APPENDIX A

IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 46145

STATE OF IDAHO, Plaintiff-Appellant,	)	Boise, June 2019 Term
v.	)	Opinion filed: December 20, 2019
KARI JANAE PHIPPS, Defendant-Respondent.	)	Karel A. Lehrman, Clerk

Appeal from the District Court of the First Judicial District of the State of Idaho, Kootenai County. Richard S. Christensen, District Judge. Clark A. Peterson, Magistrate Judge.

The order of the district court is reversed and the case is remanded.

Lawrence G. Wasden, Idaho Attorney General, Boise, for Appellant. Kenneth K. Jorgensen argued.

Kootenai County Public Defender's Office, Coeur d'Alene, for Respondent. Tyler R. Naftz argued.

MOELLER, Justice.

The State appeals from the Kootenai County district court's reversal of the magistrate court's order denying Kari Janae Phipps's motion to suppress.

Phipps asserted below that the statements she made while detained during a routine parole search of a parolee's residence, along with the evidence found as a result of her statements, were inadmissible on Fourth Amendment grounds. The State brings this appeal seeking to delineate the authority of parole officers to detain a non-parolee while performing a routine parole search of a parolee's residence. For the reasons stated below, we reverse the district court's decision and hold that the limited detention of Phipps was reasonable.

I. FACTUAL AND PROCEDURAL BACKGROUND

On November 18, 2016, Officer Kuebler and Officer Johnson from the Idaho Department of Correction performed a routine residence check on parolee Terry Wilson. Upon their arrival, the officers knocked on the apartment door and Wilson answered. As the officers entered, they noticed Phipps exit from a back bedroom. The officers recognized Phipps from previous visits. The officers asked Phipps and Wilson to take a seat in the living room while they "cleared the bedrooms for other persons." Officer Johnson testified that, although Phipps never asked to leave at that time, she was not "cleared to leave. . . . [b]ecause of procedure."

After ensuring there was no one else in the apartment, Officer Kuebler advised Phipps and Wilson that a drug dog would be brought in to aid in the search of the residence and asked whether there was anything in the apartment that they should know about. Phipps confessed to having a methamphetamine pipe in her backpack, which was on her person. Officer Kuebler proceeded to conduct a full search of the residence and

found two safes containing drugs underneath a bed in a back bedroom. The officers called backup law enforcement to handle the drugs. At some point prior to the arrival of backup, the officers ascertained that Phipps had no outstanding warrants.[1]

Approximately ten to twenty minutes later, Officer Hutchison from the Coeur d'Alene Police Department arrived. Officer Hutchison talked with Phipps separately in a back bedroom after he read Phipps her *Miranda* rights. When asked whether she had a methamphetamine pipe in her backpack, Phipps confirmed that she did. Officer Hutchison searched Phipps's backpack and found the methamphetamine pipe. Consequently, Officer Hutchison issued Phipps a citation for possession of drug paraphernalia.

On January 12, 2017, Phipps moved to suppress the methamphetamine pipe and her statements regarding the pipe. At the suppression hearing, Officer Kuebler was asked why he detained Phipps, to which he explained, "[w]hen we enter a residence, we require that everybody stays in the living room until we clear the residence for officer-safety reasons." Officer Kuebler further explained,

---

[1] The officers' testimony regarding the timeline of events differs in several respects, resulting in a different recitation of the facts between the magistrate court and the district court. Nevertheless, we adopt the findings of the magistrate court where, as here, they are supported by substantial and competent evidence. *See Pelayo v. Pelayo*, 154 Idaho 855, 858, 303 P.3d 214, 217 (2013) ("The Supreme Court reviews the trial court (magistrate) record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings." (quoting *Bailey v. Bailey*, 153 Idaho 526, 529, 284 P.3d 970, 973 (2012))).

> [W]e're entering a residence where people are on felony probation, and the people that necessarily hang out there, a lot of times we find felony warrants or other drugs so we -- we don't want to have individuals leaving, coming back -- knowing where we're at in the residence, coming back with intentions to harm an officer.

Officer Johnson similarly testified that the detention was "[d]epartment procedure to ensure officer safety."

When asked whether there was any suspicion of wrongdoing prior to the search of the residence, Officer Kuebler testified that they did not believe the parolee violated any terms or conditions of his parole; that they did not suspect he had any drugs in his apartment; and that they did not suspect he was illegally possessing a firearm. As for Phipps, Officer Johnson testified that he did not believe Phipps was violating any law at the time. The magistrate court found this to be the case as well: "She didn't appear to be armed or dangerous. They didn't see anything about her person that would justify a *Terry* stop or search of her person." Therefore, the court found that, prior to Phipps's statement to the parole officers regarding the methamphetamine pipe, "there [was] no individual probable cause to hold or detain Ms. Phipps." Rather, "Ms. Phipps was simply a person merely present during a p[arole search] . . . to check a residence."

After the suppression hearing, the magistrate court orally pronounced its findings of fact and conclusions of law. After analyzing cases from the U.S. Supreme Court and Ninth Circuit Court of Appeals, the

court concluded that there is no legal difference between a search pursuant to a search warrant and a search pursuant to a parole waiver; in either case, law enforcement may detain all individuals found on the premises. Therefore, the court held that when parole officers are conducting a lawful parole search, they may detain and question all persons present, regardless of whether they have reasonable suspicion or probable cause, which is what the officers did in this case. Accordingly, the magistrate court denied Phipps's motion to suppress.[2]

On March 27, 2017, Phipps entered a conditional guilty plea, reserving the right to appeal the magistrate court's denial of her motion to suppress. On May 5, 2017, Phipps appealed the magistrate court's denial of her motion to suppress to the district court.

On appeal, the district court reversed the magistrate court's denial of Phipps's motion to suppress. The court held that parole officers may not detain nonresidents found on the premises during a lawful parole search unless the officers have probable cause or reasonable suspicion. The court explained that "[i]n the case of a valid search warrant, . . . the probable cause determination provides a nexus between an individual's presence at the location and the suspected criminal activity, rendering detention of individuals present reasonable." However, that same nexus "does not exist when law enforcement arrives at a parolee's residence to perform a routine search pursuant to standard conditions of parole" and the individuals

---

[2] The magistrate court initially held that officers may detain all persons, but then elaborated that officers may detain them in order to "determine if this is in fact [their] residence prior to the determination of any criminal activity."

"are not parolees nor residents of the home but are merely present at a parolee's residence when law enforcement arrives." Accordingly, the district court held that Phipps was unlawfully seized and suppressed the evidence of the methamphetamine pipe and the statement regarding the pipe under the exclusionary rule. The State timely appealed.

II. STANDARD OF REVIEW

"On appeal of a decision rendered by the district court while acting in its intermediate appellate capacity, this Court directly reviews the district court's decision." *State v. Chernobieff*, 161 Idaho 537, 539, 387 P.3d 790, 792 (2016) (quoting *In re Doe*, 147 Idaho 243, 248, 207 P.3d 974, 979 (2009)).

> [T]he Supreme Court reviews the trial court (magistrate) record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure.

Pelayo v. Pelayo, 154 Idaho 855, 858, 303 P.3d 214, 217 (2013) (quoting *Bailey v. Bailey*, 153 Idaho 526, 529, 284 P.3d 970, 973 (2012)). "Thus, this Court does not review the decision of the magistrate court." *Id.* at 859, 303 P.3d at 218. "Rather, we are 'procedurally bound to affirm or reverse the decisions of the district court.'" *Id.* (quoting *Bailey*, 153 Idaho at 529, 284 P.3d at 973).

"The standard of review of a suppression motion is bifurcated." *State v. Mullins*, 164 Idaho 493, 496, 432 P.3d 42, 45 (2018) (quoting *State v. Watts*, 142 Idaho 230, 232, 127 P.3d 133, 135 (2005)). "When a decision on a motion to suppress is challenged, the Court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to the facts as found." *Id.* (quoting *State v. McNeely*, 162 Idaho 413, 414–15, 398 P.3d 146, 147–48 (2017)).

III. ANALYSIS

The State asks this Court to reverse the district court's decision, which reversed the magistrate court's denial of Phipps's motion to suppress. The State contends that it is reasonable for officers conducting a parole search of a parolee's residence to detain third parties on the premises because the government's interest in conducting the parole search outweighs the burden caused to any third parties during the limited detention. The State relies on the U.S. Supreme Court's decision in *Michigan v. Summers*, 452 U.S. 692 (1981) to support its position. Phipps contends that the government's interests do not outweigh the detention when the detainee is a non-resident.

In assessing the validity of Phipps's detention, we initially note three undisputed facts essential to defining the scope of this Court's analysis. First, there is no dispute concerning the officers' authority to enter and search the apartment. The parolee consented to suspicionless searches of his person and residence as a condition of his parole. Second, Phipps's initial detention qualifies as a seizure for purposes of the Fourth Amendment. The State does not contend otherwise and the record shows that Phipps was not free to leave

the residence. Third, the officers conceded that they did not have reasonable suspicion or probable cause to initially detain Phipps. Once again, the State does not contend otherwise and the record shows that neither officer believed Phipps to be armed or dangerous or involved in any wrongdoing. Therefore, the dispute now before this Court involves only the constitutionality of a suspicionless detention of a third party during a routine parole search. This is an issue of first impression for this Court.

"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.' " *State v. Bishop*, 146 Idaho 804, 810, 203 P.3d 1203, 1209 (2009) (quoting U.S. CONST. amend. IV). "Like the Fourth Amendment, the purpose of Art. I, § 17 [of the Idaho Constitution] is to protect Idaho citizens' reasonable expectation of privacy against arbitrary governmental intrusion." *State v. Albertson*, 165 Idaho 126, ___, 443 P.3d 140, 143 (2019) (quoting *State v. Christensen*, 131 Idaho 143, 146, 953 P.2d 583, 586 (1998)). Thus, the reasonable expectation of privacy inherent within the Fourth Amendment has not only been incorporated under the Due Process Clause of the Fourteenth Amendment to apply to the states, *see Mapp v. Ohio*, 367 U.S. 643 (1961), but it has also been recognized within the Idaho Constitution.[3]

---

[3] Although Phipps argued in her motion to suppress and briefing below that Art. I, § 17 of the Idaho Constitution affords her greater protection than that provided under the Fourth Amendment to the U.S. Constitution, *see State v. Thompson*, 114 Idaho 746, 751, 760 P.2d 1162, 1167 (1988), Phipps abandoned that issue on appeal. Instead, Phipps essentially argues that her rights under state law are coextensive with her rights under federal

Generally, in order to be reasonable under the Fourth Amendment, "an official seizure of the person must be supported by probable cause, even if no formal arrest is made." *Summers*, 452 U.S. at 696 (citing *Dunaway v. New York*, 442 U.S. 200, 204 (1979)). However, the U.S. Supreme Court has recognized that "some seizures significantly less intrusive than an arrest have withstood scrutiny under the reasonableness standard embodied in the Fourth Amendment." *Id.* at 697 (citing *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975); *Adams v. Williams*, 407 U.S. 143 (1972); *Terry v. Ohio*, 392 U.S. 1 (1968)). "In these cases the intrusion on the citizen's privacy 'was so much less severe' than that involved in a traditional arrest that 'the opposing interest in crime prevention and detection and in police officer safety' could support the seizure as reasonable." *Id.* at 697–98 (quoting *Dunaway*, 442 U.S. at 209).

Although this case presents an issue of first impression for Idaho, the law in this area has been developing nationwide over the last four decades. In 1981, the U.S. Supreme Court recognized that a valid search warrant "implicitly carries with it the limited authority [for law enforcement officers] to detain the occupants of the premises while a proper search is conducted." *Summers*, 452 U.S. at 705. In *Summers*, the police had a warrant to search a residence for narcotics. Once they arrived, they encountered Summers leaving. The police asked Summers to help them gain

---

law, citing *Summers* and its progeny as authoritative and controlling. Similarly, the district court's decision below was based solely on Fourth Amendment considerations. Therefore, because we have not been asked to determine whether the Idaho Constitution grants additional protections not found in the Fourth Amendment, we will not address that issue.

access to the residence and detained him while they searched the premises. After finding narcotics in the basement and determining that Summers owned the residence, the police arrested him, searched his person, and found an envelope containing heroin. Summers was subsequently charged with possession of a controlled substance. Summers moved to suppress the evidence "as the product of an illegal search in violation of the Fourth Amendment." *Id.* at 693–94.

In *Summers*, the dispute before the U.S. Supreme Court involved the "constitutionality of a pre-arrest 'seizure' " that was "unsupported by probable cause." *Id.* at 696. As previously noted, the U.S. Supreme Court has recognized that there are some seizures that, although covered by the Fourth Amendment, are permitted because they "constitute such limited intrusions on the personal security of those detained and are justified by such substantial law enforcement interests that they may be made on less than probable cause." *Id.* at 699. In deciding whether the seizure fell within the general rule or the exception, the Court "examine[d] both the character of the official intrusion and its justification." *Id.* at 700.

As for the character of the intrusion, the Court observed that it is "[o]f prime importance . . . that the police had obtained a warrant to search respondent's house for contraband." *Id.* at 701. "A neutral and detached magistrate had found probable cause to believe the law was being violated in that house and had authorized a substantial invasion of the privacy of the persons who resided there." *Id.* The Court also noted that the detention "was less intrusive than the search itself" and "[wa]s not likely to be exploited by the officer or unduly prolonged in order to gain more infor-

mation, because the information the officers seek normally will be obtained through the search and not through the detention." *Id.* Further, because the detention was in the respondent's own residence, "it could add only minimally to the public stigma associated with the search itself and would involve neither the inconvenience nor the indignity associated with a compelled visit to the police station." *Id.* at 702.

As for the justifications of the intrusion, the Court articulated three: (1) "the legitimate law enforcement interests in preventing flight in the event that incriminating evidence is found"; (2) "the interest in minimizing the risk of harm to the officers"; and (3) "the orderly completion of the search" as the detainees' "self-interest may induce them to open locked doors or locked containers to avoid the use of force." *Id.* at 702–03. Over a strong dissent, the majority held that "a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted." *Id.* at 705.[4]

---

[4] Although this Court has not had the opportunity to discuss *Summers* in any context, the Idaho Court of Appeals has addressed it several times. *See State v. Reynolds*, 143 Idaho 911, 155 P.3d 712 (Ct. App. 2007); *State v. Pierce*, 137 Idaho 296, 47 P.3d 1266 (Ct. App. 2002); *State v. Kester*, 137 Idaho 643, 51 P.3d 457 (Ct. App. 2002). In *Pierce* and *Kester*, the court was dealing with a search warrant and conducted an ad hoc balancing test to uphold the legality of the detention. Our holding today not only extends *Summers* to parole and probation searches, but also reiterates that an officer's authority to detain incident to a search is categorical, "it does not depend on the 'quantum of proof justifying detention or the extent of the intrusion to be imposed by the seizure.' " *Muehler*, 544 U.S. at 98 (quoting *Summers*, 452 U.S. at 705 n.19). As for *Reynolds*, the only case of the three specifically dealing with a probation search, the court did not reach

In 2005, the U.S. Supreme Court confirmed that *Summers* created a categorical rule: "An officer's authority to detain incident to a search is categorical; it does not depend on the 'quantum of proof justifying detention or the extent of the intrusion to be imposed by the seizure.' " *Muehler v. Mena*, 544 U.S. 93, 98 (2005) (quoting *Summers*, 452 U.S. at 705 n.19). "*Summers* makes clear that when a neutral magistrate has determined police have probable cause to believe contraband exists, '[t]he connection of an occupant to [a] home' alone 'justifies a detention of that occupant.' " *Id.* at 99 n.2 (quoting *Summers*, 452 U.S. at 703–04). *Muehler* also recognized that officers are permitted to ask general questions of detainees as long as the detention is not "prolonged by the questioning." *Id.* at 101. Accordingly, the officers in that case did not need reasonable suspicion or probable cause "to ask Mena for her name, date and place of birth, or immigration status." *Id*.

Here, the district court held that *Summers* only applies to the detention of an occupant when the search is conducted pursuant to a search warrant. While the court's ruling is a logical reading of *Summers*, it does not take into account more recent decisions that have extended *Summers* to circumstances where a search warrant was not issued. *See, e.g.*, *Sanchez v. Canales*, 574 F.3d 1169, 1175 (9th Cir. 2009) *overruled on other grounds by United States v. King*, 687 F.3d 1189 (9th Cir. 2012) (parole and probation searches); *People v. Rios*, 122 Cal.Rptr.3d 96, 106 (Ct. App. 2011) (probation search); *United States v. Enslin*, 327 F.3d 788,

---

the question of whether law enforcement officers can constitutionally detain individuals found on the premises of a lawful probation search because Reynolds was not on the premises being searched so *Summers* was inapplicable.

796–97 (9th Cir. 2003) (consent search to execute an arrest warrant); *Hovington v. State*, 616 A.2d 829, 832 (Del. 1992) (arrest warrant).

Of most significance to this case, is the Ninth Circuit Court of Appeals' extension of the *Summers* rule to permit the limited detention of "the occupants of a home during a parole or probation compliance search." *Sanchez*, 574 F.3d at 1173. In *Sanchez*, probation officers began conducting random probation compliance checks on all probationers with prior arrests for robbery living within the area in response to an increase in robberies. Oscar Sanchez was one of those probationers. Records indicated that Sanchez was living at his parents' house. As it turned out, however, Sanchez was incarcerated in state prison at the time. After the officers arrived, they made the occupants—Sanchez's parents, sister, and nephew—wait outside while they conducted a search of the home for Sanchez. After about an hour of searching, the officers were unable to locate Sanchez and allowed the family back inside the home. *Id.* at 1171–72.

Sanchez's family filed a suit against the officers under 42 U.S.C. § 1983, claiming that their detention was unconstitutional. *Id.* at 1172. The officers moved for summary judgment based on qualified immunity. *Id.* The district court denied summary judgment on the unconstitutional detention claim, reasoning that "Supreme Court and Ninth Circuit case law did not authorize Officers to detain 'third parties' on the premises while conducting a probation compliance search." *Id.* The district court held that *Muehler* was inapplicable "because the Sanchez home was subject to a warrantless probation compliance search, whereas 'important to the analysis in *Muehler* was the presence of a search warrant.' " *Id.* at 1174.

On appeal, the Ninth Circuit Court of Appeals reversed the district court, holding that "officers may constitutionally detain the occupants of a home during a parole or probation compliance search." *Id.* at 1173. The court reasoned that the three justifications set forth in *Muehler*—as originally established in *Summers*—are present in every valid home search, whether or not the search is supported by a warrant: "[T]he law should always be concerned to prevent the flight of criminals, ensure officer safety, and facilitate orderly completion of valid searches—warrant or no warrant." *Id.* at 1174. Moreover,

> Given that police officers may search the home of a parolee or probationer "without a warrant" and without "run[ning] afoul of the Fourth Amendment" so long as "the officers have [probable cause to believe] that they are at the address where . . . the parolee . . . resides," *Motley,* 432 F.3d at 1079, there is no need to be concerned that a neutral magistrate had not approved the reasonableness of the compliance search. *See generally Samson*, 547 U.S. at 848 ("[P]arolees . . . have severely diminished expectations of privacy by virtue of their status alone."); *Motley*, 432 F.3d at 1080 (implying limitations on the "the interest of third parties" who are co-occupants of a parolee's home). Just as in a search pursuant to a search warrant, therefore, "it is constitutionally reasonable to require [the occupant of a home] to remain while officers of the law execute a valid [probation compliance] search." *Summers*, 452 U.S. at 704–05.

Id.

The holding in *Sanchez* clearly extends *Summers* to parole and probation searches. We find there are sound reasons for this "because the character of the additional intrusion caused by detention is slight and because the justifications for detention are substantial," notwithstanding the absence of a search warrant. *Muehler*, 544 U.S. at 98 (citing *Summers*, 452 U.S. at 701–05). As for the character of the intrusion, it is generally the same whether the individual is detained during the execution of a search warrant or a parole search. That is, the detention is "surely less intrusive than the search itself," is "not likely to be exploited . . . because the information the officers seek normally will be obtained through the search and not through the detention," and bears "neither the inconvenience nor the indignity associated with a compelled visit to the police station." *Summers*, 452 U.S. at 701–02.

Moreover, the governmental interests outlined in *Summers* apply with the same force to parole and probation searches as they do with searches pursuant to a search warrant. As previously noted, there are three overarching law enforcement interests whenever officers legally search a residence: (1) "preventing flight"; (2) "minimizing the risk of harm to the officers"; and (3) "the orderly completion of the search." *Id.* at 702–03. "[T]he law should always be concerned to prevent the flight of criminals, ensure officer safety, and facilitate orderly completions of valid searches—warrant or no warrant." *Sanchez*, 574 F.3d at 1174 (citing *Muehler*, 544 U.S. at 98). The reasons for this are obvious. First, there is always the possibility that an occupant will take flight in order to avoid any implication of wrongdoing. "If police officers are concerned about flight, and have to keep close supervision

of occupants who are not restrained, they might rush the search, causing unnecessary damage to the property or compromising its careful execution." *Bailey v. United States*, 568 U.S. 186, 198 (2013). Therefore, "[a]llowing officers to secure the scene by detaining those present . . . prevents the search from being impeded by occupants leaving with the evidence being sought or the means to find it." *Id*. Second, officers visiting a parolee's home run a substantial risk of harm from unknown individuals leaving and reentering the home. Finally, if occupants are permitted to wander around the residence, there is the possibility that they may interfere with the execution of the parole search by "hid[ing] or destroy[ing] evidence, seek[ing] to distract the officers, or simply get[ting] in the way." *Id.* at 197. These risks are present in all residence searches, warrant or no warrant, and the government's interests in preventing these risks outweigh the slight intrusion associated with the detention. Accordingly, we find no meaningful difference between the detention of occupants present during the execution of a search warrant and the detention of occupants present during a routine parole or probation search.

The district court's decision in this case suggests that the detention should be limited to identifying new persons arriving and remaining on the premises during the parole search; any non-residents should then be permitted to leave. We decline to limit *Summers* in such a way. Requiring officers to check identification and determine whether each occupant is a resident or non-resident will be cumbersome, time consuming, distracting, and ultimately lead to prolonging the period of detention. Given the highly transient nature of many people's living arrangements, it

would frequently prove impossible to ascertain a person's current residence from the information they have on hand. Further, allowing individuals to come and go defeats the underlying justifications of the *Summers* rule—*i.e.*, safety and efficiency. These concerns are present whether the occupant is a resident or not.

Additionally, as the U.S. Supreme Court acknowledged in *Muehler*, officers can ask general questions of *Summers* detainees as long as the detention is not "prolonged by the questioning." 544 U.S. at 101. "[E]ven when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual; ask to examine the individual's identification; and request consent to search his or her luggage." *Id.* (internal citations omitted) (quoting *Florida v. Bostick*, 501 U.S. 429, 435 (1991)). Accordingly, when an individual is being lawfully detained during such a search, their rights under the Fourth Amendment are not infringed by an officer's questioning, even if unrelated to the detention or the search. Therefore, we conclude that based on the holdings in *Summers*, *Muehler*, and *Sanchez*, officers have the categorical authority to detain all occupants of a residence incident to a lawful parole or probation search and to question them as long as the detention is not prolonged by the questioning. In holding to the contrary, the district court erred.[5]

---

[5] In this case, the district court similarly weighed the justifications outlined in *Summers*; however, the court looked to the specific facts of the case rather than to the nature of parole and probation searches in general—*i.e.*, the court conducted an ad hoc analysis rather than a categorical one. *See Muehler*, 544 U.S. at 98 ("An officer's authority to detain incident to a search is categorical.").

The record establishes that the officers in this case were conducting a routine parole search of a parolee's residence when they detained Phipps as she was exiting a bedroom. The officers made Phipps and the parolee sit in the living room as they conducted a search of the residence. Phipps's detention was therefore permissible under *Summers* because she was present during a lawful parole search of a parolee's residence.[6] Moreover, the officer's questioning did not constitute an independent Fourth Amendment violation. Prior to the full search of the residence, an officer posed a single question to both Phipps and the parolee, asking whether there was anything in the apartment that they should know about before they searched. Phipps immediately responded that she had a methamphetamine pipe in her backpack. There is nothing in the record to suggest that the officer impermissibly prolonged the search by asking this single question prior to commencing the full search. Therefore, based on *Summers* and its progeny, we hold that the limited detention of Phipps was reasonable under the Fourth Amendment.[7]

---

[6] This case is distinguishable from our recent opinion in *State v. Maxim*, No. 45950, 2019 WL 6519992, at *1 (Idaho Dec. 4, 2019), where we declined to condone a warrantless entry and search of a home on the basis that law enforcement later discovered the owner of the home was on probation and had waived his Fourth Amendment rights.

[7] This case is distinguishable from our recent opinion in *State v. Maxim*, No. 45950, 2019 WL 6519992, at *1 (Idaho Dec. 4, 2019), where we declined to condone a warrantless entry and search of a home on the basis that law enforcement later discovered the owner of the home was on probation and had waived his Fourth Amendment rights.

IV. CONCLUSION

For the reasons discussed above, the district court erred in reversing the magistrate court's order denying Phipps's motion to suppress. Accordingly, we reverse the district court's order. This matter is remanded to the district court with instructions to reinstate the magistrate court's order and remand the case to the magistrate court for further proceedings consistent with this opinion.

Chief Justice BURDICK, and Justices BRODY, BEVAN and STEGNER **CONCUR.**

APPENDIX B

IN THE DISTRICT COURT OF THE FIRST JUDICAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

[filed June 7, 2018]

STATE OF IDAHO, Plaintiff/Respondent,	)	Case No. CR 16-22188
v.	)	Memorandum Decision and Order on Appeal
KARI JANAE PHIPPS, Defendant/Appellant.	)	

I. INTRODUCTION

Defendant conditionally pled guilty to possession of drug paraphernalia following the denial of Defendant's motion to suppress. Defendant appeals the denial of her motion to suppress, contending that the warrantless seizure of her person was unlawful and without legal justification and that the physical evidence obtained and the statements made to law enforcement were the result of the unlawful seizure.

II. FACTS

Probation officers performed a residence check on a felony parolee. *Tr., pp. 9-10*. The parolee consented to a search of his residence pursuant to the standard conditions of parole. *See id.* at 10-11, 29. Probation officers had no suspicion of any criminal wrongdoing or parole violations when they arrived to perform the residence check. *Id.* 15-16.

When the officers arrived, Defendant was present in the residence along with the parolee. *Id.* at 10-11.

The parties stipulated to the fact that Defendant was detained at the time probation officers entered into the residence to conduct the search. *Id.* at 5-7. Defendant was not on felony probation at the time of the search and there were no warrants for her arrest. *Id.* at 37, 50. Although there was no testimony about whether Defendant was a resident of the apartment, the State's briefing acknowledges that Defendant was a visitor to the residence. *See* Respondent's Brief, p. 3; Appellant's Brief, p. 1; *see also* Objection to Motion to Suppress, p. 1. However, the probation officers on scene were familiar with Defendant from her presence during prior visits. *Id.* at 19, 33.

After drugs were found elsewhere in the residence, local law enforcement was called. *Id.* at 11-12. Probation Officer Kuebler asked the individuals present if there was anything else in the apartment and notified them that a drug dog would be on scene if need be, at which point Defendant stated that she had a meth pipe in her backpack. *Id.* at 12.

Defendant moved to suppress the physical evidence found in her backpack and her statements to law enforcement, contending that she was unlawfully seized during the residence check. Defendant argues that the physical evidence and her statements to law enforcement were obtained as the result of her illegal seizure. Defendant's motion to suppress was denied, and she now appeals.

III. STANDARDS

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are supported by substan-

tial evidence but freely reviews the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). 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. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. (1999).

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures of persons or property. Searches or detentions conducted without a warrant are presumptively unreasonable. *Coolidge v. New Hampshire*, 403 U.S. 443, 454–55, 91 S.Ct. 2022, 2031–32, 29 L.Ed.2d 564, 575–76 (1971); *State v. Butcher*, 137 Idaho 125, 129, 44 P.3d 1180, 1184 (Ct.App.2002). The State may overcome this presumption by demonstrating that the search or seizure fell within a well-recognized exception to the warrant requirement or was otherwise reasonable under the circumstances. *State v. Martinez*, 129 Idaho 426, 431, 925 P.2d 1125, 1130 (Ct.App.1996).

A seizure that implicates the Fourth Amendment occurs when an officer, by means of physical force or show of authority, restrains a citizen's liberty. *State v. Ferreira*, 133 Idaho 474, 479, 988 P.2d 700, 705 (Ct.App.1999). A seizure may take the form of either an arrest or an investigative detention. An investigative detention is a seizure of limited duration to investigate suspected criminal activity and does not offend the Fourth Amendment if the facts available to the officer at the time gave rise to reasonable suspicion to believe that criminal activity was afoot. *Terry v. Ohio*,

392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *Ferreira*, 133 Idaho at 479, 988 P.2d at 705; State v. Dice, 126 Idaho 595, 599, 887 P.2d 1102, 1106 (Ct.App.1994); *State v. Knapp*, 120 Idaho 343, 347, 815 P.2d 1083, 1087 (Ct.App.1991).

Evidence obtained in violation of the Fourth Amendment is subject to the exclusionary rule, which requires unlawfully seized evidence to be excluded. *E.g.*, *Wong Sun v. United States*, 371 U.S. 471, 484–85, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); *State v. Page*, 140 Idaho 841, 846, 103 P.3d 454, 459 (2004). The exclusionary rule requires the suppression of both "primary evidence obtained as a direct result of an illegal search or seizure, ... but also evidence later discovered and found to be derivative of an illegality or 'fruit of the poisonous tree.'" *Segura v. United States*, 468 U.S. 796, 804, 104 S.Ct. 3380, 82 L.Ed.2d 599 (1984) (quoting *Nardone v. United States*, 308 U.S. 338, 341, 60 S.Ct. 266, 84 L.Ed. 307 (1939)); *accord, e.g.*, *Bishop*, 146 Idaho at 811–12, 203 P.3d at 1210–11.

IV. ANALYSIS

This appeal raises the issue of whether law enforcement may detain individuals found on the premises where a lawful parole (or probation) search is conducted pursuant to the parolee's condition of parole requiring the parolee to consent to searches by law enforcement. Idaho appellate courts have not yet addressed this issue. In *State v. Reynolds*, the Idaho Court of Appeals recognized this unresolved issue, but the Court of Appeals decided *Reynolds* on other grounds. *See State v. Reynolds*, 143 Idaho 911, 916, 155 P.3d 712 (Ct. App. 2007).

In the context of a search pursuant to a warrant issued by a neutral and detached judicial officer, the

U.S. Supreme Court and the Idaho Court of Appeals have held that police are allowed to detain individuals present during the search, even without other reasonable suspicion that those individuals are involved in criminal activity. *Michigan v. Summers*, 452 U.S. 692, 705, 101 S.Ct. 2587, 2595, 69 L.Ed.2d 340, 351 (1981); *State v. Kester*, 137 Idaho 643, 646, 51 P.3d 457, 460 (Ct. App. 2002); *State v. Pierce*, 137 Idaho 296, 47 P.3d 1266 (Ct.App.2002).

In *Summers*, the U.S. Supreme Court held that "[t]he connection of an occupant to that home gives the police officer an easily identifiable and certain basis for determining that suspicion of criminal activity justifies a detention of that occupant." *Summers*, 452 U.S. at 703–04. The Court further reasoned that in a search of a private home, "the additional intrusion caused by detention is slight" while "the justifications for detention are substantial." *Summers*, 452 U.S. at 701–05. Those justifications include (1) "preventing flight in the event that incriminating evidence is found"; (2) "minimizing the risk of harm to the officers"; and (3) "facilitating the orderly completion of the search ... [while] avoid[ing] the use of force." *Id.* at 702-03; *see also Muehler v. Mena*, 544 U.S. 93, 125 S.Ct. 1465, 161 L.Ed.2d 299 (2005) (confirming *Summers*'s holding and also authorizing reasonable force to detain occupants based on the circumstances).

In *Sanchez v. Canales*, 574 F.3d 1169 (9th Cir. 2009) (overruled on other grounds by *United States v. King*, 687 F.3d 1189 (9th Cir. 2012)), the Ninth Circuit held that detention of the occupants of a home during a parole or probation compliance search was not a violation of the Fourth Amendment, relying heavily on *Summers* and *Meuhler*. *Sanchez*, like *Meuhler*, was a civil § 1983 case, but it evaluated the same Fourth

Amendment principles applicable here—whether it was reasonable to seize the occupants of a residence while an authorized probation/parole residence check is performed.

In the case of a valid search warrant, a judge has necessarily determined that there is probable cause to believe that evidence of criminal activity may be found in that location. As reasoned in *Summers*, the probable cause determination provides a nexus between an individual's presence at the location and the suspected criminal activity, rendering detention of individuals present reasonable during the execution of the warrant:

> The existence of a search warrant, however, also provides an objective justification for the detention. A judicial officer has determined that police have probable cause to believe that someone in the home is committing a crime. Thus a neutral magistrate rather than an officer in the field has made the critical determination that the police should be given a special authorization to thrust themselves into the privacy of a home. The connection of an occupant to that home gives the police officer an easily identifiable and certain basis for determining that suspicion of criminal activity justifies a detention of that occupant.

Summers, 452 U.S. at 703–04.

However, that same nexus between an individual's presence and suspected criminal activity does not exist when law enforcement arrives at a parolee's residence to perform a routine search pursuant to stand-

ard conditions of parole rather than pursuant to probable cause. Although the *Sanchez* court reasoned that that "parolees ... are more likely [than ordinary citizens] to commit future criminal offenses," (*see Sanchez v. Canales*, 574 F.3d at 1175 (quoting *Samson v. California*, 547 U.S. 843, 853, 126 S.Ct. 2193, 165 L.Ed.2d 250 (2006))), this rationale should not extend to justify seizures of individuals who are not parolees nor residents of the home but are merely present at a parolee's residence when law enforcement arrives.

It would be unreasonable to subject an individual to searches and seizures by law enforcement merely based on their association with a parolee and would run counter to the policy goals of parolees' reintegration into society. In discussing whether a probation officer must actually request permission to search or may enter unannounced, the Idaho Court of Appeals recognized that the rights of persons associated with a probationer or parolee and the policy objectives of parole and probation should be considered,

> One might reasonably argue that the purposes of probation would be better advanced if [the condition] were interpreted as the State suggests—to allow probation officers to conduct unrestricted, unannounced searches of a probationer's residence. However, other societal interests support [the probationer's] interpretation of [the condition]. As the supreme court recognized in *Roman v. State*, 570 P.2d 1235 (Alaska 1977), there is a price to be paid for adopting a rule that probationers and parolees give up all of their Fourth Amendment rights simply because they are on probation or parole:

> Fourth amendment protection will be diminished not only for parolees, but also for the family and friends with whom the parolee might be living. Those bystanders may find themselves subject to warrantless searches only because they are good enough to shelter the parolee, and they may therefore be less willing to help him—a sadly ironic result in a system designed to encourage reintegration into society.
>
> *Roman*, 570 P.2d at 1243 (quoting Note, *Striking the Balance Between Privacy and Supervision: The Fourth Amendment and Parole and Probation Officer Searches of Parolees and Probationers*, 51 N.Y.U. L. Rev 800, 816 (1976)).

State v. Turek, 150 Idaho 745, 750, 250 P.3d 796, 801 (Ct. App. 2011) (quoting *Joubert v. State*, 926 P.2d 1191 (Alaska Ct. App. 1996)).

The U.S. Supreme Court has also held, "[i]n executing a search warrant officers may take reasonable action to secure the premises and to ensure their own safety and the efficacy of the search." *Los Angeles Cty., California v. Rettele*, 550 U.S. 609, 614, 127 S.Ct. 1989, 1992, 167 L. Ed. 2d 974 (2007) (citing *Meuhler*, 544 U.S. at 98-100 and *Summers*, 542 U.S. at 704-705). Ensuring police safety and the efficacy of the search are equally applicable considerations in a parole search context as they are in the context of a valid search warrant. As such, the three factors raised in

Summers pertaining to officer safety and search efficacy should be evaluated in determining whether law enforcement's action was reasonable.

Justifications for the detention of individuals present when law enforcement arrives to search a parolee's residence may include, (1) "preventing flight in the event that incriminating evidence is found"; (2) "minimizing the risk of harm to the officers"; and (3) "facilitating the orderly completion of the search ... [while] avoid[ing] the use of force." *Summers*, 452 U.S. at 702-03; see also *Muehler*, 544 U.S. at 98.

1. "preventing flight in the event that incriminating evidence is found"

The interest of "preventing flight in the event that incriminating evidence is found" does not apply when law enforcement arrives to conduct a parole search in the same way that it does when law enforcement executes a search warrant. In the case of a search warrant, there is probable cause to believe incriminating evidence will be found, and thus a corresponding increased risk that suspects present may attempt flight. Flight and pursuit of criminal suspects entail real and obvious safety risks to officers. In the case of a routine parole search, there need be no pre-ordered suspicion beyond the parole officer's history with the parolee.

If there is reasonable suspicion that an individual present at the parolee's residence is actually involved in criminal activity or presents a safety risk, then the individual may be detained for further investigation. *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884, 20 L. Ed. 2d 889 (1968). In this case, the parties stipulated that Defendant was detained upon law enforcement's entry into the parolee's apartment. *See Tr., p. 7.* When law enforcement arrived to perform the

residence check, law enforcement had no suspicion that the parolee was violating any terms or conditions of his parole. *Id*. at 15-16. Upon arrival, law enforcement entered the resident with the parolee's consent and observed Defendant coming out of a bedroom with a backpack. *Id*. at 29. Law enforcement then had Defendant sit in the living room with the parolee while the search was conducted. *Id*. at 31-32. Law enforcement testified that Defendant was not "cleared to leave" at that time "because of procedure." *Id*. at 37. While seated in the living room, Probation Officer Kuebler asked the individuals present if there wasa anything else in the apartment and notified them that a drug dog would be on scene if need be, at which point Defendant stated that she had a meth pipe in her backpack. *Id*. at 12. When officers initially observed Defendant, they did not see anything to indicate Defendant was armed. *Id*. at 34. Prior to the officer's statement regarding a drug dog, law enforcement admittedly had no reason to believe Defendant was violating any law or was about to commit a crime. *Id*. at 38. As such, law enforcement admitted that they did not have any reasonable suspicion that Defendant was involved in criminal activity or posed a safety risk when Defendant was detained upon law enforcement's entry. Therefore, the detention cannot be justified pursuant to *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884, 20 L. Ed. 2d 889 (1968).

The detention of an individual on the basis that she might flee if incriminating evidence is found, without any suspicion that incriminating evidence will be found or any reason to believe the individual would in fact flee, is unreasonable. The individual's interest in avoiding seizure should prevail over the state's interest in preventing flight where there is no

reasonable articulable suspicion of criminal wrongdoing by that individual.

2. "minimizing the risk of harm to the officers"

In *Summers*, the Court recognized that, "[a]lthough no special danger to the police is suggested by the evidence in this record, the execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence." *Michigan v. Summers*, 452 U.S. 692, 702, 101 S. Ct. 2587, 2594, 69 L. Ed. 2d 340 (1981). However, at the point of law enforcement's arrival in the case of a routine parole residence check, there is no analogous threat of sudden violence or frantic efforts to conceal or destroy evidence because there need be no underlying probable cause that evidence of criminal activity will actually be discovered.

This Court recognizes officer safety dictates that officers should at least be allowed to identify new persons arriving and remaining on the premises during a search. However, officer safety concerns are not served by preventing a visiting person from leaving the premises, especially where, as here, at the time of the detention, officers were familiar with Defendant from prior visits (*Tr., pp.* 19, 33), there was no suspicion of any criminal activity by the parolee or by Defendant (*Tr., pp.* 15-16, 38), and the officers did not perceive Defendant to pose a safety risk (*Tr., p.* 34).

3. "facilitating the orderly completion of the search [while] avoid[ing] the use of force."

In *Summers* and *Meuhler*, the U.S. Supreme Court recognized that facilitating the orderly completion of

the search while avoiding the use of force may be served by the detention of persons present at a residence during the execution of a search warrant because "self-interest may induce them to open locked doors or locked containers to avoid the use of force." *Summers*, 452 U.S. at 702-703; *Meuhler*, 544 U.S. at 1469-1470. However, in *Summers* and *Sanchez*, the individuals detained were residents of the premises to be searched. *Summers*, 452 U.S. at 694; *Sanchez*, 574 F.3d at 1171.

Defendant argues that "a non-resident is unlikely to be able to help with officer completion of the search, as it is improbable that she has keys or special access to locked doors or containers." The State argues that the officers' interest in conducting an orderly search "would be severely hampered if occupants of the residence were free to come and go." The State does not explain how allowing someone to leave who was initially present, where there is no suspicion of criminal activity and no perceived threat posed by the person, would hamper an otherwise orderly search.

There is no evidence that this Defendant was able to open safes or other locked containers or was able to otherwise aid in completing the search and avoiding the use of force. The State has provided no further justification for why a visitor of the residence must remain detained on-site to facilitate the orderly completion of the search. Thus, facilitating the orderly completion of the search while avoiding the use of force does not justify the detention of visitors present when law enforcement arrives to perform a parole residence check.

Therefore, concerns of search efficacy and officer safety do not justify as reasonable the automatic detention of visitors present when law enforcement arrives to perform a residence check of a parolee.

Defendant was unlawfully seized when law enforcement arrived to perform the residence check. The physical evidence and Defendant's statements to law enforcement were the direct result of such illegal seizure. Therefore, the exclusionary rule mandates that the evidence obtained as a direct result of the illegal seizure shall be suppressed.

V. CONCLUSION

For the reasons set forth above, and upon facts specific to this case, the decision of the magistrate court denying Defendant's motion to suppress is REVERSED.

SO ORDERED this 7th day of June, 2018.

/s/ Rich Christensen
Rich Christensen
District Judge

APPENDIX C

IN THE DISTRICT COURT OF THE FIRST JUDICAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	
Respondent,	)	Case No.
	)	CR-2016-22188
vs.	)	
	)	
KARI JANAE PHIPPS,	)	
Appellant.	)	

TRANSCRIPT ON APPEAL

ATTORNEY FOR APPELLANT:
Tyler R. Naftz
Office of the Kootenai County Public Defender
Post Office Box 9000
Coeur d'Alene, ID 83816-9000

ATTORNEY FOR RESPONDENT:
Eileen Paul
Office of the City of Coeur Prosecuting Attorney
710 East Mullan Avenue
Coeur d'Alene, ID 83814

APPEAL FROM MAGISTRATE COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

THE HONORABLE CLARK A. PETERSON PRESIDING

* * *

[4] IN THE DISTRICT COURT OF THE FIRST JUDICAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, Plaintiff,	)	Case No. CR-2016-22188
vs.	)	
KARI JANAE PHIPPS, Defendant.	)	

MOTION TO SUPPRESS

AT: Kootenai County Courthouse
Coeur d'Alene, Idaho

ON: Monday, February 13, 2017
10:50 a.m.

BEFORE: The Honorable Judge Clark A. Peterson

APPEARANCES:

For the State:
Eileen Paul
Office of the City of Coeur d'Alene
Prosecuting Attorney
710 East Mullan Avenue
Coeur d'Alene, ID 83814

For the Defendant:
Tyler R. Naftz
Office of the Kootenai County Public Defender
P.O. Box 9000
Coeur d'Alene, ID 83816-9000

* * *

[54] THE COURT: Well, this is interesting. Why don't you folks tell me where you disagree, if at all, with the Court. It appears there is no probable cause of—or suspicion of criminal activity of any kind whether officers entered the residence, that it was done pursuant to consent, to probation, slash, parole terms related to Mr. Wilson. When they entered, they saw Ms. Phipps come out of a bedroom.

At that point they had no belief that criminal activity was afoot. They had nothing that they observed, pursuant to your questions, Mr. Naftz, that would've even justified a *Terry* detention at that time. She didn't appear to be armed or dangerous. They didn't see anything about her person that would justify a *Terry* stop or search of her person.

[55] Pursuant to an officer-safety policy, they were going to complete a sweep of the apartment to find out who else was there, and they asked the individuals to remain present in the living room. Though I didn't hear details on the sweep, my guess is the sweep is phase one, and that was done, and then at some point a statement was made—while there's disputed evidence regarding the exact order of events, at some point a statement was made regarding a drug dog is going to be coming through, does anyone have any items that you're not supposed to have. Ms. Phipps allegedly indicated at that point that she had the methamphetamine pipe. However, one has to imagine that would've occurred after any potential sweep to determine who else was present. No one else was present, and then it seems also reasonable to believe that the question would've occurred prior to a search of the residence, though there is some dispute as to the timing.

Eventually the residence was searched, and a series of safes was found.

At some point during this interaction identification was gained. Also, one would imagine that would happen early on just for the purposes of identifying individuals; doesn't make sense to leave unknown individuals there, and then the law enforcement [56] officer indicated that by the time he arrived on scene the meth pipe—the statement regarding the meth pipe had been made. He did the search for the meth pipe, and that by the time he arrived—he got I.D.s from law enforcement, and he said the parole officers had already cleared them. In other words, there was no outstanding warrant; there was no felony probation for Ms. Phipps.

Does everyone generally agree with that recitation of facts and sort of the legal position? Ms. Paul, in particular?

MS. PAUL: I do, Your Honor. I don't know if the State—or sorry, the Court mentioned Miranda rights, but yes, I agree.

THE COURT: And no one was Mirandized until Officer Hutchison did that later, and certainly when he arrived he had received information that was probable cause for him, but the question is that period of time where, pursuant to policy with no suspicion of criminal activity, she can be held, and then what requirements of Miranda are triggered regarding that and what is that level of detention or encounter with the citizens.

I don't know that the issues were that sharpened when the parties submitted their materials. Do you—I think it would be interesting to me to permit you

folks to have until, say, Friday close of [57] business, you don't have to write a brief, but to give the Court or even send in a list of controlling authority, case law for the Court to review to make the determination because I think this is a pretty interesting question.

It seems to me almost that—I don't know that policy is sufficient to hold a citizen—if they can reasonably have their I.D.s checked, be cleared and released, then that really needs to happen, and that any detention beyond that is improper detention, and if that detention is improper and gives rise to questioning, with or without Miranda, that might be a basis for a suppression, but it'd be interesting to see if case authority discusses this idea of further detaining for officer safety, because it does seem there are some valid policy and safety reasons why even a person without any suspicion of criminal activity can be held until that search is concluded. Those persons may know other individuals, may, if released, indicate, you know, officers are present, they're searching, and that could create a substantial officer-safety concern, but I think the Court should be properly advised on these things now that we've sort of finely tuned what the facts are.

Mr. Naftz, are there any other facts that you're asking the Court to find as a result of this [58] hearing that you think bear upon the legal analysis?

MR. NAFTZ: No, Your Honor. I think just at that one time that I think the Court pointed out that I.D.s at some point were taken, more than likely early on. That was the only thing that we were looking at. I can't think of anything else, Your Honor. Thank you.

THE COURT: All right. Thank you. Ms. Paul?

MS. PAUL: No, Your Honor. I think that the Court's recitation does a good job of summarizing the important evidence, and I appreciate the opportunity to look further into refining our argument on those points.

THE COURT: Though I didn't hear clear evidence on it, my belief is people would be essentially frozen, the initial sweep would be done, then people would be identified, and then a search would be conducted. That seems the most reasonable course. You know, we're not going to wait for everybody to whip I.D. out without knowing whether or not there are other persons in the residence, so I think law enforcement would want to do that first, then we would identify who we're having contact with, and then we would conduct the probation search, and they have a desire to know also whether or not the persons that they're holding there briefly are subject to either warrant or probation terms, et cetera, so the Court would likely find that's [59] the most reasonable order of circumstances and events here, so it would be enter, hold, and at that point everyone's in agreement that there is no individual probable cause to hold or detain Ms. Phipps, but she's being held just for purposes of officer safety while they do a sweep.

They found no other individuals. Mr. Wood apparently shows up at a later time, though that's unknown, and then I believe the parties were I.D.'d and then a search was conducted so—and it strikes me that regardless of when they actually performed it, probation has the capacity to review and clear citizens—regardless of what timing they chose to do it, it appears they did that prior to the arrival of Coeur d'Alene police so—

MS. PAUL: You mean clear citizens for warrants, Your Honor?

THE COURT: Um-hmm. It appears that—I believe Office Hutchison when—he said that when I arrived I got their I.D.s, they were handed to me by probation, and they were—they had already been checked. So if you'll submit authority by—can you do it by close of business Friday? Is that acceptable, Mr. Naftz?

MR. NAFTZ: Yes, Your Honor.

[60] THE COURT: Ms. Paul?

MS. PAUL: Yes, Your Honor.

THE COURT: All right. And again, it doesn't have to be a brief. If you just literally want to send in a list of cases, please review these, I would appreciate that. If you did want to send in a paragraph or two, that would certainly be enlightening and helpful, but it will be deemed under advisement then, and it will be deemed submitted upon receipt of authority by Friday at five o'clock, and the Court will then either set it for an oral pronouncement or issue a short written decision, depending on which seems most appropriate.

Anything further, Mr. Naftz?

MR. NAFTZ: Nothing further, Your Honor. Thank you.

THE COURT: Anything further, Ms. Paul?

MS. PAUL: No, Your Honor. Thank you.

THE COURT: All right. Thank you both. It's a very interesting issue. Look forward to seeing your guiding case authority.

(Matter adjourned at 11:50 a.m.)

[61] IN THE DISTRICT COURT OF THE FIRST JUDICAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, Plaintiff,	)	Case No. CR-2016-22188
vs.	)	
KARI JANAE PHIPPS, Defendant.	)	

RULING ON MOTION TO SUPPRESS/PRETRIAL CONFERENCE

AT: Kootenai County Courthouse
Coeur d'Alene, Idaho

ON: Friday, March 10, 2017
2:23 p.m.

BEFORE: The Honorable Judge Clark A. Peterson

APPEARANCES:

For the State:
Eileen Paul
Office of the City of Coeur d'Alene
Prosecuting Attorney
710 East Mullan Avenue
Coeur d'Alene, ID 83814

For the Defendant:
Tyler R. Naftz
Office of the Kootenai County Public Defender
P.O. Box 9000
Coeur d'Alene, ID 83816-9000

* * *

[62] THE COURT: And Kari Phipps, 16-22188. Ms. Phipps is present out of custody, Mr. Lambert on her behalf. Ms. Paul is present. Mr. Naftz is not present, but Mr. Lambert is here on her behalf. The matter's on for the Court's decision on this matter and also for a pretrial. I don't know if the parties found a resolution and don't need me to put my decision on the record or if you need me to put that on the record first. What's your—

MR. LAMBERT: We need the decision, Your Honor.

THE COURT: All right. I thought you might feel that way. First I want to commend everyone. I thought it was an outstanding hearing and, not only that, I was very, very pleased with the materials that were provided both by the State and by the defense. I thought they were very, very helpful.

Candidly, it was a question I had not researched. I anticipated there being more of a distinction between searches done pursuant to a warrant issued by a judge where there was at least a judicial finding of probable cause for criminal activity—I [63] thought there would be some distinction between that really and just sort of a probation enforcement search.

However—and I am not going to recite the facts. I made the Court's finding of the facts at the conclusion of our hearing, the order in which I believe the events occurred. In summary, Ms. Phips was simply a person merely present during a probation—essentially a status search to check a residence. There was no belief of criminal wrongdoing of any kind. She was present.

She was detained. While the search was conducted for officer-safety reasons, comments were made regarding a drug dog essentially. She then made a comment that she had a methamphetamine pipe in her backpack. The backpack was subsequently searched by law enforcement after she could easily have been identified and released. I think that's all clearly conceded facts by all parties.

However, the case authority that's been presented to me, while I appreciate Mr. Naftz's materials, it appears clear that the United States Supreme Court case law and also the Ninth Circuit case law, *Sanchez*, et cetera, suggests that the same logic applies to probation searches of homes, even without articulable suspicion of probable cause, is not different from that of a search warrant, and that [64] officers may detain persons. Therefore, her detention was not unlawful and that the question here was not custodial interrogation triggering Miranda warnings, and therefore her statements are not suppressible and, as a result, neither is the search of the backpack.

I found it very interesting; there's not clear Idaho law on point. There's analogous cases in Idaho of course, but the Court I think is bound obviously by United States Supreme Court precedent, and that's set forth, frankly, in the State's materials and in the defense's materials, and then also by the controlling Federal precedent from the Ninth Circuit.

I appreciate everyone's, I thought, outstanding submissions. Thank you very much. Again I was somewhat surprised by the state of the law on that topic, but I think the law requires that I deny the motion to suppress. I don't find there's a separate basis

to believe that the Idaho Constitution provides additional protections beyond those in the United States Constitution, but I certainly think this is an issue really that does need to be addressed by the Idaho Supreme Court to clarify the law in the state of Idaho.

Again, I think there's analogous case law but not directly on point: A probation search where a person, just a third party, on a home search just simply [65] to determine if this is in fact his residence prior to the determination of any criminal activity the ability to detain third parties. I do find though on the facts that the detention here was relatively brief, unlike some of the detentions that are authorized in the searches that are at issue in the reported decisions, some of which are two or three hours long, and as you balance the intrusions here, I can understand why the courts—those courts come to their conclusions, but again, I'll just state there is no evidence to suggest Ms. Phipps was engaged in unlawful behavior and, nevertheless, the law I think compels this result, so I think I'm forced to deny the motion.

Having made that decision, what's the status of the matter today?

MR. LAMBERT: Ask the Court to leave it set.

THE COURT: All right. Thank you. We will do so. State, are you ready for trial?

MS. PAUL: Yes, Your Honor.

THE COURT: Thank you. And defense ready for trial?

MR. LAMBERT: Yes, Your Honor, we are.

THE COURT: Once again, thank you to the attorneys. Ms. Phipps, stay in contact with your counsel, and the Court will see you on the 27th at 8:30.

[66] THE DEFENDANT: Okay. Thank you.

THE COURT: All right. Good luck to you folks.