12-21-2015

State v. Simpson Appellant's Reply Brief Dckt. 42809

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. LEROY WAYNE SIMPSON, Defendant-Appellant.	)	NO. 42809 BONNEVILLE COUNTY NO. CR 2013-10350 REPLY BRIEF

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

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District Judge

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STATEMENT OF THE CASE

Nature of the Case

Leroy Simpson appeals, contending the district court erred in denying his motion to suppress the statements he made during a police interrogation because they were impermissibly-coerced statements. The State's responds by contending Mr. Simpson misrepresented the relevant facts and law. However, when the proper standard of review is given effect, and Mr. Simpson's argument and the relevant precedent are properly understood, the State's attacks are revealed to be mistaken. As such, this Court should disregard those arguments.

On the merits of this claim, the relevant facts and legal precedent reveal that the district court erred in denying Mr. Simpson's motion to suppress the coerced-compliant statements elicited by the police interrogation. Therefore, this Court should reverse that order, vacate the judgment of conviction, and remand this case for further proceedings.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Simpson's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Whether the district court erred in denying Mr. Simpson's motion to suppress the coerced-compliant statement the officers extracted from him after overbearing his will.

ARGUMENT

The District Court Erred In Denying Mr. Simpson's Motion To Suppress The Coerced-Compliant Statement The Officers Extracted From Him After Overbearing His Will

As with most cases, keeping the standard of review in mind is important to resolving the claims therein. When dealing with claims such as the one Mr. Simpson has raised on appeal, the Court reviews the legal conclusion – whether the statements were coerced, as opposed to voluntary – *de novo*. *State v. Aitken*, 121 Idaho 783, 784 (Ct. App. 1992); *cf. Arizona v. Fulminate*, 499 U.S. 279, 287 (1991) ("the ultimate issue of 'voluntariness' is a legal question") (internal quotation omitted). Under this standard, "[t]he state must show by a preponderance of the evidence that the defendant's statements were voluntary." *State v. Valero*, 153 Idaho 910, 912 (Ct. App. 2013).

Applying that standard of review in this case, the video and transcript of the interrogation show the officers employing various interrogation tactics against Mr. Simpson to try and get him to make statements he was not otherwise willing to make. (*See* Exhibits 1a and 1b.) When the totality of the circumstances is evaluated, it becomes clear that those tactics were not properly employed against Mr. Simpson, and so, resulted in eliciting unconstitutional coerced-compliant statements. (*See* App. Br., pp.12-35.) Thus, based on a consideration of all the relevant circumstances, Mr. Simpson contends that the district court erred in denying his motion to suppress the coerced-complaint statements elicited from him during that interview. (App. Br., pp.12-35.)

Rather than discuss the officers' tactics within the totality of the circumstances, the State takes a tangential approach in its Respondent's Brief, trying to discredit

Mr. Simpson's arguments by making claims that he has misstated the relevant facts and law in his Appellant's Brief. None of its assertions in that regard are meritorious.

A. The Relevant Precedent Reveals Mr. Simpson Has Made A Valid Challenge To The District Court's Order Denying His Motion To Suppress

The State asserts that Mr. Simpson's contention – that "[T]he Supreme Court's concerns with police coercion in custodial interrogations are equally applicable in the noncustodial interview" (App. Br., p.13) – misrepresents the precedent on this issue. (Resp. Br., pp.8-9.) As the State's argument indicates, custodial interrogations are different than noncustodial interviews in terms of the amount of coercion that exists in each scenario. In that regard, Mr. Simpson recognizes his use of the term "equally," standing alone, might have been unclear. However, the State's argument fails to appreciate that statement within the context of Mr. Simpson's full argument: that, because concerns about improperly coerced statements are present in the noncustodial scenario, the absence of *Miranda*-style warnings is a relevant factor in the totality of the circumstances surrounding a question of whether a statement was made voluntarily. (App. Br., pp.13-14.)

The Idaho Supreme Court has adopted a totality of the circumstances test to determine whether the defendant's statements were voluntary or whether his will was overborne in noncustodial interviews with police. *State v. Loosli*, 130 Idaho 398, 400 (1997); *State v. Troy*, 124 Idaho 211, 214 (1993). In adopting that test, the Idaho Supreme Court recognized that, because coercion can occur in a noncustodial interview, coercion should be a factor in the courts' assessment of the totality of the circumstances. *Id.* In fact, the *Troy* Court expressly identified it as the first of several

relevant factors: "[i]n determining the voluntariness of a confession, a court must look to the characteristics of the accused and the details of the interrogation, including the following: 1. Whether *Miranda* warnings were given; . . . ." *Troy*, 124 Idaho 211, 214 (1993) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973)).

Thus, while the State highlights the distinction between custodial and noncustodial interrogations, it misses the critical point resulting from this distinction: *Miranda* warnings are *required* in custodial interrogations because of the increased coerciveness of that situation. However, that does not mean that situations where such warnings are not required cannot occur still be impermissibly coercive. *See, e.g., State v. Fernandez-Torres*, 337 P.3d 691, 703 (Kan. Ct. App. 2014) (finding statements to have been impermissibly coerced during a noncustodial interrogation despite a finding that *Miranda* warnings had been given and the underlying right to remain silent waived); *United States v. Preston*, 751 F.3d 1008, 1026-27 (9th Cir. 2014) (finding statements made during a forty-minute noncustodial interrogation to have been impermissibly coerced).

The *Troy* Court's determination that coercion is one relevant factor in the totality of the circumstances is consistent with the United State Supreme Court's discussion on the same topic:

> We recognize, of course, that *noncustodial* interrogation might possibly in some situations, by virtue of some special circumstances, be characterized as one where "the behavior of . . . law enforcement officials was such as to overbear petitioner's will to resist and bring about confession not freely self-determined . . . ." When such a claim is raised, it is the duty of an appellate court, including this Court, "to examine the entire record and make an independent determination of the ultimate issue of voluntariness." *Proof that some kind of warnings were given or that none were given would be relevant evidence only on the issue of whether the questioning was in fact coercive.*

Beckwith v. United States, 425 U.S. 341, 347-48 (1976) (quoting *Rogers v. Richmond*, 365 U.S. 534, 544 (1961), and *Davis v. North Carolina*, 384 U.S. 737, 741-42 (1966) respectively) (ellipses from *Beckwith*) (emphasis added); *cf. Valero*, 153 Idaho at 911-12 (recognizing both *Beckwith* and *Troy* identify coercion as a relevant factor in noncustodial interrogations and explaining that, in such cases, the State bears the burden to show the defendant's statements were, in fact, voluntary). Thus, the concerns with coercion do, as Mr. Simpson's entire argument explains, exist in the noncustodial scenario as well as the custodial scenario.

In fact, the State's own citation to *Oregon v. Elstad* reveals its assertion – that Mr. Simpson's argument that the concern about police coercion exiting in the noncustodial setting "cannot be squared" with Supreme Court precedent (Resp. Br., pp.8-9) – is erroneous: "'Indeed, far from being prohibited by the Constitution, admissions by wrongdoers, *if not coerced*, are inherently desirable.... [sic] *Absent some officially coerced self-accusation*, the Fifth Amendment privilege is not violated by even the most damning admissions.'" (Resp. Br., p.6 (quoting *Oregon v. Elstad*, 470 U.S. 298, 305 (1985)) (internal citation from *Elstad* omitted) (emphasis added).) Thus, as even the authorities cited by the State demonstrate, a proper consideration when addressing an admission by the defendant is whether that admission was coerced.

Thus, because coercion can occur in either the custodial or noncustodial setting, *Beckwith*, *Troy*, *Loosli*, and other such decisions, recognize that, whether *Miranda* warnings were given, regardless of whether they were *required*, remains a relevant factor to consider when evaluating whether the defendant's' statements were voluntary. Since Mr. Simpson's claim is consistent with United States Supreme Court and Idaho

Supreme Court precedent in this regard, the State's allegation that Mr. Simpson "misrepresented" the relevant law on this point is mistaken and should be rejected by this Court.

On the merits of Mr. Simpson's claim of error, the State contends that the district court gave adequate consideration to the fact that no *Miranda* warnings were given. (Resp. Br., p.10.) However, that assertion ignores the plain language of the district court's statement. The district court explained, "[w]hile this Court understands that [the absence of such warnings] *could be* a negative factor, *Miranda did not apply* because this was not a custodial interrogation." (R., p.116 (emphasis added).) By only acknowledging it "could be" a negative factor, the district court expressed its understanding that it might be a factor in a particular, but not every, case. The particular cases in which the district court believed that to be a relevant factor is identified in the district court's next statement: that factor "did not apply" in the absence of a custodial interrogation. (R., p.116.) Thus, the more reasonable interpretation of the district court's statement is that it did not believe that *Miranda* warnings were a factor in this case because there was not a custodial interrogation. (*See* R., p.116.) In that case, it did not adequately consider the impact of a relevant factor within the totality of the circumstances of Mr. Simpson's case. *See Troy*, 124 Idaho at 214 (expressly identifying "whether *Miranda* warnings were given" as the first of many relevant factors to consider in this regard); *Loosli*, 130 Idaho at 400 (reaffirming that the *Troy* factors are applicable in the noncustodial context).

Since the district court was operating on an erroneous interpretation of the governing legal standards, its resulting legal conclusion is erroneous. At any rate, the

proper standard of review for this legal conclusion is *de novo*. Therefore, this Court should give adequate consideration to the relevant factor that no *Miranda*-style warnings were given in its *de novo* review of this legal conclusion.

Finally, the State takes issue with Mr. Simpson's reliance on the Utah Supreme Court's decision in *State v. Rettenberger*, 984 P.2d 1009 (Utah 1999). (*See* Resp. Br., pp.10-12.) First, Idaho's own case law makes several similar points to those made in *Rettenberger* when analyzing the potentially-coercive use of interrogation techinques within the totatlity of circumstances of a particular case. *Compare State v. Kysar*, 114 Idaho 457, 459 (Ct. App. 1988) (involving a less extreme fact pattern which nevertheless resulted in coerced statements because the questioning unconstitutionally overbore the subject's will); *with Loosli*, 130 Idaho at 400 (involving a more extreme fact pattern which nevertheless did not overbear the subject's will). As discussed in depth in the Appellant's Brief, this case is more like *Kysar* than *Loosli*. (App. Br., pp.17-18.) The State offers no rebuttal on that point, nor does it even acknowledge *Kysar* or *Loosli*. (*See generally* Resp. Br.) In addition to demonstrating the State's allegation that Mr. Simpson has somehow misrepresented the relevant law is mistaken, the fact that the State ignored this relevant Idaho precedent reveals that the State has failed to meet its burden to prove Mr. Simpson's statements were, in fact, voluntary. *See Valero*, 153 Idaho at 911-12.

Second, while, as the State points out, there are some factual differences between *Rettenberger* and this case (*See* Resp. Br., pp.11-12), rare would be the pair of cases that are factually identical. As such, Idaho's courts have often examined how other states have handled similar issues, particularly when examining an issue not fully

explored by Idaho's courts or a court in another jurisdiction has engaged in a particularly useful analsyis of the issue. *See, e.g., Trinity Universal Ins. Co. v. Kirsling*, 139 Idaho 89, 92 (2003) ("Our decision is in accord with the vast weight of persauasive authority from other jurisdictions."); *State v. Ozuna*, 155 Idaho 697, 703 (Ct. App. 2013) ("We find the reasoning fo the Massachusetts Court of Appeals persuasive.").

Mr. Simpson has cited *Rettenberger* for those same purposes here. Despite the factual differences, the *Rettenberger* Court's discussion of the nature of the various interrogation techniques used in that case is still insightful, particularly its explanation of how and why several of those interrogation tactics, which might be innocuously used in some cases, are impermissilby coercive in others. *See, e.g., Fernandez-Torres*, 337 P.3d at 703 (expressly relying on *Rettenberger*'s analysis in determining the trial court had properly suppressed coerced-compliant statements resulting from a noncustodial interrogation); *cf. Preston*, 751 F.3d at 1026-27 (mirroring the *Rettenberger* Court's analysis in determining that police questioning during a forty-minute, noncustodial interview of a suspect with a low IQ was impermissibly coercive). Therefore, *Rettenberger*'s detailed discussion of this topic is still useful in understanding and analyzing the issue in this case.

Ultimately, though, applying the precedent from cases like *Kysar*, *Loosli*, and *Troy*, the district court erred in denying Mr. Simpson's motion to suppress his coerced-compliant statements, and so, this Court should reverse that decision.

B. The Facts Reveal That Mr. Simpson's Challenge To The District Court's Order Denying His Motion To Suppress Is Meritorious

The State asserts that Mr. Simpson misrepresented the facts surrounding the district court's determination that Mr. Simpson's were voluntary based on the officers' testimony that he appeared to be "tracking" their questions. (Resp. Br., pp.9-10.) Here again, it is important to recall the governing standard of review: This Court reviews that issue *de novo*, deferring only to those factual findings which are not clearly erroneous (*i.e.*, not supported by competent and substantial evidence). *See, e.g., Lovitt v. Robideaux*, 139 Idaho 322, 325 (2003) (defining the clearly erroneous standard); *Aitken*, 121 Idaho at 784 (rearticulating the standard of review for this claim). The issue Mr. Simpson raised on appeal is that the district court's legal conclusion – that, Mr. Simpson was not "impermissibly confuse[d], trick[ed], or deceive[d]" into making the statements in question (*i.e.*, coerced into making the statements) (R., p.117) – is erroneous when the totality of the circumstances is properly considered. (App. Br., pp.12-35.)

Properly understanding the scope of Mr. Simpson's argument within the appropriate standard of review reveals the flaw in the State's attack on Mr. Simpson's representation of the facts. Mr. Simpson did not contend, as the State asserts, that the district court "ignored" Dr. Lindsey's testimony. (*See* Resp. Br., p.10.) The term "ignore" means "to refuse to take notice of." MERRIAM-WEBSTER'S DICTIONARY AND THESAURUS, 403 (2007). Mr. Simpson did not contend that the district court refused to take notice of Dr. Lindsey's testimony. (*See generally* App. Br.) Rather, Mr. Simpson contended the district court's conclusions "misconstrued" that testimony. (App. Br., p.18.) The term "misconstrue" means "to interpret wrongly." MERRIAM-WEBSTER'S

DICTIONARY AND THESAURUS, 518 (2007). This means the actor (the district court) recognized the relevant facts that existed, but reached an erroneous conclusion about what those facts mean. *Id.*

Thus, within his challenge to the district court's conclusions, Mr. Simpson asserted one of the factual findings necessarily inferred by that conclusion – that Mr. Simpson's mental health issues did not compromise ability to make voluntary decisions within the interrogation in this case – was not based on substantial and competent evidence, and so, was clearly erroneous, because it was a *non sequitur.* (App. Br., pp.18-19.) As such, Mr. Simpson is contending the district court improperly drew an inference or conclusion (that Mr. Simpson's will was not overborne due to his mental health issues) which does not logically follow from the premise (that he was tracking the questions). *See* BLACK'S LAW DICTIONARY, 490 (3rd pocket ed. 2006) (defining the term "*non sequitur*").

Dr. Lindsey explained that Mr. Simpson "just doesn't *process* information very quickly, and the thought processes move slowly compared to the average person," not that he was incapable of understanding the question asked. (Tr., Vol.1, p.90, Ls.10-12 (emphasis added).) As a result of this condition, Mr. Simpson was aware of, and thus, "tracked"[1] the question, but his ability to process the whole context of the questions, and so, make voluntary decisions to speak, in that particular, high-pressure, fast-evolving situation was compromised. This resulted in him giving topical, yet "simplistic and almost illogical" explanations. (Tr., Vol.1, p.89, Ls.11-24.) Thus, the district court's

[1] In this context, the term "track" means being "aware[] of a fact or progression." MERRIAM-WEBSTER'S DICTIONARY AND THESAURUS, 842 (2007).

factual inference – that his ability to track the questions meant his mental health issues were not at issue during in the interrogation – is not based on competent and substantial evidence, and so, it is clearly erroneous. Since that challenge to the factual inference underlying the district court's conclusion is borne out by the facts, such as Dr. Lindsey's testimony, the challenge to that inference does not constitute a misrepresentation of the facts.

More important, though, is the impact this more-complete understanding of Mr. Simpson's mental health issues has on the legal conclusion of whether Mr. Simpson's statements were voluntary. The State does not address Mr. Simpson's challenge to the district court's legal conclusion in this regard. (*See generally* Resp. Br.) If Mr. Simpson's mental health issues were, as Dr. Lindsey testified, in play during the interrogation, that factor indicates the situation was more coercive in the totality of the circumstances. *See State v. Brown*, 155 Idaho 423, 430 (Ct. App. 2013) (quoting *Colorado v. Connelly*, 479 U.S. 157, 165, 167 (1986)) (reaffirming that a person's "'mental condition is surely relevant to an individual's susceptibility to police coercions,'" and thus, is a factor that needs to be considered in the totality of the circumstances). Since this Court reviews questions of voluntariness and coercion in response to the police questioning *de novo*, that factor can and should incorporated into its evaluation of that question.

To that point, it is important to remember that the State bears the burden of proving the statements were voluntary. *See, e.g., Valero*, 153 Idaho at 911-12. The prosecutor offered no evidence to contradict Dr. Lindsey's testimony about the nature and presentation of Mr. Simpson's mental health issues generally or in this specific

situation. (*See generally* R., Tr.) Since Dr. Lindsey's uncontroverted testimony indicates Mr. Simpson's statements were not voluntary, the State has failed to carry its burden to show Mr. Simpson's statements were voluntary.

Finally on this point, the State contends that Mr. Simpson has improperly argued for this Court to "apply the law to the conclusions of his experts" rather than to the conclusions drawn by the district court. (Resp. Br., p.12.) Again, the State fails to appreciate the governing standard of review. Since this Court reviews the conclusion of voluntariness *de novo*, Mr. Simpson has argued that this Court should, in evaluating the totality of the circumstances, include the insights of the two professionals who offered their expert opinions about the coercive nature of the interrogation and the role Mr. Simpson's mental health issues played in that context. "When such a claim [regarding admissibility of allegedly-coerced statements] is raised, it is the duty of an appellate court, including [the United States Supreme] Court, 'to examine the entire record and make an independent determination of the ultimate issue of voluntariness.'"[2] *Beckwith*, 425 U.S. at 347-48 (quoting *Davis*, 384 U.S. at 741-42); *see also*

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[2] As the United States Supreme Court has indicated it is the duty of the appellate courts to "examine *the entire record*" to make its *de novo* determination of voluntariness as it relates to potential violations of the Fifth Amendment, *Beckwith* 425 U.S. at 347 (emphasis added), this Court can consider the information in the 2013 PSE and the PSI, as they are both part of the entire appellate record. (*See* R., pp.160-61 (Clerk's Certification of Exhibits).) Thus, it should reject the State's assertion that it should refuse to consider those documents. (*See* Resp. Br., p.12 n.1.)

At any rate, the relevant point of the information in those documents (namely, Mr. Simpson's inability to adequately process the information being presented by the officers, and thus, make voluntary statements in response) was sufficiently presented in Dr. Lindsey's testimony to the district court. (*See* Tr., Vol.1, p.85, L.9 - p.92, L.17.) Therefore, this Court should still consider that factor in its *de novo* review of the legal conclusion that Mr. Simpson's statements were not coerced.

State v. Connor, 124 Idaho 547, 548 (1993) (reiterating that review of such claims is *de novo*).

Both Dr. Lindsey and Dr. Honts offered detailed insights into the interplay of the officers' questions, the surrounding circumstances, and Mr. Simpson's issues in regard to the determination of whether the officers' questioning overbore Mr. Simpson's will and extracted a coerced-compliant statement in violation of Mr. Simpson's constitutional rights. (*See generally* App. Br., pp.12-35.) Since that information is relevant to the totality of the circumstances, Mr. Simpson has properly requested this Court to include that information in its determination on that matter.

As the State has offered no meritorious challenge to the claims Mr. Simpson actually made on this appeal, and since it has ultimately failed to carry its burden to show that Mr. Simpson's statements were, in fact, voluntary in light of the totality of the circumstances, the district court's decision to deny Mr. Simpson's motion to suppress his resulting statements is revealed to be erroneous. Therefore, applying the proper standard of review, this Court should reverse that decision.

CONCLUSION

Mr. Simpson respectfully requests this Court vacate his judgment of conviction, reverse the district court's order denying his motion to suppress, and remand this case for further proceedings.

DATED this 21st day of December, 2015.

BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21st day of December, 2015, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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