

IN THE SUPREME COURT OF THE STATE OF IDAHO
Docket No. 52919

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	Boise, June 2026 Term
	)	
v.	)	Opinion Filed: August 27, 2026
	)	
KADIE M. KAWANO,	)	Melanie Gagnepain, Clerk
	)	
Defendant-Appellant,	)	
	)	

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Patrick J. Miller, District Judge.

The district court's order denying the motion to suppress is affirmed.

Karin V. Sowieja, Idaho Liberty Defense, PLLC, Boise, for Appellant. Karin V. Sowieja argued.

Raúl R. Labrador, Idaho Attorney General, Boise, for Respondent. Kacey L. Jones argued.

BEVAN, Chief Justice,

Kadie M. Kawano appeals the district court's denial of her motion to suppress. On January 8, 2024, Kawano gave birth to her child, Z.L., at St. Alphonsus Hospital in Boise. Shortly after delivery, staff at St. Alphonsus obtained a sample of umbilical cord blood. They did not obtain a warrant. The sample tested positive for methamphetamine, fentanyl, and methadone. By this time, Z.L. had been transferred to St. Luke's. When St. Luke's was informed of the results of the drug test, a social worker at St. Luke's reported the case to Child and Family Services at the Idaho Department of Health and Welfare. Law enforcement then acted on the reported information to arrest Kawano and charge her with two counts of felony possession of a controlled substance.

Kawano moved to suppress the evidence obtained from the blood sample taken from the umbilical cord. She argued that it was obtained during an illegal search because St. Alphonsus was a state actor when the hospital took the blood sample. She also asserted that Idaho's unique jurisprudence affords heightened and independent protections for the disclosure of medical records. The district court disagreed and denied Kawano's motion to suppress. Kawano now

appeals to this Court, arguing that the district court erred by failing to adopt and correctly apply the coercion and compulsion test from *Kirtley v. Rainey*, 326 F.3d 1088 (9th Cir. 2003). She also argues that the district court erred by not treating her motion as a request to prohibit the State from using her medical records against her, pursuant to Idaho Code section 9-420(4). We affirm the district court's decision.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

Kadie M. Kawano sought care from St. Alphonsus Hospital on October 12, 2023. At that point, Kawano discovered that she was pregnant and 23 weeks along. She denied drug use at this visit and was reportedly excited to learn that she was pregnant, as she did not think that she could get pregnant and had not had a pregnancy in ten years while trying. She then presented to St. Alphonsus again on January 8, 2024, where the hospital staff determined that she was in pre-term labor at thirty-five and a half weeks gestation. The labor went well, and Kawano delivered Baby Z.L., spontaneously and precipitously.

At birth, Z.L. was active, alert, and appropriately responsive on physical examination. She exhibited normal muscle tone, and her skin was pink and well perfused. She was nevertheless transferred to St. Luke's Hospital for surgical intervention after being diagnosed with a congenital abnormality. Aside from that, Z.L. appeared to be in good condition at the time of birth.

Hospital staff at St. Alphonsus collected a sample of umbilical cord blood soon after delivery. It is unclear why the blood sample was collected; it may have been standard practice to do so. The hospital records indicate that Kawano "verbalized understanding that cord stat/fetal urine was obtained due to late PNC (prenatal care)." The records also reflect that Kawano "again denie[d] drug use this pregnancy." St. Alphonsus then sent the blood sample to an independent laboratory for testing.

The lab report showed the presence of methamphetamine, fentanyl, and methadone in the umbilical cord blood. St. Alphonsus shared this information with St. Luke's, which then passed it on to the Idaho Department of Health and Welfare's Child and Family Services. In making a report, a social worker from St. Luke's explained that Kawano had been given fentanyl during labor, but that methadone had not been prescribed. The social worker reported that Kawano had admitted to relapsing during her pregnancy after she was informed about the test results. The social worker also reported that Z.L. displayed signs of withdrawal, including excessive crying, increased muscle

tone, nasal stuffiness, poor feedings, and excessive sucking. As a result, St. Luke's delayed discharging Z.L. by two weeks and gave the baby morphine to treat the withdrawal symptoms.

The Department of Health and Welfare referred the matter to the Ada County Sheriff's Office, which began an investigation. Deputy Grant Grafius met with Kawano, who admitted using methamphetamine and fentanyl on a couple of occasions before finding out that she was pregnant. Kawano was then charged with two counts of felony possession of a controlled substance.

B. Procedural Background

After her arraignment, Kawano moved to suppress the evidence obtained by the State as a result of the umbilical cord blood draw, including the statements she made during the resulting investigation. Kawano claimed that, under the coercion and compulsion test articulated by the Ninth Circuit in *Kirtley v. Rainey*, 326 F.3d 1088 (9th Cir. 2003), the hospital was a state actor when it obtained the umbilical cord blood draw, and the draw therefore constituted a warrantless search in violation of the Fourth Amendment of the United States Constitution and Article I, Section 17 of the Idaho Constitution. She also argued that Idaho has a unique jurisprudence—evidenced by statutes like Idaho Code section 9-420(4), a statute governing how medical records are to be produced by hospitals—that affords heightened privacy protections to medical records. She urged the district court to “accord greater weight to the value of privacy to Idaho's citizens and likewise accord greater skepticism to those investigatory practices that infringe upon them.”

The State filed an objection to the motion, asserting that the private hospital was not an instrument or agent of the government under the test articulated in *State v. Breese*, 160 Idaho 841, 844, 379 P.3d 1111, 1114 (Ct. App. 2016). Thus, the blood draw could not be a search for Fourth Amendment purposes. The State also argued that Kawano's medical records were not protected by the physician-patient privilege because the Idaho Rules of Evidence state that privilege does not extend to any action where the communication is relevant to the alleged abuse of a child. And finally, the State claimed that Kawano's statements were not “fruit of the poisonous tree” because the hospital staff were not state actors when Kawano admitted she had relapsed. Similarly, the State argued that her statements to police were not subject to the exclusionary rule because the officers told Kawano that she was not obligated to speak with them and could ask them to leave at any time.

Kawano responded to the State's objection, citing additional evidence she did not have earlier. About two months after Kawano submitted her opening brief, the State provided Kawano

with a supplemental medical report it had obtained from St. Alphonsus. Kawano argued that this report demonstrated that St. Alphonsus had no legitimate medical reason for taking the cord blood sample. And she claimed that the medical staff used the lab results to “justify fabricated symptoms observed in” Z.L., all for the purpose of ultimately referring the case to law enforcement. Kawano claimed that this action, in concert with mandatory reporting statutes, transformed St. Alphonsus into a state actor under the coercion and compulsion test. She also asserted that her constitutional right to privacy trumped the State’s reliance on the Idaho Rules of Evidence as it pertained to the disclosure of her medical records. And she argued that all her statements were subject to the exclusionary rule because she only made those statements to state actors who were conducting an investigation based on an illegal search.

The district court held a hearing on the motion. Neither party called witnesses to testify at this hearing. Instead, the parties relied on documentary evidence, including Kawano’s medical records and the police reports, as well as arguments of counsel. During the hearing, Kawano acknowledged that she could not prevail under the test set forth in *State v. Breese*. She argued instead that disclosure was prohibited under the Ninth Circuit’s coercion and compulsion test. Kawano did not explicitly mention Idaho Code section 9-420(4) at this hearing, but she did raise what she called “a little bit more of an obscure argument” that asserted her right to privacy under HIPAA and state law.

The district court was unconvinced. The court agreed with Kawano’s assessment that she could not succeed under the *Breese* test. The district court noted that law enforcement was unaware of the blood draw at the time it was taken, and that Kawano had not shown that the blood draw was initially taken for any reason other than to treat Z.L. more effectively. This led the court to conclude that St. Alphonsus was not a state actor under the *State v. Breese* test. The district court also refused to apply the Ninth Circuit’s coercion and compulsion test as the test had not been adopted in Idaho. The district court pointed out that the coercion and compulsion test had been articulated to determine if an entity was a state actor for a 42 U.S.C. section 1983 (“Section 1983”) civil rights claim, which the court concluded was a different legal issue than the one presented by Kawano’s case.

Moreover, the district court determined that even if the coercion and compulsion test applied, St. Alphonsus would not have been considered a state actor. The district court noted that Kawano’s medical records “contain numerous facts that would cause medical providers to be

concerned about prenatal drug use and the potential impacts to Baby Z.L. . . .” And the court determined that Kawano had not demonstrated that St. Alphonsus had taken the blood sample for any reason other than to properly treat Z.L. Consequently, the district court determined that Kawano had failed to demonstrate that St. Alphonsus was acting at the government’s behest. The court then denied Kawano’s motion. The district court did not address Idaho Code section 9-420(4). Kawano then entered a conditional guilty plea and filed a timely appeal to this Court.

II. ISSUES ON APPEAL

1. Whether the district court erred by determining that St. Alphonsus was not a state actor when the hospital took and tested umbilical cord blood after Baby Z.L.’s birth.
2. Whether the district court erred by failing to construe Kawano’s motion to suppress as a request to prohibit the State from using her medical records against her pursuant to Idaho Code section 9-420(4).

III. STANDARD OF REVIEW

Ordinarily, this Court’s standard of review on a motion to suppress is bifurcated. *State v. Andersen*, 164 Idaho 309, 312, 429 P.3d 850, 853 (2018). Thus, this Court will typically accept the trial court’s findings of fact “unless they are clearly erroneous.” *State v. Miramontes*, 170 Idaho 920, 923, 517 P.3d 849, 852 (2022) (quoting *State v. Gonzales*, 165 Idaho 667, 671, 450 P.3d 315, 319 (2019)). However, this case “presents the unusual situation where this Court has exactly the same evidence before it as was considered by the district court . . .” *Andersen*, 164 Idaho at 312, 429 P.3d at 853. In such cases, this Court does not extend “the usual deference to the district court’s evaluation of the evidence.” *Id.* Therefore, this Court will “freely review the evidence and weigh the evidence in the same manner as the trial court would do.” *Id.* (quoting *State v. Lankford*, 162 Idaho 447, 492, 399 P.3d 804, 819 (2017)).

IV. ANALYSIS

A. **The district court did not err in determining that St. Alphonsus was not a state actor when the hospital took and tested the umbilical cord blood.**

Kawano claims that the district court erred in concluding that St. Alphonsus was not a state actor when it drew the blood sample. As part of that argument, she asserts that the district court should have considered Ninth Circuit precedent given the limited Idaho authority addressing the issue. Relying on the Ninth Circuit’s coercion and compulsion test, Kawano argues that St. Alphonsus functioned as a state actor when it drew the umbilical cord blood and submitted it for drug testing. Therefore, she contends that the blood draw constituted a warrantless search and

seizure, requiring suppression of the resulting evidence. Accordingly, Kawano claims that the district court erred in denying her motion to suppress.

The State argues that the district court correctly denied Kawano’s motion to suppress because St. Alphonsus was not a state actor. The State argues that it was appropriate for the district court to dismiss the coercion and compulsion test because that test was developed in federal court for 42 U.S.C. Section 1983 cases. The State also claims that Ninth Circuit precedent supports this conclusion because the Ninth Circuit applies the same test found in *State v. Breese* in “private-search cases” like this one. We agree with the State.

The Fourth Amendment of the United States Constitution provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated” U.S. CONST. amend. IV. However, “the Fourth Amendment does not apply to a search or seizure, even an arbitrary one, effected by a private party on his own initiative” *Skinner v. Ry Lab. Execs.’ Ass’n*, 489 U.S. 602, 614 (1989) (citations omitted). The Fourth Amendment only protects against “such intrusions if the private party acted as an instrument or agent of the Government.” *Id.* (citations omitted).

We analyze the issues presented under the Idaho Constitution in much the same manner. Although the United States Supreme Court establishes only the minimum level of constitutional protection, this Court has recognized the “merit in having the same rule of law applicable within the borders of our state, whether an interpretation of the Fourth Amendment or its counterpart—Article I, [section] 17 of the Idaho Constitution—is involved. Such consistency makes sense to the police and the public.” *State v. Pulizzi*, 174 Idaho 733, 737, 559 P.3d 1220, 1224 (2024) (alteration in original) (quoting *State v. Donato*, 135 Idaho 469, 471, 20 P.3d 5, 7 (2001)). Accordingly, “the federal framework is appropriate for analysis of state constitutional questions unless the state constitution, the unique nature of the state, or Idaho precedent clearly indicates that a different analysis applies.” *CDA Dairy Queen, Inc. v. State Ins. Fund*, 154 Idaho 379, 383, 299 P.3d 186, 190 (2013). Nothing in this case warrants a departure from that general rule.

The Idaho Court of Appeals has noted that “there is a ‘gray area’ between the extremes of overt governmental participation in a search and the complete absence of such participation.” *State v. Breese*, 160 Idaho 841, 843, 379 P.3d 1111, 1113 (Ct. App. 2016) (citation omitted). To address cases falling within that gray area, the court explained that “[c]ourts should analyze gray area inquiries on a case-by-case basis, referring to certain general principles.” *Id.* (citation omitted).

One of those principles is that “[i]n order to bring a private citizen’s actions within the purview of the Fourth Amendment, the government must be involved either directly as a participant or indirectly as an encourager.” *Id.* at 844, 379 P.3d at 1114 (citations omitted).

Thus, when analyzing whether the person conducting the search is acting as an instrument or agent of the government, [courts] consider two critical factors—whether the government knew of and acquiesced in the intrusive conduct and whether the party performing the search intended to assist law enforcement efforts or further his or her own ends.

Id. (citations omitted). “The burden of proving governmental involvement in a search conducted by a private citizen rests on the party objecting to the evidence.” *Id.* at 843, 379 P.3d at 1113 (citation omitted).

In the proceedings below, Kawano admitted that she could not show that St. Alphonsus was an agent or instrument of the State. That is why she turns to the coercion and compulsion test as articulated in *Kirtley v. Rainey*, 326 F.3d 1088 (9th Cir. 2003), to advance her argument that St. Alphonsus was a state actor. However, Kawano glosses over the fact that *Kirtley* centered on a civil claim advanced under Section 1983.

Section 1983 provides that litigants may bring a civil action against anyone who, under the color of law, deprived the litigant of a constitutional right, privilege, or immunity. 42 U.S.C. § 1983. The Supreme Court has recognized “a number of different factors or tests in different contexts” that can establish state action under Section 1983. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 939 (1982) (citations omitted). These include the “public function” test, the “state compulsion” test, the “nexus” test, and the “joint action test.” *Id.* (citations omitted). Relevant to the state compulsion test, the Supreme Court has held that “a State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State.” *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982) (citations omitted). This is the same test found in *Kirtley*, 326 F.3d at 1094 (“The compulsion test considers whether the coercive influence or ‘significant encouragement’ of the state effectively converts a private action into a government action.” (citation omitted)).

We conclude that the *Breese* test is better suited for resolving this case since it is applicable in the 4th Amendment context. The coercion and compulsion test articulated in *Kirtley*, on the other hand, has not been adopted in Idaho and relates to a civil claim based on a federal statute.

Furthermore, we note that the Ninth Circuit does not apply the coercion and compulsion test in private-search cases. Instead, the Ninth Circuit applies the very same test found in *Breese* to determine whether a private search implicates the Fourth Amendment. *Compare United States v. Rosenow*, 50 F.4th 715, 731 (9th Cir. 2022) (“[T]he relevant inquiry is: (1) whether the government knew of and acquiesced in the intrusive conduct; and (2) whether the party performing the search intended to assist law enforcement efforts or further his own ends.” (citation omitted)), *with Breese*, 160 Idaho at 844, 379 P.3d at 1114 (“Thus, . . . we consider two critical factors—whether the government knew of and acquiesced in the intrusive conduct and whether the party performing the search intended to assist law enforcement efforts or further his or her own ends.” (citations omitted)). We reject the invitation to extend the Ninth Circuit’s articulation of the coercion and compulsion test to a criminal context when not even the Ninth Circuit has done so.

Therefore, we hold that the district court did not err by applying the *Breese* test rather than the Ninth Circuit’s articulation of the coercion and compulsion test. Nor did the district court err by finding that St. Alphonsus was not a state actor when it collected the umbilical cord blood and had it tested.

B. The district court did not err by failing to consider Kawano’s motion to suppress as a request that the district court prevent the State from using her medical records against her pursuant to Idaho Code section 9-420(4).

Kawano claims that her “motion to suppress was effectively and practically, a petition to the District Court to omit having her medical records from being used in a court proceeding.” She emphasizes that, under Idaho Code section 9-420(4), she need not “show state action in order to petition the court to find that the lab results, and all other medical records obtained by the hospital and shared with the State, be excluded in the criminal court proceeding before it.” The State responds by asserting that Kawano’s statutory argument is unpreserved. The State is correct.

“Issues not raised below will not be considered by this Court on appeal, and the parties will be held to the theory upon which the case was presented to the lower court.” *Erie Props., LLC v. Glob. Growth Holdings, Inc.*, 176 Idaho 243, ___, 575 P.3d 827, 843 (2025) (citation modified). “[A] party preserves an issue for appeal by properly presenting the issue with argument and authority to the trial court below and noticing it for hearing or a party preserves an issue for appeal if the trial court issues an adverse ruling.” *State v. Miramontes*, 170 Idaho 920, 924-25, 517 P.3d 849, 853-54 (2022). Trial courts are usually “in the best position to determine the relevant facts and adjudicate the dispute.” *Id.* at 925, 517 P.3d at 854 (quoting *Puckett v. United States*, 556 U.S.

129, 134 (2009)). And trial courts should typically be afforded “an opportunity to prevent or if possible eradicate such error” before the parties appeal. *Id.* (quoting *Stewart v. City of Idaho Falls*, 61 Idaho 471, 103 P.2d 697, 700 (1940)).

Here, Kawano did not preserve her argument that the State should have been prevented from using her medical records pursuant to Idaho Code section 9-420(4). That section grants standing to “[a]ny patient . . . to apply to the court . . . for a protective order denying, restricting or otherwise limiting access and use of” their medical records. In her opening motion before the district court, Kawano quoted section 9-420(4), among several other statutes, as evidence that Idaho highly values the privacy of its citizens’ medical records. But beyond the bare recitation of the statute’s text, there is no indication that Kawano ever indicated below that she was leveraging the statute for any purpose other than supporting her privacy rights claim. Kawano cited section 9-420(4) again in her reply memorandum to the district court, but she failed to make the argument she is making now. After quoting section 9-420(4), Kawano only stated that,

[w]hile this statute is permissive and does not obligate the provider, nurse, hospital staff, etc. to intervene, it highlights the strict ethical rules of confidentiality that healthcare providers, nurse, hospital staff, etc. are bound by when dealing with a patient’s personal medical records—and the serious nature of any sort of disclosure.

Nothing in this analysis indicates that Kawano was petitioning the district court for a protection order for her medical records. Instead, her use of the statute indicates that Kawano only cited section 9-420(4) as justification for arguing that Idaho recognizes an expansive right of privacy that extends to medical records.

Kawano effectively acknowledges as much by arguing that her motion was, in substance, “effectively and practically” a request for a protective order. But presenting an issue in substance is not the same as properly presenting it to the district court with argument and authority. Just as it is not this Court’s role to “search the record on appeal for citation and argument,” it is not the district court’s obligation to discern and develop arguments that a party failed to articulate. *See Dickenson v. Benewah Cnty. Sheriff*, 172 Idaho 144, 150, 530 P.3d 691, 697 (2023) (“Indeed, judges are not like pigs, hunting for truffles buried in briefs.” (citation modified)). Accordingly, we conclude that Kawano failed to preserve her statutory argument.

V. CONCLUSION

Since Kawano has not established that St. Alphonsus was a state actor under governing Idaho law, we conclude that collection and testing of the umbilical cord blood did not violate her

rights under the United States or Idaho Constitutions. We further conclude that Kawano failed to preserve her argument that the district court should have construed her motion to suppress as a request for a protective order under Idaho Code section 9-420(4). Accordingly, we affirm the district court's order denying Kawano's motion to suppress.

Justices BRODY, MOELLER, ZAHN, and MEYER concur.