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.

ANNAIECE MARIE HORVATH,

Defendant.

Case No. **CRF 2008 27669**

MEMORANDUM DECISION AND ORDER ON DEFENDANT'S MOTION TO SUPPRESS

I. FACTUAL BACKGROUND.

On December 17, 2008, defendant Annaiece Horvath (Horvath) was arrested by Officer McMillan (McMillan). McMillan responded to 451 N. Government Way in Coeur d'Alene for a wanted person and placed Horvath under arrest for a DWP (driving without privileges) warrant. Upon having transported Horvath to the Kootenai County Public Safety Building (jail), McMillan performed a search incident to arrest and found a green plastic sleeve containing a mirror and a baggie with methamphetamine in it. McMillan charged Horvath with felony possession of a controlled substance, methamphetamine.

The facts leading up to the charge of possession of methamphetamine in this case are as follows. Horvath has three cases that are directly involved here. The **first**, in Kootenai County Case No. CRM 2005 24928. In that case, Horvath was sentenced on

February 24, 2006, on the misdemeanor crime of driving without privileges, and was placed on two years unsupervised probation, the only term being she commit no similar offenses. On September 11, 2007, Horvath committed a probation violation by committing a similar offense (driving without privileges in CR 2007 21203), and on November 21, 2008, Magistrate Judge Benjamin Simpson issued an Order to Show Cause on that probation violation, scheduled for January 8, 2008. Horvath appeared at the January 8, 2008, hearing, and Judge Simpson found Horvath had violated her probation by getting the new driving without privileges charge in CR 2007 21203. Judge Simpson signed an Order directing Horvath to serve 30 days in the Kootenai County Jail beginning May 1, 2009. On November 7, 2008, an Affidavit from Sergeant P. Haney of the Kootenai County Sheriff's Department was filed with the Court, stating that Horvath failed to report to jail on May 1, 2008. On November 20, 2008, Judge Simpson issued a Bench Warrant in CRM 2005 24928, based on Horvath's failure to appear on May 1, 2008. The **second** case is Kootenai County Case No. CRM 2008 7457. In that case, Horvath was arrested on April 21, 2008, pursuant to an arrest warrant in that case which was issued on April 15, 2008, for the felony crime of possession of a controlled substance, methamphetamine. Horvath remained in custody in that case at the Kootenai County Jail until she bonded out on August 23, 2008. Following a motion to suppress evidence found in her purse in that case which was granted, the felony possession of methamphetamine charge was dismissed on September 25, 2008, and Horvath pled guilty to a misdemeanor failure to present identification to an officer while on a licensed premises. The **third** case is the present case, Kootenai County Case No. CRF 2008 27669, where Horvath is charged with possession of a controlled substance, methamphetamine, for events that occurred on December 17, 2008. In that case, Horvath filed a Motion to Suppress on March 26, 2009,

but did not get around to noticing it up for the July 21, 2009, hearing until May 7, 2009. In her Motion to Suppress, Horvath claims: "The evidence must be suppressed because the arrest of the defendant on a warrant that had been issued in error was unlawful and without legal justification, therefore in violation of the Constitution and the laws of the United States and the State of Idaho." Motion to Suppress, p. 1.

On July 21, 2009, three and a half hours before the hearing on her Motion to Suppress, Horvath filed her "Brief in Support of Motion to Suppress." Oral argument was held on July 21, 2009. At oral argument, Horvath asked this Court to take judicial notice of the two other files, CRM 2005 24928 and CRM 2008 7457, and counsel for the State of Idaho did not object. On July 22, 2009, Horvath and counsel for the State filed a Stipulation for Extension of Time for Filing Respondent's Brief. This Court has determined in all fairness the State should be allowed the opportunity to file a brief, however, such a brief is not necessary.

At pre-trial conference on July 23, 2009, this Court announced its decision denying Horvath's Motion to Suppress. This Court also stated it would be entering a memorandum decision and order as soon as possible. After the Court announced its decision in court, Horvath entered a conditional plea to the possession of methamphetamine charge.

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). 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).

III. ANALYSIS.

A. THE WARRANT WAS VALID.

Horvath correctly states: "Defendant was at the Kootenai County jail on May 1, 2008." Brief in Support of Motion to Suppress, p. 2. Thus, Horvath implies that since she was in jail on May 1, 2008, the day Judge Simpson ordered her to be there on his case, she was in compliance with Judge Simpson's order, and Judge Simpson's subsequent bench warrant was issued in error. Horvath also correctly notes that eight days before May 1, 2008, "She was arrested on April 22, 2008 pursuant to an arrest warrant issued in Kootenai County Case No. CRF 2008-7457." Brief in Support of Motion to Suppress, p. 2.

This Court finds on May 1, 2008, Horvath was <u>not</u> in custody on Kootenai County Case No. CRM 2005 24928, and was only in custody on CRM 2008 7457. This is for a variety of reasons set forth below. Since Horvath was not in custody on Kootenai County Case No. CRM 2005 24928, the arrest warrant issued by Judge Simpson on November 20, 2008, (which was what was being executed upon when the methamphetamine was found that forms the basis of this instant case, CRF 2008 27669), was valid.

In the absence of a judicial order by Judge Simpson in CRM 2005 24928, specifying the thirty days he imposed on Horvath to begin on May 1, 2008, would run concurrently with the time Horvath happened to be serving beginning April 22, 2008, on the new charge,

the time Horvath served would not run in both cases concurrently.

First, the time served was of two different "qualities", that is, in CRM 2005 24928 it was time served as punishment for a probation violation. In CRM 2008 7457, Horvath was in custody beginning April 22, 2008, pursuant to an arrest warrant awaiting disposition. Second, even if the time sought to be served in both cases were of similar "quality", that is, if both cases were jail time as part of an actual sentence being served, it would still take a court order from the judge in the older case, CRM 2005 24928, Judge Simpson, authorizing his time to run concurrent with the newer case, CRM 2008 7457.

If they were of similar "quality" (and they were not), the sentences would run consecutively, absent a court order to the contrary. Idaho courts appear to have not directly addressed this issue. However, reasonable inferences from existing Idaho case law, when viewed in light of other jurisdictions' interpretations of the issue, indicates that unless a judge specifies sentences are to run concurrently, the sentences would run consecutively.

Idaho statutes place the determination of whether to run two jail sentences concurrently or consecutively squarely in the hands of the sentencing court. *See* I.C. § 18-308. This is a purely discretionary decision, and is reviewed only for abuse of that discretion. *State v. Lloyd*, 104 Idaho 397, 401, 659 P.2d 151, 155 (Ct. App. 1983) (citing *State v. Thomas*, 98 Idaho 623, 570 P.2d 860 (1977)); *State v. Brandt,* 109 Idaho 728, 710 P.2d 638 (1985).

Idaho law does not, however, permit courts to impose arbitrary or unjust sentences, and courts in certain circumstances must give credit for time served. Idaho Code § 18-309 specifies that, in computing the term of imprisonment, a defendant "shall receive credit in the judgment for any period of incarceration prior to entry of judgment, if such incarceration

was for the offense or an included offense for which the judgment was entered." Similarly, if a probationer violates his probation, the Idaho Code provides that the probationer's incarceration from the time of service of the bench warrant will count as part of the sentence. I.C. § 19-2603; *See State v. Lively*, 131 Idaho 279, 280, 954 P.2d 1075, 1076 (Ct. App. 1998).

Sentences for independent crimes are not automatically aggregated with those imposed by other courts in other offenses; the time served for incarceration on one offense does not, without judicial determination, automatically count towards time on a different sentence. The Idaho Court of Appeals views the decision to impose concurrent rather than consecutive sentences as a *mitigation* of punishment, implying therefore that the default, unmitigated stance of sentencing courts should be to run sentences consecutively. *State v. Brandt*, 109 Idaho 728, 710 P.2d 638 (Ct. App. 1985). Consecutive sentences are a decision within the sound discretion of the trial court. State v. Murillo, 135 Idaho 811, 25 P.3d 124 (2001). If the decision to impose concurrent rather than consecutive sentences is within the judge's discretion as a mitigation of punishment, it would be the defendant's burden to ask the court to exercise its discretion, and to point out situations in which there is the possibility of sentences running concurrently. That was not done in the present case. Horvath had the duty to put Judge Simpson on notice of the fact that she was already in custody, and make a request to have that time in a different case run concurrent in the case she had before Judge Simpson, and she did not do that.

Other jurisdictions have addressed this issue more directly, and their reasoning is instructive for analytical purposes. For example, the Ninth Circuit Court of Appeals has ruled that, as a matter of law, sentences issued by federal courts run concurrently unless a judge orders consecutive sentences. *U.S. v. Wingender*, 711 F.2d 869, 870 (9th Cir.

1983); *See Borum v. United States*, 409 F.2d 433, 440 (9th Cir. 1967). However, the federal case law is unclear as to whether this presumption of concurrence applies only in cases where a defendant is convicted of multiple crimes during the same proceeding or in cases where a defendant violates a different law while serving a sentence. *Compare Wingender, supra, with Gaddis v. U.S.*, 280 F.2d 334, 336 (6th Cir. 1960). Other states provide more guidance to their courts on whether to run sentences concurrently or consecutively. For example, New Jersey provides the following factors for their sentencing courts to consider in deciding whether to impose concurrent or consecutive sentences, in addition to the facts of the crime:

> whether (1) the crimes and their objectives were predominantly independent of each other; (2) the crimes involved separate acts of violence or threats of violence; (3) the crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior; (4) any of the crimes involved multiple victims; and (5) the convictions for which the sentences are to be imposed are numerous.

State v. Carey, 775 A.2d 495, 500-01 (N.J. 2001) (applying N.J.S.A. 2C:44-5, subd. a., New Jersey's statute providing for judicial discretion in imposing consecutive or concurrent sentences). Each of these factors relate to the separation between the two offenses, either in time, space, or victims. By following similar reasoning, and viewing these factors in light of the Idaho and federal laws above, it would seem that a concurrent sentence is preferable if the offenses are close in time, space, or victims, and that consecutive sentences would be preferable in cases where the offenses are not so related. In the present case, officers arrested Horvath on a bench warrant issued as a result of her failing to report to jail on May 1, 2008. That jail time was imposed as a sanction for a probation violation in a previous case from 2005. Officers arrested her on April 22, 2008 for a warrant involving a completely separate case. It perhaps would have been difficult for Horvath's attorney to

contact the Judge Simpson in the 2005 case, to inform Judge Simpson of Horvath's prior incarceration on April 22, 2008, to ask for concurrent time served on Judge Simpson's thirty days in the 2005 case that was to begin to run on May 1, 2008, but Horvath's attorney would have been in a much better position to know this sequence of events than Judge Simpson. The bottom line is, it would have taken an order from Judge Simpson for his order of thirty days in the 2005 case to have been satisfied by any time that Horvath was already spending on brand new charges beginning April 22, 3008. Judge Simpson would have had to have exercised his discretion. He wasn't asked to, and accordingly, he did not. As a result, the bench warrant issued in CRM 2005 24928 by Judge Simpson on November 20, 2008 (for Horvath's failure to appear at jail on May 1, 2008), was valid.

B. EVEN IF THE WARRANT WAS INVALID, IT WAS ONLY INVALID DUE TO A "TECHNICAL VIOLATION."

"A duly issued warrant authorizes a proper officer to make an arrest thereunder." 6A C.J.S. *Arrest* § 6 (2009). "Even if the detention warrant was invalid, it, like an arrest warrant that turns out to be defective, cannot invalidate an arrest where the police possess probable cause to make the arrest." *Giordenello v. United Stattes,* 357 U.S. 480, 78 S.Ct. 1245 (1958) (in event of a new trial, the government could try to justify the arrest without relying on the warrant.); *United States v. Rose,* 541 F.2d 750 (8th Cir. 1976). In *State v. Cootz,* 110 Idaho 807, 718 P.2d 1245 (Ct.App. 1986), the defendant attacked the validity of the detention warrant and the officer's conduct in executing the warrant; he argued the detention warrant was a sham, contained false and unsupported information, and that the issuing magistrate had been deceived. 110 Idaho 807, 810, 718 P.2d 1245, 1248. The Idaho Court of Appeals affirmed the lower Court's determination that there was probable cause for a warrantless arrest in addition to police having had authority under I.C. § 19-603(3) (allowing a warrantless arrest to be made where a felony has in fact been committed

and the officer has reasonable cause to believe the person arrested committed it) to make a warrantless arrest.

Generally, in Idaho, Courts should avoid hypertechnicality when interpreting warrants. *State v. Sapp,* 110 Idaho 153, 155, 715 P.2d 366, 368 (Ct.App. 1986). Warrants are to be viewed in a commonsense and realistic fashion. *State v. Holman,* 109 Idaho 382, 388, 707 P.2d 493, 499 (Ct.App. 1985). According to the United States Supreme Court, practical accuracy in interpreting warrants controls over technical precision. *United States v. Ventresca,* 380 U.S. 102, 108, 85 S.Ct. 741, 744 (1965).

Horvarth cites *People v. Mitchell,* 678 P.2d 990 (Colo. 1984), for the proposition that in that case the defendant was arrested for failure to pay a traffic fine despite having actuall paid the fine, and the Colorado Supreme Court found that an arrest based on "an erroneously issued warrant violated the Fourth Amendment to the United States Constitution". Brief in Support of Motion to Suppress, p. 2, citing 678 P.2d 990, 996. This is the only case cited by Hovarth. In *Mitchell*, the Colorado Supreme Court found "…the warrant was void not because the facts supporting it fell somewhat below the constitutional threshold of probable cause, but, so far as the record shows, because *there were no facts at all to support its issuance*." *Id.* (italics added). There were no facts because the traffic fine was in fact paid. In the present case, there are certainly facts to support Judge Simpson's issuing the bench warrant for Horvath's failure to appear at the jail pursuant to Judge Simpson's earlier order. Horvath in fact appeared at the jail on a different case. The Colorado Supreme Court refused to find such amounted to a "technical violation", which under the Colorado statute was defined as "…a reasonable good faith reliance upon a statute which is later ruled unconstitutional, a warrant which is later invalidated due to a good faith mistake, or a court precedent which is later overruled." 678 P.2d 990, 994-96.

At the very worst, even if the above analysis as to concurrent sentences is completely wrong, Judge Simpson's issuing his warrant was a due to his good faith mistake. And even if it were a mistake, it would have been a mistake based on ignorance of Horvath's custody status, and Horvath was in the *best* position to cure any such ignorance by the court as to her custody status.

C. THERE IS NO PURPOSE TO BE SERVED BY THE EXCLUSIONARY RULE UNDER THESE FACTS.

Because the purpose of the exclusionary rule regarding evidence seized in violations of a defendant's Fourth Amendment rights is deterrence, courts have limited the rule's application to those instances where its remedial purposes are best served. *United States v. Leon,* 468 U.S. 897, 908, 104 S.Ct. 3405, 3412-13 (1984). Thus, where "the exclusionary rule does not result in appreciable deterrence, then, clearly, its use…is unwarranted." *United States v. Janis,* 428 U.S. 433, 454, 96 S.Ct. 3021, 3032 (1976). *Leon* involved a search in which officers acted with objective reasonableness in relying on a warrant issued by a neutral detached magistrate, which was later determined to be invalid. 468 U.S. 897, 905, 104 S.Ct. 3405, 3411. The Court focused on three factors in holding that no reason exists upon which to apply the exclusionary rule as a means to deter misconduct of those who issue warrants:

1. the exclusionary rule was historically designed to deter police misconduct, not to punish the errors of judges and magistrates;
2. no evidence suggests judges and magistrates are inclined to ignore or subvert the Fourth Amendment, or that lawlessness by Judges and Magistrates requires the application of an extreme sanction like the exclusionary rule; and
3. Most importantly, there is no basis for believing the exclusionary rule would have a significant deterrent effect on Judges and Magistrates.

468 U.S. 897, 916, 104 S.Ct. 3405, 3417.

In *Herring v. United States,* ___ U.S. ___, 129 S.Ct. 695 (2009), the Supreme Court

upheld *Leon*, but noted, "We do not suggest that all recordkeeping errors by the police are immune from the exclusionary rule." 129 S.Ct. 695, 703.

> If the police have been shown to be reckless in maintaining a warrant system, to have knowingly made false entries to lay the groundwork for future false arrests, exclusion would certainly be justified under our cases should such misconduct cause a Fourth Amendment violation. We said as much in *Leon,* explaining that an officer could not "obtain a warrant on the basis of a 'bare bones' affidavit and then rely on colleagues who are ignorant of the circumstances under which the warrant was obtained to conduct the search."

Id., at 703-04.

However, where systemic errors are demonstrated, it may be reckless for officers to rely on an unreliable warrant system. *Arizona v. Evans,* 514 U.S. 1, 17, 115 S.Ct. 1185 (1995). (O'Connor, J., concurring) ("Surely it would *not* be reasonable for the police to rely…on a recordkeeping system…that routinely leads to false arrests." (emphasis in original)).

This is clearly not a case where the warrant at issue was made with false entries. There is no conduct to be deterred in this case. There was absolutely no conduct on the part of law enforcement that should be deterred by excluding evidence. Assuming that it were the law that all judges have a duty, prior to issuing a bench warrant, to check to see if a defendant is in custody on a different matter before issuing that warrant, then at most there was a good faith mistake by Judge Simpson. The exclusionary rule would not apply to Judge Simpson.

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IV. ORDER.

IT IS HERBY ORDERED THAT ANNAIECE MARIE HORVATH's Motion to Suppress is DENIED, for the reasons set forth above.

DATED this 23rd day of July, 2009

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JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

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

Defense Attorney – Martin Neils
Prosecuting Attorney -

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY:_____
Deputy