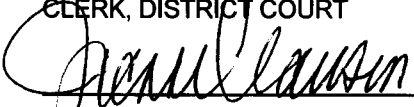


STATE OF IDAHO)
County of KOOTENAI)^{ss}

FILED 4/30/18

AT 11:00 O'clock a M

CLERK, DISTRICT COURT


Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)
)
 Plaintiff,)
 vs.)
)
 DAMEAN DEAN ESPINOZA,)
)
 Defendant.)

Case No. **CRF 2018 1037**
CRF 2018 1195

**MEMORANDUM DECISION AND
ORDER DENYING DEFENDANT'S
MOTIONS TO SUPPRESS**

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY.

The matter before the Court is defendant Damean Dean Espinoza's (Damean) Motion to Suppress in Kootenai County Case Nos. CR-2018-1037 and CR-2018-1195.

On August 17, 2017, Bradley Johnson, a police officer with the City of Post Falls, Idaho, was dispatched to an Exxon gas station located at 701 N. Spokane Street, Post Falls, Idaho, in response to a reported assault. Daniel Koontz, a police officer with the City of Post Falls, Idaho, also responded to the same dispatch. Neither Officer Johnson nor Officer Koontz observed the assault take place. After arriving at the gas station, Officer Johnson interviewed the reporting party and victim, Cody Moore, and Officer Koontz interviewed Damean. According to Officer Johnson's police report, Cody reported that Damean chased him on foot from Perfection Tire Center to the Exxon gas station. Cody stated that he entered the Exxon gas station, locked himself in the bathroom, and called

911. Cody explained that Damean had accused him of stealing a large sum of money and had threatened to kill him as a result. Cody told Officer Johnson that he was scared Damean would catch him and kill him. Officer Johnson subsequently arrested Damean for the alleged assault. He searched Damean's person and located what he believed to be heroin on Damean's person. However, Officer Johnson did not charge Damean with possessing heroin that day.

Thereafter, on January 19, 2018, Brian Williamson, a detective with the Post Falls Police Department, secured an arrest warrant for Damean. The arrest warrant was for possession of a controlled substance with intent to deliver, which stemmed from the heroin seized as a result of Damean's August 17, 2017, arrest. At a preliminary hearing, Detective Williamson testified that on January 19, 2018, he located Damean at a residence in Post Falls, Idaho. He observed Damean exit the residence, get in a vehicle, and begin to drive. Detective Williamson followed Damean in an unmarked patrol car and subsequently stopped Damean.¹ At that time, Damean was arrested pursuant to the arrest warrant and searched incident to that arrest. As a result of the search, Detective Williamson found what he believed to be contraband on Damean's person.

That same day, on January 19, 2018, the State of Idaho (State) filed a criminal complaint against Damean in Kootenai County Case No. CR-2018-1037. The criminal complaint alleges that Damean committed the crime of possession with the intent to deliver a controlled substance. The allegation relates to the events of August 17, 2017. The State filed an Information on March 1, 2018, accusing Damean of the same crime.

On January 22, 2018, the State filed a criminal complaint against Damean in Kootenai County Case No. CR-2018-1195. The criminal complaint alleges that Damean

¹ Detective Williamson testified that he stopped Damean because of the arrest warrant and because Damean was driving with a suspended license.

committed the crime of trafficking in heroin. The allegation relates to the events of January 19, 2018. The State filed an Information on March 1, 2018, accusing Damean of trafficking in heroin, driving while suspended, and possession of drug paraphernalia.

Meanwhile, on February 21, 2018, Damean filed a Motion to Suppress in both Kootenai County Case Nos. CR-2018-1037 and CR-2018-1195. Damean filed a Memorandum in Support of Motion to Suppress on April 10, 2018. The plaintiff, State of Idaho, filed a Memorandum in Opposition to Motion to Suppress on April 23, 2018. A hearing Damean's Motion to Suppress was held on April 25, 2018.

II. STANDARD OF REVIEW.

In an appeal from an order granting or denying a motion to suppress, the reviewing court will not disturb findings of fact supported by substantial evidence. *State v. Whiteley*, 124 Idaho 261, 264, 858 P.2d 800, 803 (Ct. App. 1993); *State v. Donato*, 135 Idaho 469, 470, 20 P.3d 5, 6 (2001). However, it freely reviews "the trial court's determination as to whether constitutional requirements [were] satisfied in light of the facts." *Whiteley*, 124 Idaho at 264, 858 P.2d at 803; *Donato*, 135 Idaho at 470, 20 P.3d at 6. "[T]he power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court." *State v. Dreier*, 139 Idaho 246, 250, 76 P.3d 990, 994 (Ct. App. 2003) (citing *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)).

III. ANALYSIS.

The primary issue presented in Damean's Motion to Suppress is whether his August 17, 2017, arrest for an alleged assault committed outside the presence of law enforcement was unconstitutional in light of the Idaho Supreme Court's holding in *State v.*

Green, 158 Idaho 884, 354 P.3d 446 (2015). The Court previously considered this same issue in an unrelated case, *State of Idaho v. Peter Clarke*, Kootenai County case no. CR-2016-14857. Therefore, before addressing Damean's Motion to Suppress, the Court briefly summarizes its decision in *State of Idaho v. Peter Clarke*.

A. The Court denied the defendant's Motion to Suppress in *State of Idaho v. Peter Clarke*, Kootenai County Case No. CR-2016-14857.

This Court takes judicial notice pursuant to I.R.E. 201, of the file in *State of Idaho v. Peter Clarke*, Kootenai County Case CR 2016 14857, specifically the court minutes and digital record in that motion to suppress hearing. In *Clarke*, Michael Hanson, a deputy with the Kootenai County Sheriff's Office, testified at a suppression hearing that he arrested the defendant for an alleged battery. Deputy Hanson stated that he did not witness the battery take place. At the conclusion of the hearing, the Court issued a decision on the record. Based on the testimony presented, the Court found that Deputy Hanson had probable cause to believe a battery occurred and that Deputy Hanson arrested the defendant in accordance with Idaho Code § 19-603(6) (i.e., there was no statutory violation). Idaho Code § 19-603(6) provides a peace officer may make an arrest without a warrant, "When upon immediate response to a report of a commission of a crime there is probable cause to believe, that the person arrested has committed a violation of section 18-902 (assault)..." The Court then took a short recess to review the Idaho Supreme Court's opinion in *State v. Green*, 158 Idaho 884, 354 P.3d 446 (2015), and to consider whether the defendant's warrantless arrest was unconstitutional in light of the *Green* opinion.

Thereafter, the Court went back on the record and denied the defendant's Motion to Suppress. In doing so, the Court explained that the *Green* opinion was helpful, but not entirely on point, as to whether a warrantless arrest for a misdemeanor committed outside the presence of law enforcement was unlawful under the Idaho Constitution. The Court

first found it significant that there was no Idaho case law discussing subsection (6) of Idaho Code § 19-603. The Court next noted that the *Green* opinion makes clear the difference between a violation of the Idaho Constitution and a violation of a state statute, and the Court noted that even when there is a statutory violation, suppression of evidence is not warranted under *Green*. The Court then found that a warrantless arrest of an individual for committing a listed subsection (6) misdemeanor outside the presence of law enforcement was not automatically unconstitutional under the Idaho Constitution and in light of *Green*. The Court's decision was based on a lack of binding case law; the Court also took into consideration the consequences of a different decision. That is, the Court noted that subsection (6) had been in existence for some time and that the listed subsection (6) misdemeanors occur outside the presence of law enforcement on a daily basis throughout the State of Idaho. The Court decided that the *Green* opinion did not support a finding that every warrantless arrest for an assault, battery, domestic assault or battery, violation of a protective order, or violation of a no contact order, which almost universally occur outside the presence of law enforcement, was a violation of the Idaho Constitution. The Court concluded by expressly declining to be the first district judge in the State of Idaho to hold otherwise.

The defendant Peter Clarke appealed the Court's decision denying his Motion to Suppress. The appeal in *State v. Clarke* is pending.

B. Damean's August 17, 2017, arrest pursuant to Idaho Code § 19-603(6) was constitutionally reasonable under the Idaho Constitution.

With regard to his August 17, 2017, arrest, Damean argues that his arrest for misdemeanor assault, which occurred outside the presence of law enforcement, was unconstitutional because the "Idaho Supreme Court's holding in *State v. Green* struck down I.C. § 19-603(6)." Mem. Supp. Mot. Supp. 2–5. Damean points out that in *Green*,

the Idaho Supreme Court explained that subsection (6) “did not exist at the time the Idaho Constitution was adopted, and because [it] was not incorporated by constitutional amendment [it] cannot be considered part of the *constitutional* standard for what constitutes a reasonable seizure of the person.” *Id.* at 4 (quoting *Green*, 158 Idaho at 888–89, 354 P.3d at 450–51). Given this, Damean generally contends that while his arrest met the requirements of Idaho statute, it did not meet Idaho’s constitutional requirements. *Id.* at 5. Because his arrest did not meet Idaho’s constitutional requirements, Damean asks the Court to suppress the evidence seized as a result of his arrest. *Id.*

While Damean’s argument may ultimately have merit (depending on the outcome of the appeal in *State v. Clarke*), the Court concludes that Damean has overstated the Idaho Supreme Court’s holding in *Green* and further finds that Damean’s argument relies on what appears to be dicta in the *Green* opinion. First, in *Green*, the Idaho Supreme Court did not strike down Idaho Code § 19-603(6) as Damean suggests as the issue of whether an officer can make a constitutionally reasonable warrantless arrest (or not) under that subsection was not before the appellate court. The issues in *Green* were (1) whether a misdemeanor arrest in violation of Idaho Code § 49-1407 is unreasonable under the Idaho Constitution and, (2) if not, whether evidence obtained incident to such an arrest must still be suppressed. *Green*, 158 Idaho at 885–86, 354 P.3d at 447–48. In turn, the Idaho Supreme Court held that an officer’s failure to comply with Idaho Code § 49-1407 did not result in a constitutional violation (i.e., the arrest was not constitutionally unreasonable), and even though Alesha Green’s (*Green*) arrest violated state statute, suppression of evidence was not warranted as suppression of evidence is a court-created remedy for constitutional, not statutory, violations. *Id.* at 887–88, 892, 354 P.3d at 449–50, 454.

Second, to the extent that the Idaho Supreme Court in *Green* discussed subsection (6), its discussion appears to be dicta and not truly necessary to its decision. In the *Green* case, Green was stopped in her vehicle for failing to maintain her lane and subsequently arrested for driving without a valid license in violation of Idaho Code § 49-301. *Green*, 158 Idaho at 885, 354 P.3d at 447. Driving without a valid license is a misdemeanor offense, and an arrest for violating the statute can only be made if certain conditions are met. *Id.*; I.C. § 49-1407. The circumstances in *Green* did not merit an arrest. *Green*, 158 Idaho at 885, 354 P.3d at 447. “Nonetheless, the officer arrested Green[,]” searched Green and her vehicle, and discovered drugs and drug paraphernalia on Green’s person and a large amount of cash in Green’s car. *Id.* Thereafter, Green was charged with several drug-related offenses. *Id.* She moved to suppress the evidence on the ground that her arrest was unlawful under Article I, Section 17 of the Idaho Constitution. *Id.* The district court granted Green’s Motion to Suppress, finding that Green’s arrest was unreasonable under the Idaho Constitution because it did not comply with Idaho Code § 49-1407. *Id.* at 886, 354 P.3d at 448.

On appeal, the Idaho Supreme Court reversed the district court. It concluded that there had been no constitutional violation because the facts demonstrated Green was arrested for a public offense committed in the officer’s presence. *Id.* at 887–88, 354 P.3d at 449–50. The Idaho Supreme Court explained that Green’s arrest was consistent with the Idaho Constitution because, at the time the Idaho Constitution was adopted, Idaho statute permitted the warrantless arrest of a person for a public offense committed in the officer’s presence² and Green was arrested for such an offense. *Id.* at 887–88, 892, 354

² The Idaho Supreme Court explained:

At that time, the law governing warrantless arrests by peace officers in Idaho was found in Title III, Chapter V, Section 7540 of the Idaho Revised Statutes, which

P.3d at 449–50, 454 (explaining that the constitution “incorporated the principles regarding arrest in the Idaho statutory and common law in 1890 when [it] was adopted.”). It then proceeded to discuss subsections (6) and (7) of Idaho Code § 19-603 even though these statutes did not provide a basis for Green’s arrest and were not directly at issue in the *Green* case.³ In doing so, the Idaho Supreme Court stated:

Since the time the Idaho Constitution was adopted, the Idaho Legislature has enacted several more statutes governing arrests in Idaho under various circumstances. See, e.g., I.C. §§ 19–603(6)–(7) (allowing warrantless misdemeanor arrests for offenses not committed in officers’ presence when committed on an airplane or when the offense is one of several specified violent misdemeanors), 49–1407 (limiting officers’ discretion to arrest for certain minor offenses unless specified circumstances are met), 39–6312(2) (providing that an officer may make a warrantless arrest for a misdemeanor violation of a protection order even if that violation did not occur in officer’s presence). However, the enactments and amendments of these statutes were not required to be made through the same rigorous standard as an amendment to the Idaho Constitution. See Idaho Const. art. XX, § 1. Because these subsequently enacted arrest standards did not exist at the time the Idaho Constitution was adopted, and because they were not incorporated by constitutional amendment, they cannot be considered part of the *constitutional* standard for what constitutes

provided:

A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person:

1. For a public offense committed or attempted in his presence.
2. When a person arrested has committed a felony, although not in his presence.
3. When a felony has in fact been committed and he has reasonable cause for believing the person arrested to have committed it.
4. On a charge made, upon a reasonable cause, of the commission of a felony by the party arrested.
5. At night, when there is reasonable cause to believe that he has committed a felony.

Therefore, arrests made under the circumstances specified in this statute should be accepted as constitutionally reasonable under the Idaho Constitution. See *State v. Hart*, 66 Idaho 217, 157 P.2d 72 (1945) (finding that defendant’s arrest complied with I.C. § 19–603 and, therefore, rejecting defendant’s argument that his arrest was constitutionally unlawful).

Green, 158 Idaho at 888, 354 P.3d at 450 (footnotes omitted).

³ It appears that the Idaho Supreme Court discusses subsection (6) of Idaho Code § 19-603 because, like Idaho Code § 49-1407, it was enacted after the Idaho Constitution was adopted.

a reasonable seizure of the person. To hold otherwise would essentially allow the Legislature to amend the Idaho Constitution by the process of a statutory enactment or amendment. Because these subsequently enacted arrest standards are merely statutory, constitutional remedies are inappropriate when those statutes have been violated by police. Although the Legislature could certainly specify suppression as the remedy for police violation of one of these statutes, because such a statutory violation is not a constitutional violation, suppression is not warranted absent such a legislative directive.

Id. at 888–89, 354 P.3d at 450–51. While this statement does suggest that, absent a constitutional amendment, a warrantless arrest of a person pursuant to Idaho Code § 19-603(6) is always unlawful (as Damean argues), the Court is unable to reach that conclusion as the statement appears to be dicta and dicta is not binding precedent. See *Sun Valley Ranches, Inc. v. Prairie Power Co-op., Inc.*, 124 Idaho 125, 129, 856 P.2d 1292, 1296 (Ct. App. 1993) (“The doctrine is well established in Idaho and is limited to the appellate court’s legal pronouncements and holdings necessary to decide the particular issue presented.”). The Court concludes the statement is dicta because the discussion of subsection (6) is not necessary to the Idaho Supreme Court’s analysis and decision in *Green*. Further, the Court notes that the Idaho Supreme Court’s discussion of subsection (6) consists of only one paragraph. As this Court explained in *State of Idaho v. Peter Clarke*, to find that a warrantless arrest pursuant to Idaho Code § 19-603(6) is per se unlawful would significantly impact law enforcement practices throughout the State of Idaho, and this Court is unable to reach that conclusion with only a single paragraph of what appears to be dicta in the *Green* opinion as support.

Therefore, because Damean only seeks suppression of evidence on the ground that his August 17, 2017, arrest was unlawful in light of the *Green* opinion and because the Court concludes that his arrest was lawful despite *Green*, the Court denies the Motion to Suppress in Kootenai County Case No. CR-2018-1037.

Finally, some of the facts developed at the April 25, 2018, hearing on Damean's Motion to Suppress, deserve comment.

Most importantly, the time period between the call from the victim, Cody Moore, and Officer Bradley Johnson's arrival was very short. Officer Johnson testified at the April 25, 2018, hearing, that he was dispatched to the Exxon station at 9:30 p.m. and arrived at 9:34 p.m. Damean's attorney asked the Court to take judicial notice of the preliminary hearing transcript, and that motion was granted. On cross examination, Officer Johnson was asked why, at the preliminary hearing on February 25, 2018, he estimated that it was less than 20 minutes from dispatch to arrival at the scene complaining party. He responded that he had gone back and checked the radio logs to verify when he was dispatched and when he arrived. Additionally, Officer Daniel Koontz was already on the scene when Officer Johnson arrived four minutes after the call came in. The fact remains that this was a misdemeanor not committed in the officer's presence, but the time period from the event to police being on scene and encountering and arresting Damean, was very short. This is important, as mentioned above, Idaho Code § 19-603(6) provides a peace officer may make an arrest without a warrant, "When upon immediate response to a report of a commission of a crime there is probable cause to believe, that the person arrested has committed a violation of section 18-902 (assault)..." The Court makes the finding that Officer Johnson and Officer Koontz made an immediate response to the report of a commission of a crime, and that they had probable cause to believe Damean had committed an assault.

Also important is the factual basis for the crime of assault to have occurred. Officer Johnson testified that Damean took steps to attempt to commit a violent act, the intended victim, Moore, took steps to flee, and if he had not successfully fled, violence would have

been done by Damean to Moore. Officer Johnson testified that in his extensive investigation with Moore, Moore related the following. Moore indicated that he and Damean were good friends, but that Moore knew Damean to have had nefarious dealings involving drugs. Moore told Officer Johnson that Damean's friend had earlier told Moore that Damean had accused Moore of stealing Damean's property having a great value, and that Damean's friend said he wanted to kill Moore. Moore told Officer Johnson he knew Damean to be capable of violent acts. Moore told Officer Johnson that when he saw Damean by the tire store, he feared for his life and immediately ran away, ran into the Exxon station, tried to hide behind the counter, the employee would not let him behind the counter, so Moore went to the bathroom and locked himself in that bathroom, and called 911. Moore told Officer Johnson that Damean at some point during the chase said, "I'm going to kill you", and that he had a knife. Moore described a knife that was similar to a knife found on Damean's friend. The Court finds there has been more than sufficient evidence presented to prove that Officer Johnson had probable cause to believe that Damean had committed the crime of assault upon Moore.

C. Because the Court concluded that Damean's August 17, 2017, warrantless arrest was lawful, it follows that his January 19, 2018, arrest was also lawful.

As for his January 19, 2018, arrest, Damean argues that his arrest was unlawful because the arrest warrant authorizing his arrest was based on evidence seized as a result of his unlawful August 17, 2017, arrest. Mem. Supp. Mot. Suppress 5–6. He cites to Detective Brian Williamson's testimony at the February 15, 2018, preliminary hearing to support his assertion that the only basis for the arrest warrant was evidence gathered as a result of his August 17, 2017, arrest. *Id.*

The Court agrees with Damean that Detective Williamson testified at the preliminary hearing that the basis for the arrest warrant was the evidence discovered as a result of a

search incident to Damean's August 17, 2017, arrest. However, because the Court concluded that Damean's warrantless arrest on August 17, 2017, was lawful, it follows that any evidence collected as a result of that warrantless arrest was properly seized.⁴


Therefore, the Court concludes that the arrest warrant authorizing Damean's arrest was based on evidence seized as a result of his lawful August 17, 2017, arrest. As such, the Court denies Damean's Motion to Suppress in Kootenai County Case No. CR-2018-1195.

IV. CONCLUSION AND ORDER.

Based on the above, the Court denies defendant's Motion to Suppress filed in both cases.

IT IS HEREBY ORDERED THAT DAMEAN DEAN ESPINOZA's Motion to Suppress is **DENIED** in each case.

DATED this 30th day of April, 2018

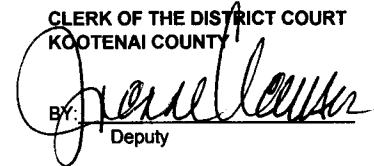

JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 30 day of April, 2018 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

11:01am

Defense Attorney - Jay Logsdon/Linda Payne *pdax@kcnv.wa*
Prosecuting Attorney - Stan Mortensen *ks@kcnv.wa*

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY
BY: 
Deputy

⁴ Damean only argues that the evidence seized as a result of his August 17, 2017 arrest should be suppressed because his arrest was unlawful.