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State v. Maloney Appellant's Brief 2 Dckt. 47365

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	**NO. 47365-2019**
	)	
v.	)	**TWIN FALLS COUNTY**
	)	**NO. CR42-18-6021**
DAISHA LYNN MALONEY,	)	
	)	**REPLY BRIEF**
Defendant-Appellant.	)	
	)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

HONORABLE BENJAMIN J. CLUFF
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Daisha Maloney contends that the search of her purse in this case was not justified by the automobile exception because her purse was not a container in the car when probable cause to search the car was developed, as discussed in an unpublished opinion from the Idaho Court of Appeals. She explained this Court should formally adopt the Court of Appeals' analysis to answer this open question in Idaho because it was consistent with the relevant Idaho precedent and overall Fourth Amendment jurisprudence. She also noted that most other jurisdictions to directly address the question have adopted that same analysis and or reinforce that it is the appropriate analysis to use.

The State did not discuss the Idaho precedent or the Court of Appeals' unpublished decision at all in its analysis of this case. That failure is troubling because the district court's rationale, which the State advocated as the "common sense" analysis, actually runs counter to the relevant Idaho and overall Fourth Amendment jurisprudence. Moreover, the only case the State cites in support of its position (from Iowa) does not actually support its argument. In fact, the Iowa Court of Appeals has, in an unpublished decision, actually explained how the very argument the State made in that regard is erroneous. While the State acknowledged the Iowa Court of Appeals' unpublished opinion, it misrepresented the nature of its analysis on this issue.

For all these reasons, this Court should reject the State's argument and formally answer this question of first impression by adopting the well-reasoned analysis reflected in the Idaho Court of Appeal's unpublished opinion. As such, it should reverse the district court's decision denying Ms. Maloney's motion to suppress.

Statement of the Facts and Course of Proceedings

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

ISSUE

Whether the search of Ms. Maloney's purse was not lawful under the automobile exception because her purse was not in the car when the officer developed probable cause to search the car.

ARGUMENT

The Search Of Ms. Maloney's Purse Was Not Lawful Under The Automobile Exception Because Her Purse Was Not In The Car When The Officer Developed Probable Cause To Search The Car

A. The State's Argument Is Inconsistent With The Relevant Idaho Precedents And Fourth Amendment Jurisprudence

Ms. Maloney detailed how the relevant Idaho precedent demonstrates that the Court of Appeals' unpublished opinion in *State v. Holt*, 2017 WL 3574623 (Ct. App. 2017),[1] was well reasoned and its analysis as to why a container that was not in the car when probable cause to search the car developed cannot be searched pursuant to the automobile exception should be formally adopted. (App. Br., pp.5-9.) The State did not mention *Holt* at all and it did not contest Ms. Maloney's analysis of how the other Idaho cases support the analysis in *Holt*. (*See generally* Resp. Br.) Rather, it simply asserts that the district court's contrary view represents the "common sense reasoning" on this issue. (Resp. Br., p.8.) This Court should reject the State's unsupported assertion in that regard because the relevant Idaho precedent reveals that the district court's reasoning is actually contrary to the applicable Fourth Amendment jurisprudence, and therefore, actually not the common-sense approach.

As both the Idaho Court of Appeals and United States Supreme Court have made clear, the automobile only applies when "probable cause exists to believe *a vehicle* contains evidence

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[1] As in her Appellant's Brief, Ms. Maloney continues to recognize that unpublished decisions do not constitute precedent, and she does not cite *Holt* as authority requiring a particular decision in this case. Rather, she merely references it as a historical example of how a learned court has analyzed the question at issue here and urges this Court to adopt that well-reasoned analysis. *Compare Staff of Idaho Real Estate Comm'n v. Nordling*, 135 Idaho 630, 634 (2001) (quoting *Bourgeois v. Murphy*, 119 Idaho 611, 617 (1991)) ("When this Court had cause to consider unpublished opinions from other jurisdictions because an appellant had discussed the cases in his petition, we found the presentation of the unpublished opinions as 'quite appropriat[e].' Likewise, we find the hearing officer's consideration of the unpublished opinion, not as binding precedent but as an example, was appropriate.").

of criminal activity," and so, only authorizes "the search of any area *of the vehicle* in which the evidence might be found." *State v. Newman*, 149 Idaho 596, 600 (Ct. App. 2010) (emphasis added); *accord Wyoming v. Houghton*, 526 U.S. 295, 300 (1999) (explaining "the Framers would have regarded as reasonable (if there was probable cause) the warrantless search of containers *within* an automobile") (emphasis from original). Thus, common sense says that, when a purse is no longer *within* the vehicle when probable cause to search the vehicle develops, the purse is not an area *of the vehicle* in which the suspected evidence might be found, and therefore, not subject to the automobile exception.

In other words, the problem with the State's argument is that it "places too much emphasis on probable cause" in a vacuum rather than actually analyzing it within the context of the particular exception to the warrant requirement at issue. *See State v. Blythe*, ___ Idaho ___, 462 P.3d 1177, 1182 (2020) (rejecting a similar argument under the search-incident-to-arrest exception to the warrant requirement). Probable cause "does not, by itself, justify a search" without a warrant. *Id.* While probable cause is certainly a necessary prerequisite for such a search, it only authorizes a warrantless search if it exists alongside a justification for not getting a warrant. *See id.* Therefore, even when probable cause exists, the search must still serve the historical rationales for not requiring the officer to seek a warrant upon which the particular exception is based. *Id.* at 1182-83.

There are two historical rationales for not requiring an officer to get a warrant to search a car when he has probable cause to believe there is contraband in the car: the extraordinary mobility of cars and the diminished expectation of privacy that exists in cars. *State v. Bottleson*, 102 Idaho 90, 92 (1981). However, "the automobile exception does not generally extend to the warrantless search of luggage within an automobile." *Id.* In other words, those two historical

rationales do not automatically justify the search of containers just because "probable cause," as a nebulous concept, develops during the stop. *Compare Blythe*, 462 P.3d at 1182.

Rather, as noted in the Appellant's Brief, the probable cause analysis is limited to the specific facts of the situation at issue. Thus, probable cause to search the trunk of a car does not justify a search of the passenger compartment or containers in the passenger compartment under the automobile exception. *California v. Acevedo*, 500 U.S. 565, 580 (1991). The reverse is also true – the officers cannot search a container in the trunk of a car if they only have probable cause to believe contraband will be found in the passenger compartment. *State v. Schmadeka*, 136 Idaho 595, 600 (Ct. App. 2001). This jurisprudence also reveals that the mobility rationale does not automatically justifies the search of all containers in the car at the time of the stop. The State offered no analysis about this jurisprudence, and as such, the State's contrary position cannot represent the "common sense" rationale under the Fourth Amendment. (*See generally* Resp. Br.)

The State's argument gains no more traction with respect to other historical rationale for the automobile exception. As noted in the Appellant's Brief, the Idaho Court of Appeals has expressly and unambiguously held that the diminished expectation of privacy that a person has in an automobile "does not mean that an officer can search a bag without probable cause." *State v. Lovely*, 159 Idaho 675, 678 (Ct. App. 2016). The automobile exception simply allows that probable cause to search the car will extend to containers that are *within* the car, since those containers are, at the moment probable cause develops, still subject to the diminished expectation of privacy. *See Houghton*, 526 U.S. at 300. Again, the State offered no analysis about this jurisprudence. (*See generally* Resp. Br.) Since Ms. Maloney's purse was no longer in the car when the probable cause to search the car developed, it was not subject to the diminished

expectation of privacy that attaches to car at that time. As such, the search of her purse did not serve that historical rationale either.

All this demonstrates the common-sense understanding in the Fourth Amendment jurisprudence that the focus of the *automobile* exception is whether the authorization to search *the automobile* extends to a container *in the automobile* – whether the container is a place where the contraband might be found *in the automobile.* If the container is in the car when the officer develops probable cause to search the car, the container can be searched as part of the car. But if the container is not in the car when the officer develops probable cause, it cannot be searched because it is not a part of the car where contraband is suspected.

Simply put, "[t]he fact that the container was within an automobile controls" the analysis under the automobile exception. *State v. Gallegos*, 120 Idaho 894, 898 (1991). Or, as the United States Supreme Court explained: "The critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought." *Houghton*, 526 U.S. at 302 (internal quotation omitted). The property to be searched under the *automobile* exception is the automobile itself. *See id.* As such, "[w]hen there is probable cause to search for contraband in a car, it is reasonable for police officers . . . to examine packages and containers without a showing of individualized probable cause for each one" because they are "'in' the car, and the officer has probable cause to search for contraband *in* the car." *Houghton*, 526 U.S. at 302 (emphasis from original). Thus, the common-sense analysis under the applicable Fourth Amendment jurisprudence says that, when a purse is no longer *in the car* when probable cause to suspect contraband *is in the car*, that means the purse is no longer a place where contraband might be found *in the car*. *See id.* As a result, the actual

common-sense analysis, per the applicable Fourth Amendment jurisprudence, demonstrates that a purse removed from the car before probable cause develops is beyond the scope of the automobile exception.

In fact, this precise common-sense analysis is reflected in the Court of Appeals' unpublished decision in *Holt*, which provides a historical example of how a learned court in Idaho has actually already assessed this very question. *Holt*, 2017 WL 3574623. And yet, the State argues that common sense runs to the contrary without so much as acknowledging this recent historical example or discussing the relevant Fourth Amendment jurisprudence that supports it. (*See generally* Resp. Br.) Therefore, this Court should adopt the Court of Appeals' well-reasoned rule from *Holt* in formally answering this question of first impression in Idaho, since it reflects the actual common-sense analysis which consistent with the applicable Fourth Amendment jurisprudence.

B. When Fully Read, The Iowa Case Which The State Cited Does Not Actually Support The State's Argument; In Fact, The Iowa Court Of Appeals Has, In An Unpublished Opinion, Explained The State's Argument Is Wrong On Its Face

Other jurisdictions which have actually addressed this issue have adopted the same reasoning the Court of Appeals used in *Holt*, and the analysis used by still other jurisdictions reinforce the conclusion that it is the appropriate, common-sense analysis under the Fourth Amendment. (*See* App. Br., pp.6-9 (discussing the other cases in detail).) In a footnote, the State asserts, without any analysis, that several of the decisions from other jurisdictions simply recognize probable cause as part of the formulation of the automobile exception. (Resp. Br., p.6 n.1.) However, just as the State did not contradict Ms. Maloney's analysis of how the Idaho precedent supports the *Holt* reasoning, it did not actually contradict her analysis of how those other states' applications of the automobile exception reinforce *Holt*'s reasoning. (*See generally*

Resp. Br.) As such, for the same reasons discussed in Section A, *supra*, all these opinions from sister jurisdictions further reveal why the Court of Appeals' analysis in *Holt* represents the common-sense approach under the Fourth Amendment.

The only case which the State actually cited in support of its counterargument from any jurisdiction was *State v. Eubanks*, 355 N.W.2d 57, 60 (Iowa 1984). (*See generally* Resp. Br., pp.6-9.) However, a full reading of *Eubanks* reveals it actually supports Ms. Maloney's argument, not the State's.

In *Eubanks*, probable cause developed before the container was removed from the car: "As the officer approached the car, he detected an odor of marijuana emanating from the interior." *Id.* at 58. As a result, the officer could, indeed, search all containers that were in the car "when it was stopped," because they were, in the totality of those circumstances, all containers representing areas *in the car* in which the suspected contraband might be found. *Id.* However, the Iowa Supreme Court also pointed out the search in that case was appropriate was because the officer "could lawfully open and examine all containers within the vehicle *from the time probable cause appeared*." *Id.* at 60 (emphasis added); *compare Houghton*, 526 U.S. at 300 (explaining "the Framers would have regarded as reasonable (*if there was probable cause*) the warrantless search of containers within an automobile") (emphasis altered). As such, the Iowa Supreme Court's analysis actually tracks with the common-sense perspective adopted by most other jurisdictions and which is reflected in Idaho's precedent. *See, e.g., State v. Smith*, 152 Idaho 115, 120-21 (Ct. App. 2011) (where an officer developed probable cause that the car contained contraband as he approached the car, he could search all containers in the car at that time, regardless of whether one was subsequently removed from the car).

The Iowa Court of Appeals has, in fact, actually reached this same conclusion and, in the process, explained that the very way the State is now trying to use *Eubanks* is improper. *State v. Campbell*, 908 N.W.2d 539, *1 n.2 (Iowa Ct. App. 2017) (emphasis from original), *unpublished*.[2] The State mentions *Campbell* in a footnote, asserting that it merely includes probable cause as a part of the analysis. (Resp. Br., p.6 n.1.) That drastically misrepresents the analysis conducted in *Campbell* because *Campbell* went on to endorse the very argument Ms. Maloney is making.

In *Campbell*, the prosecutor had argued in the trial court that the search of the purse should be upheld based on the language in *Eubanks* which talked about searching all the containers in the car when it was stopped. *Campbell*, 908 N.W.2d 539 (Table), at *1. Although the prosecutor abandoned that argument on appeal, the *Campbell* Court nevertheless proceeded to explain why that argument was flawed. *Id.* at *1 n.2.

Specifically, the *Campbell* Court explained, "the automobile exception permits all containers *inside* a vehicle to be searched at the time when probable cause to search arises, not all containers located in the vehicle at the time the vehicle is stopped. *See State v. Eubanks* . . . ." *Id.* (emphasis from original). It noted that *Eubanks* was the product of the specific facts in that case, since, "[o]ften the lawful stop of the vehicle and the probable cause to search will occur contemporaneously, as in *Eubanks*, where the officer smelled marijuana as the officer approached the car."[3] *Id.* (citing *Eubanks*, 355 N.W.2d at 58). It was this specific fact – that the

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[2] As with *Holt*, *Campbell* is cited, not as controlling precedent, but merely as a historical example of how yet another learned court has analyzed the question at issue here. *See Nordling*, 135 Idaho at 634; *Bourgeois*, 119 Idaho at 617.

[3] *Campbell*'s acknowledgement that probable cause will "often" arise before containers can be removed from the car reinforces Ms. Maloney's point that the district court's concern about occupants trying to thwart searches by removing containers from the car is unfounded. (App. Br., p.12.) Rather, most cases will be resolved like *Smith*, 152 Idaho at 120-21 – where probable

officer in *Eubanks* had probable cause before the purse was removed from the car – which, allowed for that purse to be searched under the automobile exception in *Eubanks*:

> Eubanks's removal of her purse after the officer asked her to step out of the vehicle did not insulate the purse from the automobile exception search because the purse was in the vehicle at the time the officer smelled the marijuana. *Id.* at 60 ("Once the patrolman lawfully stopped the car *and* had probable cause to search for contraband, all containers within the car when it was stopped were fair game for the car search. Defendant had no right to insulate her purse or any other container from a lawful warrantless search by the simple expedient of physically removing the purse and its contents from the car *while* the search was in progress." (emphasis added))

Campbell, 908 N.W.2d 539 (Table), at *1 n.2 (emphasis from *Campbell*). However, the Iowa Court of Appeals specifically continued, "[i]n this case, both the stop of the car for the registration violation and the officer's instruction to Campbell to place her purse back in the car, *preceded* the time when probable cause to search the car arose due to the discovery of the marijuana in the center console during the inventory search." *Id.* (emphasis from original). Thus, the prosecutor's argument in *Campbell* misread and misapplied *Eubanks*. *Id.*

As such, a full reading of *Campbell*'s analysis demonstrates it did far more than simply acknowledge probable cause as a part of the analysis as the State contends. It specifically explained how the very argument the State is offering in Ms. Maloney's case represents an erroneous application of *Eubanks* and how *Eubanks* actually supports the argument Ms. Maloney is making. *Id.*

Since even the lone case cited by the State actually supports Ms. Maloney's argument, this Court should join its sister jurisdictions in formally recognizing the common-sense analysis articulated in *Holt* – that, when a purse is not *in the car* when probable cause arises to search *the car*, the purse cannot be said to be an area *inside the car* where the suspected contraband might

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cause develops almost immediately, and as such, the subsequent removal of the container from the car will not prevent a search of the container.

be found. As a result of that common-sense reasoning, consistent with the applicable Fourth Amendment precedent, Ms. Maloney's purse could not be searched under the *automobile* exception in those circumstances because it simply was not part of *the automobile* when the ability to search *the automobile* arose.

CONCLUSION

Ms. Maloney respectfully requests this Court vacate her conviction, reverse the order denying her motion to suppress, and remand this case for whatever additional proceedings might be needed.

DATED this 1st day of July, 2020.

/s/ Brian R. Dickson
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of July, 2020, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

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BRD/eas