

Uldaho Law

Digital Commons @ Uldaho Law

Idaho Supreme Court Records & Briefs, All

Idaho Supreme Court Records & Briefs

4-25-2018

State v. Ayala Appellant's Reply Brief Dckt. 45048

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"State v. Ayala Appellant's Reply Brief Dckt. 45048" (2018). *Idaho Supreme Court Records & Briefs, All*. 7131.

https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/7131

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|------------------------------|
| STATE OF IDAHO, |) | |
| |) | |
| Plaintiff-Respondent, |) | NO. 45048 |
| |) | |
| v. |) | ADA COUNTY NO. CR01-16-32723 |
| |) | |
| JESUS GEORGE AYALA, |) | REPLY BRIEF |
| |) | |
| Defendant-Appellant. |) | |
| _____ |) | |

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE DEBORAH A. BAIL
District Judge

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

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

KIMBERLY A. COSTER
Deputy State Appellate Public Defender
I.S.B. #4115
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**

**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

TABLE OF CONTENTS

| | <u>PAGE</u> |
|--|-------------|
| TABLE OF AUTHORITIES | ii |
| STATEMENT OF THE CASE | 1 |
| Nature of the Case | 1 |
| Statement of the Facts and Course of Proceedings | 2 |
| ISSUES PRESENTED ON APPEAL | 3 |
| ARGUMENT | 4 |
| I. The District Court Erred When It Denied Mr. Ayala’s Motion To Suppress ... | 4 |
| A. The District Court Erroneously Concluded That Knowledge Of Mr. Ayala’s Status As An Parole Absconder Provided The Police Officer Probable Cause To Arrest Mr. Ayala; The State’s Argument To The Contrary Is Without Merit | 4 |
| 1. The State Has Mischaracterized Mr. Ayala’s Argument | 5 |
| 2. The State’s Reliance On <i>Morrissey v. Brewer</i> Is Misplaced | 5 |
| 3. The State’s Reliance On <i>Virginia V. Moore</i> And <i>State V. Green</i> Is Misplaced | 6 |
| B. The State’s Alternative Legal Theory For Upholding The Warrantless Search – That The Search Can Be Justified Based On Mr. Ayala’s Diminished Expectations Of Privacy – Is Without Merit And Should Be Rejected | 7 |
| CONCLUSION | 9 |
| CERTIFICATE OF MAILING | 10 |

TABLE OF AUTHORITIES

Cases

Clear Springs Foods, Inc. v. Spackman, 150 Idaho 790 (2011).....7

Devenpeck v. Alford, 543 U.S. 146 (2004).....4

Frasier v. Carter, 92 Idaho 79 (1968)7

Heckman Ranches, Inc. v. State, By & Through Dep’t of Pub. Lands, 99 Idaho 793 (1979)7

Marchbanks v. Roll, 142 Idaho 117 (2005)7

Mickelsen Const., Inc. v. Horrocks, 154 Idaho 396 (2013).....7

Morrissey v. Brewer, 408 U.S. 471 (1972).....5

Samson v. California, 547 U.S. 843 (2006)8

State v. Cruz, 144 Idaho 906 (Ct. App. 2007)8

State v. Garcia-Rodriguez, 162 Idaho 271 (2017).....7

State v. Green, 158 Idaho 884 (2015)4, 6

State v. Guzman, 122 Idaho 981 (1992).....8

State v. Lee, 162 Idaho 642 (2017)4, 5

United States v. Knights, 534 U.S. 112 (2001).....8

Virginia v. Moore, 553 U.S. 164 (2008)4, 6

Wong Sun v. United States, 371 U.S. 471 (1963)8

Statutes

I.C. § 20-227.....6

STATEMENT OF THE CASE

Nature of the Case

This case challenges the constitutional validity of a police officer's warrantless arrest of a parolee, Jesus George Ayala, without probable cause to believe Mr. Ayala had committed any crime, and without any other valid arrest authority.

The police officer arrested Mr. Ayala based solely on the oral request of a parole officer to locate and pick up Mr. Ayala for absconding from his parole supervision. The parole officer told police he intended to issue an agent's warrant, but before the agent's warrant was prepared, the police officer arrested Mr. Ayala. During the search incident to that arrest, the police discovered drugs and paraphernalia in Mr. Ayala's possession.

Mr. Ayala moved to suppress, claiming the police violated his constitutional rights against unreasonable seizures and searches by arresting him without a warrant, without probable cause to believe he was committing a crime, and without other valid arrest authority. The district court denied the motion, concluding that the parole officer's oral request to arrest Mr. Ayala provided police both probable cause to make the arrest, and the authority to act on behalf of the parole officer, as his agents, to make a warrantless arrest.

On appeal, Mr. Ayala contends that the district court's conclusions are erroneous and that the decision denying his suppression motion should be reversed. This Reply Brief is necessary to address the State's argument that probable cause to believe a person has violated his parole supervision agreement provides the police officers with constitutional probable cause to arrest. Regarding his excessive sentence, Mr. Ayala respectfully refers the Court to his Appellant's Brief, at pages 14-17.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings are set forth in Mr. Ayala's Appellant's Brief, at pages 1-4, and are not be repeated in this Reply Brief.

ISSUES

- I. Did the district court err when it denied Mr. Ayala's motion to suppress?
- II. Did the district court abuse its discretion by imposing an excessive sentence?

ARGUMENT

I.

The District Court Erred When It Denied Mr. Ayala's Motion To Suppress

A. The District Court Erroneously Concluded That Knowledge Of Mr. Ayala's Status As An Parole Absconder Provided The Police Officer Probable Cause To Arrest Mr. Ayala; The State's Argument To The Contrary Is Without Merit

The State asserts on appeal that, “[b]ecause the arrest for the parole violation was supported by probable cause, the district court correctly found no constitutional violation in the arrest.” (Respondent’s Brief, p.4.) This assertion is incorrect. The district court’s conclusion – that knowledge of Mr. Ayala’s absconding status gave probable cause to make the arrest – was erroneous. Under the long-standing probable cause exception to the warrant requirement, “a warrantless arrest by a law officer is reasonable [and lawful] under the Fourth Amendment where there is probable cause to believe that a *criminal offense* has been or is being committed.” *State v. Lee*, 162 Idaho 642, ___, 402 P.3d 1095, 1103 (2017) (quoting *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004)) (brackets original to *Lee* opinion) (emphasis added); *see also Virginia v. Moore*, 553 U.S. 164, 174–78 (2008) (an arrest is “lawful” under the Fourth Amendment if “officers have probable cause to believe that a person has committed a *crime* in their presence”). *See also State v. Green*, 158 Idaho 884, 888 (2015) (holding the Idaho Constitution’s “probable cause to arrest” standard authorizes police to make warrantless arrests for a “felony” or “for a public offense committed or attempted in his presence.”)

As demonstrated in Appellant’s Brief, absconding from parole supervision is *not* a crime or public offense in Idaho. (Appellant’s Brief, p.9.) Consequently, the police officers’

knowledge that Mr. Ayala may have¹ absconded from his parole supervision did not give the police officers probable cause to arrest him. The district court's contrary conclusion is erroneous.

1. The State Has Mischaracterized Mr. Ayala's Argument

The State claims that Mr. Ayala is arguing that “the constitution ... does not allow arrests for probation or parole violations that are not independent crimes” (Respondent's Brief, p.4), and that “that violators of probation and parole are entitled to remain at large indefinitely” (Respondent's Brief, p.5). This characterization of Mr. Ayala's argument is incorrect. What Mr. Ayala argues here is simply that the constitutional “probable cause” standard, which authorizes the police to make warrantless arrests, applies where the police have probable cause to believe the person has committed a *crime*. Under this well-established standard, probable cause was lacking in this case and the district court's conclusion to the contrary was erroneous.

2. The State's Reliance On *Morrissey v. Brewer* Is Misplaced

The burden rests with the State to establish that the warrantless arrest of Mr. Ayala was valid, *see State v. Lee*, 162 Idaho 642 (2017), and the State has failed to carry that burden. The State claims that *Morrissey v. Brewer*, 408 U.S. 471 (1972), supports the district court's conclusion that constitutional probable cause to arrest may be based on a parole violation. (Respondent's Brief, p.5.) This is the sole legal authority cited by the State. (*See generally* Respondent's Brief.) However, *Morrissey* deals exclusively with the requirements of due process *after* a parolee has been arrested and before his parole may be revoked. *Id.* The decision

¹ The evidence shows only that the police officers received information that Mr. Ayala was “wanted” by his parole officer, and that the parole officer intended to issue an agent's warrant; however, there is no evidence that the police officers were apprised of the actual facts underlying the parole officer's request. (*See generally* Tr.)

is not concerned with the parolee's initial arrest, except to observe that the event typically occurs at the direction of the parole officer, and that it may take place at some distance from the parolee's institution. *Id.* This opinion provides no authority for the State's proposition that the Fourth Amendment's "probable cause" standard allows a police officer to make an arrest based on his belief that the person is in violation of his parole.

3. The State's Reliance On *Virginia V. Moore* And *State V. Green* Is Misplaced

The State's reliance on *Virginia v. Moore*, 553 U.S. at 171, and *State v. Green*, 158 Idaho 884 (2015) is also misplaced. (See Respondent's Brief, p.6.) Contrary to the State's claim, Mr. Ayala does *not* argue on appeal that "the arrest was invalid under I.C. § 20-227" (Respondent's Brief, p.5), and contrary to the State's argument (Respondent's Brief, p.6), he does not argue that the officers *violated* that statute. Rather, as detailed in his Appellant's Brief, Mr. Ayala's argument is that the police officer violated his Fourth Amendment rights by arresting him without a warrant, without constitutional probable cause, and without any other valid authority to make the arrest. Mr. Ayala's *only* appellate argument² regarding I.C. § 20-227³ is that the parole officer's arrest authority granted by that statute *was never invoked*: the

² Below, Mr. Ayala made an argument that the failure to comply with the statute warranted suppression under the Fourteenth Amendment, but as noted in Appellant's Brief, at page 6, n.6, he has not pursued that argument on appeal.

³ Idaho Code § 20-227 (1) provides,

Any parole or probation officer may arrest a parolee or probationer ... without a warrant, or may deputize any other officer with power of arrest to do so, *by giving such officer a written statement* hereafter referred to as an agent's warrant, setting forth that the parolee or probationer ... in the judgment of said parole or probation officer, violated ... the conditions of his parole or probation

I.C. § 20-227 (1) (emphasis added). This statute grants a parole officer the authority to (1) make a warrantless arrest of a parolee, or (2) "deputize" any other "officer with arrest power" to do so "by giving such officer a written statement" known as an agent's warrant. *Id.* The statute prescribes *who* the parole officer can deputize (i.e., any other officer with arrest power), and *how* the parole officer must deputize such officer (i.e., by

parole officer did not make the arrest, and he did not deputize any other officer to do so until after police had taken Mr. Ayala into custody and searched him. (Appellant’s Brief, p.12.)

B. The State’s Alternative Legal Theory For Upholding The Warrantless Search – That The Search Can Be Justified Based On Mr. Ayala’s Diminished Expectations Of Privacy – Is Without Merit And Should Be Rejected

The State agrees that the district court erred to the extent it found the warrantless arrest was justified based on Mr. Ayala’s diminished expectations of privacy as a parolee. (Respondent’s Brief, p.6.) However, the State argues, in a footnote, that the police officer’s *search* conducted incident to the constitutionally unlawful arrest may be justified by his reduced expectation of privacy. (Respondent’s Brief, p.6, n.1.) The State’s argument should be rejected for several reasons.

First, the State did not raise this argument below. As the Idaho Supreme Court clearly has stated:

“This Court will not consider issues raised for the first time on appeal.” *Mickelsen Const., Inc. v. Horrocks*, 154 Idaho 396, 405, 299 P.3d 203, 212 (2013) (quoting *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 812, 252 P.3d 71, 93 (2011)). “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.” *Heckman Ranches, Inc. v. State, By & Through Dep’t of Pub. Lands*, 99 Idaho 793, 799–800, 589 P.2d 540, 546–47 (1979); *Marchbanks v. Roll*, 142 Idaho 117, 119, 124 P.3d 993, 995 (2005); *Frasier v. Carter*, 92 Idaho 79, 82, 437 P.2d 32, 35 (1968) (“We have held generally that this court will not review issues not presented in the trial court, and that parties will be held to the theory on which the cause was tried.”).

State v. Garcia-Rodriguez, 162 Idaho 271, 275 (2017).

giving such officer a written statement). *Id.* Here, the parole officer failed to invoke his arrest authority under the statute: he did not make the arrest, and he did not deputize any other officer to do so until after police had taken Mr. Ayala into custody and searched him.

Second, even if this Court were to consider the State's newly-raised argument, this Court should reject the argument because, as argued in Appellant's Brief, at page 8, the arrest in this case violated Mr. Ayala's Fourth Amendment rights, and the fruits of the search conducted incident to that unlawful arrest must therefore be suppressed under *Wong Sun v. United States*, 371 U.S. 471, 484–85 (1963), and *State v. Guzman*, 122 Idaho 981, 988-98 (1992). Mr. Ayala's status as a parolee does not deprive him of that remedy.

Third, and as noted in Appellant's Brief, the State did not introduce the terms or conditions of Mr. Ayala's parole supervision agreement; because parolees' and probationers' privacy interests are diminished by the terms and conditions of their parole or probation agreements,⁴ the extent to which Mr. Ayala's privacy expectations *may* have been diminished by such terms or conditions cannot be evaluated by this Court. Specifically, there is no evidence before this Court of any term or condition requiring that Mr. Ayala submit to searches by the police.

Thus, the State has failed to carry its burden of showing that the warrantless arrest of Mr. Ayala was constitutionally lawful. Contrary to the conclusions of the district court, the police lacked probable cause to arrest because they had no reason to believe Mr. Ayala was committing any crime; and the State has failed to establish that the arrest fell within any other recognized exception to the warrant requirement. The exclusionary rule should be applied in this

⁴ See, e.g., *State v. Cruz*, 144 Idaho 906, 911 (Ct. App. 2007) (“Cruz’ parole condition significantly diminished his reasonable expectation of privacy *because* it subjected him to searches of person or property, including residence and vehicle, *at any time and place* and did not expressly require reasonable suspicion or reasonable grounds”); *United States v. Knights*, 534 U.S. 112, 119 (2001) (probationer’s consent to suspicionless searches by probation officers and law enforcement officers, found in probation agreement, significantly diminished probationer’s reasonable expectation of privacy); *Samson v. California*, 547 U.S. 843, 852 (2006) (California parolee’s privacy expectations significantly diminished by state-imposed circumstances

case to suppress the evidence obtained as the result of that illegal seizure, and the district court's denial of the suppression motion should be reversed.

CONCLUSION

For the reasons stated above, and those set forth in his Appellant's Brief, Mr. Ayala respectfully requests that this Court vacate the district court's order of judgment and commitment, reverse the order denying his motion to suppress, and remand this case to the district court for further proceedings. Alternatively, he asks that this Court reduce his sentence, or else vacate his sentence and remand the case to the district court for resentencing.

DATED this 25th day of April 2018.

_____/S/_____
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

“including the plain terms of the parole search condition” subjecting parolees to warrantless arrests and suspicionless searches by both law enforcement and probation officers).

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 25th day of April 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:

JESUS GEORGE AYALA
INMATE #102900
ISCC
PO BOX 70010
BOISE ID 83707

DEBORAH A BAIL
DISTRICT COURT JUDGE
Via e-mail to: dcbailde@adaweb.net

CRAIG H DURHAM
FERGUSON DURHAM PLLC
Via e-mail to: chd@fergusondurham.com

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
Via e-mail to: ecf@ag.idaho.gov

_____/S/_____
MAGALI CEJA
Administrative Assistant

KAC/mc