STATE OF IDAHO)
County of KOOTENAI)ss

FILED_____

AT_____ O'clock _____M
CLERK, DISTRICT COURT

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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.

WILLIAM MANUEL BECKETT,

Defendant.

Case No. **CRF 2009 465**

MEMORANDUM DECISION AND ORDER ON DEFENDANT'S MOTION TO SUPPRESS

Defendant WILLIAM MANUEL BECKETT's Motion to Suppress **GRANTED** in part, **DENIED** in part.
David Whipple, Dep. Prosecuting Attorney, lawyer for the Plaintiff.
Staci Anderson Coeur d'Alene, lawyer for Defendant Beckett.

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I. FACTUAL BACKGROUND.

On January 10, 2009, Defendant William Beckett (Beckett) was stopped by Officer Sergeant Stinebaugh (Stinebaugh), who had noticed Beckett's SUV turning onto Canfield Avenue from Ramsey Road in Coeur d'Alene, Idaho. Stinebaugh recognized the SUV as one he had been looking for earlier that day after observing its license plate. Stinebaugh exited his patrol vehicle after the vehicle parked in the driveway of 1700 West Canfield Avenue, approached the driver and recognized him as Beckett, having seen a photograph of him on January 10, 2009. Stinebaugh informed Beckett he was speaking with him regarding the whereabouts of a snow blower which had been stolen from an elderly

gentleman on January 8, 2009. Beckett denied stealing the snow blower, but stated he had borrowed and returned it. Stinebaugh contacted dispatch and was advised Beckett's driving status was suspended for having failed to provide proof of insurance. Deputy Franssen (Franssen), who had arrived on the scene as Stinebaugh was speaking with Beckett, performed a pat-down search of Beckett after Stinebaugh gave him the signal to place Beckett under arrest for driving while suspended. Franssen located a pen tube containing burnt residue during the search incident to arrest. He then placed Beckett in the back of his patrol vehicle to transport him to the public safety building. Franssen obtained a narcotic identification kit (NIK) from the front seat of the patrol car and asked Beckett what the substance in the pen tube might be, to which Beckett replied, "Oxycontin." Franssen's NIK test results were inconclusive.

Beckett was charged with possession of a controlled substance, possession of paraphernalia, and driving while suspended. On March 13, 2009, Beckett filed his Motion to Suppress. Beckett moves to suppress all statements made to Franssen and statements made to Stinebaugh at the public safety building as these statements were made without the benefit of *Miranda* warnings and were tainted as fruit of the poisonous tree, respectively. An evidentiary hearing and oral argument on the Motion to Suppress was held on April 22, 2009. The State of Idaho had filed no brief prior to this hearing. Sergeant Stinebaugh and Deputy Franssen of the Kootenai County Sheriff's Office testified.

At the conclusion of oral argument, this Court found Beckett was not in custody until he was handcuffed. Thus, this Court refused to suppress any statements made or evidence obtained prior to Beckett being handcuffed. This Court held that once Beckett was handcuffed he was in custody, entitled to *Miranda* warnings, and not given those *Miranda* warnings until out at the jail being booked. This Court held that all statements made by Beckett from the time he was handcuffed and in custody, until the *Miranda*

warnings were given at the jail must be suppressed. That included Beckett's response as to Stinebaugh's question "I wonder what is in the pipe"?

In oral argument, counsel for Beckett argued that there was no affirmative waiver by Beckett as to his rights. Since that was not a matter raised in Beckett's Motion to Suppress, this Court gave the parties until April 29, 2009. Both parties submitted briefs.

Beckett was personally present during the evidentiary hearing and oral argument on the Motion to Suppress on April 22, 2009, and did not testify. Attached to Beckett's "Supplemental Memorandum in Support of Motion to Suppress" is an "Affidavit of William M. Beckett in Support of Motion to Suppress." However, this affidavit of Beckett is not mentioned or referenced in Beckett's "Supplemental Memorandum in Support of Motion to Suppress". In any event, it is impossible to determine veracity and credibility via an affidavit.

II. STANDARD OF REVIEW.

In an appeal from an order denying a motion to suppress, the Court of Appeals will not disturb findings of fact supported by substantial evidence, but will freely review whether the trial court's determination as to whether constitutional requirements were satisfied in light of the facts. *State v. Whiteley,* 124 Idaho 261, 264, 858 P.2d 800, 803 (Ct. App. 1993). *State v. Atkinson,* 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct.App. 1996); *State v. Cruz,* 144 Idaho 906, 908, 174 P.3d 876, 878 (Ct. App. 2007).

When evaluating the trial court's determination of voluntariness of consent given, reviewing courts will not disturb such a decision on appeal if the trial court's finding is based on reasonable inferences to be drawn from the record. *State v. Post,* 98 Idaho 834, 837, 573 P.2d 153, 156 (1978). Whether consent to a search was voluntary is a question of fact and reviewing courts accept the factual findings of a trial court unless they are clearly erroneous. *State v. McCall,* 135 Idaho 885, 886, 26 P.3d 1222, 1223 (2001). Findings are

not deemed clearly erroneous when supported by substantial evidence in the record. *State v. Benson,* 133 Idaho 152, 155, 983 P.2d 225, 228 (Ct.App. 1999). In determining whether *Miranda* warnings apply, reviewing courts will not reverse a trial court where substantial competent evidence supports the court's factual findings. *State v. Kirkwood,* 111 Idaho 623, 625, 726 P.2d 735, 737 (1986). The application of legal principles to factual findings is given free review. *State v. Hiassen,* 110 Idaho 608, 611, 716 P.2d 1380, 1383 (Ct.App. 1986).

III. ANALYSIS.

Beckett argues that his statements were not voluntary because he was in custody during police interrogation and did not receive *Miranda* warnings. Memorandum in Support of Motion to Suppress, p. 2. In *Miranda,* the U.S. Supreme Court held that police must inform individuals of their right to remain silent and their right to counsel before undertaking custodial interrogation in order to protect the Fifth-Amendment privilege against self-incrimination. *Miranda v. Arizona,* 384 U.S. 436, 467, 86 S.Ct. 1602, 1624 (1966). The *Miranda* rule applies where an individual is "in custody" or where their "freedom of action is curtailed to a degree associated with formal arrest." *Berkemer v. McCarthy,* 468 U.S. 420, 440, 104 S.Ct. 3138, 3150 (1984) (quoting *California v. Behler,* 463 U.S. 1121, 1125, 103 S.Ct 3517, 3520 (1983)). The totality of the circumstances must be objectively evaluated to determine whether there was pressure sufficient to make a reasonable person in the defendant's position believe they were in custody for the purposes of *Miranda*. *See State v. Medrano,* 123 Idaho 114, 117-8, 844 P.2d 1364, 1367-68 (Ct.App. 1992).

This Court must determine whether Beckett's statements (that the burnt residue was Oxycontin) were the result of custodial interrogation without the requirement of *Miranda* warnings having been met. Deputy Franssen testified he arrived on the scene in response to Sergeant Stinebaugh's call. Franssen observed Steinbaugh engage Beckett in

conversation, then saw Stinebaugh give Franssen a visual signal to handcuff Beckett, whereupon Franssen handcuffed Beckett. After Beckett was handcuffed, Franssen testified both Stinebaugh and Franssen conducted a pat-down search of Beckett, and that Franssen found the pen in Beckett's pocket. Stinebaugh testified that he overheard Franssen ask Beckett about the pipe. Stinebaugh did not recall what Beckett's answer was, but Stinebaugh testified this quick conversation occurred on the way to the patrol car, and that this occurred after Beckett was arrested.

Here, Franssen questioned the Defendant without providing *Miranda* warnings. Beckett was in handcuffs in the rear seat of a patrol car; he was clearly in custody as there had been a formal arrest *and* restraint on his freedom of movement. *See California v. Beheler*, 463 U.S. ("1121, 1125, 103 S.Ct. 3517, 3520 (1983) ("the ultimate inquiry is simply whether there is a "formal arrest or 'restraint on freedom of movement' of the degree associated with a formal arrest."); *State v. Birkla,* 126 Idaho 498, 501, 887 P.2d 43, 46 (Ct.App. 1994). Beckett was likewise clearly subject to interrogation as any question regarding the burnt residue in the pen tube recovered is reasonably likely to elicit an incriminating response. *See e.g., Rhode Island v. Innis,* 446 U.S. 291, 300-01, 100 S.Ct. 1682, 1689-90 (1980) (Interrogation must involve a measure of compulsion beyond that inherent in custody and refers not only to express questioning, but also any words of action by the police reasonably likely to elicit an incriminating response.); *State v. Bagshaw,* 141 Idaho 257, 260-61, 108 P.3d 404, 407-08 (Ct.App. 2004). As the State pointed out in its brief, an officer may, contemporaneously incident to a lawful custodial arrest, search the arrestee's person. *Chimel v. California,* 395 U.S. 752, 89 S.Ct. 2034 (1969); *State v. Homolka,* 131 Idaho 172, 953 P.2d 612 (1998).

This Court finds any statements made by Beckett after he was placed in handcuffs are suppressed. To that extent, Beckett's Motion to Suppress is granted. The next issue is

whether the pen itself should be suppressed.

> Driving without privileges is addressed in Idaho Code § 18-8001:
>
> > Any person who drives or is in actual physical control of any motor vehicle upon the highways of this state with knowledge or who has received legal notice pursuant to section 49-320, Idaho Code, that his driver's license, driving privileges or permit to drive is revoked, disqualified or suspended in this state or any other jurisdiction is guilty of a misdemeanor.

Pursuant to I.C. § 19-603, an officer may arrest an individual without a warrant for a public offense committed or attempted in his presence. Therefore, having observed Beckett driving, once Stinebaugh learned Beckett's license was suspended, he was permitted to arrest Beckett for committing this misdemeanor in Stinebaugh's presence. The resulting search incident to arrest is therefore proper. *See e.g., Henry v. United States,* 361 U.S. 98, 102, 80 S.Ct. 168, 172 (1959); *State v. Baxter,* 144 Idaho 672, 680, 168 P.3d 1019, 1027 (Ct.App. 2007) (A search incident to arrest falls into one of the specifically established and well-delineated exceptions to the warrant requirement for searches.)

The next and final issue was raised in Beckett's Memorandum in Support of Motion to Suppress filed on April 29, 2009, but was not directly raised in Beckett's Motion to Suppress nor the initial Memorandum in Support of Motion to Suppress filed on March 13, 2009. This issue is whether there was a knowing, voluntary and intelligent waiver of Beckett's right to remain silent, once Beckett's *Miranda* rights were read to him at the jail. Part and parcel of this argument is Beckett's argument that Deputy Franssen's question about what might be in the pen tube while Beckett was in custody without being given his *Miranda* rights, was followed up "very quickly" with questions by Stinebaugh at the jail on the same subject. Memorandum in Support of Motion to Suppress, filed April 29, 2009, p. 3. Beckett argues the burden of proving waivers of the privilege against self incrimination and the right to counsel were made knowingly, intelligently and voluntarily is upon the State, citing *Robinson v. U.S.* 928 A.2d 717 (D.C. 2007).

This Court finds such questioning did not occur "very quickly" after Beckett answered Franssen's question at the scene of the arrest as to what might be in the pen. The follow up conversation occurred at the jail. Franssen testified it took at least five minutes to get to the jail. Franssen testified there was no conversation between he and Beckett on the way to the jail.

Sergeant Stinebaugh testified Franssen transported Beckett to the jail, and the next time Stinebaugh saw Franssen was at the jail. Stinebaugh conducted the questioning at the jail. Stinebaugh testified when he got to the jail behind Franssen and Beckett, Stinebaugh saw Beckett at the booking table. On direct examination, Stinebaugh testified he read Beckett his Miranda rights, then asked Beckett if he understood those rights. Stinebaugh testified Beckett waived those rights and agreed to speak with Stinebaugh. On cross-examination, Stinebaugh testified he asked Beckett if he understood his [*Miranda*] rights, and Beckett indicated that he did.

Beckett argues:

> At the Public Safety Building, Sergeant Stinebaugh verbally recited Mr. Beckett his Miranda rights and then immediately began to question Mr. Beckett about the pen tube. At the conclusion of the reading of the defendant's rights, Sergeant Stinebaugh did not ask the defendant if the defendant understood those rights or if the defendant wished to waive those rights. Instead, Sergeant Stinebaugh informed Mr. Beckett that he knew the pen tube was used for ingesting drugs because Deputy Franseen [sic] had told him.

Memorandum in Support of Motion to Suppress, filed April 29, 2009, pp. 1-2. Beckett also argues: "Sergeant Stinebaugh verbally recited the warnings to the defendant but did not ask the defendant if he had heard and, more importantly, if he understood those rights and wished to waive those rights and continue speaking with the Sergeant." *Id.,* p. 3. Beckett's arguments ignore the testimony given under oath by Stinebaugh. This Court finds Sergeant Stinebaugh credible. After the hearing, Beckett signed an affidavit on April 22,

2009, where he claims:

> 6. I was again questioned at the jail. I was read my rights but I was never asked if I waived those rights. I did not know I could decline to speak further with the police officer. I would have requested an attorney if I had been given that option.

Affidavit of William M. Beckett In Support of Motion to Suppress, ¶ 6, attached to Memorandum in Support of Motion to Suppress, filed April 29, 2009. This Court finds this testimony via affidavit to be not credible. Beckett was present in court at his Motion to suppress hearing on April 22, 2009. Why he would be present at that hearing, then apparently later that day (or perhaps even prior to hearing), sign an affidavit, submit such affidavit more than a week after signing the affidavit, not letting the Court assess his testimony under oath from the witness stand and subject to the crucible of cross-examination, is beyond this Court. The Court can only infer that this was a conscientious decision by Beckett and his attorney, and that such decision was made realizing Beckett would not fare well under cross-examination. No other inference can be made.

No statements made by Beckett after the *Miranda* warnings were given at the jail are to be suppressed.

IV. ORDER.

IT IS HERBY ORDERED THAT WILLIAM MANUEL BECKETT's Motion to Suppress is **GRANTED** in part and **DENIED** in part as set forth above.

DATED this 30th day of April, 2009.

_____
JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of April, 2009 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney - Staci Anderson
Prosecuting Attorney – David Whipple

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY:_____
Deputy