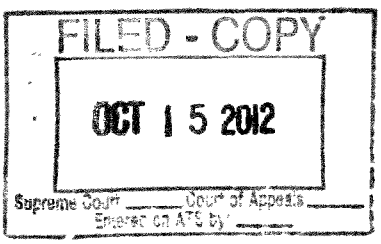
10-15-2012

State v. Dycus Appellant's Reply Brief Dckt. 39608

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff/Respondent,	)	No. 39608
vs.	)	
	)	
ROSEMARY PEARL DYCUS,	)	REPLY BRIEF
	)	
Defendant-Appellant.	)	
	)	

REPLY BRIEF OF APPELLANT



HONORABLE JOEL E. TINGEY
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Rosemary Dycus asserts that the district court committed fundamental error when it denied Dycus's motion to suppress evidence obtained as a result of an illegal arrest and search. Ms. Dycus claims that Officer Cook of the Idaho Falls Police Department illegally entered into a public restroom, where she had manifested a right to privacy. Ms. Dycus asserts that the illegal invasion of her privacy invalidates the fruits of the state's illegal search.

Statement of the Facts and Course of Procedure

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

ISSUE

Whether the district court incorrectly relied on the doctrine of inevitable discovery in denying Ms. Dycus's motion to suppress.

ARGUMENT

The District Court Erred In Applying The Doctrine of Inevitable Discovery Resulting In It Erring In Incorrectly Denying Dycus' Motion To Suppress

A. Introduction

The entirety of the state's argument fails because the state incorrectly asserts that Officer Cook lawfully arrested Ms. Dycus for Driving Without Privileges. Contrary to the state's assertion, Ms. Dycus had a legitimate expectation of privacy in the Common Cents bathroom. Officer Cook did not arrest Ms. Dycus as a result of a traffic stop. He followed Ms. Dycus into a Common Cents Gas Station where he subsequently discovered she had entered into a locked bathroom. He obtained a key from an attendant and forced himself into the bathroom where he found Ms. Dycus in the process of getting dressed.

The state misconstrues the facts in supporting its argument. Simply because Officer Cook arrested Ms. Dycus on an otherwise arrestable offense does not by itself mean that Officer Cook conducted a lawful arrest. The officer followed Ms. Dycus into the Common Cents after suspecting a non-violent misdemeanor had been committed by Ms. Dycus. He then pursued her, without a warrant, into an area where she had a reasonable expectation of privacy. No evidence was presented to suggest Ms. Dycus was fleeing the officer or other exigent circumstance existed. The state wrongfully asserts that Officer Cook lawfully arrested Ms. Dycus and subsequently conducted a valid search. The state further, and again incorrectly, asserts that Ms. Dycus's expectation of privacy is irrelevant.

Because Ms. Dycus had a reasonable expectation of privacy in the Common Cents bathroom and because Officer Cook intruded into that space to conduct a warrantless search, the inevitable discovery doctrine does not apply and all evidence gathered against Ms. Dycus after

Officer Cook entered the bathroom should be suppressed. The state cannot remove the taint of a warrantless search and an illegal arrest by a misapplication of the inevitable discovery doctrine.

B. The Inevitable Discovery Doctrine Does Not Protect Evidence Gathered From An Unreasonable and Warrantless Search

Evidence discovered as a result of an unreasonable search must be suppressed. *Brauch*, 133 Idaho at 219; *Fancher*, 145 Idaho at 840. This suppression also includes later-discovered evidence derived from the original search. *Id.* The inevitable discovery doctrine is an exception to the exclusionary rule and allows the admission of evidence that would have been discovered through lawful means. *See Fancher*, 145 Idaho at 840. The pipe found in Ms. Dycus's possession, like the paraphernalia found in *Fancher*, was discovered as a direct result of the illegal search and is therefore subject to the exclusionary rule. The police illegally entered the protected area, searched the protected area, and found the evidence during that illegal search. *Compare with Fancher,* 145 Idaho at 840.

Having demonstrated the causal connection between the illegal search and the discovered evidence, the burden shifts to the state to prove that one of the exceptions to the exclusionary rule applies. *State v. Cardenas*, 143 Idaho 903, 909 (Ct. App. 2006). To meet its burden, the state must prove by a preponderance of the evidence that the items in question would have been found by lawful means. *State v. Bunting*, 142 Idaho 908, 915 (Ct. App. 2006). This means that the state must show that the evidence found unlawfully would have been discovered pursuant to an independent line of investigation. *State v. Buterbaugh*, 138 Idaho 96, 102 (Ct. App. 2002). The purpose of this doctrine is to ensure that the state is in the same position it would have been in but for the illegal search. *Id.* at 102, citing *Nix v. Williams*, 467 U.S. 431, 442-44 (1984).

In this case, there is no evidence of any independent lines of investigation. Even the investigation of the separate DWP charge cannot be independent since the officer was entering the protected space to pursue that line of investigation. In fact, there was only one investigation, that for the DWP, that existed up until the time the officer unlawfully searched the jacket and found the marijuana pipe. The entry was a part of the investigation of the DWP and thus, that investigation could not be considered to be an *independent* line of investigation. The only way to put the state in the same position it would have been in but for the illegal search, therefore, is to exclude the evidence found during the illegal search.

Contrasting this case is the situation in *Buterbaugh*, where a fire chief searched the contents of an upstairs closet after he and his men successfully fought a fire in the basement, where he found evidence of marijuana possession. 138 Idaho at 100-01. Since the search of the upstairs closet was not conducted within the scope of the fire chief's duties in fighting or investigating the fire in the basement, that search was an impermissible warrantless intrusion. *Id.* Therefore, all evidence found subject to that search or the subsequently-obtained warrant were subject to the exclusionary rule. *Id.* However, because the firefighters and officers independently investigating the fire in the basement found other evidence of marijuana possession, the court determined that the evidence found by the fire chief and the evidence found pursuant to the subsequent warrant was saved by the inevitable discovery doctrine. *Id.* at 102-03. Since the investigators would have discovered the evidence in the upstairs closet by following up on the entirely independent investigation conducted in the basement, the only way to put the state in the same position it would have been in but for the illegal search was to admit the evidence. *Id.*

Because there was no separate line of investigation in this case that would have led to the discovery of this evidence, it is not saved by the inevitable discovery doctrine. The state must be put in the same position it would be in but for the illegal search, which is without the evidence found during the illegal search. Therefore, the evidence found during the illegal search must be suppressed.

C. Search Incident To Arrest Does Not Validate The Warrantless Search

Officer Cook testified that he informed Ms. Dycus that she was under arrest for the DWP before searching the jacket. Transcript at 13. That, however, does not invoke the search incident to arrest exception to save his initial search, which began the moment he opened the door to the restroom. *See Limberhand*, 117 Idaho at 460. The court in *Limberhand* held that "once it is resolved that there is a cognizable expectation of privacy, the invasion of that privacy interest—*including a visual one*—will be a search subject to constitutional limitations." *Id.*, *emphasis added.* Therefore, by opening the door and looking around, much less by entering the protected area, the officer had already violated Ms. Dycus's rights and all evidence found as a result of that violation is fruit of the poisonous tree and must be suppressed. *See State v. Brauch*, 133 Idaho 215, 219 (Idaho 1999); *State v. Fancher*, 145 Idaho 832, 840 (Ct. App. 2008).

Furthermore, the search incident to arrest exception is narrowly interpreted to allow officers to search only the area within the suspect's immediate control from which they might gain weapons or destructible evidence. *State v. Cantrell*, 149 Idaho 247, 249 (Ct. App. 2010), citing *Chimel v. California*, 395 U.S. 752, 753 (1967). The Supreme Court recently clarified the *Chimel* rule, holding that a search incident is only justified if the area is within the suspect's wingspan or there was a chance of finding evidence of the crime of arrest. *Arizona v. Gant*, 129 S.Ct. 1710, 1723-24 (2004) (discussing the inability of the suspects to access the passenger

compartment of their car when they were outnumbered by officers, handcuffed, and placed into patrol vehicles). The Court went on to say that the reason for the exception is to allow a search "when *genuine* safety or evidentiary concerns encountered during the arrest of a vehicle's recent occupant justify a search." *Id.* at 1721, *emphasis added.* Holding more broadly, the Court declared, would only give police an entitlement to perform warrantless searches, an outcome that could not stand under the Fourth Amendment. *Id.*

The state bears the burden of proving that this exception would apply in this situation. *Smith*, 144 Idaho at 485. There is no evidence in the record showing that officers had any reason to think either alternative was present. *See generally* Transcript. In fact, the magistrate found from the facts that the evidence showed Ms. Dycus was using the restroom appropriately. Transcript at 22. As that finding is not clearly erroneous from the evidence presented, this court is bound by that finding. *Heinen*, 114 Idaho at 658. There was no evidence introduced to show either a genuine threat to officer safety or to evidence. *See* Transcript. Rather, Ms. Dycus was caught by several officers, literally with her pants down. Transcript at 12. There was no evidence introduced to show that the jacket was within Ms. Dycus's wingspan when it was searched. *See* Transcript. Therefore, under the *Cantrell* and *Chimel* rule, clarified by *Gant*, the search incident exception does not validate this warrantless search.

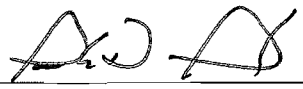
Because Ms. Dycus manifested her intent to assert an expectation of privacy by shutting and locking a bathroom door, officers of the state were prohibited from pursuing her without a warrant. When a suspect commits a non-violent misdemeanor in the presence of an officer, the officer may not pursue the suspect without a warrant unless: (a) the suspect is fleeing lawful arrest, or (b) there are exigent circumstances other than the pursuit itself. *State v. Wren*, 115 Idaho 618 (Ct.App. 1989). The facts presented in *Wren* vary from here in that in *Wren*, the

suspect went into his home rather than into a locked bathroom. However, the analysis is the same since both had an expectation of privacy. Also, in *Wren*, there was clear contact between the suspect and the police prior to the police entering the residence.

CONCLUSION

Because the district court erred in its application of the inevitable discover doctrine, Ms. Dycus respectfully requests that this Court reverse the district court's denial of her motion to suppress and remand this case for further proceedings.

DATED this 5th day of October, 2012



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a licensed attorney for the State of Idaho, with my office in Idaho Falls, and that on 6th day of October 2012, I caused to be served a true and correct copy of the foregoing Appellant's Reply Brief on the party listed below, by mailing with the correct postage thereon, or by causing the same to be hand-delivered.

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