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

STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	**NO. 49210-2021**
	)	
v.	)	**TWIN FALLS COUNTY**
	)	**NO. CR42-21-4019**
CAMILLE J. POOL,	)	
	)	**RESPONDENT'S BRIEF**
Defendant-Respondent.	)	
	)	

BRIEF OF RESPONDENT

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

While Idaho's appellate courts have not previously determined the precise issue in this case—whether a probationer who waives their Fourth Amendment rights retains their Idaho constitutional rights—Idaho precedent answers the question in the affirmative. In Camille Pool's case, the district court held that, despite waiving her Fourth Amendment rights pursuant to a term of her misdemeanor probation, Camille Pool retained her rights to be free from unreasonable searches and seizures protected by the Idaho Constitution. Because Idaho courts do not blindly apply federal constitutional interpretations when interpreting the Idaho Constitution, and because Idaho courts evaluate specific probation agreement language when determining the scope of a probationer's waiver, the district court correctly granted Ms. Pool's suppression motion. Ms. Pool asserts that the State has failed to demonstrate error in the district court's order granting her motion to suppress evidence unlawfully obtained during a probation search.

Statement of the Facts and Course of Proceedings

Camille Pool was convicted of misdemeanor DUI, and on May 27, 2020, she was placed on probation for a period of eighteen months. (7/26/21/21 Tr., p.8, L.22 - p.9, L.23; Exh., p.5.) At her sentencing hearing, Ms. Pool was told she would be required to waive her "Fourth Amendment rights" in order to be placed on probation, and she told the magistrate court she did not have any questions about the terms of probation as orally recited by the court. (R., p.81; Exh., p.20.) Ms. Pool did not sign a written waiver of her Fourth Amendment rights; however, a copy of the Judgment stating that she was on probation and waived her Fourth Amendment rights was mailed to Ms. Pool. (R., pp.81-82; Exh., p.5.)

While on probation, Ms. Pool was discharged from a drug and alcohol treatment program. (7/26/21 Tr., p.15, Ls.6-13.) On April 14, 2021, Ms. Pool's probation officer, Mirnez Alic, learned of this and stopped by her home for a "house check." (7/26/21 Tr., p.15, L.22 – p.16, L.8.) Before the officers walked through Ms. Pool's home, Officer Alic talked to Ms. Pool and "brought up [the] 4th amendment waiver to warrantless search and seizures and she said she understood." (7/26/21 Tr., p.17, Ls.5-8.) During the walkthrough, officers located marijuana, paraphernalia, methamphetamine, and alcohol. (7/26/21 Tr., p.18, L.3 – p.18, L.25; R., p.82.) Based on these facts, Ms. Pool was charged by Information with one count of possession of methamphetamine and one count of misdemeanor possession of drug paraphernalia. (R., pp.22-24.)

Ms. Pool moved to suppress the evidence, arguing that her home was searched in violation of her rights under the Fourth, Fifth, Sixth and Fourteenth Amendments of the United States Constitution, and Article I, Sections 13 and 17, of the Idaho Constitution, and the evidence gathered against her should be suppressed as fruits of the unlawful search. (R., pp.35-76.)

The State did not respond to Ms. Pool's motion to suppress and addendums. (R., pp.4-5.)

The district court held a hearing on the motion to suppress. The State conceded standing and called Officer Alic. (7/26/21 Tr., p.7, Ls.2-17.) Officer Alic testified regarding the circumstances surrounding the search of Ms. Pool's home. (*See generally*, 7/26/21 Tr.) The State admitted several exhibits, including the judgment from Ms. Pool's misdemeanor case which provided that Ms. Pool "specifically waives his/her 4th Amendment right to warrantless search[es] of his/her person, vehicle, or residence," and "[b]y signing this judgment the defendant acknowledges and accepts the terms and conditions of probation." (Exh., p.5.) The Judgment was unsigned and, in place of Ms. Pool's signature, someone had handwritten "Mailed

to defendant." (Exh., p.5.) The evidence submitted during the suppression hearing also included a transcript of Ms. Pool's sentencing hearing, in which she told the magistrate court that she did not have any questions about the court's requirement that she waive her "Fourth Amendment right against search and seizure." (Exh., p.20.)

Defense counsel argued that Ms. Pool did not waive either her Fourth Amendment or her Idaho constitutional rights. (7/26/21 Tr., p.25, L.8 – p.33, L.12.) Alternatively, defense counsel asserted that, should the district court conclude that Ms. Pool validly waived her Fourth Amendment rights, the waiver did not encompass Ms. Pool's rights protected by Article I, Section 17, of the Idaho Constitution. (7/26/21 Tr., p.29, Ls.17-23.)

The district court took the matter under advisement. (7/26/21 Tr., p.43, Ls.7-9.) The court issued a written decision, in which it found that the Fourth Amendment waiver was valid, despite the administrative errors. (R., pp.80-92.) The court concluded that the unsigned Judgment was insufficient to constitute a valid Fourth Amendment waiver, and that no waiver was included in the Probation Agreement. (R., p.86.) However, the district court found that, through the sentencing court's discussion with Ms. Pool regarding the Fourth Amendment waiver, Ms. Pool validly waived her Fourth Amendment right to be free from searches and seizures. (R., p.86.)

The district court further concluded that Ms. Pool did not waive her rights to be free of searches and seizures as provided in the Idaho Constitution. (R., pp.80-92.) The court noted that, while the police in this case acted in good faith, that fact does not cure the defect in the search because the good faith exception is inapplicable under the Idaho Constitution. (R., p.91.) The court concluded that the search of Ms. Pool's home was not the product of a warrant or an exception to the warrant requirement; thus, the evidence obtained pursuant to the search of her

home must be suppressed under the Idaho Constitution. (R., p.91.) The State appealed. (R., pp.95-98.)

ISSUE

The State presented the issue as:

Did the district court erroneously conclude that Pool did not consent to probation searches of her residence?

Ms. Pool rephrases the issue as:

Did the State fail to show that the district court erred in granting Ms. Pool's motion to suppress?

ARGUMENT

The District Court Correctly Granted Ms. Pool's Motion To Suppress

A. Introduction

Ms. Pool moved the district court to suppress the evidence seized in violation of her constitutional rights. In granting the motion to suppress, the district court carefully set forth the facts by which it concluded that Ms. Pool waived her Fourth Amendment right to be free from unreasonable searches and seizures. The district court then analyzed the distinction between rights protected by the Federal Constitution and Idaho constitutional rights, and correctly concluded that Ms. Pool did not waive her rights under the Idaho Constitution. This Court should affirm the order granting Ms. Pool's motion to suppress.

B. Standard Of Review

This Court uses a bifurcated standard to review a district court's order on a motion to suppress. *State v. Danney*, 153 Idaho 405, 408 (2012); *see also State v. Hunter*, 156 Idaho 568, 571 (Ct. App. 2014) (same). This Court will accept the trial court's findings of fact "unless they are clearly erroneous." *State v. Wulff*, 157 Idaho 416, 418 (2014). This Court exercises free review of "the trial court's application of constitutional principles to the facts found." *Danney*, 153 Idaho at 408.

C. The District Court Correctly Granted Ms. Pool's Motion To Suppress

The State has not challenged any of the district court's factual findings in this appeal. As such, the question for this Court is whether, in light of the facts found by the district court, the district court erred in granting Ms. Pool's motion to suppress. Ms. Pool submits that the district

court's ruling granting her motion to suppress was amply supported both by the evidence and by governing case law, and that this Court should therefore affirm the district court.

In its opening Appellant's Brief, the State challenged the district court's conclusion that Ms. Pool did not waive her rights under the Idaho Constitution. In support of its claim, the State argued that Ms. Pool's Judgment (Exh., p.5) demonstrated that the parties "intended the terms of probation to include warrantless searches of Pool's residence." (App. Br., p.5.) However, the district court concluded that Ms. Pool's unsigned misdemeanor Judgement was insufficient to establish a waiver of even her Fourth Amendment rights. (R., p.86.) The State's argument that the intent of the parties is apparent from an unsigned Judgement is fallacious, and the State's argument is unsupported by the evidence it purports to rely upon. (R., pp.5-6.)

1. A Search and Seizure Waiver Executed As A Condition Of Probation Is Interpreted By Analyzing The Scope Of Consent

The State argued, "[t]he district court erred by looking only at the scope of Pool's waiver rather than what she consented to." (App. Br., p.4.) The State appears to be urging this Court to adopt a new standard whereby consent to search is evaluated using a "reasonable person" standard. Such a standard is contrary to prevailing Idaho case law, which provides that any analysis of a waiver by consent must consider the scope of consent. *See, e.g., State v. Turek*, 150 Idaho 745, 749 (Ct. App. 2011). Idaho case law in this area is well-established, and this Court should decline to adopt the State's proposed new standard.

One exception to the warrant requirement is for searches conducted with consent voluntarily given by a person who has the authority to do so. *See e.g., Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973). The consent exception encompasses Fourth Amendment waivers given as a condition of probation or parole, which operate as consent to search. *State v.*

Purdum, 147 Idaho 206, 208 (2009); *State v. Gawron*, 112 Idaho 841, 843 (1987). When the basis for a search is consent, the State must conform its search to the limitation placed upon the consent. *Turek*, 150 Idaho at 749. "The standard for measuring the scope of consent under the Fourth Amendment is that of objective reasonableness." *Id.* (citing *Florida v. Jimeno*, 500 U.S. 248, 251 (1991)). It is the State's burden to demonstrate that the consent exception applies. *State v. Garnett*, 165 Idaho 845, 848 (2019), *reh'g denied* (2019).

The State asserts that the standard for measuring the scope of consent is that of objective reasonableness. (App. Br., p.6.) The State relies upon *Turek* to support its claim that the court must "examine how a reasonable person in the probationer's place would have understood the probationary terms." (App. Br., p.6 (quoting *State v. Turek*, 150 Idaho 745, 749 (Ct. App. 2011).) While the State is correct in claiming that the standard for measuring the scope of consent under the Fourth Amendment is one of objective reasonableness, its argument for a broad "reasonable person" application is undermined by the precedent it relies upon. *See Turek*, 150 Idaho at 752 (holding the language "at the request of" required the probationer be informed of the officer's intent to conduct an impending search). In fact, the *Turek* Court disagreed with the State's contention in that case "that the acceptance of this probation condition constitutes an unfettered waiver of all Fourth Amendment rights against any warrantless search," and determined that such an interpretation "ignores a key component of the consent exception to the Fourth Amendment's proscription of warrantless searches--the scope of the consent." *Id.* at 749. The *Turek* Court found that for those searches based upon consent, the State must conform the search to the limitations placed by the consent, *i.e.,* the wording of the probation agreement. *Id.*

The State's argument misrepresents the holding in *Turek* and ignores the multitude of Idaho Supreme Court precedent analyzing the relationship between the scope of consent in a

probation/parole waiver, and a determination of "objective reasonableness." *See State v. Hansen*, 167 Idaho 831 (2020); *State v. Jaskowski*, 163 Idaho 257 (2018); *State v. Purdum*, 147 Idaho 206 (2009); *State v. Gawron*, 112 Idaho 841 (1987). For example, the Idaho Supreme Court in *Jaskowski* held that the provision waiving Mr. Jaskowski's Fourth Amendment rights was conditioned upon a request to search, and that any search conducted without a request was not objectively reasonable. *Jaskowski*, 163 Idaho at 261. In *Jaskowski*, the Court summarized a similar argument from the State as follows:

> The State's argument in this appeal is essentially that which the Court of Appeals rejected in *Turek*: that all Fourth Amendment waivers should be treated in the same way, without regard for the language used in the condition of probation. Our previous decisions regarding Fourth Amendment waivers do not support the State's assertion that we should adopt such a universal approach to Fourth Amendment waivers. *See Purdum*, 147 Idaho at 208, 207 P.3d at 184; *Gawron*, 112 Idaho at 843, 736 P.2d at 1297.

Id. 163 Idaho at 260. The *Jaskowski* Court closely examined its previous decisions in *Purdum* and *Gawron* and concluded that the resolution of each case depended upon the specific language of the waiver at issue. *Id*. at 261. "[C]ourts evaluating the scope of the Fourth Amendment waiver must look to the language used in the condition of probation in order to determine whether the search was objectively reasonable." *Id*.

Thus, in determining whether a search was objectively reasonable, the Court evaluates the scope of the waiver and law enforcement's compliance with the language of the probation terms. *Id*. at 260. When evaluating the scope of the waiver, the Court has consistently declined to adopt a more generalized or broad interpretation of the waiver language. *See id*; *Turek*, 150 Idaho at 749. This Court should reject the State's request for this Court to discard well-established precedent analyzing the "scope of the waiver" in favor of a broad "reasonable person" standard.

2. Ms. Pool Consented To Fourth Amendment Warrantless Searches And Seizures, But Retained Her Idaho Constitutional Rights

The State argues that the unsigned Judgment which stated, "Defendant specifically waives [ ] her 4th Amendment right to warrantless search[es] of [ ] her . . . residence" (Exh., p.5), demonstrated that the parties "intended the terms of probation to include warrantless searches of Pool's residence." (App. Br., p.5.) The district court concluded that Ms. Pool waived only her Fourth Amendment rights and did not waive any Idaho constitutional rights, including her Article I, Section 17, right to be free from unreasonable searches and seizures. (R., pp.85-91.)

Article I, Section 17, of the Idaho Constitution states:

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized.

IDAHO CONST. art. I, § 17. This section contains "nearly identical guarantees" as those in the Fourth Amendment of the United States Constitution. *State v. Green*, 158 Idaho 884, 886 (2015).

However, "federal and state constitutions derive their power from independent sources." *State v. Newman*, 108 Idaho 5, 10 n.6 (1985). "The Court will consider federal rules and methodology when interpreting parts of the Idaho Constitution that have an analogous federal provision." *CDA Dairy Queen, Inc. v. State Ins. Fund*, 154 Idaho 379, 383 (2013). However, "state courts are at liberty to find within the provision of their own constitutions greater protection than is afforded under the federal constitution." *Newman*, 108 Idaho at 10 n.6. "This is true even when the constitutional provisions implicated contain similar phraseology." *Id.* In fact, Idaho courts interpreting Idaho's Constitution have rejected the temptation to "borrow" from federal courts' interpretations of constitutional standards. Idaho courts do not "blindly apply

United States Supreme Court interpretation and methodology" when interpreting the Idaho Constitution. *Id*.

For example, the Idaho Supreme Court departed from Fourth Amendment jurisprudence in interpreting Article I, § 17, in *State v. Guzman*, 122 Idaho 981, 998 (1992). The *Guzman* Court concluded that it would no longer "sheepishly follow[ ] in the footsteps of the U.S. Supreme Court," when analyzing its own state constitution. *Id*. The *Guzman* Court concluded that Article I, § 17, of the Idaho Constitution would not be limited by the federal constitution's "good faith" exception. *Id*. 122 Idaho at 993; *State v. Pettit*, 162 Idaho 849, 855 (Ct. App. 2017). Thus, a waiver of federal constitutional rights, even analogous rights, is insufficient to waive the protections of the Idaho Constitution. If the rights protected by the Idaho Constitution are to be waived, there must be a specific waiver of such rights; it cannot be presumed. *State v. Werneth*, 101 Idaho 241, 243 (1980); *Abercrombie v. State*, 586 Idaho 586, 593 (1967) (citing *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)).

Here, contrary to the State's claims, Ms. Pool's waiver was not a waiver of all of her rights to be free of warrantless searches of her home. (App. Br., pp.5-6.) As the district court found, "there is no evidence that the Defendant waived her rights to be free of searches and seizures as provided in the Idaho Constitution." (R., p.90.) The State has not challenged this finding of fact on appeal. (*See* App. Br., pp.5-7.) As the district court correctly determined, Ms. Pool's waiver was tied only to her Fourth Amendment rights. (R., pp.90-91.)

The State contends, "the facts show the parties, including Pool, intended the terms of probation to include warrantless searches of Pool's residence." (App. Br., p.5.) In support of this claim, the State carefully quotes portions of the probation waiver language within the Judgment, but omits critical terms such as "4th Amendment." (App. Br., p.5.) However, the State's

argument is contrary to the record and the district court's findings. The district court concluded that Ms. Pool validly waived her Fourth Amendment right to be free from searches and seizures, pursuant to her acknowledgment of that term of probation as explained by the magistrate judge who sentenced her on the DUI offense. (R., pp.86-87.) After pronouncing Ms. Pool's sentence, the magistrate said, "And you are required to waive your 4th Amendment right against search and seizure. Do you have any questions about those terms?" (Exh., p.20.) Ms. Pool responded, "No, sir." (Exh., p.20.) The State's argument that a reasonable person in Ms. Pool's position would have understood themselves to be waiving both the articulated Fourth Amendment right as well as the unarticulated Idaho constitutional right is misguided and inconsistent with the Idaho appellate courts' interpretation of Idaho constitutional protections. (*See* App. Br., pp.6-7.)

Additionally, when interpreting the terms of a probation waiver, due process requirements dictate a general presumption that the terms be interpreted as not waiving constitutional rights. *State v. Haggard*, 166 Idaho 858, 863 (2020). In *Haggard,* the Idaho Supreme Court held, "Because the due-process requirements for waiving a right are proportional to the constitutional protection surrendered, a general presumption exists *against* the waiver of constitutional rights." *Id*. (emphasis in original).

Here, the magistrate court advised Ms. Pool at her sentencing hearing that the probation agreement required her to waive her *Fourth Amendment right* to be free from search and seizure. (Exh., p.20 (emphasis added).) The specific mention of the Fourth Amendment precludes a broader interpretation that Ms. Pool was waiving of *all* of her search and seizure rights. *See Jaskowski*, 163 Idaho at 261. In those cases in which a probation agreement used broad language such as "waives his constitutional right," the appellate courts have interpreted such language to be a waiver of rights under both the federal and state constitution. *See Gawron*, 112 Idaho at 842

(holding the language of the probation term providing probationer to waive "his constitutional right to be free from such searches," authorized a search of his home while he was absent). Such language was not used in Ms. Pool's case. Thus, the district court properly concluded that Ms. Pool's oral waiver of her Fourth Amendment rights did not act to waive those rights protected by the Idaho Constitution. (R., p.90.) As the district court found, "there is no evidence that the Defendant waived her rights to be free of searches and seizures as provided in the Idaho Constitution." (R., p.90.)

The State has failed to show the district court erred in concluding that Ms. Pool did not waive her search and seizure protections provided by the Idaho Constitution. The district court correctly suppressed the evidence seized as the result of the unlawful search of Ms. Pool's home. For these reasons, Ms. Pool respectfully requests that this Court affirm the district court's order suppressing the evidence unlawfully obtained.

CONCLUSION

Ms. Pool respectfully requests that this Court affirm the district court's Order Granting Defendant's Motion to Suppress.

DATED this 25th day of May, 2022.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of May, 2022, I caused a true and correct copy of the foregoing RESPONDENT'S BRIEF to be served as follows:

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SJC/eas