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Idaho Supreme Court
Karel Lehrman, Clerk of the Court
By: Brad Thies, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAH1

STATE OF IDAHO,	)	
	)	**NO. 46135-2018**
Plaintiff-Respondent,	)	
	)	**ADA COUNTY NO. CR01-17-21909**
v.	)	
	)	
CHRISTOPHER SCOTT FRANKS,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
______________________________	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE NANCY A. BASKIN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Christopher Scott Franks appeals from the district court's denial of his motion to suppress the incriminating statements he made to his jailer while under threat of being strip-searched. At the time he made his statements, Mr. Franks was a detainee at the Ada County Jail. Four uniformed officers entered his cell and he and his cellmates were ordered up against a wall, handcuffed, and told they would be strip-searched and then led way. While isolated with the deputy in a shower room, and in response to the deputy's questioning as to whether he had "anything illegal" on him, Mr. Franks made incriminating statements – without having the warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1996).

The district court denied suppression, concluding that Mr. Franks was not "in custody" for *Miranda* purposes, that he clearly knew he had the right to counsel and to not answer the officer's questions, and that his incriminating statements were voluntarily made. However, under a correct application of the law, suppression is required because Mr. Franks was in custody within the meaning of *Miranda*. Suppression is also required because the State failed to meet its burden of showing that the statements were voluntarily made and not coerced. This Court should reverse.

Statement of the Facts and Course of Proceedings

The following facts were presented and considered in connection with Mr. Franks' motion to suppress.[1] On May 30, 2017, Mr. Franks was in his cell at the Ada County Jail

[1] Mr. Franks testified and the State called Officer Zuberer. (Tr., p.11, L.5 – p.60, L.2.) Officer Zuberer's report also was admitted. (Tr., p.58, Ls.14-16; Ex.A.)

awaiting trial on charges unrelated to this case.[2] Early that morning, sheriff's deputy Mike Zuberer received a tip from an unnamed inmate that there were drugs in Mr. Franks' cell. (Ex.A; Tr., p.57, Ls.13-15.)[3] Officer Zuberer reviewed Mr. Franks' "Telmate"[4] account and noticed numerous money transactions within in the past few days. (Ex.A.) Based on that information, Officer Zuberer "decided to make a plan of attack" to search Mr. Franks' cell and inmates who may have been involved. (Ex.A.) Officer Zuberber and three other uniformed officers "racked open" Mr. Franks' cell, entered the cell, ordered Mr. Franks and his three cellmates out of their cell and up against the wall, facing it, and to put their hands behind their backs, then secured them in handcuffs. (Tr., p.11, L.11 – p.12, L.18; p.42, Ls.20-25.) Mr. Franks was informed that he and the others were being taken to the jail booking area to be strip-searched. (Tr., p.10, Ls.10-24.) Handcuffed, Mr. Franks and his cellmates were led away by the officers down to the booking area and lined up against the wall; they were then separated and taken one-by-one into the shower area to be strip-searched. (Tr., p.14, Ls.12-24; Ex.A.)

When it was his turn to be strip-searched, Mr. Franks was asked by Officer Zuberber whether he was carrying "anything illegal." (Tr., p.45, Ls.23-25; Ex.A.) In response to the officer's question, Mr. Franks said "No," but nodded his head indicating "yes" at the same time. (Tr., p.15, L.2 – p.16, L.5; p.34, Ls.9-20; Ex.A.) Mr. Franks then reached inside his pants, pulled out a sock – later determined to contain heroin – and gave it to the officer. (Tr., p.40, L.7; Ex.A.)

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[2] Mr. Franks was being held on charges of grand theft. (1/30/18 Tr., p.11, Ls.8-11.) *See State v. Franks*, Ada County No. CR01-17-15718. Mr. Franks later entered a guilty plea in that case on October 26, 2017.

[3] The suppression hearing took place on January 30, 2018; unless otherwise indicated by a different date, all transcript references are to that hearing.

[4] Telmate is the system used by Ada County Sheriff to deposit funds for inmates. *See* https://adacounty.id.gov/sheriff/ada-county-jail/mail-payments/ontransact.

Mr. Franks was not advised of his *Miranda* rights nor provided an attorney at any time during this encounter. (Tr., p.16, L.4 – p.17, L.10; p.44, Ls.22-24.)

Mr. Franks was charged with trafficking in heroin and possessing major contraband inside the jail. (R., pp.11, 30.) He filed a motion to suppress asserting that the evidence was obtained in violation of his Fifth Amendment and *Miranda* rights, and that his responses to the officer's question – nodding his head and handing the sock to the officer – were involuntary and coerced. (R., pp.77-80.) The State filed a brief in opposition. (R., pp.104-10.)

The district court denied suppression. In a ruling from the bench, the district court held there was no "custodial interrogation" for purposes of *Miranda* and that the statements were voluntarily made and not coerced. (Tr., p.73, L.10 – p.75, L.9.)[5] Following the denial of his suppression motion, Mr. Franks negotiated an agreement with the State and entered conditional *Alford*[6] plea to the trafficking count, reserving his right to appeal the district court's decision. (R., pp.258-262; 6/7/2018 Tr., p.11, L.15 – p.30, L.20.) The district court imposed judgment and sentenced Mr. Franks to eighteen years, with ten years fixed, to run concurrently with all other sentences. (R., p.266.) Mr. Franks filed a timely Notice of Appeal. (R., p.270.)

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[5] The district court also made a number of findings and conclusions relating to Mr. Franks' reduced privacy rights and the Fourth Amendment. (Tr., p.62, L.19 – p.73, L.9.) However, Mr. Franks did not allege a Fourth Amendment violation and these findings and conclusion have no bearing on the issues presented in this case.

[6] *North Carolina v. Alford*, 400 U.S. 25 (1979).

<u>ISSUE</u>

Did the district court err when it denied Mr. Franks' motion to suppress?

ARGUMENT

The District Court Erred When It Denied Mr. Franks' Motion To Suppress

A. Introduction

In *Miranda v. Arizona*, the United States Supreme Court held a person must be informed of his Fifth Amendment privilege against self-incrimination prior to being subjected to custodial interrogation; otherwise, any incriminating statements made by the person are inadmissible at trial. 384 U.S. at 444-45. *Miranda* warnings are required whenever an individual is subjected to "custodial interrogation." Here, not only were Mr. Franks' statements given without the required *Miranda* warnings, they were involuntarily made and coerced, requiring suppression of the statements and all physical fruits. The district court's contrary conclusions are erroneous and its decision to deny suppression should be reversed.

B. Standard Of Review

In reviewing a district court order granting or denying a motion to suppress evidence, the standard of review is bifurcated." *State v. Purdum*, 147 Idaho 206, 207 (2009) (citation omitted). "This Court will accept the trial court's findings of fact unless they are clearly erroneous. However, this Court may freely review the trial court's application of constitutional principles in light of the facts found." *Id.* (citations omitted). "At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court." *State v. Aguirre*, 141 Idaho 560, 562 (Ct. App. 2005) (citations omitted).

C. <u>Mr. Franks Was Subjected To A Custodial Interrogation Requiring *Miranda* Warnings</u>

The Fifth Amendment provides that no person "... shall be compelled in any criminal case to be a witness against himself ..." U.S. CONST. amend. V. In *Miranda*, the United States Supreme Court held the privilege against self-incrimination requires that incriminating statements obtained during "custodial interrogation" be inadmissible as evidence against a defendant unless the defendant was provided a full and effective warning of his rights. 384 U.S. 436. The *Miranda* Court specified,

> No effective waiver of the right to counsel during interrogation can be recognized unless specifically made after the warnings we here delineate have been given. … This warning is an absolute prerequisite to interrogation. No amount of circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead. Only through such a warning is there ascertainable assurance that the accused was aware of this right.

384 U.S. at 471-72 (internal citations omitted).

As set forth below, Mr. Franks was subjected to custodial interrogation and the failure to provide *Miranda* warnings requires that his incriminating statements be suppressed.

1. <u>Mr. Franks Was Subjected To "Interrogation" Within The Meaning Of *Miranda*</u>

Mr. Franks' questioning by Officer Zuberer was an "interrogation" within the meaning of *Miranda*.

> [T]he term "interrogation" under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. … *A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation.*

Rhode Island v. Innis, 446 U.S. 291, 301 (1980) (emphasis added).

Here, Officer Zuberer's asking Mr. Franks whether he had "anything illegal on him" (*see* Ex.A; Tr, p.21, Ls.13-16) was a question any officer should know is reasonably likely to elicit an

incriminating response. It is an "interrogation" for purposes of *Miranda*. Thus, regardless of whether the question was one of Officer Zuberer's "common questions" (Tr., p.39, Ls.3-7) or whether, as found by the district court, that that question was "standard protocol" (Tr., p.66, Ls.4-20), the question was not exempt from *Miranda's* requirements. In *Mathis v. United States,* 391 U.S. 1, 3 (1968), the U.S. Supreme Court explicitly rejected the government's argument that "routine" tax investigations, unrelated to a prisoner's underlying offense, are immune from *Miranda.* Here, the officer's direct question asking whether Mr. Franks had "anything illegal," even if routine or part of established jail protocol, was a question that police "should know is reasonably likely to evoke an incriminating response" and amounts to interrogation within the meaning of *Miranda.*

2. Mr. Franks Was "In Custody" For Purposes Of *Miranda*

Mr. Franks was "in custody" for purposes of *Miranda*, as inmates are not exempt from *Miranda's* requirements. Two years after *Miranda*, in *Mathis,* the U.S. Supreme Court held that a suspect's answers incriminating him in tax fraud, given to federal investigators while he was imprisoned serving state conviction, were held inadmissible because no *Miranda* warnings had been given. 391 U.S. at 3. The Court acknowledged *Miranda*'s applicability to questioning " 'when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way,' " *id.* at 5, (quoting *Miranda*, 384 U.S. at 478); but the Court did not say whether the interview with Mathis fell within *Miranda because* of his incarceration, or because of some other deprivation that was significant in the circumstances. However, in *Maryland v. Shatzer*, 559 U.S. 98, 113 (2010), the U.S. Supreme Court clarified that by itself, "lawful imprisonment imposed on conviction of a crime does not create the coercive pressures identified in *Miranda.*"

Later, in *Howes v. Fields*, the U.S. Supreme Court rejected a categorical rule that prisoners who are taken aside for questioning are "in custody" for purposes of *Miranda*. 565 U.S. 499, 511 (2012). The Court stated that "service of a term of imprisonment, without more, is not enough to constitute *Miranda* custody." 565 U.S. 499, 511 (2012). Instead, the Court said,

> When a prisoner is questioned, the determination of custody should focus on all of the features of the interrogation. These include the language that is used in summoning the prisoner to the interview and the manner in which the interrogation is conducted. An inmate who is removed from the general prison population for questioning and is thereafter subjected to treatment in connection with the interrogation that renders him "in custody" for practical purposes will be entitled to the full panoply of protections prescribed by *Miranda*.

Id. at 514 (internal citations, quotation marks, and ellipsis omitted).

In *Howes v. Fields*, the U.S. Supreme Court found that the prisoner being interrogated was *not* in custody for purposes of *Miranda* because he was free to terminate the interview and leave. 565 U.S. at 515. In making this determination, the Court balanced those factors showing he was in *Miranda* custody against those showing that he was not. *Id.* The factors showing a custodial interrogation included that: the prisoner did not invite or consent to the interview; he was not advised that he was free to decline to speak; the interview lasted a long time, extending beyond the prisoner's usual bedtime; the deputies conducting the questioning were armed; and one of the deputies "used a sharp tone." *Id.*

However, the Court concluded that these factors were offset by others indicating that the prisoner was free to leave:

> *Most important*, respondent [prisoner] was told at the outset of the interrogation, and was reminded again thereafter, that he could leave and go back to his cell whenever he wanted. Moreover, respondent was not physically restrained or threatened and was interviewed in a well-lit, average-sized conference room, where he was "not uncomfortable." He was offered food and water, and the door to the conference room was sometimes left open.

Id. The Court concluded that, "[a]ll of these objective facts are consistent with an interrogation environment in which a reasonable person would have felt free to terminate the interview and leave." *Id.*

It is apparent from *Howes v. Fields* that courts must examine *all* of the features of the interrogation to determine whether a prisoner is free to terminate an interview and leave. *Id.* A prisoner who is not so free will be considered "in custody" for purposes of *Miranda*. Making this determination will depend "on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." *Stansbury v. California*, 511 U.S. 318, 323 (1994). The question is whether the objective circumstances "add up to custody" for *Miranda* purposes. *J.D.B. v. North Carolina*, 564 U.S. 261, 278 (2011). Consistent with these principals, the Idaho Supreme Court has observed, "The only relevant inquiry is how a reasonable man *in the suspect's position* would have understood his situation." *State v. Huffaker*, 160 Idaho 400, 405 (2016) (quoting *Stansbury*, at 324) (emphasis added). The burden of showing custody rests with the defendant seeking to exclude evidence based on a failure to administer *Miranda* warnings. *State v. James*, 148 Idaho 574, 557 (2010). As set forth below, Mr. Franks met that burden and the district court's contrary conclusion is in error.

The objective circumstances in this case show that Mr. Franks was questioned during an encounter in which uniformed officers had barged into his cell; he was ordered up against the wall, and to face it, and his hands were restrained in handcuffs behind his back. (Tr., p.11, L.11 – p.12, L.18; p.42, Ls.20-25.) He was told he would be strip-searched, then led away from the general jail population to the booking area and into the shower room where he was isolated with

an officer, Officer Zuberer, who questioned directly him. (Tr., p.10, Ls.10-24, p.14, Ls.12-24; Ex.A.)

As testified to by Officer Zuberer, Mr. Franks was not free to leave.

> Q: Was he free to, when you ordered him to go down to the booking area, was he free to stop and go back to his cell?
>
> A: Not at that time, no.
>
> Q: Was he in custody?
>
> A: Yes.

(Tr., p.41, L.23 – p.24, L.3.)

The undisputed evidence also established that inmates like Mr. Franks were not normally handcuffed when being moved throughout parts of the jail; this degree of restraint was unusual. (Tr., p.19, L.21 – p.20, L.6; p.45, Ls.4-10.)

Thus, unlike the prisoner in *Howes v. Fields*, Mr. Franks was subjected to a heightened coercive environment, such that a reasonable person in Mr. Franks' position would not have felt free to terminate the interrogation and leave and return to his cell.

Also, unlike the prisoners in *Howes v. Fields*, 565 U.S. 499, and in *Shatzer*, 559 U.S. 98, who were serving prison sentences after being convicted, Mr. Franks was in custody as a pre-trial detainee. The coercive pressures of custody with which *Miranda* was concerned are arguably present where someone is incarcerated before trial. *See United States v. Ellison*, 632 F.3d 727 (1st Cir. 2010) (recognizing the difference in the conditions of a pre-trial detainee and a convict for purpose of *Miranda* custody.) The condition of a suspect being held while awaiting trial, like Mr. Franks, is different from the convict's position, since the suspect might reasonably perceive that the authorities have a degree of discretion over pretrial conditions, at least to the point of making recommendations to a court. *Id.*

Focusing on *all* of the features of the interrogation here, Mr. Franks was subjected to treatment that rendered him "in custody" for practical purposes, and he was entitled to the protection of *Miranda*.

D. The State Failed To Carry Its Burden Of Showing That Mr. Franks' Incriminating Statements Were Voluntarily And Not Coerced; The Statements Should Be Suppressed

The district court also erred in concluding that Mr. Franks' incriminating statements were "voluntary" and not the product of coercion. (Tr., p.73, Ls.15-16, p.74, Ls.15-16.) The use against a criminal defendant of a statement that the defendant made involuntarily violates the Due Process Clause. *Miller v. Fenton*, 474 U.S. 104, 109–10 (1985); *State v. Hayes*, 158 Idaho 476, 485 (Ct. App. 2015). A statement that is the product of police coercion, either physical or psychological, or that was otherwise obtained by methods offensive to due process must be suppressed, as well as all fruits of such statement. *United States v. Patane*, 542 U.S. 630 (2004).

To determine whether a defendant's incriminating statements were given voluntarily, a court must examine the totality of the circumstances and ask whether the defendant's will was overborne by police conduct. *Arizona v. Fulminante*, 499 U.S. 279, 287-88 (1991); *State v. Troy*, 124 Idaho 211, 214 (1993). A court should consider the characteristics of the accused and the details of the interrogation, including whether *Miranda* warnings were given, the youth of the accused, the accused's level of education or low intelligence, the length of the detention, the repeated and prolonged nature of the questioning, and the deprivation of food or sleep. *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973); *Troy*, 124 Idaho at 214. The presence or absence of *Miranda* warnings is a particularly significant factor. *Missouri v. Seibert*, 542 U.S. 600, 608-09 (2004). If, under the totality of circumstances, the defendant's free will was overborne by threats, through direct or implied promises or other forms of coercion, then the defendant's statement is not voluntary and is inadmissible. *Fulminante*, 499 U.S. at 285-87;

Troy, 124 Idaho at 214. When a defendant alleges an interrogation is coercive, the State bears the burden of proving voluntariness by a preponderance of the evidence. *Lego v. Twomey*, 404 U.S. 477, 489 (1972); *State v. Yager*, 139 Idaho 680, 685 (2004); *State v. Johns*, 112 Idaho 873, 878 (1987).

The State did not meet its burden of proving that Mr. Franks' incriminating statements were voluntarily given, and the totality of the circumstances reveals that they were not. Most critically, Mr. Franks should have been given *Miranda* warnings prior to being subjected a custodial interrogation, but he was not. (Tr., p.16, Ls.4-8.) Additionally, he was questioned during an encounter in which uniformed officers barged into his cell, ordered him up against the wall, and to face it, and restrained his hands in handcuffs behind his back. (Tr., p.11, L.11 – p.12, L.18; p.42, Ls.20-25.) He was then told he would be strip-searched and was led away to a shower area and then, isolated with an officer who questioned him directly, Mr. Franks made his incriminating response. (Tr., p.10, Ls.10-24, p.14, Ls.12-24; Ex.A.)

The district court found there was "no coercion" and that Mr. Franks' incriminating statement was a "voluntary response." (Tr., p.73, Ls.15-16, p.74, L.s15-16.) The district court cited to the facts that Mr. Franks was an adult, not a minor; that he had been in the jail for some five weeks and was accustomed to it; and that he was familiar with the criminal justice system having been subjected to numerous strip searches in the past. (Tr., p.69, Ls.14-23.) Additionally, however, the district court found that Mr. Franks "understands his Miranda rights" and "clearly knew" he did not have to answer the question. (Tr., p.74, Ls.21-23.) This finding is not supported by the record and is clearly erroneous.

At the suppression hearing, Mr. Franks was asked if he knew what *Miranda* rights were. (Tr., p.15, L.19 – p.16, L.7); however, he was not asked, and there is no evidence in the record

showing, whether he was aware of those rights *at or before* the time he made his incriminating statements. (*See generally*, Tr., p.11, L.2 – p.26, L.9.) There is no evidence that Mr. Franks had ever been given *Miranda* warnings in the past; the only evidence was that some seven months *after* he made his unwarned statements, and *after* his attorney filed his motion to suppress briefing the issue, Mr. Franks knew what *Miranda* rights included. This is not substantial competent evidence to support a finding that Mr. Franks understood his rights at the time he made his unwarned incriminating statements.

Considering the circumstances of the interrogation as whole, the district court erred in failing to conclude that Mr. Franks' will was overborne by the officer's conduct and that his incriminating statements were involuntary and coerced. Suppression should have been granted.

E. The "Inevitable Discovery Doctrine" Does Not Save The Illegally-Obtained Evidence From Exclusion

Although not argued by the State, the district court made an alternative ruling that the objected-to evidence was admissible under the "inevitable discovery doctrine." (Tr., p.71, L.23 – p.72, L.10.) The district court reasoned that the inevitable discovery doctrine was applicable because Officer Zuberer had determined that the other seven suspected inmates would also be strip-searched. (Tr., p.71, L.23 – p.72, L.10.)

The "inevitable discovery doctrine" does not apply in this case, however, because that doctrine only saves the fruits of an unlawful action when the State shows that those fruits "ultimately or inevitably *would* have been discovered by lawful means." *State v. Downing*, 163 Idaho 26, 31 (2017) (quoting *Nix v. Williams*, 467 U.S. 431, 444 (1984)). The exception does not apply just because the evidence *could* have been discovered *had* the same officer acted lawfully instead of unlawfully. *State v. Rowland*, 158 Idaho 784, 787 (Ct. App. 2015). The exception does not permit a hypothetical "do-over." *See id.* ("Indeed, the inevitable discovery

doctrine was never intended to swallow the exclusionary rule by substituting what the police *should* have done for what they really did or were doing.") The inevitable discovery doctrine therefore is not applicable here, and the district court's contrary conclusion is erroneous.

CONCLUSION

Mr. Franks respectfully asks this Court to reverse the district court's order denying suppression, vacate his judgment of conviction for trafficking in heroin, and remand his case to the district court for further proceedings.

DATED this 21st day of March, 2019.

/s/ Kimberly A. Coster
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of March, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

KAC/eas