

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	NO. 50707-2023
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-22-22589
v.	)	
	)	
AMANDA JOAN FLETCHER,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

\_\_\_\_\_  
**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 RONALD J. WILPER**  
**District Judge**  
\_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature of the Case

Amanda Fletcher appeals from the district court's judgment of conviction for possession of a controlled substance and possession of drug paraphernalia. She argues the district court erred by denying her motion to suppress in two respects. First, she asserts the district court erred by failing to apply *State v. Maxim*, 165 Idaho 901, 454 P.3d 543 (2019), which holds an officer must have knowledge of the probationer's Fourth Amendment waiver in order to search pursuant to that waiver. The officers here had no such knowledge.

Second, she asserts the district court erred by failing to address the greater protections under the Idaho Constitution for dog sniffs and searches under the automobile exception. She contends a dog sniff is a "search" under Article I, Section 17 and thus requires reasonable suspicion. She also contends Article I, Section 17 prohibits the use of the automobile exception for a warrantless search of a vehicle when the vehicle is secured and obtaining a warrant is practicable.

Due to these errors, Ms. Fletcher respectfully requests this Court vacate the district court's judgment of conviction, reverse its order denying her motion to suppress, and remand this case for further proceedings.

### Statement of Facts and Course of Proceedings

Around 3 a.m. in July 2022, a police officer observed a woman sitting in her vehicle in a gas station's parking lot. (R., p.167.) The gas station was open, and the vehicle was "parked

normally.” (R., p.167.) The officer identified the woman as Ms. Fletcher and determined she had an outstanding arrest warrant. (R., p.168.) The officer approached Ms. Fletcher and arrested her. (R., p.168.) The officer then asked Ms. Fletcher for consent to search her vehicle, but she refused. (R., p.168.) The officer knew that Ms. Fletcher was on probation, but he “knew nothing” of the conditions of her probation. (R., p.170.) The officer also requested a drug detection dog, and another officer arrived to do a free air sniff with his dog around the vehicle. (R., p.168.) The dog alerted, and the officers searched the vehicle. (R., p.168.) The officers found suspected methamphetamine and paraphernalia. (R., p.168.)

The State filed a criminal complaint alleging Ms. Fletcher committed the crimes of possession of a controlled substance and possession of drug paraphernalia. (R., pp.9–10.) After a preliminary hearing, the magistrate court found probable cause for the offenses and bound Ms. Fletcher over to the district court. (R., pp.26–27, 28, 30–31.) The State charged her by information with possession of a controlled substance and possession of paraphernalia. (R., pp.32–33.) Later, the State filed a part two of the information alleging the sentencing enhancement for a subsequent drug offense. (R., pp.42–43, 44–45.)

Ms. Fletcher filed a motion to suppress. (R., p.47.) In a memorandum in support, Ms. Fletcher argued the search of her vehicle violated her Idaho constitutional rights. (*See generally* R., pp.48–75.) She asserted Article I, Section 17 of the Idaho Constitution should be interpreted to prohibit searches under the automobile exception when the vehicle is secured and

obtaining a warrant remains practicable.<sup>1</sup> (R., pp.51–62.) She also asserted Article I, Section 17 should be interpreted to deem free air dog sniffs a “search” and to prohibit them unless law enforcement has reasonable suspicion. (R., pp.66–74.)

In response, the State argued Ms. Fletcher waived her ability to challenge law enforcement’s search of her vehicle because she was on felony probation at the time of the search, and she consented to searches as a condition of her probation. (R., p.155.) In support of this argument, the State included Ms. Fletcher’s signed agreement of supervision. (R., pp.123–24.) It stated in relevant part:

5. Search: I consent to the search of my person, residence, vehicle, personal property, and other real property or structures owned or leased by me, or for which I am the controlling authority, conducted by any agent of the IDOC or law enforcement officer. I hereby waive my rights under the Fourth Amendment, and the Idaho Constitution concerning searches.

(R., p.123.) Alternatively, the State argued the Idaho Constitution did not grant greater protection related to the automobile exception or dog sniffs. (R., pp.156–58.) The State asserted, under the automobile exception, the officers had probable cause to search her vehicle after a dog alerted during a free air sniff. (R., pp.158–59.)

The district court held an evidentiary hearing on Ms. Fletcher’s motion to suppress. (*See* Tr.,<sup>2</sup> pp.43–96.) The officer that arrested Ms. Fletcher and the officer with the drug detection

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<sup>1</sup> Ms. Fletcher also argued the Fourth Amendment should be interpreted to prohibit warrantless searches of secured vehicles without an exigency showing, but she does not pursue this argument on appeal. (R., pp.63–66.)

<sup>2</sup> There are four transcripts on appeal, contained in one 97-page electronic document. Pinpoint citations will reference the overall pagination of the entire document, located in the lower right corner of each page.

dog both testified. (Tr., p.45, L.22–p.54, L.1.) Relevant here, the arresting officer testified that he knew Ms. Fletcher was on probation, but he did not contact her probation officer or otherwise gain any knowledge of the terms of her probation. (Tr., p.52, Ls.9–13, p.53, L.16–p.54, L.1.)

After this testimony, Ms. Fletcher maintained the Idaho Constitution afforded her greater protections related to the automobile exception and dog sniffs. (Tr., p.71, L.1–p.78, L.4.) The State disagreed. (Tr., p.78, L.7–p.82, L.6.) The parties also argued about the effect of Ms. Fletcher’s Fourth Amendment waiver.<sup>3</sup> (Tr., p.86, L.16–p.95, L.24) The district court took the motion under advisement. (Tr., p.82, L.7–p.86, L.15, p.95, L.25–p.96, L.7.)

The district court issued a memorandum decision denying Ms. Fletcher’s motion to dismiss. (R., pp.167–226; *see also* Tr., p.18, L.10–p.19, L.20 (brief oral ruling summarizing written decision).) First, the district court ruled the officers conducted a “search” of Ms. Fletcher’s vehicle after the positive drug dog alert. (R., p.175.)

Second, the district court considered whether the officers’ search of the vehicle was reasonable due to Ms. Fletcher’s search condition in her supervision agreement. (R., pp.176–212.) To resolve this question, the district court discussed the concepts of waiver and consent. (R., pp.177–181.) The district court made the following distinction:

A waiver of one’s Fourth amendment rights cannot automatically be undone. Therefore, the government bears a higher burden when trying to persuade the Court that a person made a voluntary, intelligent, and knowing waiver of that right.

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<sup>3</sup> Ms. Fletcher recognizes the district court took issue with categorizing this search condition in her supervision agreement as a “Fourth Amendment waiver.” (*See* R., pp.176–212; *see also* R., p.125 (condition #5 on searches).) However, Ms. Fletcher will reference this condition as a “Fourth Amendment waiver” or simply “waiver” to be consistent with the Court’s language in *Maxim*.

Consent is revocable. Therefore, the government does not bear the same burden in order to show that consent was voluntarily given.

(R., p.179.) The district court also discussed the Court’s decision in *Maxim*, 165 Idaho 901, 454 P.3d 543, and related case law. (R., pp.181–195.) The district court then determined the State did not prove that Ms. Fletcher entered a knowing, voluntary, and intelligent “waiver” of her Fourth Amendment and related Idaho constitutional rights by agreeing to that search condition of probation. (R., pp.195–98.)

Turning to consent, the district court discussed the Court’s decision in *State v. Hansen*, 167 Idaho 831, 477 P.3d 885 (2020). (R., pp.198–212.) The district court determined, under *Hansen*:

Ms. Fletcher could not revoke her consent when approached by police. While this Court has found she did not make a knowing, informed, and voluntary waiver of her right to be free from unreasonable searches of her car, the result is the same, nonetheless. The search is reasonable under the consent exception to the warrant requirement despite the fact she revoked her consent before the search began.

(R., p.211.) The district court also determined her consent to search (via the condition of her probation) was voluntary. (R., p.212.)

Finally, the district court returned to *Maxim*. (R., pp.212–24.) The district court summarized the *Maxim* argument as: “The consent exception to the warrant requirement doesn’t apply here, not because Ms. Fletcher did not consent (and not because she revoked her consent), but because the police officer who searched her car did not subjectively know or think something.” (R., p.212.) After discussing *Maxim* and related case law again, the district court expressed some difficulty reconciling *Maxim* and *Hansen*. (R., pp.220–24.)

The district court concluded:

This Court is persuaded that Ms. Fletcher made a voluntary decision to accept the conditions of her probation. That included a voluntary grant by her of consent, in advance, to searches by law enforcement officers. She revoked that consent when approached by the officers here, but the Idaho Supreme Court in *Hansen* deprived her of the ability to make that choice. . . .

Ms. Fletcher's voluntary and unrevoked consent is sufficient to overcome the presumption of unreasonableness attendant with a warrantless search under the Fourth Amendment. That is sufficient to deny her motion under the Fourth Amendment. But under Article I, Section 17 of the state constitution, the government must additionally show whatever knowledge or awareness requirement *Maxim* imposes. The officer here knew Ms. Fletcher was on probation for a drug offense. He knew nothing else, except that she refused permission for him to search her car. That is factually identical to *Hansen*. Apparently in *Hansen* that was sufficient to satisfy whatever *Maxim* requires. This Court will simply mirror the result in *Hansen*. The officer's search of Ms. Fletcher's vehicle (however that occurred, via sniff or rummaging around) was reasonable under the state constitution pursuant to the consent exception to the warrant requirement, plus whatever it is *Maxim* requires.

(R., pp.224–25.) The district court did not address Ms. Fletcher's arguments that Article I, Section 17 afforded additional protections related to the automobile exception or dog sniffs. (R., pp.167–226.) Accordingly, the district court denied her motion. (R., p.225.)

Ms. Fletcher entered a conditional guilty plea to possession of a controlled substance and possession of paraphernalia. (R., pp.231, 232–33; Tr., p.5, L.21–p.6, L.8, p.8, L.1–p.10, L.20.) The State agreed to dismiss the sentencing enhancement. (Tr., p.6, Ls.11–15.) She reserved the right to challenge the district court's denial of her motion to suppress. (Tr., p.5, L.21–p.6, L.8.) The district court placed her on probation for seven years, with an underlying sentence of seven years, with two years fixed, for possession of a controlled substance (R., p.249; Tr., p.36, Ls.10–15.) The district court sentenced her to thirty days in jail, with credit for time served, for possession of paraphernalia. (R., p.249; Tr., p.36, Ls.18–21.)

Ms. Fletcher timely appealed from the district court's judgment of conviction. (R., pp.254–57, 263–65.)

ISSUE

Did the district court err when it denied Ms. Fletcher's motion to suppress evidence obtained from a warrantless search of her vehicle?

## ARGUMENT

### The District Court Erred When It Denied Ms. Fletcher's Motion To Suppress Evidence Obtained From A Warrantless Search Of Her Vehicle

#### A. Introduction

Ms. Fletcher submits two arguments in support of her position that the district court erred by denying her motion to suppress. First, she argues the district court incorrectly applied *Hansen* as opposed to *Maxim* to rule the officers lawfully searched her vehicle pursuant to her Fourth Amendment waiver. Under *Maxim*, the officers' search of her vehicle was unreasonable because the officers did not have knowledge of her waiver. Therefore, the district court erred in ruling the waiver permitted the officers' warrantless search of Ms. Fletcher's vehicle.

Second, although the district court did not address the dog sniff or automobile exception, Ms. Fletcher argues the district court should have granted her motion to suppress because the State did not meet its burden to show the warrantless search of her vehicle was reasonable. Ms. Fletcher contends Article I, Section 17 of the Idaho Constitution grants greater protections for dog sniffs and searches under the automobile exception. Due to the warrantless search of her vehicle, Ms. Fletcher asserts the district court should have suppressed the evidence found inside.

#### B. Standard Of Review

The Court "defer[s] to the trial court's factual findings unless clearly erroneous. However, free review is exercised over a trial court's determination as to whether constitutional requirements have been satisfied in light of the facts found." *State v. Henage*, 143 Idaho 655, 658, 152 P.3d 16, 19 (2007) (citations omitted). "At a suppression hearing, the power to assess the credibility of

witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court.” *State v. Conant*, 143 Idaho 797, 799, 153 P.3d 477, 479 (2007) (citation omitted).

C. The District Court Erred Because The Officers Could Not Rely On Ms. Fletcher’s Fourth Amendment Waiver To Search Her Vehicle Without Their Knowledge Of The Waiver, And The Idaho Constitution Limits The Use Of Dog Sniffs And The Automobile Exception

Ms. Fletcher will first address the district court’s erroneous ruling on her Fourth Amendment waiver. She will then address her Idaho constitutional claims.

1. *Under Maxim, the officers could not rely on Ms. Fletcher’s Fourth Amendment waiver to search her vehicle without their knowledge of the waiver.*

“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 . . . .’” *Maxim*, 165 Idaho at 904, 454 P.3d at 546 (quoting U.S. CONST. amend. IV). “It is beyond dispute that a vehicle is an ‘effect’ as that term is used in the [Fourth] Amendment.” *Hansen*, 167 Idaho at 834, 477 P.3d at 888 (quoting *United States v. Jones*, 565 U.S. 400, 404 (2012)). A warrantless search is presumptively unreasonable unless it falls within “one of several narrowly drawn exceptions.” *State v. Anderson*, 154 Idaho 703, 706, 302 P.3d 328, 331 (2012). “When a search is conducted in violation of the Fourth Amendment, a defendant ‘may seek to have the court exclude evidence obtained by the unconstitutional police conduct.’” *Hansen*, 167 Idaho at 834, 477 P.3d at 888 (quoting *Maxim*, 165 Idaho at 905, 454 P.3d at 546).

The Court recently addressed Fourth Amendment waivers in *Maxim* and *Hansen*. In *Maxim*, an officer entered the defendant’s apartment without a warrant and eventually found contraband on the defendant’s person. *Id.* at 902–03, 454 P.3d at 544–45. In response to the

defendant's motion to suppress, the State argued the defendant lacked "standing" to challenge the officer's entry into the apartment because, as a condition of the defendant's probation, the defendant agreed to a Fourth Amendment waiver. *Id.* at 903–04, 454 P.3d at 545–46. The defendant responded that "he retained Fourth Amendment standing because the officers were unaware of the waiver at the time of the alleged violations." *Id.* at 904, 454 P.3d at 546. The Court agreed with the defendant. *Id.* at 904–08, 454 P.3d at 546–50.

Using the touchstone of reasonableness as its guide, the Court stated, "The discovery of a Fourth Amendment waiver after the fact should not serve as a *deus ex machina* allowing the State to rewrite the story in the courtroom when the police's actions were unconstitutional outside of it." *Id.* at 908, 454 P.3d at 550. The Court explained that "the determinative fact in this case is that the officers did not know about [the defendant's] Fourth Amendment waiver at the time of the alleged unconstitutional conduct." *Id.* Thus, "the only question presented by these facts is whether the existence of a Fourth Amendment waiver can transform the officer's otherwise illegal actions into reasonable ones despite being unaware of the waiver at the time he acted." *Id.* The Court held that it could not: "[A] Fourth Amendment waiver cannot salvage an otherwise unreasonable entry into a home under the Fourth Amendment if the police officers were unaware of the waiver at the time of the unconstitutional search." *Id.* The Court concluded, "We hold that a Fourth Amendment waiver which is unknown to an officer at the time of a Fourth Amendment violation cannot be relied on to assert that the search was reasonable." *Id.* at 910, 454 P.3d at 552.

About one year later, in *Hansen*, an officer searched the defendant's vehicle after learning the defendant was on probation with a Fourth Amendment waiver, notwithstanding the defendant's

refusal to consent to the search. 167 Idaho at 833–34, 477 P.3d at 887–88. The officer was unable to contact the defendant’s probation officer, but it was undisputed that the officer knew the defendant had a Fourth Amendment waiver as part of his supervision agreement. *Id.*; *see also Appellant’s Brief, Hansen*, 167 Idaho 831, 477 P.3d 885, 2019 WL 3804547, at \*1 (Idaho Aug. 2, 2019), at \*1; *Respondent’s Brief, Hansen*, 167 Idaho 831, 477 P.3d 885, 2019 WL 6170151, at \*2 (Idaho Aug. 30, 2019). Accordingly, the Court stated, “This case does not present a situation where an officer conducted a search of a probationer without knowledge of his probationary status.” *Hansen*, 167 Idaho at 835, 477 P.3d at 889 (citing *Maxim*, 165 Idaho 901, 454 P.3d 543). “Rather,” the Court explained, “the question here is whether [the defendant] expressly revoked the consent provided for in his probation agreement when he refused to provide consent to be searched during the traffic stop.” *Id.* The Court held the defendant could not revoke his consent during the search. *Id.* at 835–36, 477 P.3d at 889–90. The Court concluded that “a probationer may only revoke the consent given as a condition of probation at a hearing before the court that entered the order granting probation in the first place” *Id.* at 837, 477 P.3d at 891.

Although the district court had difficulty reconciling *Maxim* and *Hansen*, (*see R.*, pp.220–24), Ms. Fletcher respectfully submits their holdings are clear. Under *Hansen*, a defendant may not revoke their Fourth Amendment waiver upon an officer’s decision to search pursuant to that waiver. Under *Maxim*, an officer must have knowledge of the defendant’s Fourth Amendment waiver prior to their search pursuant to that waiver. In this case, *Maxim* controls. Ms. Fletcher had had a Fourth Amendment waiver nearly identical to the *Maxim* waiver. 165 Idaho at 907, 454 P.3d at 549. And, like *Maxim*, the officer had no knowledge of the waiver at the time of the search of

Ms. Fletcher's vehicle. (R., p.170; Tr., p.52, Ls.9–13, p.53, L.16–p.54, L.1.) Therefore, Ms. Fletcher's Fourth Amendment waiver could not "transform" the officer's "otherwise illegal actions into reasonable ones" when the officer was "unaware of the waiver at the time of the unconstitutional search." *Maxim*, 165 Idaho at 908, 454 P.3d at 550. The district court erred in declining to apply *Maxim* to the State's reliance on Ms. Fletcher's Fourth Amendment waiver to justify the warrantless search.

Moreover, contrary to the district court's decision, this case is not "factually identical to *Hansen*." (R., p.225.) Although Ms. Fletcher refused to give consent, *Hansen* holds, essentially, that her attempt to revoke her Fourth Amendment waiver was ineffectual because it occurred at the time of the search. *Hansen* does not change *Maxim*, however. Even if Ms. Fletcher could not renege on her Fourth Amendment waiver at the time of the search (*Hansen*), the officer still had to have knowledge of her waiver to conduct search her vehicle (*Maxim*). Again, the officer "knew nothing about the conditions of her agreement." (R., p.170; *see also* R., pp.224–25.) *Hansen*'s holding on the defendant's inability to revoke consent does not change *Maxim*'s requirements for the officer's knowledge. The district court erred in its decision to "simply mirror the result in *Hansen*." (R., p.225.)

In sum, Ms. Fletcher asserts the district court erred by denying her motion to suppress on the basis that the officer's search was "reasonable" due to her Fourth Amendment waiver. (R., p.225.)

2. *Under the Idaho Constitution, a dog sniff is a “search” and requires reasonable suspicion of criminal activity.*

The district court ruled on the Fourth Amendment waiver only, (R., pp.167–226), but the State also argued the officers’ search of Ms. Fletcher’s vehicle was lawful under the automobile exception. (R., pp.158–59.) The State asserted the drug dog alerted on Ms. Fletcher’s vehicle, and that positive alert provided probable cause to search her vehicle under the automobile exception. (R., pp.158–59.) Ms. Fletcher contends that suspicionless dog sniffs and warrantless searches of secured vehicles without any exigency are both prohibited under the Idaho Constitution.

Article I, Section 17 of the Idaho Constitution provides: “The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated . . . .” IDAHO CONST. art. I, § 17. “When construing the Idaho Constitution, ‘the primary object is to determine the intent of the framers.’” *State v. Clarke*, 165 Idaho 393, 397, 446 P.3d 451, 455 (2019) (quoting *Idaho Press Club, Inc. v. State Legislature*, 142 Idaho 640, 642, 132 P.3d 397, 399 (2006)). “Unfortunately, Article I, Section 17 was adopted without debate. In the absence of the words of the framers, rights guaranteed by the state constitution are ‘examined in light of the practices at common law and the statutes of Idaho when our constitution was adopted and approved by the citizens of Idaho.’” *Id.* (quoting *State v. Creech*, 105 Idaho 362, 392, 670 P.2d 463, 493 (1983)).

Although the Article I, Section 17 and the Fourth Amendment have nearly identical language, the Court is not required “to follow United States Supreme Court precedent in interpreting our own constitution.” *State v. Donato*, 135 Idaho 469, 471, 20 P.3d 5, 7 (2001). For

example, the Court has held the Idaho Constitution provides greater protection to Idaho citizens' property by determining the definition of "curtilage" under the Idaho Constitution was broader than its Fourth Amendment definition. *State v. Webb*, 130 Idaho 462, 467–68, 943 P.2d 52–53, 57 (1997). The Court has rejected the good faith exception to the exclusionary rule under the Idaho Constitution. *State v. Guzman*, 122 Idaho 981, 992–98, 842 P.2d 660, 671–77 (1992). The Court also held warrantless roadblocks to detect and deter drunk driving were constitutionally impermissible under Article I, Section 17. *State v. Henderson*, 114 Idaho 293, 296–300, 756 P.2d 1057–64, 1060 (1988). In *State v. Thompson*, 114 Idaho 746, 748–51, 760 P.2d 1162, 1164–67 (1988), the Court held law enforcement's installation of a pen register, which recorded the numbers called on a phone and the duration of the calls, was a search under Article I, Section 17. In these instances, the Court has "provided greater protection to Idaho citizens based on the uniqueness of our state, our Constitution, and our long-standing jurisprudence." *Donato*, 135 Idaho at 472, 20 P.3d at 8.

In line with this precedent, the Court should determine the Idaho Constitution once again provides greater protection for Idaho citizens and hold a dog sniff is a search under Article I, Section 17. A "search" occurs when the government intrudes upon a person's "reasonable" or "legitimate" expectation of privacy or "trespasses against private property for the purpose of obtaining information." *State v. Dorff*, 171 Idaho 818, 526 P.3d 988, 998 (2023) (citing *Jones*, 565 U.S. at 404); *see also State v. Randall*, 169 Idaho 358, 366–67, 496 P.3d 844, 852–53 (2021) (comparing expectation of privacy and trespassory search standards). Ms. Fletcher does not contend a dog sniff is a search under the property rights theory. *Dorff*, 171 Idaho at 526, P.3d at

998 (“Likewise, a sniff of the free-air surrounding a vehicle is not a ‘search’ under the property-based test because chattels do not have a protected area of ‘curtilage’—unlike their textual counterpart in real property: homes.”). Rather, she asserts a dog sniff is a search because it intrudes upon an Idaho citizen’s reasonable expectation of privacy.

The Court’s pen register decision is particularly instructive on Idahoans’ expectation of privacy. In *Thompson*, the Court started with the same premise from the U.S. Supreme Court on a person’s expectation of privacy. 114 Idaho at 749, 760 P.2d at 1165. The Court agreed that both the Fourth Amendment and Article I, Section 17 “are designed to protect a person’s legitimate expectation of privacy, which ‘society is prepared to recognize as reasonable.’” *Id.* (quoting *State v. Johnson*, 110 Idaho 516, 523 n. 5, 716 P.2d 1288, 1295 n. 5 (1986)); see *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring) (reasonable exaptation of privacy test). The *Thompson* Court disagreed, however, with the U.S Supreme Court’s application of that premise to pen registers. *Id.* The U.S. Supreme Court had concluded “that the person on whose telephone line the pen register was installed ‘in all probability entertained no actual expectation of privacy in the phone numbers he dialed, and that, even if he did, his expectation was not legitimate.’” *Id.* (quoting *Smith v. Maryland*, 442 U.S. 735, 745 (1979)). The U.S. Supreme Court reasoned that a person who voluntarily conveyed their dialed phone numbers to a phone company that could record them “assumed the risk that the information would be divulged to police.” *Smith*, 442 U.S. at 745. Lacking a legitimate expectation of privacy, “the [U.S. Supreme] Court held there was no search, and no warrant was required.” *Thompson*, 114 Idaho at 749, 760 P.2d at 1165.

The *Thompson* Court was not persuaded. *Id.* The Court was “convinced . . . that in Idaho there is a legitimate and reasonable expectation of privacy in the phone numbers that are dialed.” *Id.* In reaching this conclusion, the *Thompson* Court quoted extensively from the two *Smith* dissents. *Id.* at 749–51, 760 P.2d at 1165–67. In one, Justice Stewart explained that, if a user’s phone conversation was protected (*Katz*), then their numbers dialed should be protected too. *Thompson*, 114 Idaho at 749, 760 P.2d at 1165 (quoting *Smith*, 442 U.S. at 746–48 (Stewart, J., dissenting)). Both provided “content” and could “reveal the most intimate details of a person’s life.” *Id.* at 750, 760 P.2d at 1166 (quoting *Smith*, 442 U.S. at 748 (Stewart, J., dissenting)). Justice Stewart stated:

It seems clear to me that information obtained by pen register surveillance of a private telephone is information in which the telephone subscriber has a legitimate expectation of privacy. . . . The information captured by such surveillance emanates from private conduct within a person’s home or office—locations that without question are entitled to Fourth and Fourteenth Amendment protection. Further, that information is an integral part of the telephonic communication that under *Katz* is entitled to constitutional protection, whether or not it is captured by a trespass into such an area.

*Thompson*, 114 Idaho at 750, 760 P.2d at 1166 (quoting *Smith*, 442 U.S. at 746–48 (Stewart, J., dissenting)). In the second dissent, Justice Marshall opined that a reasonable expectation of privacy “depends not on the risks an individual can be presumed to accept when imparting information to third parties, but on the risks he should be forced to assume in a free and open society.” *Id.* (quoting *Smith*, 442 U.S. at 750 (Marshall, J., dissenting)). Justice Marshall expressed concern that the use of pen registers ignores the “vital role telephonic communication plays” in our lives, and “unfettered official surveillance . . . will undoubtedly prove disturbing even to those with nothing

illicit to hide.” *Id.* at 750–51, 760 P.2d at 1166–67 (quoting *Smith*, 442 U.S. at 751 (Marshall, J., dissenting)). “Privacy in placing calls is of value not only to those engaged in criminal activity.” *Id.* at 751, 760 P.2d at 1167 (quoting *Smith*, 442 U.S. at 751 (Marshall, J., dissenting)). The *Thompson* Court adopted these dissenting opinions and believed “those who use telephones in Idaho” are entitled to additional protection from “the intrusion of pen registers into our daily life in Idaho.” *Id.*

A dog sniff’s intrusion into a person’s privacy interests is no different. The rationale excluding a dog sniff as a “search” does not hold up against the Court’s principles in *Thompson*. The U.S. Supreme Court held in *Illinois v. Caballes*, 543 U.S. 405 (2005), that a dog sniff “does not implicate legitimate privacy interests” because it only reveals the presence or absence of contraband, and the possession of contraband is not “legitimate.” *Id.* at 408–09. The U.S. Supreme Court concluded, “A dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment.” *Id.* at 410. In other words, if a person chooses to possess contraband, they assume the risk that the odors from their contraband will be detected by drug dogs. *Thompson* rejected this “assume the risk” justification. An Idaho citizen’s privacy interest does not depend on whether they are presumed to accept the risk of detection of criminal activity. *Thompson*, 114 Idaho at 749–51, 760 P.2d at 1165–67. *Thompson* recognized that the target of the intrusion does not defeat the fact of the intrusion, and a constitutionally protected area retains its protection. If a dialed phone number is as protected as the contents of the phone call, the odors emanating from the vehicle are as protected as the contents of the vehicle. This information

“captured” by the dog “emanates” from a person’s “private conduct” in their vehicle, “whether or not it is captured by a trespass into such an area.” *Id.* at 750, 760 P.2d at 1166 (quoting *Smith*, 442 U.S. at 746–48 (Stewart, J., dissenting)).

Further, there can be no question that a dog sniff, like a pen register, provides “content” and exposes “the most intimate details of a person’s life.” *Id.* at 750, 760 P.2d at 1166 (quoting *Smith*, 442 U.S. at 748 (Stewart, J., dissenting)). Vehicle usage plays a “vital role” in Idaho society.<sup>4</sup> *Id.* at 750–51, 760 P.2d at 1166–67 (quoting *Smith*, 442 U.S. at 751 (Marshall, J., dissenting)). The “rural nature of much of our state” requires travel by vehicle. *Webb*, 130 Idaho at 467, 943 P.2d at 57. And, in general, “for a majority of people, a car is a place where a portion of everyday life is spent.” *State v. Wiegand*, 645 N.W.2d 125, 139 (Minn. 2002) (Page, J., concurring and concurring specially). The “unfettered official surveillance” of a suspicionless dog sniff during a traffic stop will “prove distributing” to all Idaho citizens, even those with “nothing illicit to hide.” *Thompson*, 114 Idaho at 751, 760 P.2d at 1167 (quoting *Smith*, 442 U.S. at 751 (Marshall, J., dissenting)).

Perhaps the most important attribute of our way of life in Idaho is individual liberty. A citizen is free to stroll the streets, hike the mountains, and float the rivers of this state without interference from the government. That is, police treat you as a criminal only if your actions correspond. Such is not the case with roadblocks.

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<sup>4</sup> “Idaho and Wyoming tied for the highest rate of car ownership nationwide, with 96.2% of households in both states reporting access to at least one vehicle in 2021.” *Car Ownership Statistics 2023*, available at <https://www.forbes.com/advisor/car-insurance/car-ownership-statistics/#american-community-survehttps://www.forbes.com/advisor/car-insurance/car-ownership-statistics/#american-community-survey> (updated and last visited Jan. 3, 2024).

*Henderson*, 114 Idaho at 298, 756 P.2d at 1062. And such is not the case with dog sniffs. An officer may conduct a free air sniff of any Idahoan’s vehicle during a traffic stop, and the Idaho citizen is powerless to refuse that intrusion. To add insult to injury, dogs are fallible. “[D]ogs in artificial testing situations return false positives anywhere from 12.5% to 60% of the time, depending on the length of the search,” not to mention “errors by their handlers” and “the pervasive contamination of currency” by controlled substances. *Caballes*, 543 U.S. at 412 (Souter, J., dissenting). Thus, out of one hundred dog sniffs, at least twelve and up to sixty of those Idaho citizens could have their vehicles lawfully searched—and their seizure lawfully extended—for the police to root around for contraband that is nonexistent. *See California v. Acevedo*, 500 U.S. 565, 580(1991) (“The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained.”); *United States v. Ross*, 456 U.S. 798, 825 (1982) (“If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.”). These searches “jeopardize” an individual’s “sense of security” and expose intimate details about their life to the government. *Thompson*, 114 Idaho at 750, 760 P.2d at 1166 (quoting *Smith*, 442 U.S. at 751 (Marshall, J., dissenting)).

Considering the heightened privacy interests in Idaho, the intrusion from a dog sniff shares much in common with the intrusion from a thermal imaging device in *Kyllo v. United States*, 533 U.S. 27 (2001). In *Kyllo*, the U.S. Supreme Court held the government’s use of a thermal imaging device to detect the heat emanating from a home (which could indicate the use of marijuana grow lights) was a “search” under the Fourth Amendment. *Id.* at 34. Even though there was no physical

intrusion, and the heat was freely exposed “radiating from the external surface” of the home, *id.* at 35, the U.S. Supreme Court held the use of the imaging device was a search because the government “use[d] a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion.” *Id.* at 40. The U.S. Supreme Court was persuaded that “obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical ‘intrusion into a constitutionally protected area,’ constitutes a search—at least where (as here) the technology in question is not in general public use. *Id.* at 34 (quoting *Silverman v. United States*, 365 U.S. 505, 512 (1961)). This understanding of a search “assures preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.” *Id.*

Like a thermal imaging device, a drug dog is a “sense-enhancing” tool, not available to the general public, that allows the government to explore details of a vehicle that “would previously have been unknowable without physical intrusion.” *Id.* at 34, 40. *See Jones*, 565 U.S. at 404 (“It is beyond dispute that a vehicle is an ‘effect’ as that term is used in the Amendment.”) Like heat radiating from a home, odors emanating from a vehicle may or may not expose drug-related criminal activity. The police may infer from a positive dog alert that contraband is in the vehicle, just like the police may infer from excessive heat that the individual is growing marijuana (or infer from certain dialed phone numbers that an individual is conspiring to commit a crime). The U.S. Supreme Court’s protection in *Kyllo* did not depend on whether individual assumed the risk by conveying potentially incriminating information about their home’s heat:

The Fourth Amendment's protection of the home has never been tied to measurement of the quality or quantity of information obtained. . . . There is certainly no exception to the warrant requirement for the officer who barely cracks open the front door and sees nothing but the nonintimate rug on the vestibule floor. In the home, our cases show, *all* details are intimate details, because the entire area is held safe from prying government eyes. . . . These were intimate details because they were details of the home, just as was the detail of how warm—or even how relatively warm—[the defendant] was heating his residence.

*Kyllo*, 533 U.S. at 37–38 (footnote omitted). In line with *Kyllo*, as the Court adopted in *Thompson*, a legitimate expectation of privacy is not extinguished upon the individual's assumption of risk that certain information may be freely available to the government (with the right tools). *Thompson*, 114 Idaho at 751, 760 P.2d at 1167 (quoting *Smith*, 442 U.S. at 750–51 (Marshall, J., dissenting)). In other words, an Idaho citizen's "constitutional protections are not abrogated whenever a person apprises another of facts valuable in criminal investigations." *Smith*, 442 U.S. at 748 (Marshall, J., dissenting). Thus, the protections for the inside of an individual's vehicle are not abrogated whenever odors waft out of their vehicle. A dog sniff allows law enforcement to gain information from an otherwise protected area, the inside of a vehicle, without a physical intrusion. *See Randall*, 169 Idaho at 370–71, 496 P.3d at 856–57 (Stegner, J., concurring). Under Article I, Section 17, *Thompson*, and *Kyllo*, Ms. Fletcher submits the Court should hold a dog sniff is a search.

As a "search," the remaining question is the level of suspicion that would allow law enforcement to conduct a dog sniff. Ms. Fletcher contends the Court need not address that question here because the officer lacked even reasonable suspicion of drug-related criminal activity to justify the dog sniff. (R., p.168; *see also* R., p.191 ("Whatever caused the officer to suspect

Ms. Fletcher’s vehicle may contain drugs and, therefore, was worth the effort of summoning [the dog] to the scene, was nothing more than an inchoate hunch; apparently based on her appearance or the officer’s general view of the propensity of people who have possessed drugs in the past to possess them at all times.”). If the Court addresses the question, however, Ms. Fletcher submits reasonable, articulable suspicion is the appropriate standard.

The Court would not be alone in holding a dog sniff is a search under its state constitution, and other jurisdictions have required reasonable suspicion for the search. For example, the Supreme Court of New Hampshire has held, under its constitution, a dog sniff is a search that requires reasonable suspicion. *State v. Pellicci*, 580 A.2d 710, 715–17 (N.H. 1990). The Supreme Court of Pennsylvania has held similarly. *Commonwealth v. Rogers*, 849 A.2d 1185, 1190–91 (Pa. 2004); *see also Commonwealth v. Johnston*, 530 A.2d 74, 79 (Pa. 1987). The Supreme Court of Montana has adopted this approach as well. *State v. Tackitt*, 67 P.3d 295, 299–303 (Mont. 2003). Notably, the Montana court’s analysis to grant its citizens greater protection echoes the Court’s analysis in *Thompson*: “What a person knowingly exposes to the public is not protected, but what an individual seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.” *Id.* at 300 (quoting *State v. Elison*, 14 P.3d 456, 469 (Mont. 2000)). Lastly, in *State v. Wiegand*, 645 N.W.2d 125 (Minn. 2002), the Minnesota Supreme Court held, under its constitution, a dog sniff was “not a search requiring probable cause,” *Id.* at 133, but it was an “intrusion into privacy interests” that required reasonable suspicion, *id.* at 134–35. *See also id.* at 137–40 (Page J., concurring and concurring specially) (arguing a dog sniff is a search requiring probable cause under the state constitution due to the privacy interests in a vehicle and

intrusive nature of a dog sniff). These jurisdictions are persuasive on the adoption of not only the reasonable suspicion standard but also the constitutional protection itself.

The requirement of reasonable suspicion for a dog sniff is also consistent with this Court's related dog sniff cases. In *State v. Linze*, 161 Idaho 605, 609, 389 P.3d 150, 154 (2016), the Court held an officer unlawfully extended a traffic stop by deviating from the stop's original purpose and acting as back up for a dog sniff without reasonable suspicion to justify the sniff. In *State v. Karst*, 170 Idaho 219, 227, 509 P.3d 1148, 1156 (2022), the Court held an officer unlawfully extended a traffic stop by deviating from the stop's original purpose to call for a drug-dog unit, again without reasonable suspicion to justify the call. In light of *Karst* and *Linze*, the requirement of reasonable suspicion for the dog sniff itself would not be overly burdensome on law enforcement. If an officer must possess reasonable suspicion to deviate from the stop to request a dog or assist in a dog sniff, their reasonable suspicion would presumably carry over for the dog sniff itself. Thus, a reasonable suspicion requirement would guard against wholly suspicionless intrusions upon Idaho citizens' privacy interests while also providing a workable standard for law enforcement.

Applying these Idaho constitutional protections here, the officers violated Ms. Fletcher's state constitutional rights when they conducted a dog sniff around her vehicle. This was a search, and the officers had no legitimate justification to intrude upon Ms. Fletcher's privacy interest in her vehicle's contents. Again, the district court determined the officers had no more than an "inchoate hunch" of the presence of drugs in Ms. Fletcher's vehicle, and no facts found by the district court gave rise to reasonable, articulable suspicion. (R., p.191; *see also* R., p.168.)

Therefore, Ms. Fletcher submits the district court should have granted her motion to suppress evidence found in her vehicle after the suspicionless dog sniff, in violation of Article I, Section 17.

3. *Under the Idaho Constitution, the automobile exception does not allow a warrantless search for a secured vehicle when obtaining a warrant is practicable.*

Along with the greater protection against dog sniffs, the heightened privacy interests for Idaho citizens support a protection against warrantless searches of secured vehicles without any exigency.

The automobile exception under the Fourth Amendment allows law enforcement to “conduct a warrantless search of a vehicle when they have probable cause to believe that the vehicle contains contraband or evidence of a crime.” *Randall*, 169 Idaho at 366, 496 P.3d at 852. This exception applies even if the vehicle is secured and there are no exigent circumstances other than the vehicle’s mobility. *Acevedo*, 500 U.S. at 569; *Texas v. White*, 423 U.S. 67, 68 (1975). Ms. Fletcher asserts the automobile exception under the Idaho Constitution should not include warrantless searches when the vehicle is secured and obtaining a warrant is practicable.

Like *Thompson*’s application to dog sniffs, the Court’s roadblock decision is instructive on the constitutional limits of Idaho’s automobile exception. In *Henderson*, the Court determined warrantless roadblocks “cannot withstand constitutional scrutiny” “[i]n light of the individual’s right of freedom from arbitrary governmental intrusion, and the questionable efficacy of roadblocks.” 114 Idaho at 293, 756 P.2d at 1057. Although the Court acknowledged “the drunk driver is one of society’s greatest concerns,” the Court found that roadblocks were “less efficient than the normal stops based on probable cause” at detecting or deterring drunk driving. *Id.* at 296–

97, 756 P.2d at 1060–61. The Court concluded, “Therefore, roadblocks are an inefficient and *unnecessary* constraint on a person’s right to remain free of search or seizure absent probable cause.” *Id.* at 297, 756 P.2d at 1061. The Court also examined the Idaho legislature’s decision not to grant authority for roadblocks. *Id.* at 297–98, 756 P.3d at 1061–62. “Accordingly,” the Court held “that where police lack express legislative authority, particularized suspicion of criminal wrongdoing and prior judicial approval, roadblocks established to apprehend drunk drivers cannot withstand constitutional scrutiny.” *Id.* at 299, 756 P.2d at 1063.

The Court’s justifications for adopting a state constitutional protection against roadblocks applies similarly to a constitutional protection against warrantless searches of secured vehicles in non-exigent situations. These warrantless searches are an “unnecessary” constraint on an Idaho citizen’s right to remain free from a search absent a warrant issued by a neutral and detached magistrate. *Id.* at 297, 756 P.2d at 1061. It is not necessary to abandon the warrant requirement when the vehicle is secured and no exigent circumstances exist. If the vehicle is lawfully parked, without any danger to others, and there is time to secure a warrant, there is simply no justification for a warrantless search other than convenience to law enforcement. Convenience should not rule over Idahoans’ constitutional privacy interests.<sup>5</sup>

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<sup>5</sup> As the Washington Supreme Court stated: “At best, the State has shown it was expedient for [the officer] to conduct the search [of the defendant’s car] as he did. But, whatever relative convenience to law enforcement may obtain from forgoing the burden of seeking a warrant once probable cause to search arises in circumstances such as here, we adhere to the view that ‘mere convenience is simply not enough.’” *State v. Tibbles*, 236 P.3d 885, 889 (Wash. 2010) (en banc); *see also id.* at 887 (holding the State has the burden to show exigent circumstances for a warrantless search of a vehicle under state constitution, and mobility is one factor in the totality of the circumstances).

Further, advances in technology render a warrantless search minimally more efficient than securing a warrant, especially in a nonemergency situation. The Idaho legislature has codified telephonic applications and search warrants. I.C. §§ 19-4404 (telephonic affidavit); 19-4406 (telephonic issuance of warrant); *see also* Idaho Criminal Rule 41(c)(4) (“A judge may issue a warrant based on information communicated by telephone or other reliable electronic means.”). Law enforcement officers have smartphones and computers to prepare warrant applications and contact magistrate judges and prosecutors. These “technological developments . . . enable police officers to secure warrants more quickly, and do so without undermining the neutral magistrate judge’s essential role as a check on police discretion . . . .” *Missouri v. McNeely*, 569 U.S. 141, 155 (2013) (holding natural dissipation of alcohol in blood does not provide per se exigency to permit warrantless blood draw); *see also State v. McCarthy*, 501 P.3d 478, 505–06 (Or. 2021) (technological and legislative changes to allow telephonic and electronic warrants no longer justify exigency basis for automobile exception under state constitution). Thus, the desire for efficiency in obtaining evidence of criminal activity in vehicles is far less compelling when the vehicle is secured and applying for a search warrant is entirely practicable. If anything, requiring a warrant for secured vehicles in non-exigent circumstances will advance efficiency interests by incentivizing jurisdictions to improve their warrant processes and by avoiding suppression when law enforcement miscalculates the probable cause standard.

Other jurisdictions have also held, under their state constitution, that the automobile exception does not extend to secured vehicles when obtaining a warrant remains practicable. *McCarthy*, 501 P.3d at 486–506 (overruling precedent to hold, under state constitution, the state

must show exigent circumstances at the time of the search for a warrantless search of a vehicle); *Commonwealth v. Alexander*, 243 A.3d 177, 195–209 (Pa. 2020) (overruling precedent to hold, under state constitution, “warrantless vehicle searches require both probable cause and exigent circumstances”); *Tibbles*, 236 P.3d at 887–88 (under state constitution, requiring probable cause and exception to warrant requirement, such as exigency, for warrantless search of vehicle); *State v. Bauder*, 924 A.2d 38, 50 (Vt. 2007) (reciting state constitutional standard requiring probable cause and exigent circumstances for warrantless search of vehicle); *Camacho v. State*, 75 P.3d 370, 374 (Nev. 2003) (“under the Nevada Constitution police may not conduct a warrantless search of a vehicle, even if police may have probable cause to believe that contraband is located therein, absent exigent circumstances”); *State v. Gomez*, 932 P.2d 1, 13 (N.M. 1997) (“Quite simply, if there is no reasonable basis for believing an automobile will be moved or its search will otherwise be compromised by delay, then a warrant is required. While it may be true that in most cases involving vehicles there will be exigent circumstances justifying a warrantless search, we do not accept the federal bright-line automobile exception.”). For example, the Montana Supreme Court held:

Because of the legitimate privacy interests implicated and the invasive and generally overbroad nature of the state’s intrusion on these interests, the search of an automobile requires more than merely the existence of probable cause to believe it contains evidence of a crime. On the foregoing basis, we conclude that, despite any language to the contrary in our previous decisions, there is no “automobile exception” to the search warrant requirement under the Montana Constitution. Rather, as we have consistently held, a warrantless search of an automobile requires the existence of probable cause as well as a generally applicable exception to the warrant requirement such as a plain view search, a search incident to arrest, or exigent circumstances.

*State v. Elison*, 14 P.3d 456, 470–71 (Mont. 2000). Similarly, as the Pennsylvania Supreme Court stated: “Obtaining a warrant is the default rule. If an officer proceeds to conduct a warrantless search, a reviewing court will be required to determine whether exigent circumstances existed to justify the officer’s judgment that obtaining a warrant was not reasonably practicable.” *Alexander*, 243 A.3d at 208 (emphasis omitted).

Indeed, Pennsylvania’s decision to overrule its precedent and limit the automobile exception under its constitution is especially compelling because it premised its decision, in part, on its prior rejection of the good faith exception to the exclusionary rule. *Id.* at 201–05. The Pennsylvania court explained that its past rejection of the good faith exception under its state constitution “calibrated the interests of society in securing criminal convictions and law enforcement needs versus privacy protections quite differently than does the United States Supreme Court.” *Id.* at 203. Its “basis for that different balancing” was the “link to privacy protections as advanced by the warrant requirement” in its Fourth Amendment equivalent. *Id.* The court determined that its rationale to reject the good faith exception “mandates that we cannot reflexively cede our citizens’ constitutional rights to privacy to the needs of law enforcement and the concern that evidence may be suppressed.” *Id.* at 204. In applying that rationale to warrantless vehicle searches, the court stated: “[A] finding in a case that an officer’s warrantless search was not justified by an exigency does not reflect hostility to his or her actions. It means only that our constitution places greater emphasis on the violations of privacy occasioned by an unreasonable search.” *Id.* The court stated that its Fourth Amendment equivalent “requires that we ask whether the violation of privacy interests inherent in allowing widespread warrantless searches is

compatible with the Pennsylvania Constitution.” *Id.* The court answered, “We think it is not.” *Id.* The court determined, “Due to the rich history of our charter protecting privacy as established in [the no-good-faith-exception case] and explained by [a dissent to the adoption of the automobile exception], our constitution prioritizes the protection of privacy rights caused by the unreasonable search above the need to present incriminating evidence in court and to assist law enforcement efforts.” *Id.*

In rejecting the good faith exception like Pennsylvania, the Court did not expressly discuss Idahoans’ heightened privacy interests—although it has in adopting other state constitutional protections (*Henderson* on roadblocks and *Thompson* on pen registers)—but the Court did focus on benefits that, again like Pennsylvania’s standard, “encourage police officers to obtain a warrant whenever practicable.” *Alexander*, 243 A.3d at 205. The Court believed that rejecting the good faith exception would “encourage thoroughness in the warrant issuing process; . . . avoid having the judiciary commit an additional constitutional violation by considering evidence which has been obtained through illegal means; and . . . preserve judicial integrity.” *Guzman*, 122 Idaho at 993, 842 P.2d at 672. On the warrant preference specifically, the Court explained that rejecting the good faith exception would “encourage[ ] police departments to devote greater care and attention to providing the magistrate with sufficient evidence to establish probable cause,” such as incentivizing police to spend more time “garnering evidence to establish probable cause,” and would encourage “magistrates to be vigilant in their role as neutral guardians of the constitution.” *Id.* at 997, 842 P.2d at 676. In other words, “The exclusionary rule unencumbered by the good faith exception provides incentives for the police department and the judiciary to take care that

each warrant applied for and issued is in fact supported by probable cause.” *Id.* at 998, 842 P.3d at 677. “In addition to encouraging compliance with the constitutional requirement that no warrant shall issue but upon probable cause,” the Court highlighted another “laudable effect[ ]” of rejecting “good faith” in that “it also lessens the chances that innocent citizens will have their homes broken into and ransacked by the police because of warrants issued upon incomplete or inaccurate information.” *Id.*

Adopting a greater protection for Idaho citizens by limiting the automobile exception will create equally “laudable effects.” The “default rule” to require a warrant to search a vehicle will incentivize law enforcement to gather sufficient evidence in support of probable cause and encourage a careful analysis by magistrate judges. *Alexander*, 243 A.3d at 208. It will also “lessen the chances that innocent citizens” will have their vehicles searched based upon less than probable cause. *Guzman*, 122 Idaho at 998, 842 P.2d at 677. Further, as explored in *Henderson* and *Thompson*, the heightened privacy protections under Article I, Section 17 are not “compatible” with “the violation of privacy interests inherent in allowing widespread warrantless searches” of vehicles. *Alexander*, 243 A.3d at 204. The Idaho Constitution “prioritizes the protection of privacy rights caused by the unreasonable search above the need to present incriminating evidence in court and to assist law enforcement efforts.” *Id.* This “outcome” to require exigent circumstances (or another valid exception) to conduct a warrantless search of a vehicle “adheres” to the Court’s preference for a warrant and its protection Idaho citizens’ privacy interests. *Id.* at 205.

Therefore, Ms. Fletcher submits the Court should hold, under Article I, Section 17, that the automobile exception does not permit the warrantless search of a vehicle when the vehicle is secured and it is reasonably practicable for law enforcement to obtain a warrant.

Applying this Idaho constitutional protection here, the officers violated Ms. Fletcher's state constitutional rights when they searched her vehicle without a warrant after the dog alert. Even if the dog sniff was permissible under the Idaho Constitution, the warrantless search of her vehicle was not. Ms. Fletcher's vehicle was "parked normally" in an open gas station's parking lot. (R., p.167.) Ms. Fletcher was arrested. (R., p.168.) There were no concerns about destruction of evidence, flight, or another emergency to render it impracticable for the officers to obtain a search warrant. (*See R.*, pp.167–68.) In short, there were no exigent circumstances. Without exigent circumstances, the State did not meet its burden to justify the warrantless search of Ms. Fletcher's vehicle. Therefore, Ms. Fletcher submits the district court should have granted her motion to suppress evidence found in her vehicle after the warrantless search of her vehicle, in violation of Article I, Section 17.

4. *The district court should have suppressed the evidence found in Ms. Fletcher's vehicle after the officers violated her Idaho constitutional rights with the suspicionless dog sniff and warrantless search of her vehicle.*

Due to the unconstitutional dog sniff and vehicle search, Idaho's exclusionary rule requires suppression of the methamphetamine and paraphernalia found by the officers in Ms. Fletcher's vehicle. (R., p.168.). "The value of the exclusionary rule was recognized by this Court long before the United States Supreme Court required it for fourth amendment violations." *State v. Rauch*, 99

Idaho 586, 592, 586 P.2d 671, 677 (1978). “Idaho had clearly developed an exclusionary rule as a constitutionally mandated remedy for illegal searches and seizures in addition to other purposes behind the rule such as recognizing the exclusionary rule as a deterrent for police misconduct.” *Donato*, 135 Idaho at 472, 20 P.3d at 8. “The rule is well settled in this state that evidence, procured in violation of defendant’s constitutional immunity from search and seizure, is inadmissible and will be excluded if request for its suppression be timely made.” *State v. Koivu*, 152 Idaho 511, 516, 272 P.3d 483, 487 (2012) (citation omitted).

To determine whether evidence should be excluded, the question is “whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.” *Wong Sun v. United States*, 371 U.S. 471, 488 (1963) (citation and quotation marks omitted); *State v. Bishop*, 146 Idaho 804, 811, 203 P.3d 1203, 1210 (2009) (same). The evidence here was the fruit of the suspicionless dog sniff and warrantless search of Ms. Fletcher’s vehicle. Therefore, the district court should have excluded the evidence and granted Ms. Fletcher’s motion to suppress.

CONCLUSION

Ms. Fletcher respectfully requests this Court vacate the district court's judgment of conviction, reverse its order denying her motion to suppress, and remand this case for further proceedings.

DATED this 4<sup>th</sup> day of January, 2024.

/s/ Jenny C. Swinford  
JENNY C. SWINFORD  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4<sup>th</sup> day of January, 2024, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

KENNETH K. JORGENSEN  
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/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

JCS/eas