

Mr. Martin asserted the officers' statements made during the search were inconsistent with Officer Moyle's sworn testimony from the preliminary hearing, specifically his testimony that he immediately recognized the items prior to the search. (*See* R., p.228.) Mr. Martin asserted that the officer testified he knew the crescent moon-shaped piece of glass belonged in a dabs kit because he had seen them used, but he had never personally seen somebody use the item. (*See* R., pp.229-30.) He asserted that Officer Moyle wanted the court to believe that the green and yellow silicone container was paraphernalia because it was used to contain paraphernalia, even though the container was empty. (*See* R., p.230.) Further, while Officer Moyle testified the small metal piece was used to smoke marijuana products, he also testified that he could not see a hole it in when he looked at it. (*See* R., pp.230-31.)

Additionally, Mr. Martin asserted that, while Officer Moyle testified that he did not know if the items appeared to be used, and he did not look at them after taking it out of the vehicle, the video recording showed him looking at the items and stating, "It's new." (*See* R., pp.231-32.) Mr. Martin then asserted that Officer Moyle testified he did not recall having a conversation with Officer Macuk about the items, but he did have that conversation. (*See* R., pp.232-33.) He asserted that the State could not meet its burden to prove that Officer Moyle had probable cause to search the vehicle, "when the State's key witness has been proven untruthful." (R., p.234.)

Moreover, Mr. Martin asserted that Officer Macuk offered similar testimony on cross-examination. (R., p.234.) He asserted that "the officers didn't know what the items are and admitted they have never seen these particular items used as paraphernalia." (R., p.235.) Mr. Martin asserted, "The video doesn't lie, it [cannot] be disputed the officer here lack[s] any credibility concerning the most critical evidence in this case. Since the officer lacks credibility, the State failed to meets its burden and the search should be suppressed." (R., p.236.)

Mr. Martin also filed two affidavits regarding the sale and use of kits commonly purchased for the legal use of CBD oil and CBD wax in Idaho. (*See* R., pp.249-58.) The district court conducted a Zoom hearing on the motion for reconsideration. (*See generally* 6/25/20 Tr.)

The district court later issued an Opinion and Order on Defendant's Motion for Reconsideration. (R., pp.260-64.) The court determined, "Between the video and preliminary hearing testimony, there is no dispute the officers do not know specific names of the items in the kit that was observed. Even though these officers do not know names/terminology, they still recognize the items as paraphernalia." (R., p.261.) The district court also determined that the officers "could not explain exactly how each of these items could be used for the ingestion of drugs," and they "testified they did not observe any of these items being used to ingest drugs." (R., p.261.) However, "both officers testified that they recognized the items as a 'dabs kit' which is drug paraphernalia based upon their training and experience." (R., p.261.)

The district court then determined, "The State met its burden of establishing the warrantless seizure was justified pursuant to the plain view doctrine . . . ." (R., p.262.) After considering the video recording and the preliminary hearing testimony, the court determined, "it was immediately apparent to Officer Moyle that what he observed was evidence of a violation of I.C. § 37-2734A(1) [prohibiting the possession of drug paraphernalia]." (R., p.263.)

The district court did "not dispute that Officer Moyle could have prepared more thoroughly prior to the testimony given in this case." (R., p.263.) However, the court determined, "the officer's inability to give specific names to each item contained in the photograph in Exhibit 6, and his testimony that he did not personally observe the items being used, does not establish that Moyle was lying when he testified he recognized the items, as they were viewed together, as a dabs kit." (R., p.263.) The district court determined, "There is substantial evidence in the record, taken as a whole, to meet the State's burden of establishing the warrantless seizure was justified pursuant to the plain view doctrine." (R., p.263.) The court denied the motion for reconsideration. (R., p.263.)

Pursuant to a conditional plea agreement, Mr. Martin pleaded guilty to amended charges of one count of possession of a controlled substance with intent to deliver, one count of possession of a controlled substance, and one count of unlawful possession of a firearm. (*See* R., pp.271-85.) Mr. Martin reserved his right to appeal the denial of his motion to suppress. (R., pp.277, 284.) The district court subsequently imposed, for possession of a controlled substance with intent to deliver, a unified sentence of eight years, with three years fixed; for possession of a controlled substance, a concurrent unified sentence of seven years, with three years fixed; and, for unlawful possession of a firearm, a concurrent unified sentence of five years, with three years fixed. (R., pp.290-94.)

Mr. Martin filed a Notice of Appeal timely from the Judgment of Conviction. (R., pp.304-07, pp.310-14 (Amended Notice of Appeal).)

ISSUE

Did the district court err when it denied Mr. Martin's requests to suppress the evidence found as a result of the officers' warrantless seizure of the items inside his vehicle and warrantless search of his vehicle, because the plain view doctrine and the automobile exception did not apply?

ARGUMENT

The District Court Erred When It Denied Mr. Martin's Requests To Suppress The Evidence Found As A Result Of The Officers' Warrantless Seizure And Search, Because The Plain View Doctrine And The Automobile Exception Did Not Apply

A. Introduction

Mr. Martin asserts the district court erred when it denied his requests to suppress the evidence found as a result of the officers' warrantless seizure of the items inside his vehicle and warrantless search of his vehicle, because the plain view doctrine and the automobile exception did not apply. The district court initially determined that the warrantless seizure was constitutional under the plain view doctrine, because "the officer was properly in a position to observe the paraphernalia that was sitting out in the back seat of the SUV," and "[t]he evidence submitted indicates the incriminating nature of the items, as drug paraphernalia, was readily apparent to Officer Moyle." (*See* R., pp.223-24.) In denying the motion for reconsideration, the district court determined, "The State met its burden of establishing the warrantless seizure was justified pursuant to the plain view doctrine . . . ." (R., p.262.) The district court determined that "the State established both elements of the plain view doctrine," because "the officer was lawfully outside the car looking in the window, where he observed the items he repeatedly called a dabs kit," and "it was immediately apparent to Officer Moyle that what he observed was evidence of a violation of I.C. § 37-2734A(1)." (R., p.263.)

However, the district court did not expressly address whether the warrantless search of Mr. Martin's vehicle was legal. (*See* R., pp.220-24, 260-63.) "[A]pplication of the plain view exception also requires that the officer 'have a lawful right of access to the object itself.'" *State v. Buti*, 131 Idaho 793, 799 (1998) (quoting *Horton v. California*, 496 U.S. 128, 137

(1990)). The State did argue that the search of the vehicle was valid under the automobile exception.[3] (*See, e.g.*, R., pp.195-96.)

But the plain view doctrine did not apply to justify the officers' warrantless seizure of the items they observed in the backseat of the vehicle, because the officers did not have probable cause to believe the items were associated with criminal activity, and therefore it was not immediately apparent to the officers that the items were evidence of a crime. Moreover, the automobile exception to the warrant requirement did not apply to justify the officers' warrantless search of the vehicle, because the officers did not have probable cause to believe that the vehicle contained contraband or evidence of a crime. Thus, the district court should have granted Mr. Martin's motion to suppress and his motion for reconsideration.

B. Standard Of Review

The Court will freely review the evidence in this case. As the Idaho Supreme Court has held, "In an ordinary appeal from an order granting or denying a motion to suppress, our standard of review is bifurcated." *State v. Andersen*, 164 Idaho 309, 312 (2018). The Court will accept the trial court's findings of fact unless they are clearly erroneous, and may freely review

[3] The Idaho Supreme Court has held, "Where an order of a lower court is correct, but based upon an erroneous theory, the order will be affirmed upon the correct theory." *State v. Hoskins*, 165 Idaho 217, 222 (2019) (internal quotation marks omitted). This "right-result, wrong-theory" explanation for appellate review "is most often invoked when there are two (or more) alternate bases presented to the lower court on which to resolve the case but only one of which is correct." An "appellate court may uphold the decision on appeal by applying a correct theory to the same facts (or to undisputed facts in the record)." *Id.* "[T]here must be sufficient facts in the appellate record on which to base a decision on alternate grounds." *Id.*

While this case does not present a situation where the State presented alternate bases to the district court (because the State had to show that both the warrantless search of the SUV and the warrantless seizure of the items were legal), Mr. Martin acknowledges that the parties "had adequate opportunity to present evidence and arguments" on the automobile exception. *See id.*

Additionally, the district court's decisions could be read as including an implicit determination that the initial intrusion into Mr. Martin's vehicle was lawful. *Cf. Texas v. Brown*, 460 U.S. 730, 740-43 (1983).

the trial court's application of constitutional principles in light of the facts found. *Id.* (quoting *State v. Purdum*, 147 Idaho 206, 207 (2009)).

However, Mr. Martin's "appeal presents the unusual situation where this Court has exactly the same evidence before it as was considered by the district court: the transcript of the preliminary hearing and the video recording of [the officers'] contact with [Mr. Martin]." *See id.* Indeed, in this case the district court considered the preliminary hearing transcript and the video recording of Officer Moyle's body camera footage of the encounter. (*See* 5/14/20 Tr., p.16, Ls.15-20; Ex. A.) At least with respect to the motion for reconsideration, the district court also considered Mr. Martin's affidavits, as well as Exhibit 6 from the preliminary hearing, a photograph of the alleged dabs kit. (*See* R., p.263; 6/25/20 Tr., p.20, Ls.10-17.) The parties did not present any other testimony at the motion to suppress hearing or motion for reconsideration hearing, which were conducted by Zoom. (*See generally* 5/14/20 Tr.; 6/25/20 Tr.)

Thus, in this type of instance, as in *Andersen*, the Court does "not extend the usual deference to the district court's evaluation of the evidence." *See Andersen*, 164 Idaho at 312. "Under these limited circumstances, this Court has determined that its role on appeal is to freely review the evidence and weigh the evidence in the same manner as the trial court would do." *Id.* (quoting *State v. Lankford*, 162 Idaho 477, 492 (2017)) (internal quotation marks omitted).

C. The Plain View Doctrine Did Not Apply To Justify The Officers' Warrantless Seizure Of The Items They Observed In The Backseat Of Mr. Martin's Vehicle, Because It Was Not Immediately Apparent To The Officers That The Items Were Evidence Of A Crime

The plain view doctrine did not apply to justify the officers' warrantless seizure of the items they observed in the backseat of Mr. Martin's vehicle, because the officers did not have probable cause to believe the items were associated with criminal activity, and therefore it was not immediately apparent to the officers that the items were evidence of a crime.

"The Fourth Amendment to the United States Constitution protects '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'" *State v. Bishop*, 146 Idaho 804, 810 (2009) (quoting U.S. Const. amend. IV)).[4] "This guarantee has been incorporated through the Due Process Clause of the Fourteenth Amendment to apply to the states." *Id.* "Evidence obtained in violation of the amendment generally may not be used as evidence against the victim of the illegal government action." *Id.* at 810-11. "This rule, known as the exclusionary rule, applies to evidence obtained directly from the illegal government action and to evidence discovered through the exploitation of the original illegality." *Id.* at 811 (citing *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963); *State v. Page*, 140 Idaho 841, 846 (2004)).

"Warrantless searches and seizures are presumptively unreasonable under the Fourth Amendment." *State v. Wulff*, 157 Idaho 416, 419 (2014) (citing *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971); *State v. Diaz*, 144 Idaho 300, 302 (2007)). "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).

As a preliminary matter, the officers' observation of the items in the backseat of Mr. Martin's SUV did not implicate the Fourth Amendment. "[A] policeman's mere observation of items readily visible to the public is not a 'search.' The Fourth Amendment protects only places or activities in which the individual holds a reasonable expectation of privacy." *State v. Clark*, 124 Idaho 308, 312 (Ct. App. 1993). "Likewise, there exists no cognizable privacy right

[4] While Mr. Martin also asserted that the searches and seizure violated Article I, § 17 of the Idaho Constitution, he did not articulate how the Idaho Constitution was more protective than the United States Constitution.

in 'that portion of the interior of a vehicle which may be viewed from outside the vehicle by either inquisitive passerby or diligent police officers.'" *State v. Ramirez*, 121 Idaho 319, 322 (Ct. App. 1992) (quoting *Texas v. Brown*, 460 U.S. 730, 742 (1983)). Here, the officers were in the parking lot of the hotel, when they looked through the windows of Mr. Martin's vehicle and observed the alleged dabs kit inside. (*See* R., p.221.) The officers' observation did not implicate the Fourth Amendment. *See Ramirez*, 121 Idaho at 322.

However, the warrantless seizure of the items inside the SUV was illegal. "The plain view exception is a recognized exception to the warrant requirement, and permits warrantless seizure where certain conditions are met." *Baldwin v. State*, 145 Idaho 148, 155 (2008). "First, the officer must lawfully make an initial intrusion or otherwise properly be in a position from which she or he can view a particular area." *Id.* "Second, it must be immediately apparent to the police that the items they observe may be evidence of crime, contraband, or otherwise subject to seizure." *Id.* (citing *State v. Claiborne*, 120 Idaho 581, 586 (1991)). "The second requirement is met when an officer has probable cause to believe the item in question was associated with criminal activity." *Id.* at 155-56. As discussed above, "application of the plain view exception also requires that the officer have a lawful right of access to the object itself." *Buti*, 131 Idaho at 799 (internal quotation marks omitted).

Probable cause "is a flexible, common-sense standard," which "requires that the facts available to the officer would warrant a man of reasonable caution in the belief that certain items may be contraband or stolen property or useful as evidence of a crime." *Texas v. Brown*, 460 U.S. at 742 (citation and internal quotation marks omitted). Probable cause "does not demand any showing that such a belief be correct or more likely true than false"; rather, "A practical, nontechnical probability that incriminating evidence is involved is all that is required." *Id.*

(internal quotation marks omitted). "This determination may be based on the surrounding facts and circumstances." *Claiborne*, 120 Idaho at 586. "An officer 'may draw reasonable inferences based on his training and experience in determining whether a connection exists.'" *Id.* (quoting *State v. Tamez*, 116 Idaho 945, 946 (Ct. App. 1989)). "In addition, it is acceptable to look at 'the collective knowledge of the officers executing the searches.'" *Id.* (quoting *United States v. Newton*, 788 F.2d 1392 (8th Cir. 1986)).

Here, the officers did not have probable cause to believe the items observed in the backseat of Mr. Martin's SUV were associated with criminal activity. Under these circumstances, the facts available to the officers would not warrant a man of reasonable caution in the belief that the items they observed in the vehicle were evidence of a crime.

The officers' statements during the search of the vehicle indicate they did not recognize what the observed items were before seizing them, much less believe they were evidence of a crime. At around thirty-three minutes into the video recording, Officer Moyle picked up the package containing the alleged dabs kit, and asked, "What is all this stuff? What is this?" (Ex. A, 33:00-33:07.) Officer Moyle then looked at the green and yellow silicone container among the items, and stated, "It's new. It's enough for us." (Ex. A, 33:15-33:22; *see* R., p.228.) Officer Macuk then replied, "It's enough for paraphernalia." (Ex. A, 33:22-33:25; *see* R., p.228.) The officers' statements during the search indicate they did not recognize the observed items as evidence of a crime until after they seized the items.

The officers' testimony at the preliminary hearing also shows they did not have probable cause to believe the items were evidence of a crime, because their testimony to the contrary was not credible. For example, Officer Moyle testified on cross-examination as follows:

Q. Now, as you look as—at State's Exhibit 6, you call it a dabs kit?

A. Yes.

Q. Could you explain to the Court what each of those items is?

A. I don't know their names, no.

Q. You don't know what they are?

A. No. I don't know their names of them.

Q. You just know that it's paraphernalia?

A. Yes. Well, I don't know, like, each individual name for an item.

(1/8/20 Tr., p.58, Ls.5-15.) On the crescent moon-shaped piece of glass, Officer Moyle testified, "I know it belongs to a dabs kit. I don't know the name of that particular item." (1/8/20 Tr., p.58, Ls.16-22.) When asked, "How do you know it belongs to a dabs kit?", he replied, "Because I've seen them used." (1/8/20 Tr., p.58, Ls.22-23.) But defense counsel immediately thereafter asked, "You've personally seen somebody using this item?", and Officer Moyle testified, "Not personally, no." (1/8/20 Tr., p.58, Ls.24-25.)

Further, Officer Moyle testified on the silicone container:

Q. And how do you know that this yellow and green round item is paraphernalia?

A. It's commonly associated with paraphernalia.

Q. Okay. Based on what?

A. My training and experience.

Q. So what is it called?

A. A small circular silicone container.

Q. That's what it's—that's the technical term for it?

A. I don't know what the technical term is.

Q. But you know by looking at it that it's commonly used as paraphernalia?

A. To contain paraphernalia, yeah.

(1/8/20 Tr., p.59, Ls.1-13.) On the small metal piece displayed in Exhibit 6, the officer testified:

Q. What's it used for?

A. To smoke marijuana products?

Q. How?

A. I don't—

Q. Do you even know that there's a hole in it by looking at it?

A. I know there is after—after I looked at it, yes.

Q. After you looked at it?

A. Yes.

Q. But when you looked at it, you couldn't see the hole in it, could you?

A. No.

Q. No. So you don't know what it is?

A. I know it's used to smoke marijuana products.

(1/8/20 Tr., p.59, L.14 – p.60, L.7.)

In sum, Officer Moyle testified that he could not give the technical names for the items, and he did not know how the small metal piece was used. While he testified that the silicone container could be used to contain paraphernalia, and he had seen the crescent moon-shaped piece of glass being used, he also testified that he had not personally seen somebody using the crescent moon-shaped piece of glass. Officer Moyle could not name the items in the alleged dabs kit, and he did not know how to use most of the items.

Also, the video recording of Officer Moyle's body camera footage from the encounter contradicts important parts of his testimony. For instance, Officer Moyle testified that he did not know if the small metal piece appeared to be used:

Q. Was this one used to smoke marijuana products?

A. I don't know.

Q. Why don't you know?

A. At the time of the the—at the time of the—that time I took it, I didn't know what it—if it was or not.

Q. Did it appear to be used?

A. I don't know.

Q. You don't know whether it did or didn't?

A. At the time, no.

Q. And after you took it out, did it appear to be used?

A. After I took it out of the vehicle?

Q. Yes.

A. I don't know.

Q. You still don't know?

A. I didn't look at it, no.

Q. Did any of these items appear to be used prior to you removing them from the vehicle?

A. Can you state your question again?

Q. Did any of the items appear to be used to ingest marijuana or some other illegal drug prior to you taking them from the vehicle?

A. I don't know.

Q. You don't know?

A. No.

Q. And after you removed them from the vehicle, did they appear to be used?

A. I don't know. I didn't look at them.

Q. You didn't look at them?

A. No.

(1/8/20 Tr., p.60, L.8 – p.61, L.13.) But while Officer Moyle testified that he did not know if the items were used, the video shows Officer Moyle looking at the items while stating, "It's new." (Ex. A, 33:15-33:19; *see* R., pp.228, 232.) Moreover, while Officer Moyle testified he did not look at any of the items after removing them from the vehicle, the video show he looked at the items after removing them. (Ex. A, 33:00-33:19; *see* R., pp.228, 232.)

Further, Officer Moyle testified that he did not recall having a conversation with Officer Macuk about the alleged dabs kit:

Q. Do you recall standing at the vehicle, looking at Item No. 6 with Officer Macuk about 33 minutes into your body cam?

A. No, I don't recall.

Q. You don't recall that?

A. No.

Q. Do you recall having any conversation with Officer Macuk about Item No. 6 at approximately 33 minutes into your body cam?

A. I don't remember that conversation, no.

Q. Do you recall you or Officer Macuk saying to each other, what is that thing? Do you recall that?

A. No, I don't.

Q. Don't recall that at all?

A. No.

(1/8/20 Tr., p.63, Ls.8-22.) But Officer Moyle and Officer Macuk talked about the alleged dabs kit at around thirty-three minutes into the video recording. (Ex. A, 33:00-33:25; *see* R., p.228.)

Officer Moyle could not name the items in the alleged dabs kit, and he did not know how to use most of the items. He testified he had not personally seen the crescent moon-shaped piece of glass being used, right after he testified he had seen it used. Also, the video recording of the encounter contradicts many important parts of his testimony. Thus, the testimony of Officer Moyle was not credible. As Mr. Martin asserted before the district court, this Court should not "accept the conclusory statement, 'Based on my training and experience,' when the officers are unable to explain to the court what the items are and how they are used." (*See* R., p.166.) Officer Moyle did not recognize the items as evidence of a crime before seizing the items.

Officer Macuk also did not recognize the items as evidence of a crime before the seizure. On cross-examination, he testified regarding two of the items in the alleged dabs kit:

> Q. Okay. So there's two—what appears to be two different glass shapes that are in that—in the packaging?
>
> A. Yes, sir.
>
> Q. And you think that they're used as paraphernalia?
>
> A. Correct. They appear like they would be—belong to a type of bong.
>
> Q. How would they be used?
>
> A. I don't ingest marijuana. I don't know how they use them. I just know, from experience, those are commonly accompanied with bongs.
>
> Q. So have you ever seen—let's use the one that's above the cylinder.
>
> A. Okay.
>
> Q. In your training and experience, have you ever seen that particular item used as a bong, or part of a bong?
>
> A. That particular item, no, because there's not a bong attached with this one.

Q. Okay. So by itself, it's not really drug paraphernalia, is it?

A. It still appears to be drug paraphernalia, yes.

Q. And the item below, would you explain to the Court how you, based on your training and experience, have seen that particular item?

A. It's accompanied with marijuana devices, which are accompanied with marijuana, marijuana residue.

Q. And you've seen them?

A. That specific one, no. They come in—

Q. Never seen either one of those? You personally have never seen either one of those?

A. Until I saw them in person, no, I hadn't seen these.

(1/8/20 Tr., p.26, L.15 – p.27, L.24.) Officer Macuk testified he had seen similar items. (*See* 1/8/20 Tr., p.28, Ls.1-14.) In sum, much like Officer Moyle's testimony, Officer Macuk's testimony showed he could not explain how those two items were used. Thus, this Court should find that Officer Macuk's testimony was not credible. Officer Macuk did not recognize the items as evidence of a crime before seizure of the items.

As shown by the video recording of the encounter, the officers' statements during the search indicate they did not recognize what the items were before seizing the items, much less believe they were evidence of a crime. Additionally, the officers' testimony to the contrary was not credible. Under these circumstances, the facts available to the officers would not warrant a man of reasonable caution in the belief that the items they observed in the vehicle were evidence of a crime. *See Texas v. Brown*, 460 U.S. at 742. Thus, the officers did not have probable cause to believe that the items were associated with criminal activity. *See id.*; *Baldwin*, 145 Idaho at 155-56. It was therefore not immediately apparent to the officers that the items may be evidence

of crime. *See Baldwin*, 145 Idaho at 155. The plain view doctrine thereby did not apply to justify the officers' warrantless seizure of the items. *See id.*[5]

D. The Automobile Exception Did Not Apply To Justify The Warrantless Search Of Mr. Martin's Vehicle, Because The Officers Did Not Have Probable Cause To Believe That The Vehicle Contained Contraband Or Evidence Of A Crime

The automobile exception to the warrant requirement did not apply to justify the officers' warrantless search of Mr. Martin's vehicle, because the officers did not have probable cause to believe that the vehicle contained contraband or evidence of a crime.

"Generally, the seizure of property in open view involves no invasion of privacy and requires no warrant, assuming there is probable cause to associate the property with criminal activity." *Id.* (citing *Texas v. Brown*, 460 U.S. at 738). "However, a somewhat different circumstance is presented where, as here, the property in open view is situated on private premises—in a vehicle—to which access is not otherwise available for the seizing officer." *Id.* (citing *Texas v. Brown*, 460 U.S. at 738). "A vehicle's interior is subject to [Fourth Amendment] protection, and thus even a minor instruction into that space constitutes a 'search'." *Id.* (citing *New York v. Class*, 475 U.S. 106 (1986)). The automobile exception, another recognized exception to the warrant requirement, "allows police officers to conduct warrantless searches of automobiles if they have probable cause to believe that the automobile contains contraband or evidence of a crime." *Buti*, 131 Idaho at 800 (citing *Carroll v. United States*, 267 U.S. 132 (1925); *State v. Gallegos*, 120 Idaho 894 (1991)).

[5] Moreover, because the automobile exception did not apply to justify the officers' warrantless search of Mr. Martin's vehicle, as discussed in Section D. below, the officers did not have a lawful right of access to the items. *See Buti*, 131 Idaho at 799-800. The plain view doctrine did not apply for that reason as well.

Here, at the onset of their search, the officers did not have probable cause to believe that Mr. Martin's vehicle contained contraband or evidence of a crime as established in Section C. above, and incorporated herein. Thus, the automobile exception to the warrant requirement did not justify the officers' warrantless search of Mr. Martin's vehicle. *See Buti,* 131 Idaho at 800.

In sum, the plain view doctrine did not apply to justify the officers' warrantless seizure of the items inside Mr. Martin's SUV, and the automobile exception did not apply to justify their warrantless search of the vehicle. The State did not argue that any other exception supported the officers' warrantless seizure and search. (*See, e.g.*, R., pp.192-96.) Thus, the State has not met its burden of showing that a recognized exception to the warrant requirement is applicable here. *See Halen*, 136 Idaho at 833. The district court erred when it denied Mr. Martin's requests to suppress the evidence found as a result of the officers' warrantless seizure of the items inside his vehicle and the warrantless search of his vehicle. The evidence found as a result of the illegal seizure and search should be suppressed, either as evidence obtained directly from the illegal government actions, or as fruit of the poisonous tree in the case of the evidence found in the later search of the hotel room. *See Bishop*, 146 Idaho at 810-11.

CONCLUSION

For the above reasons, Mr. Martin respectfully requests that this Court vacate his judgment of conviction, the district court's order denying his motion to suppress, and the order denying his motion for reconsideration.

DATED this 19th day of May, 2021.

/s/ Ben P. McGreevy
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of May, 2021, 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

BPM/eas