

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO, Plaintiff, vs. RANDY PAUL KOIVU, Defendant.	CASE NO. CR-2010-1014 MEMORANDUM DECISION AND ORDER ON DEFENDANT'S MOTION TO SUPPRESS
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PROCEDURAL AND FACTUAL HISTORY:

On January 6, 2004, the Defendant was found guilty of Possession of a Controlled Substance, in Boundary County. The court ordered 3 years fixed, with 2 years indeterminate, for a unified sentence of 5 years, but granted 4 years of probation. As a condition of probation, the Defendant was ordered to pay certain fines, costs and restitution. On October 31, 2005, the court revoked probation, relinquished jurisdiction and remanded the Defendant to the Department of Corrections for service of sentence.

Around July 2, 2009, the Defendant was discharged from prison. On October 1, 2009, a Deputy Clerk for Boundary County filed an Affidavit and Notice of Failure to Pay, alleging that Defendant was late in the amount of \$1,028.50 for fines, costs and public defender reimbursement. Notice of arrearages was sent to the Defendant. On December 1, 2009, the same

clerk filed a second Affidavit alleging outstanding fines and costs of \$588.50, which were to have been paid in full by July 6, 2006.

On December 8, 2009, Judge Verby signed a Warrant of Attachment directing any peace officer in the State of Idaho to arrest the Defendant and bring him before the court for contempt, less he post bail in the amount of \$588.50. Neither law enforcement nor prosecutors had any involvement in the generation of the clerk's affidavits, nor the issuance of the Warrant of Attachment.

On March 5, 2010, Bonner County Sheriff's Deputies lawfully pulled over the Defendant for speeding. There were two other male passengers in the car. The deputies lawfully obtained identifying information from the three occupants, and ran the information through dispatch for a records check. Dispatch returned that the Defendant and one of the other occupants had warrants in Boundary County.

The deputies reasonably relied on the validity of both confirmed warrants, and placed the Defendant and the other occupant under arrest and transported them to the Bonner County Jail. At the jail, the Defendant was searched prior to being placed in a holding cell. During that process, a baggie of Methamphetamine was discovered at Defendant's feet, and attributed to him. The Defendant was then arrested for felony Possession of a Controlled Substance (Methamphetamine), and this case was generated.

On April 8, 2010, the Prosecuting Attorney for Boundary County filed a motion to dismiss the Warrant of Attachment filed on December 8, 2009. On May 4, 2010, Judge Verby signed an order dismissing the Warrant of Attachment because "the Court lacked jurisdiction to issue the warrant on December 8, 2009."

The parties to this matter filed a Stipulation as to the facts herein on August 19, 2010, and subsequently filed a Stipulation to Forego Oral Argument on August 27, 2010.

The Court has reviewed the files and records herein and now being fully advised in the premises, and good cause appearing therefore,

MEMORANDUM DECISION:

In *State v. Guzman*, 122 Idaho 981, 842 P.2d 660 (1992), the district court determined that a search warrant was not supported by probable cause. However, under the “good faith” exception to the exclusionary rule, as set forth in *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984) the district court admitted evidence found during execution of the warrant.

On appeal, the Idaho Supreme Court revisited the case in which the good faith exception was first adopted in Idaho, *State v. Prestwich*, 116 Idaho 959, 783 P.2d 298 (1989). In revisiting this opinion, the Court noted that the Court of Appeals in *Prestwich* adopted *Leon* based upon the fact that in *State v. Rice*, 109 Idaho 985, 712 P.2d 686 (Ct. App. 1985), *rev. den.* (1986), the Idaho Supreme Court denied petition for review. In *Rice*, the Court of Appeals held that, while the Court had concerns about *Leon*, “in light of our Supreme Court’s admonition that the Idaho provision is to be construed consistently with the fourth amendment to the federal constitution, *State v. Cowen*, 104 Idaho 649, 650, 662 P.2d 230, 231 (1983), we are constrained [to follow the rule in *Leon*].” *Rice*, 109 Idaho at 989, 712 P.2d at 690.

Prestwich then followed the rule in *Rice*, predicating its decision on *Nash v. Overholser*, 114 Idaho 461, 757 P.2d 1180 (1988), in which Justice Johnson wrote:

In my opinion, the result of the failure of this Court to grant a petition for review is that the decision of the Court of Appeals becomes the law of this state with regard to any new principles of law announced in the decision.

Id., at 463-64, 757 P.2d at 1182-83. Thus, the *Leon* good faith exception was adopted by the Idaho Supreme Court by applying the “review denied rule”. *Guzman*, 122 Idaho at 985, 842 P.2d at 665. Noting the difficulties and problems that the “review denied rule” caused, the *Guzman* Court then explicitly rejected the rule. *Id.* The Court explained that it was not necessarily placing its stamp of approval upon every Court of Appeals decision when it denied review:

There have been many instances when only two members of the Court voted to grant review, and also many instances where only one vote is cast to grant review. The various reasons for not granting review are not stated, but we have never considered that denying review meant any more than that for any one of various reasons there were not sufficient votes for reconsidering the decision of the Court of Appeals. One apparent reason for the rule of review denied was that, because we have considered an opinion in question and the briefs, an ensuing denial thereof puts our imprint upon the opinion. No one doubts the sincerity of those advocating that proposition, but the consensus of the Court is that such denial of review has no more meaning or effect than when the Supreme Court of the United States denies a petition for certiorari, the denial likely being attributable to the ever-increasing number of petitions. Of a necessity there must be a screening process.

Id. at 986, P.2d at 665. Of course, this does not mean that decisions of the Court of Appeals are not precedential to trial courts; rather, the Supreme Court “has never subscribed to the view that our decision to not review a decision emanating from that court was tantamount to an implicit holding that the new case law precedent emanating from the Court of Appeals became somehow binding on this Court.” *Id.*

The Court went on to determine that the good faith exception in *Leon* did not merit adoption under Idaho Const. Art. 1, § 17. As the Court explained:

Although we do not doubt and do not challenge the United States Supreme Court’s power to define the parameters of fourth amendment protection against unreasonable searches and seizures, it is equally important that the protections accorded under our state constitution not be diminished by a permanently pervading adoption of the federal good-faith exception.

Guzman, 122 Idaho at 989, 842 P.2d at 668. The Court extensively discussed its right to be instructed by the Fourth Amendment and its strictures, while still interpreting the Idaho

Constitution to provide greater protections. *Id.* at 987-88, 842 P.2d 666-67.

The *Guzman* Court then engaged in a lengthy analysis of Idaho State and Fourth Amendment jurisprudence, showing Idaho's shift into the exclusionary rule and the United States Supreme Court's shift from exclusion of evidence as a way of protecting citizens' Fourth Amendment rights, to exclusion as a mere deterrent of future unlawful police conduct. Thus, the *Guzman* court found *Leon* to be the "apex of this . . . view of the exclusionary rule" in announcing a "good faith" exception to the federal exclusionary rule. *Guzman*, 122 Idaho at 992, 842 P.2d at 992. The *Leon* Court found that as long as the officer acted in good faith reliance, there was nothing to deter, and thus no justification for exclusion. *Id.*

The *Guzman* Court took a less narrow view of the purpose of the exclusionary rule:

[W]hile we recognize[] that the deterrence of police misconduct was a purpose, we also recognized that judicial integrity mandated the exclusionary rule. *See also State v. Johnson*, 110 Idaho 516, 524-26, 716 P.2d 1288, 1296-98 (1986) (recognizing the different purposes of the state exclusionary rule). In sum the bases for our state exclusionary rule are the same as those set forth in *Mapp* and are inimical to the view taken by the Supreme Court in *Calandra* . . . Additionally, we believe the exclusionary rule is also properly directed toward the warrant issuing process itself. We agree with those commentators who have noted that "it is somewhat odd to suppose that the exclusionary rule was not designed to deter the issuance of invalid warrants."

Id. at 992-93, 842 P.2d at 671-72 (citation omitted). Thus, the *Guzman* court disagreed with the United States Supreme Court's finding that the sole policy which warrants suppression under exclusionary rule is deterrence of illegal police behavior:

We believe that the exclusionary rule should be applied in order to: 1) provide an effective remedy to persons who have been subjected to an unreasonable government search and/or seizure; 2) deter the police from acting unlawfully in obtaining evidence; 3) encourage thoroughness in the warrant issuing process; 4) avoid having the judiciary commit an additional constitutional violation by considering evidence which has been obtained through illegal means; and 5) preserve judicial integrity.

Id. at 993, 842 P.2d at 672. Lastly, the *Guzman* Court disagreed with *Leon*'s determination that the exclusionary rule needs to be limited because of "[t]he substantial social costs exacted by the

exclusionary rule for the vindication of Fourth Amendment rights . . .” *Guzman*, 122 Idaho at 994, 842 P.2d at 673, *quoting Leon*, 468 U.S. at 907, 104 S.Ct. at 3412. First, *Guzman* explains that a cost-benefit analysis is impossible, as there is “insufficient empirical data for the costs and benefits of a good faith exception to be accurately assessed.” *Id.* at 994, 842 P.2d at 673, *quoting State v. Oakes*, 598 A.2d 119, 126 (Vt. 1991). The Court further explained that it is not the exclusionary rule that results in substantial costs; it is the Fourth Amendment:

Much of the criticism leveled at the exclusionary rule is misdirected; it is more properly directed at the Fourth Amendment itself The exclusionary rule places no limitations on the actions of the police. The fourth amendment does. The inevitable result of the Constitution’s prohibition against unreasonable searches and seizures and its requirement that no warrants shall issue but upon probable cause is that police officers who obey its strictures will catch fewer criminals That is the price the framers anticipated and were willing to pay to ensure the sanctity of the person, home, and property against unrestrained governmental power.

Id. at 994-95, 842 P.2d at 673-74 (citation omitted).

The state does not pay a “cost” by being put in a worse position than before the constitutional violation; it is only forbidden to benefit from its error. As the state is only deprived of what it was not entitled to possess in the first place, to say the fourth amendment exacts a cost to the state is like saying that a thief pays for committing a theft when he is required to return what he stole.

Id. Lastly, the court explained,

The exclusionary rule unencumbered by the good faith exception provides incentives for the police department and the judiciary to take care that each warrant applied for and issued is in fact supported by probable cause. In addition to encouraging compliance with the constitutional requirement that no warrant shall issue but upon probable cause, it also lessens the chances that innocent citizens will have their homes broken into and ransacked by the police because of warrants issued upon incomplete or inaccurate information. We believe these are laudable effects of the exclusionary rule which appear to have gone unrecognized by the *Leon* majority.

Id. at 998, 842 P.2d at 677.

1. Whether the Exclusionary Rule Would Apply in this Case Under the U.S. Constitution

The State first argues that under the United States Constitution and Fourth Amendment

jurisprudence, the exclusionary rule should not apply in this case. It is true that under *Leon* and its progeny, a good faith exception exists, and would likely be applied to this case. Here, the officers acted reasonably when stopping the Defendant for a traffic violation and arresting him based upon an outstanding warrant. Under *Leon*, illegal police conduct would not be deterred by excluding the methamphetamine found as a result of the arrest, and therefore the State is correct that under federal law, the good faith exception would probably apply.

2. Whether the Exclusionary Rule Should Apply in this Case Under the Idaho Constitution?

a. Did *Guzman* Misapply and Misinterpret State and Federal Law?

The State first argues that the authority cited by *Guzman* does not support its analysis or result, beginning with *State v. Arregui*, 44 Idaho 43, 254 P. 788 (1927). The State argues that *Arregui* is based upon federal law, and explicitly champions conformity between state and federal law. Therefore, *Arregui* fails to hold that the state exclusionary rule adopted a rule different from the federal exclusionary rule.

Arregui is the case that first adopted the exclusionary rule in Idaho. This case is cited in *Guzman* for the proposition that Idaho adopted the exclusionary rule based upon its own constitution, and not United States Supreme Court mandate, in that the United States Supreme Court did not require states to adopt the exclusionary rule at the time of the *Arregui* opinion.

The State misinterprets the significance of *Guzman*'s citation to *Arregui*. What was significant in *Guzman* was that the *Arregui* Court adopted an exclusionary rule mirrored after the federal rule *not out of United State Constitutional or Supreme Court mandate, but of its own volition, under its own State Constitution*:

It should be emphasized that the fourth amendment exclusionary rule did not apply to the states when *Arregui* was decided and, thus, the exclusionary rule in Idaho became based wholly upon the state constitution. *See Wolf v. Colorado*, 338 U.S. 25, 69 S.Ct. 1359, 93 L.Ed. 1782 (1949) (the fourth amendment applies to the states, *but* the fourth amendment

exclusionary rule does not). Thus, Idaho has had an independent exclusionary rule based upon the state constitution for the past sixty-five years.

Guzman, 122 Idaho at 991, 842 P.2d at 670. This justification in *Guzman* has been affirmed by our Supreme Court:

Admittedly, we have previously found Article 1, § 17, in some instances, provides greater protection than the parallel provision in the Fourth Amendment of the U.S. Constitution. *See, e.g., . . . State v. Guzman . . .* However, in these cases, we provided greater protection to Idaho citizens based on the uniqueness of our state, our Constitution, and our long-standing jurisprudence.

State v. Donato, 135 Idaho 469, 472, 20 P.3d 5, 8 (2001). Even more harmful to the State's argument is the fact that *Guzman* reaffirms the interpretation of the federal Constitution at the time of *Arregui*, noting that the United States Supreme Court has since diverged from this interpretation:

In sum, the United States Supreme Court has abandoned the original purposes of the exclusionary rule as announced in *Weeks* and adopted by this Court in *Arregui*, in that the federal system has clearly repudiated any purpose behind the exclusionary rule other than that of a deterrent to illegal police behavior. Thus, the change in federal law has provided an impetus for a return by this Court to exclusive state analysis.

Guzman, 122 Idaho at 993, 842 P.2d at 672.

The State next argues that other cases cited in the opinion in *Guzman* also show that Idaho has not previously adopted an exclusionary rule broader than that articulated by the United States Supreme Court. However, the state mischaracterizes the purposes for which these cases are cited. *State v. Rauch*, 99 Idaho 586, 593, 586 P.2d 671, 678 (1978) is cited for its holding “that evidence illegally seized must be suppressed because to admit it would constitute an independent constitutional violation by the court in addition to the violation at the time of the illegal search.” *Guzman*, 122 Idaho at 992, 842 P.2d at 671. It is not cited as authority that Idaho's exclusionary rule is historically broader than the federal rule. And, in fact, whether Idaho's exclusionary rule was historically broader is inapposite to the question of whether Idaho

must adopt federal exceptions to previously implemented remedies for search and seizure violations.

Lastly, the State herein uses *State v. LePage*, 102 Idaho 387, 391-92, 630 P.2d 674, 678-79 (1981), *cert denied*, 454 U.S. 1057, 102 S.Ct. 606, 70 L.Ed.2d 595 (1982) to show that *Guzman* improperly characterizes and relies on Idaho precedent for its holding that Idaho's exclusionary rule is broader than the federal rule. The State's argument is based on the fact that *LePage* cites federal cases in its holding, and *LePage* makes no distinction between state and federal rights. Thus, the State argues, "nothing in the *LePage* decision indicates that the Idaho Supreme Court was adopting or articulating any rule different from its federal counterpart or inconsistent with the *Leon* good faith exception."

LePage is cited in *Guzman*, stating "while we recognized that deterrence of police misconduct was a purpose, we also recognized that judicial integrity mandated the exclusionary rule." *Guzman*, 122 Idaho at 992, 842 P.2d at 671. While *LePage* does cite federal law, it also clearly states:

[W]e are cognizant of the need to insure that the judiciary does function, and is perceived as functioning, in a manner consistent with the individual constitutional rights, both state and federal, of all who appear before the bar of justice. While the primary purpose of the exclusionary rule is undoubtedly to deter police misconduct, it is also true that at some point the courts must simply refuse to countenance certain behavior on the part of law enforcement agencies.

LePage, 102 Idaho at 391, 630 P.2d at 678. Thus, *LePage* clearly stands for the proposition for which the *Guzman* Court cites to it. More telling and more importantly, however, *LePage*'s reliance on federal law, and *Guzman*'s reliance on *LePage*, cannot possibly show approval of the good faith exception in *Leon*, as the *Leon* opinion was not issued until three years later.

b. Whether Leon Addresses and Meets the Concerns Raised in Guzman

The State next argues that *Guzman* is incorrect in its assertion that the *Leon* good faith

exception is inimical to the values of exclusion unrelated to police deterrence. However, the State's argument confuses the issue. The State contends that *Leon* addressed the issues in *Guzman* and determined that such issues, while not unimportant or unfounded, did not require suppression when considered in a cost-benefit analysis. *Guzman*, however, states that this is exactly where *Leon* is incorrect, and that the Idaho Supreme Court thus exercised its right to independently scrutinize and evaluate claims under the Idaho Constitution.

Guzman extensively considered *Leon* and its progeny when determining whether the Idaho Constitution independently justified adoption of the good faith exception. *Guzman* held that *Leon*'s holding was only reached due to the Supreme Court's narrow justification for the exclusionary rule—deterrence of police misconduct. *Guzman*, 122 Idaho at 992, 842 P.2d at 671. Listing its five basic purposes for believing exclusion to be a proper remedy, the Court found that *Leon* was simply too narrow to accommodate the interests of the Idaho Constitution:

Additionally, we disagree with the basic premise of the *Leon* decision—that the decision whether to apply the exclusionary rule should be made by determining whether the goal of police deterrence would be furthered in the case at bar—because it totally fails to take into account the other purposes of our independent state exclusionary rule. We believe, regardless of whether the goal of police deterrence would be served, that the other purposes of the state exclusionary rule justify application of the rule in every case where evidence is seized pursuant to a warrant which is not supported by a showing of probable cause. In this regard, we are in agreement with some of the states which have rejected the good faith exception on state constitutional grounds.

Id., at 993, 842 P.2d at 672, citing *People v. Bigelow*, 66 N.Y.2d 417, 427, 488 N.E.2d 451, 458, 497 N.Y.S.2d 630 (1985); *State v. Carter*, 322 N.C. 709, 722, 370 S.E.2d 553, 561 (1988); *State v. Oakes*, 598 A.2d 119, 126 (Vt.1991); *State v. Marsala*, 216 Conn. 150, 167, 579 A.2d 58, 66 (1990). Thus, while *Leon* held that purposes other than police deterrence existed but were inadequate to justify the exclusionary rule under the federal constitution, *Guzman* held that these rationales *did* warrant exclusion under the State Constitution, thereby rejecting *Leon*'s cost-

benefit analysis.

Additionally, there are undertones in the State's argument that the Idaho Constitution should mirror federal law, because the federal courts have already decided the issue. However, "[i]t is by now beyond dispute that [the Idaho Supreme Court] is free to interpret the state constitution as more protective of the rights of Idaho citizens than the United States Supreme Court's interpretation of the federal constitution. *Guzman*, 122 Idaho at 987, 842 P.2d at 666, citing *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 80-82, 100 S.Ct. 2035, 2040-41, 64 L.Ed.2d 741 (1980). Therefore, the *Guzman* court did not misapply state and federal law, and diligently explained its deviance from the federal exclusion adopted in *Leon*.

3. Whether Suppression of Evidence Would be Improper Under Idaho's Exclusionary Rule

The State claims that none of the rationales set forth for the exclusionary rule in *Guzman* are present in this case, and therefore suppression is improper even under *Guzman*. As noted above, *Guzman* sets forth five justifications for its holding that no good faith exception to the exclusionary rule applies in Idaho:

1) provide an effective remedy to persons who have been subjected to an unreasonable government search and/or seizure; 2) deter the police from acting unlawfully in obtaining evidence; 3) encourage thoroughness in the warrant issuing process; 4) avoid having the judiciary commit an additional constitutional violation by considering evidence which has been obtained through illegal means; and 5) preserve judicial integrity.

Id. at 672, 842 P.2d at 993. Here, the search and seizure were not, in and of themselves, unreasonable. Nor is there any deterrent rationale served with regard to police conduct, in that officers acted lawfully and in good faith reliance upon the warrant. However, the other three interests would likely be served by suppression.

The warrant was invalid, and officers obtained evidence of a crime against the Defendant solely because the invalid warrant existed. As such, this is the exact situation in which *Guzman*

intended to interject the policies of ensuring thoroughness in the warrant issuing process (such as determining whether the court has jurisdiction to issue a warrant), and ensuring that the judiciary does not commit an additional constitutional violation by allowing the admission of evidence obtained as the direct result of an invalid warrant (here, the methamphetamine). Judicial integrity is also served: “[t]he criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence.” *Mapp v. Ohio*, 367 U.S. 643, 659, 81 S.Ct. 1684, 1694, 6 L.Ed.2d 1081 (1961). *Guzman* is the law of this state. Therefore, a number of the *Guzman* rationales are met by suppressing the evidence obtained as a result of the invalid warrant herein.

While the State correctly concludes that the exclusionary rule would not apply under the U.S. Constitution, *Guzman* is clear in its holding that the Idaho Constitution cannot support a good faith exception because it encompasses and recognizes greater protections served by the exclusionary rule. *Guzman* reaches this authority based in part on state law and in part on federal law, showing Idaho’s independence in modifying and creating state constitutional law, Idaho’s adherence to Fourth Amendment jurisprudence in the early 20th Century, and Idaho’s shift away from federal constitutional principles as the United States Supreme Court generated *Leon*’s good faith exception. Under Idaho law and the policies announced in *Guzman*, a number of interests are served to justify the Court’s denial of *Leon*’s good faith exception.

ORDER:

The court being fully advised in the premises and good cause appearing therefore,
IT IS HERBY ORDERED, as follows:

1. That Defendant’s Motion to Suppress is hereby GRANTED.

DATED: The ___ day of _____, 2010

Benjamin R. Simpson
District Judge # 1001

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2010, I caused, to be served, a true and correct copy of the foregoing document as addressed to:

Shane Greenbank, Deputy Prosecuting Attorney
Prosecutor's Office
Fax: 208-263-0601

Linda Payne
Attorney for Defendant
Fax: 208-667-8292

Deputy Clerk