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. ADAM CHRISTOPHER HORTY, Defendant.	CASE NO. CR-2014-5189 MEMORANDUM DECISION AND ORDER ON DEFENDANT'S MOTION TO SUPPRESS

Defendant's Motion to Suppress is based upon the following factual history taken from testimony at the May 30, 2014 Motion to Suppress Hearing and Defendant's Exhibit A:

On or about March 24, 2014 Officer Spencer Mortensen of the Coeur d'Alene Police Department went to the Holiday Motel room number 12 in Coeur d'Alene, Kootenai County, Idaho, to serve a felony arrest warrant on Howard Brammer ("Mr. Brammer") who was believed to be living at that location. Officer Mortensen was accompanied by Officer Schmitz, Detective Craft, and Detective Cwik. Officer Mortensen's suspicion that Mr. Brammer had been living in room 12 were confirmed by Mr. Brammer's neighbor, Frank Darby ("Mr. Darby"), who told Officer Mortensen that Mr. Brammer had been living in room 12 for two weeks.

Mr. Darby informed the officers that there was a shared entryway that was connected by

a landing between his room and room number 12. Mr. Darby consented to the officers accessing this entryway through his residence. Officer Mortensen went out onto the landing from Mr. Darby's room, knocked on the door and announced his presence, then opened the door to room number 12. After opening the door Officer Mortensen called out for Mr. Brammer to exit the motel room. Mr. Brammer exited the residence and was taken into custody without incident.

Katrina Brammer ("Mrs. Brammer") followed her husband out of the residence and was asked by officers if there was anyone else in the residence. Mrs. Brammer stated that there was another male named Zack inside. Officer Mortensen ordered Zack to come out and he exited the residence. According to Officer Mortensen, he then asked Mrs. Brammer if he could search the residence for any other persons inside and Mrs. Brammer consented to the search for individuals inside the residence.

Officer Mortensen and Detective Craft entered the residence and found the Defendant Adam Horty ("Mr. Horty") lying on a bed in one of the rooms. Mr. Horty was placed into handcuffs and taken out of the residence. Office Mortensen exited the residence and asked Mrs. Brammer if he could search the living room area of the residence. After numerous requests, Mrs. Brammer consented to the search of the living room.

Officer Mortensen entered the residence and began a search of the living room. Officer Mortensen found a black and blue nylon bag ("the bag") under a pile of women's clothes in the living room. According to Officer Mortensen he unzipped the bag. Within the bag he found drug paraphernalia and what appeared to be methamphetamine. Officer Mortensen also located a camera in the bag; the pictures on the camera were of Mr. Horty. Subsequently, Mrs. Brammer told Officer Mortensen that the bag and its contents belonged to Mr. Horty; Mrs. Brammer told Officer Mortensen that she saw Mr. Horty enter her home carrying the bag and that he was the

only person who had touched the bag.

Defendant filed this Motion to Suppress on May 2, 2014. Defendant filed an Addendum to his Motion to Suppress on May 9, 2014. The State filed its Brief in Opposition to Defendant's Motion to Suppress on May 28, 2014. Defendant filed a memorandum in support of his Motion on May 30, 2014. The Court heard oral argument on Defendant's Motion on May 30, 2014. Following oral argument the Court gave the State one week to file supplemental briefing. The Court took the matter under advisement on June 6, 2014.

DISCUSSION

1. Whether Mr. Horty has Standing, as a Repeat Social Visitor, to challenge Mrs. Brammer's consent to search the motel room?

A warrantless police entry into a private residence is presumptively violative of the Fourth Amendment. *State v. Vasquez*, 129 Idaho 129, 131, 922 P.2d 426, 428 (Ct. App. 1996). However, Fourth Amendment rights are personal rights which may not be vicariously asserted. *State v. Palmer*, 138 Idaho 931, 934, 71 P.3d 1078, 1081 (Ct. App. 2003). "[A]n unjustified warrantless entry of a residence violates Fourth Amendment rights only of those persons who have a legitimate expectation of privacy in the premises." *Vasquez*, 129 Idaho at 131, 922 P.2d at 428.

A search may be challenged when a personal interest under the Fourth Amendment is asserted and a legitimate expectation of privacy is shown to exist in the area searched or the items seized. *Id.* In determining whether an individual has standing to challenge a search, the question is whether governmental officials violated any legitimate expectation of privacy held by that individual. *Id.* The defendant bears the burden of proving a legitimate privacy interest. *Id/; Vasquez*, 129 Idaho at 131, 922 P.2d at 428.

The United States Supreme Court has held that in some circumstances a person may have

a legitimate expectation of privacy in the house of another. *Id. See Minnesota v. Olson,* 495 U.S. 91, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990); *see also State v. Vasquez,* 129 Idaho 129, 922 P.2d 426 (Ct.App.1996). For example, in *Olson,* the Court held that an overnight guest in the house of another carried an expectation of privacy that is protected by the Fourth Amendment. *Palmer,* 138 Idaho at 934, 71 P.3d at 1081. On the other hand, the Supreme Court has held that one who is merely present with the consent of the householder may not claim the protections of the Fourth Amendment. *Id.* (referencing *Minnesota v. Carter,* 525 U.S. 83, 119 S.Ct. 469, (1998)). The Court of Appeals of Idaho similarly concluded in *Vasquez* that the defendant's "status [in that case] as a casual visitor did not accord him a reasonable expectation of privacy in the apartment." *Vasquez*, 129 Idaho t 131, 922 P.2d at 428.

Like *Vasquez,* it has not been alleged in the case at bar that Mr. Horty was an overnight guest at the motel room or that he was an "owner" of the room. According to Officer Mortensen, Mr. Horty told him that he had not been living or "crashing" at the residence and that he had arrived that morning about forty five minutes prior to the police arriving. Mr. Horty was apparently there to have breakfast with the Brammers.

Based upon the foregoing, the Court finds that Mr. Horty was merely present with the consent of the householders, the Brammers. Mr. Horty bears the burden of proving that he had a legitimate expectation of privacy in the Brammer's motel room; at this point Mr. Horty has not provided any evidence to support that expectation of privacy. The Court finds that pursuant to *Vasquez* and *Palmer*, Mr. Horty has not established that he has standing to challenge the search of the motel room and claim a privacy interest therein. Accordingly, Defendant's Motion to Suppress is denied as to the evidence obtained during the search of the Brammer's motel room. Furthermore, because Mr. Horty does not have standing to challenge the search of the motel

room, the Court need not further address whether the search was lawful.

2. Whether the detention of Mr. Horty was illegal or became illegal after the arrest of Mr. Brammer subject to an arrest warrant?

Not every encounter between police and citizens will trigger Fourth Amendment scrutiny. *State v. Page*, 140 Idaho 841, 843, 103 P.3d 454, 456 (2004). "A seizure under the meaning of the Fourth Amendment occurs only 'when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.'" *Id.*, citing *State v. Nickel*, 134 Idaho 610, 612-13, 7 P.3d 219, 221-22 (2000) (other citation omitted).

> "When a defendant seeks to suppress evidence allegedly obtained as a result of an illegal seizure, the burden of proving that a seizure occurred is on the defendant." *State v. Reese,* 132 Idaho 652, 654, 978 P.2d 212, 214 (1999). Therefore, the proper inquiry in determining whether a seizure occurred is "whether, under all the circumstances surrounding an encounter, a reasonable person would have felt free to leave or otherwise decline the officer's requests and terminate the encounter." *Id.* At 653, 978 P.2d at 213. This rule has been otherwise stated that "'[s]o long as a reasonable person would feel free to disregard the police and go about his business,' an encounter between police and an individual is consensual." *Nickel*, 134 Idaho at 613, 7 P.3d at 222 (quoting *Florida v. Bostick*, 501 U.S. 429, 434, 111 S. Ct. 2382, 2386, 115 L.Ed.2d 389, 398 (1991)).

Page, 140 Idaho at 843-44, 103 P.3d at 456-57.

Once a seizure has been found, the burden shifts to the State to prove that the seizure was constitutional. *State v. Mireles,* 133 Idaho 690, 692, 991 P.2d 878, 880 (Ct. App. 1999). A seizure does not violate the Fourth Amendment if, in light of the circumstances, the actions of the government officials are found to be reasonable. *State v. Wixom*, 130 Idaho 752, 754, 947 P.2d 1000 (1997) (citing *United States v. Brignoni-Ponce,* 422 U.S. 873, 878 (1975)). The State may show that a detention was reasonable by establishing: 1) specific articulable facts which justify the officer's suspicion that the detained person is, has been, or is about to be engaged in criminal activity; or 2) that it was part of the officer's community care-taking function. *See Terry v. Ohio*, 392 U.S. 1, 688 S.Ct. 1868, (1968); *In re Clayton*, 113 Idaho 817, 818, 748 P.2d

401, 402 (1988).

In the case at bar, Officer Mortensen and Detective Craft entered the motel room pursuant to Mrs. Brammer's consent in order to look for any other individuals. According to Officer Mortensen, Mr. Horty was found lying on a bed in one of the rooms; Mr. Horty was placed into handcuffs and led out of the motel room. Based upon the fact that Mr. Horty was placed into handcuffs, the Court finds that Mr. Horty was detained. Because Mr. Horty was detained the State had the burden to show that the detention was lawful. The State has not presented any evidence to suggest that the officers had specific articulable facts which justified any suspicion that Mr. Horty was or had been, or was about to be engaged in criminal activity. The State has also failed to make any allegation that the detention was part of the officers' community care-taking function. Based upon the foregoing, the Court finds that the initial seizure of Mr. Horty was unlawful.

The next question before the Court then is whether the unlawful detention of Mr. Horty requires that the evidence obtained during the search of the Brammers' residence be suppressed. Application of the exclusionary rule to suppress evidence is appropriate only as to evidence that is fruit of the illegal governmental activity. *State v. Babb*, 136 Idaho 95, 98, 29 P.3d 406, 409 (Ct. App. 2001).

Suppression of evidence is justified where "but for" the illegal government activity, the evidence would not have been discovered. *State v. McBaine*, 144 Idaho 130, 133, 157 P.3d 1101, 1104 (Ct. App. 2007). The test to determine whether evidence should be excluded is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Id.* (quoting *Wong Sun v. United States,* 371

U.S. 471, 488, 83 S.Ct. 407, 417 (1963)).

On a suppression motion, the defendant has the burden to show a causal connection between the allegedly illegal search or seizure and the State's acquisition of the challenged evidence. *Babb*, 136 Idaho 95, 98, 29 P.3d 406, 409.

> The Ninth Circuit Court of Appeals has described the parties' respective burdens as follows: "The Government must prove that particular evidence or testimony is not fruit of the poisonous tree, but *a defendant has the initial burden of establishing a factual nexus between the illegality and the challenged evidence*."

Id. (quoting *United States v. Kandik,* 633 F.2d 1334, 1335 (1980) (emphasis added)).

In his brief, Mr. Horty asserts that he "should have been allowed to go about his business, take the items he arrived with and been allowed to leave." (Def.'s Memo, P. 7). There is no evidence before the Court, however, the Mr. Horty made any requests or attempts to collect his belongings; additionally, the Court notes that in his Addendum to Motion to Suppress Mr. Horty denies any assertions that the bag containing the methamphetamine and paraphernalia was his property. Furthermore, the methamphetamine and paraphernalia were located during a search the Brammers' residence, not during a search of Mr. Horty's person. There is no evidence before the Court that the discovery of the methamphetamine and paraphernalia arose out of the illegal detention. Based upon the foregoing, the Court finds that Mr. Horty has failed to establish that but for his unlawful detention the methamphetamine and paraphernalia would not have been discovered by law enforcement.

ORDER:

Based upon the foregoing, IT IS HERBY ORDERED, that:

1. The Court finds that pursuant to *Vasquez* and *Palmer*, Mr. Horty has not established that he has standing to challenge the search of the motel room and claim a privacy interest therein. Mr. Horty was not an overnight guest at the motel

room nor was he was an "owner" of the room; rather he was simply a casual visitor.

2. The Court finds that while the seizure of Mr. Horty was unlawful, Mr. Horty has failed to meet his burden to show a causal connection between the illegal seizure and the State's acquisition of the evidence obtained during the search of the Brammers' residence; the evidence obtained during the search of the Brammers' residence is not a fruit of the unlawful seizure and is therefore it is not subject to exclusion.

3. Because Mr. Horty lacks standing to challenge the search of the motel room and because the evidence obtained during that search is not fruit of the unlawful seizure, Defendant's Motion to Suppress is DENIED.

DATED: This 9 day of June, 2014

Benjamin R. Simpson
District Judge # 101

CERTIFICATE OF SERVICE

I hereby certify that on the 9 day of June, 2014, I caused, to be served, a true and correct copy of the foregoing document as addressed to:

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Deputy Clerk

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