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State v. Burgess Appellant's Reply Brief Dckt. 41902

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 41902
)	
v.)	ADA COUNTY NO. CR 2013-2864
)	
SHAYNE RAY BURGESS,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

REPLY 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

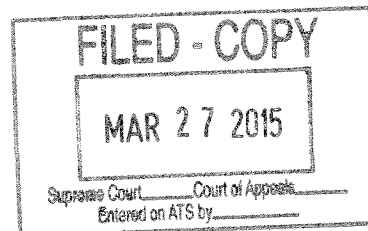
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STATEMENT OF THE CASE

Nature of the Case

Shayne Ray Burgess appeals from his Judgment of Conviction and Commitment for aggravated assault on certain personnel, with a weapons enhancement, and misdemeanor resisting, delaying or obstructing an officer. Mr. Burgess asserts that the district court erred at trial by allowing the State to introduce on cross-examination his inculpatory statements to Trooper Robinson. The statements were obtained in violation of the United States Supreme Court's holding in *Miranda v. Arizona*, and the State did not meet its burden of showing that the statements were voluntary and that they were being admitted for a permissible purpose. He further asserts that the district court erred when it admitted his statement to hospital staff that he used methamphetamine on the day of the incident because its unfairly prejudicial effect substantially outweighed its probative value.

The State presented two main points in its Respondent's Brief. Regarding the first issue, the State argued that Idaho Criminal Rule 12(b), which requires that a motion to suppress evidence be made prior to trial, prevents Mr. Burgess from objecting to the improper use of his un-Mirandized statements. (Respondent's Brief, pp.5-6.) However, Rule 12(b) does not apply to the statements in question because the State conceded below that the evidence was obtained in violation of *Miranda v. Arizona*, 384 U.S. 436, 444-56 (1966) and could not be admitted in the State's case-in-chief. (Tr. 11/22/13, p.227, Ls.13, 17-19.) Therefore, suppression was not at issue and a motion to suppress would have been moot. Rather, the question at issue was whether the

prosecutor could later use the un-Mirandized statements for a different purpose without establishing that the statements were not involuntary.

Regarding the second issue, the State argued that the district court did not abuse its discretion when it admitted evidence of Mr. Burgess's methamphetamine use. (Respondent's Brief, pp.6-9.) Because the Respondent's Brief does not present any arguments on this issue that have not already been addressed in the Appellant's Brief, Mr. Burgess will limit this Reply Brief to the first issue.

Statement of the Facts and Course of Proceedings

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

ISSUES

1. Did the district court err in when it allowed the State to introduce on cross-examination Mr. Burgess's inculpatory statements that were obtained in violation of *Miranda v. Arizona*?
2. Did the district court err when it admitted Mr. Burgess's statement that he used methamphetamine on the day of the offense?

ARGUMENT

I.

The District Court Erred When It Allowed The State To Introduce On Cross-Examination Mr. Burgess's Inculpatory Statements That Were Obtained In Violation Of *Miranda v. Arizona*

Mr. Burgess is not precluded from objecting to the State's use of un-*Mirandized* statements during its cross-examination. The State contends that Idaho Criminal Rule 12(b), which requires that a motion to suppress be filed before the commencement of a trial, somehow prevents Mr. Burgess from challenging the prosecutor's later attempt to admit the statements as impeachment evidence. (Respondent's Brief, pp.5-6.) This argument is without merit. The prosecutor at trial conceded that the statements were obtained in violation of *Miranda v. Arizona, supra*, 384 U.S. at 444-46. (Tr. 11/22/13, p.227, Ls.13, 17-19.) Given this concession, a motion to suppress evidence would have been entirely moot. Rule 12(b) does not require the filing of moot motions. Therefore, Rule 12(b) does not have any application to the facts of this case. As such, the State's reliance on *State v. Collinsworth*, 96 Idaho 910, 912 (Ct. App.1975) and *State v. Gleason*, 130 Idaho 585, 590 (Ct. App. 1997), both of which pertain to motions to suppress that involved issues that were not conceded by the prosecution, are misplaced and need not be addressed here. (Respondent's Brief, pp.5-6.)

Further, the logical application of the State's argument is absurd. The State is essentially arguing that the prosecution can concede a suppression issue, thereby obviating the need for the defense to file a suppression motion, then later ask for the admittance of the evidence, and argue that the defense should have filed a suppression

brief. Clearly, the State did not intend on appeal to advocate for this sort of gamesmanship, but the practical outcome of its argument remains inescapable.

The State did not challenge Mr. Burgess's argument on the merits. Therefore, Mr. Burgess maintains that the district court erred when it admitted these statements for any purpose without making a finding of voluntariness and, even if such a finding had been made, the statements were ultimately used for an impermissible purpose.

II.

The District Court Erred When It Admitted Mr. Burgess's Statement That He Used Methamphetamine On The Day Of The Incident Because Its Probative Value Was Substantially Outweighed By Its Unfairly Prejudicial Effect

Mr. Burgess's arguments regarding this issue have been fully briefed in Appellant's Brief and need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

CONCLUSION

Mr. Burgess respectfully requests that this Court vacate his convictions and remand his case to the district court for a new trial.

DATED this 27th day of March, 2015.

Handwritten signature of Kimberly E. Smith in black ink, with the initials "FOR" written to the right of the signature.

KIMBERLY E. SMITH
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

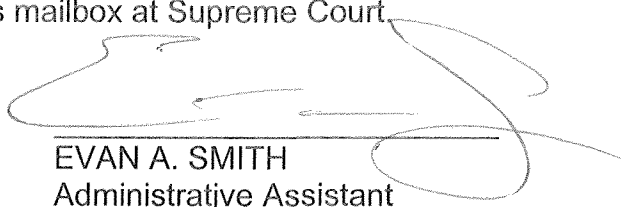
I HEREBY CERTIFY that on this 27th day of March, 2015, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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KES/eas