

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

STATE OF IDAHO, )  
 ) No. 49210-2021  
 Plaintiff-Appellant, )  
 ) Twin Falls County Case No.  
 v. ) CR42-21-4019  
 )  
 CAMILLE J. POOL, )  
 )  
 Defendant-Respondent. )  
 \_\_\_\_\_ )

\_\_\_\_\_  
**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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# TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE.....	1
Nature Of The Case .....	1
Statement Of The Facts And Course Of The Proceedings .....	1
ISSUE .....	3
ARGUMENT .....	4
The District Court Erroneously Concluded That Pool Did Not Consent To Probation Searches Of Her Residence.....	4
A.    Introduction.....	4
B.    Standard Of Review .....	4
C.    Pool Consented To Searches Of Her Residence As A Condition Of Probation.....	5
CONCLUSION.....	7
CERTIFICATE OF SERVICE .....	7

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Florida v. Jimeno</u> , 500 U.S. 248 (1991).....	6
<u>State v. Garnett</u> , 165 Idaho 845, 453 P.3d 838 (2019).....	5
<u>State v. Gawron</u> , 112 Idaho 841, 736 P.2d 1295 (1987).....	5
<u>State v. Gonzales</u> , 165 Idaho 667, 450 P.3d 315 (2019).....	4
<u>State v. Greub</u> , 162 Idaho 581, 401 P.3d 581 (Ct. App. 2017).....	6
<u>State v. Hansen</u> , 167 Idaho 831, 477 P.3d 885 (2020).....	5
<u>State v. Jaskowski</u> , 163 Idaho 257, 409 P.3d 837 (2018).....	5
<u>State v. Maxim</u> , 165 Idaho 901, 454 P.3d 543 (2019).....	5
<u>State v. Turek</u> , 150 Idaho 745, 250 P.3d 796 (Ct. App. 2011) .....	6
 <u>CONSTITUTIONAL PROVISIONS</u>	
Idaho Const. art. 1, § 17 .....	6
U.S. Const. amend IV .....	1, 2, 4, 5

## STATEMENT OF THE CASE

### Nature Of The Case

The State of Idaho appeals from the district court's order granting suppression of the fruits of a probation search.

### Statement Of The Facts And Course Of The Proceedings

Camille J. Pool was convicted of misdemeanor DUI. (Exhibits, p. 5.) At the sentencing, the magistrate informed Pool of some of the terms of probation, including that she was "required to waive [her] 4<sup>th</sup> Amendment right against search and seizure." (Exhibits, pp. 19-20 (Sentencing Tr., p. 14, L. 9 - p. 15, L. 6); R., p. 81.) Pool stated she had no questions about the terms of her probation. (Exhibits, p. 20 (Sentencing Tr., p. 15, Ls. 7-8); R., p. 81.) Because the sentencing hearing was conducted over Zoom rather than in person, Pool did not sign the judgment, which was mailed to her the next day. (Exhibits, pp. 5, 9 (Sentencing Tr., p. 4, Ls. 1-17).) She did, however, sign a "Standard Conditions of Probation Agreement" the next day with a probation officer. (Exhibits, p. 4; Tr., p. 9, Ls. 1-20; p. 21, Ls. 12-22.)

The judgment included an order of probation requiring Pool to pay probation costs, violate no laws, pay all financial obligations, notify the court of any change of address, and that "Defendant specifically waives his/her 4<sup>th</sup> Amendment right to warrantless search of his/her person, vehicle, or residence by any law enforcement or probation officer." (Exhibits, p. 5.) The probation agreement did not include a Fourth Amendment waiver. (Exhibits, p. 4.) The probation officer testified the probation agreement, generated by the probation department, does not have a Fourth Amendment waiver because any such waiver is "done by the Court." (Tr., p. 11, Ls. 11-23.) He also testified that when he sits down

with a probationer, he “go[es] over what they were sentenced to as well as the terms and conditions of the probation agreement” and “review[s] the judgment” including the sentence and “any other conditions” of probation such as a “4<sup>th</sup> amendment waiver.” (Tr., p. 9, Ls. 17-20; p. 13, Ls. 4-24; see also Tr., p. 20, L. 16 – p. 23, L. 14.) He discussed the Fourth Amendment waiver in the judgment with Pool, and Pool had no questions. (Tr., p. 13, L. 25 – p. 14, L. 6.)

When Pool missed drug and alcohol testing and was discharged from treatment, the probation officer decided to do a “house check.” (Tr., p. 14, L. 7 – p. 16, L. 8.) Prior to searching, the probation officer “brought up [the] 4<sup>th</sup> amendment waiver to warrantless search and seizures” to Pool who “said she understood.” (Tr., p. 17, Ls. 5-10.) Probation officers found marijuana, marijuana paraphernalia, methamphetamine, and alcohol. (Tr., p. 18, Ls. 16-25; Exhibits, pp. 2-3.) Probation officers called in law enforcement, who found additional methamphetamine and methamphetamine paraphernalia. (Exhibits, p. 3.)

The state charged Pool with one count of possession of methamphetamine and one count of possession of paraphernalia. (R., pp. 22-23.) Pool moved to suppress evidence found as a result of the home probation search. (R., pp. 35-46.) The district court found that “at no time were Defendant’s rights under the Idaho Constitution mentioned by the magistrate or in any documents received by the Defendant.” (R., p. 82.) It concluded that Pool had “waived her Fourth Amendment protections against searches and Seizures.” (R., pp. 83-87.) However, because there had been no explicit waiver of the search and seizure rights under the Idaho Constitution, the search was unconstitutional. (R., pp. 88-91.)

The state timely appealed. (R., pp. 95-97.)

ISSUE

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

## ARGUMENT

### The District Court Erroneously Concluded That Pool Did Not Consent To Probation Searches Of Her Residence

#### A. Introduction

The district court found that Pool waived her Fourth Amendment rights against searches and seizures and that the probation search was within the scope of that term of probation. (R., pp. 83-87.) It concluded, however, that because there was no specific waiver of search and seizure rights under the Idaho Constitution, only the Fourth Amendment, Pool had not consented to the search of her house. (R., pp. 88-91.) The district court erred by looking only at the scope of Pool's waiver rather than what she consented to. Probation terms are analogous to contracts and interpreted accordingly. A term agreeing to warrantless searches is a consent to search, and consent to search is determined by what a typical reasonable person would have understood by the term of probation. Because a reasonable person in Pool's circumstances would understand that she was consenting to warrantless searches of her person, vehicle, and house as a condition of probation, regardless of the scope of any waiver, the district court erred by concluding the probation search (indeed any warrantless search unsupported by suspicion) was unreasonable.

#### B. Standard Of Review

When reviewing a ruling on a motion to suppress, the appellate court “accept[s] the trial court’s findings of fact unless they are clearly erroneous” but “freely review[s] the trial court’s application of constitutional principles in light of the facts found.” State v. Gonzales, 165 Idaho 667, 671, 450 P.3d 315, 319 (2019) (quotation marks omitted).

C. Pool Consented To Searches Of Her Residence As A Condition Of Probation

A search is reasonable “where a probationer has consented to a search by virtue of a term in a probation agreement.” State v. Maxim, 165 Idaho 901, 905, 454 P.3d 543, 547 (2019). “A probationer’s consent to search as a condition of probation constitutes a waiver of Fourth Amendment rights,” and the state has the burden of showing that the “consent exception applies.” State v. Garnett, 165 Idaho 845, 848, 453 P.3d 838, 841 (2019). “[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.” State v. Jaskowski, 163 Idaho 257, 261, 409 P.3d 837, 841 (2018). “[W]arrantless searches conducted pursuant to a Fourth Amendment waiver provision in a probation agreement may be rendered reasonable, at least where the officer(s) conducting the search know of the waiver and the search does not exceed the scope of the consent provided for in the probation agreement.” State v. Hansen, 167 Idaho 831, 835, 477 P.3d 885, 889 (2020). Interpretation of the scope of the probation consent is analogous to interpretation of a contract. See State v. Gawron, 112 Idaho 841, 843, 736 P.2d 1295, 1297 (1987). Under this standard the law “presumes that the parties understood the import of their contract and that they had the intention which its terms manifest.” Jaskowski, 163 Idaho at 261, 409 P.3d at 841 (quotation marks omitted).

Here the facts show the parties, including Pool, intended the terms of probation to include warrantless searches of Pool’s residence. In this case Pool, as a condition of probation, “specifically” waived her Fourth Amendment rights regarding “*warrantless search* of his/her person, vehicle, or *residence* by any law enforcement or probation officer.” (Exhibits, p. 5 (emphasis added).) The reasonable reading of this term of



probation manifests intent that Pool be subject to warrantless searches of her residence as a condition of probation.

In concluding otherwise, the district court noted that the protections against unreasonable searches and seizures in the federal and state constitutions arise from independent sources and that the state rights are slightly broader. (R., pp. 88-89.) Moreover, a waiver of rights cannot be presumed. (R., p. 89.) Without such a specific waiver, Pool enjoyed the full rights of Article 1, § 17 of the Idaho Constitution, and the search violated that section. (R., pp. 89-91.) The flaw in this analysis is that it completely nullifies the condition of probation. According to the district court, a specific waiver was a condition of granting consent. This was not a reasonable interpretation of the consent to search granted by Pool as a condition of probation.

“The standard for measuring the scope of consent under the Fourth Amendment is that of objective reasonableness, i.e., ‘what would the typical reasonable person have understood by the exchange between the officer and the suspect?’” State v. Greub, 162 Idaho 581, 585, 401 P.3d 581, 585 (Ct. App. 2017) (citing Florida v. Jimeno, 500 U.S. 248, 251 (1991)). This standard applies to consents granted as a condition of probation. State v. Turek, 150 Idaho 745, 749, 250 P.3d 796, 800 (Ct. App. 2011). Because the terms of probation are analogous to a contract, the court “must therefore examine how a reasonable person in the probationer’s place would have understood it, taking into consideration the language of the disputed provision ... and the case law interpreting similar provisions.” Id. at 751, 250 P.3d at 802 (brackets and quotation marks omitted).

Applying this standard, a reasonable person who “specifically waive[d] his/her 4<sup>th</sup> Amendment right to warrantless search of his/her person, vehicle, or residence by any law

enforcement or probation officer” (Exhibits, p. 5) would believe they were subject to “warrantless search[es] of his/her person, vehicle, or residence by any law enforcement or probation officer,” not that they were subject to **no** warrantless searches by virtue of retaining protections granted by the Idaho, as opposed to the federal, constitution. Although only one source of rights was “specifically” waived, the reasonable interpretation of the term of probation was that Pool consented to searches of her person, vehicle, and residence, rather than that she had *not* consented to any searches. The district court erred in concluding Pool had not consented to the search of her residence as a condition of probation.

#### CONCLUSION

The state respectfully requests this Court to reverse the district court’s order granting suppression and remand for further proceedings.

DATED this 2nd day of February, 2022.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of February, 2022, served a true and correct copy of the foregoing BRIEF OF APPELLANT to the attorney listed below by means of iCourt File and Serve:

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KKJ/dd