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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 46135-2018**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR01-2017-21909**
	)	
CHRISTOPHER SCOTT FRANKS,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Christopher Scott Franks appeals from the judgment of the district court entered upon his conditional guilty plea to Trafficking in Heroin. On appeal, Franks argues the district court erred when it denied his motion to suppress statements he made while he was an inmate at the Ada County Jail.

Statement Of The Facts And Course Of The Proceedings

Deputy Zuberer, a deputy at the Ada County Jail, received information that drugs may be in cells 710 and 740. (Ex. A.[1]) Deputy Zuberer reviewed the records and discovered Franks had received numerous monetary transactions. (See id.) Deputy Zuberer, with the assistance of two other deputies, opened Franks' cell, cell 710. (See id; see also 1/30/18 Tr., p. 32, L. 1 – p. 33, L. 4.) The deputies placed Franks, and the other three inmates in the cell, into handcuffs. (See id.) Deputy Zuberer and another deputy then escorted the inmates to the showers in order to perform individual strip-searches for contraband or drugs. (See id.) For security and privacy concerns, the jail policy requires one strip-search at a time and so Deputy Zuberer separated Franks from the other inmates. (1/30/18 Tr., p. 33, Ls. 10-24.)

Prior to searching Franks, Deputy Zuberer asked Franks if he had any drugs or weapons on him. (1/30/18 Tr., p. 33, L. 25 – p. 34, L. 19; see also Ex. A.) Franks said "no" but nodded his head in the affirmative. (Id.)

[1] Deputy Zuberer's report was admitted at the Suppression Hearing as Defendant's Exhibit A. (1/30/18 Tr., p. 57, L. 20 – p. 58, L. 16.)

Franks then pulled a sock from his crotch area and handed it to Deputy Zuberer. (1/30/18 Tr., p. 34, L. 17 – p. 36, L. 20; Ex. A.) Deputy Zuberer felt something round, about the size of a quarter, in the sock. (See Ex. A.) Deputy Zuberer then strip searched Franks. (See id.) Deputy Zuberer did not find any more contraband on Franks. (See id.) The sock contained a ball of heroin. (See id.)

The state charged Franks with Trafficking in Heroin and Possession, Introduction or Removal of Certain Articles Into or From Correctional Facilities, with a Persistent Violator Enhancement. (R., pp. 40-41, 143-145.)

Franks moved "for an order suppressing the admissions/confessions made, (including any physical gestures that could be interpreted as an assertion), specifically any and all statements/assertions made to Deputy Mike Zuberer[.]" (R., pp. 58-59, 77-81.) The state responded. (R., pp. 104-110.) The district court held a hearing on the motion to suppress at which Franks and Deputy Zuberer testified. (R., pp. 131-134.) Franks testified that he was handcuffed and taken out of his cell to be searched. (1/30/18 Tr., p. 11, L. 22 – p. 12, L. 24.) Franks had been strip-searched before. (1/30/18 Tr., p. 12, L. 25 – p. 13, L. 17.) Franks testified that Deputy Zuberer did not read him the Miranda[2] warnings. (1/30/18 Tr., p. 15, L. 5 – p. 16, L. 11.) Franks testified that when Deputy Zuberer asked him if he had anything illegal, he said "no." (1/30/18 Tr., p. 21, Ls. 13-16.) Deputy Zuberer testified that when conducting a strip-search the jail deputies will remove the inmate from his cell for security and privacy. (1/30/18 Tr., p. 29, L. 13 – p. 30, L. 18.)

[2] Miranda v. Arizona, 384 U.S. 436 (1966).

The district court relied upon the United States Supreme Court decision in Howes v. Fields, 565 U.S. 499 (2012), which held there is no per se rule regarding whether someone in jail is in "custody" for purposes of Miranda. (1/30/18 Tr., p. 62, L. 19 – p. 75, L. 9.) The district court applied the factors laid out in Fields and determined, for the purposes of Miranda, that Franks was not in custody and no Miranda warnings were required. (See id.) The district court denied Franks' motion to suppress. (See id.)

The parties agreed to a Rule 11 Conditional Plea Agreement that was accepted by the district court. (R., pp. 260-262.) Franks pled guilty to Trafficking in Heroin and reserved the right to appeal the denial of the motion to suppress. (R., pp. 264-265). The district court entered judgment and sentenced Franks to eighteen years with ten years fixed, with the sentence to run currently with his other sentences. (R. pp. 266-269.) Franks timely appealed. (R., pp. 270-273.)

ISSUE

Franks states the issue on appeal as:

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

(Appellant's brief, p. 4.)

The state rephrases the issue as:

Has Franks failed to show the district court erred when it denied his motion to suppress his verbal and nonverbal response to Deputy Zuberer's question?

ARGUMENT

The District Court Did Not Err When It Denied Franks' Motion To Suppress

A. Introduction

The district court properly applied the Fields factors and found that Franks was not in "custody" for the purposes of Miranda, and thus his verbal and nonverbal responses to Deputy Zuberer's single question should not be suppressed. (See 1/30/18 Tr., p. 62, L. 19 – p. 75, L. 9.) The district court also found that there was no coercive conduct by Deputy Zuberer and that Franks' verbal and nonverbal responses were voluntary. (See id.) On appeal, Franks argues the district court erred when it applied the Fields factors to the facts of this case and also claims his verbal and nonverbal responses were not voluntary. (See Appellant's brief, pp. 5-13.) Franks has failed to show the district court erred. The district court correctly applied the law to the facts.

Further, even if the district court erred, the only evidence potentially subject to suppression would be Franks' verbal and nonverbal responses. Franks did not move to suppress the actual heroin. (See, e.g., R., p. 80 ("For the above stated reasons, the defendant request this Court to suppress for all reasons the admissions/confessions made by the defendant as a result of the unwarned and coerced interrogation by [Deputy] Zuberer."); R., p. 105 ("Defendant is not challenging the search of his person conducted at the jail, nor is he asking the Court to suppress the Heroin located on his person.").) Even if the heroin was somehow included in the motion to suppress, the district court did not err when it determined, as an alternative holding, that the inevitable discovery doctrine would apply. (See 1/30/18 Tr., p. 71, L. 24 – p. 72, L. 10.)

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. Godwin, 164 Idaho 903, ___, 436 P.3d 1252, 1261-1262 (2019) (quoting State v. James, 148 Idaho 574, 576, 225 P.3d 1169, 1171 (2010)). The appellate court will accept the trial court's findings of fact unless they are clearly erroneous. Id. (quoting James, 148 Idaho at 576, 225 P.3d at 1171.) However, the appellate court freely reviews the trial court's application of constitutional principles in light of the facts found. Id. (quoting James, 148 Idaho at 576, 225 P.3d at 1171.)

C. Franks Has Failed To Show The District Court Erred When It Denied His Motion To Suppress His Verbal And Nonverbal Responses To Deputy Zuberer's Question

Franks moved to suppress "the admissions/confessions made, (including any physical gestures that could be interpreted as an assertion), specifically any and all statements/assertions made to Deputy Mike Zuberer in response to questioning about 'anything on his person that may be illegal' while handcuffed and in custody at the Ada County Jail as being unwarned and coerced." (R., p. 58.) Franks argued that his "act of nodding his head in the affirmative is testimonial, as is his act of handing the sock to [Deputy] Zuberer." (R., p. 79.) The district court rejected Franks' argument and, applying the Fields factors, found that he was not in custody for purposes of Miranda. (1/30/18 Tr., p. 62, L. 19 – p. 75, L. 9.)

On appeal Franks argues that he was in custody pursuant to Fields, and thus Miranda warnings were required. (See Appellant's brief, pp. 6-11.) Franks' argument on

appeal fails. The district court properly considered and applied the Fields factors and determined that Miranda warnings were not required.

"The requirement for *Miranda* warnings is triggered by custodial interrogation." State v. Beck, 157 Idaho 402, 407, 336 P.3d 809, 814 (Ct. App. 2014) (citing State v. Medrano, 123 Idaho 114, 117, 844 P.2d 1364, 1367 (Ct. App. 1992)). "*Miranda* provides that, in the context of a criminal case, the prosecution may not use statements stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." State v. Harms, 137 Idaho 891, 894, 55 P.3d 884, 887 (Ct. App. 2002) (citing Miranda, 384 U.S. at 444). "*Miranda's* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent." Id. (citing Rhode Island v. Innis, 446 U.S. 291, 300-01 (1980); State v. Frank, 133 Idaho 364, 370, 986 P.2d 1030, 1036 (Ct. App. 1999)). Here, Franks was not subject to custodial interrogation and, thus, the requirement for Miranda warnings was not triggered.

1. The District Court Did Not Err When It Applied The *Fields* Factors To The Facts And Found That Franks Was Not In Custody For The Purposes Of *Miranda*

Based upon information that Franks may be dealing drugs at the Ada County Jail, Deputy Zuberer placed Franks in handcuffs and took him to the showers to perform a strip-search. (1/30/18 Tr., p. 32, L. 1 – p. 33, L. 4; Ex. A.) Before Deputy Zuberer searched Franks, he asked Franks if he had any drugs or weapons on him. (1/30/18 Tr., p. 33, L. 25 – p. 34, L. 19; see also Ex. A.) Franks said "no" but nodded his head in the affirmative. (Id.) Franks then pulled a sock from his crotch area and handed it to Deputy

Zuberer. (1/30/18 Tr., p. 34, L. 17 – p. 36, L. 20; Ex. A.) The sock contained a ball of heroin. (See id.)

The district court found that Franks was not in custody for the purposes of Miranda, and thus Miranda warnings were not required prior to Deputy Zuberer asking the question. (1/30/18 Tr., p. 62, L. 19 – p. 75, L. 9.) On appeal, Franks argues that the district court incorrectly applied the Fields factors. (See Appellant's brief, pp. 7-11.) Contrary to Franks' argument, the district court correctly applied the factors laid out by the United States Supreme Court.

In Fields, the United States Supreme Court considered the application of Miranda in a prison setting and found that a determination regarding an individual's freedom of movement is "simply the first step in the analysis, not the last." See Howes v. Fields, 565 U.S. 499, 510-511 (2012). The Court noted it had "'decline[d] to accord talismanic power' to the freedom-of-movement inquiry, and ha[s] instead asked the additional question whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." Id. at 510 (internal citation omitted). The Court articulated three reasons why the Miranda custody analysis is different for an individual who is already incarcerated. See id. at 510-511.

First, a person who is already incarcerated does not experience the shock that accompanies arrest. See id. at 511. For "a person [who] is arrested in his home or on the street and whisked to a police station for questioning—detention represents a sharp and ominous change, and the shock may give rise to coercive pressures." Id. In contrast, a person who is already incarcerated does not experience the "same 'inherently compelling pressures' that are often present when a suspect is yanked from familiar surroundings in

the outside world and subjected to interrogation in a police station." Id. (citing Maryland v. Shatzer, 559 U.S. 98, 112-113 (2010)).

Second, a prisoner who is already incarcerated is "unlikely to be lured into speaking by a longing for prompt release." Id. "When a person is arrested and taken to a station house for interrogation, the person who is questioned may be pressured to speak by the hope that, after doing so, he will be allowed to leave and go home. On the other hand, when a prisoner is questioned, he knows that when the questioning ceases, he will remain under confinement." Id. (citing Shatzer, 559 U.S. at 113-114).

"Third, a prisoner, unlike a person who has not been convicted and sentenced, knows that the law enforcement officers who question him probably lack the authority to affect the duration of his sentence." Id. (citing Shatzer, 559 U.S. at 113-114). Thus, the prisoner will not feel compelled to speak in hopes of a more lenient sentence. See id.

The Court concluded that the "standard conditions of confinement and associated restrictions on freedom will not necessarily implicate the same interests that the Court sought to protect when it afforded special safeguards to persons subjected to custodial interrogation. Thus, service of a term of imprisonment, without more, is not enough to constitute *Miranda* custody." Id.

Here, when Franks was found with the heroin he had been in custody at the Ada County Jail on Grand Theft charges for five weeks. (See 1/30/18 Tr., p. 11, Ls. 8-12, p. 17, L. 21 – p. 18, L. 10.) Thus, while Fields and Shatzer talk in terms of imprisonment, the same rationales would apply to Franks, who was incarcerated in the Ada County Jail. He had been incarcerated for over a month and, thus, would not experience the same "inherently compelling pressures" that occur when someone is arrested and yanked from

familiar surroundings and interrogated at the police station. Further, Deputy Zuberer would have no authority to affect Franks' current incarceration or potential sentence on Franks' unrelated Grand Theft charge. The United States Supreme Court's analysis of the application of Miranda for incarcerated individuals would apply to Franks in this case.

Under the standard articulated in Fields, to determine "whether a person is in custody in this sense, the initial step is to ascertain whether, in light of 'the objective circumstances of the interrogation,' a 'reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave.'" Fields, 565 U.S. at 508-509 (citation omitted). The courts must examine "all of the circumstances surrounding the interrogation." Id. (citations omitted). The relevant factors include "the location of the questioning, its duration, statements made during the interview, the presence or absence of physical restraints during the questioning, and the release of the interviewee at the end of the questioning." Id.

"Determining whether an individual's freedom of movement was curtailed, however, is simply the first step in the analysis, not the last. Not all restraints on freedom of movement amount to custody for purposes of *Miranda*." Id. at 509. "[T]he freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody." Id. (citing Shatzer, 559 U.S. at 112-113).

Here, the district court properly examined all the circumstances and applied the Fields factors to the facts. (1/30/18 Tr., p. 62, L. 19 – p. 75, L. 9.) Regarding the location of the interrogation, the district court found Deputy Zuberer's testimony, that he followed the proper procedure for the search, was credible. (1/30/18 Tr., p. 64, L. 13 – p. 66, L. 3.) The Court found that the location, the booking area, was proper because the inmates were

moved to a location where the strip-searches could preserve the inmates' privacy. (See id.)

> The protocol that the officer followed, as well as the other officers, was consistent with jail protocol, and the location was proper in that all eight inmates were moved to an area where the private strip-searches could take place, that that was normally done in the intake booking area because there are no cameras and for inmate privacy the selected inmates were taken individually.

(1/30/18 Tr., p. 65, L. 19 – p. 66, L. 3.)

Franks argues that he was taken away from the "general jail population" where he was "isolated" with Deputy Zuberer. (See Appellant's brief, pp. 9-10.) However, as noted by the United States Supreme Court, an inmate being isolated from the general population does not necessarily indicate "custody." Fields, 565 U.S. at 512-513. Other inmates are not necessarily supportive or friendly:

> [Q]uestioning a prisoner in private does not generally remove the prisoner from a supportive atmosphere. Fellow inmates are by no means necessarily friends. On the contrary, they may be hostile and, for a variety of reasons, may react negatively to what the questioning reveals.

Id. It would have been much worse for the strip-search to have taken place in the presence of the general population, instead of in the privacy of the booking showers. The district court properly considered the location factor and properly determined that it weighed against the finding of "custody."

Next, the duration of the "questioning" was extremely short as was the statement in response. It was one question with a verbal response of "No."

> As to the duration, the court finds the duration was extremely short. The officer simply asked, and the court finds the officer's testimony credible, he asked, "Do you have any drugs or weapons on you?" This is a standard officer safety question. It is not a question investigating the

> crime. It's the officer testified that it was standard protocol to ask this question before the search began.
>
> In this case, the officer testified, and the defendant does not dispute, he confirmed that he said "no." The officer clarified that while the defendant said, "no," he also nodded his head, "yes," and pulled something from his pants to hand the officer. There was no indication that the officer asked any additional questions regarding what was being handed to him, or is this drugs. The officer simply took what the defendant handed him, and he put it in his pocket to be properly processed at the end.

(1/30/18 Tr., p. 66, Ls. 4-23.) The district court went on to find that the question was not for the purpose of criminal investigation, but rather just a protocol question regarding whether Franks had something on him that could put Deputy Zuberer at risk, like a needle or a weapon. (1/30/18 Tr., p. 66, L. 24 – p. 67, L. 19.) On appeal Franks does not appear to challenge the district court's determination and weighing of the extremely limited duration and scope of the questioning. (See Appellant's brief, pp. 7-11.)

The district court also considered that Franks was not in restraints during the single question. (See 1/30/18 Tr., p. 67, L. 20 – p. 68, L. 14.) The district court found that by the time Deputy Zuberer asked the question, the restraints had been removed. (See id.) The restraints had to have been removed because, in response to Deputy Zuberer's question, Franks was able to reach into his pants and pull out the heroin sock. (See id.) Franks, on appeal, does not challenge the district court's determination that he was not in restraints at the time of the question. (See Appellant's brief, pp. 7-11.)

The district court also considered that Franks was released at the end of the questioning and search. (See 1/30/18 Tr., p. 68, Ls. 4-14.) The district court found that Franks was placed in a holding cell and then returned to the jail population. (See id.) The district court properly considered all of the factors laid out by Fields.

> So in applying those five factors to the circumstances, the circumstances don't rise to a level that the defendant was in custody for purposes of Miranda.

(1/30/18 Tr., p. 68, Ls. 15-18.) In addition to properly applying the Fields factors, the district court also correctly articulated the underlying rationale behind the Fields factors.

> As stated in Howes [v. Fields], it's not unusual that a person would be searched in jail. This normally -- this is a normal process when you're in jail that you are subject to search, and that it's not a situation where a prisoner might be lured into speaking to an officer in order to be immediately released. A person who's being held in custody at a county jail knows they're not getting out of custody simply because they give an answer to an officer, and both sides specifically confronted, both the defendant and the officer regarding this issue, and both the defendant and the officer testified, and the court finds it's credible by both parties, that there were no promises, there were no threats, and there was no coercion to force the defendant to answer the officer's question about drugs or weapons, in that the defendant knew that his questioner, Deputy Zuberer, would like the ability to release him from jail even if he had made such a promise.

(1/30/18 Tr., p. 68, L. 19 – p. 69, L. 13.)

Contrary to Franks' argument on appeal, the district court properly considered the totality of the circumstances and correctly applied the Fields factors. The district court did not err. Franks was not in custody for the purposes of Miranda, and Deputy Zuberer did not need to read Miranda warnings before asking Franks if he had any weapons or drugs on him prior to a search.

2. The District Court Did Not Reach The Issue Whether The Single Procedural Question Asked By Deputy Zuberer Amounted To An Interrogation For The Purposes Of *Miranda*

On appeal Franks argues that the single question from Deputy Zuberer amounted to an "interrogation." (See Appellant's brief, pp. 6-7.) However, the district court decision hinged on whether Franks was in "custody" and therefore did not need to address

whether the single procedural question constituted an "interrogation." This Court too need not reach the "interrogation" issue because the "custody" issue is dispositive.

3. Even If This Court Finds *Miranda* Warnings Were Required, The Failure To Administer *Miranda* Warnings Would Not Result In The Suppression Of The Heroin

Franks did not seek to suppress the actual heroin. Franks moved the district court "to suppress for all reasons the admissions/confessions made by the defendant as a result of the unwarned and coerced interrogation by [Deputy] Zuberer." (R., p. 80.) Franks argued that his "act of nodding his head in the affirmative is testimonial, as is his act of handing the sock to [Deputy] Zuberer." (R., p. 79.) However, he never argued the physical evidence (the heroin) be voluntarily surrendered to the officer was subject to suppression.

In its response the state below also recognized the limited scope of Franks' motion to suppress. "Defendant is not challenging the search of his person conducted at the jail, nor is he asking the Court to suppress the Heroin located on his person." (R., p. 105.)

During the hearing on the motion to suppress, defense counsel also did not argue that the heroin itself should be suppressed, but focused his argument on the Miranda issue. (See, e.g., 1/30/18 Tr., p. 52, Ls. 6-9 ("[T]he thrust of our motion was that he wasn't Mirandized, and this was a criminal investigation, a custodial criminal investigation.") Therefore, the scope of the issue is limited to the verbal and nonverbal responses to Deputy Zuberer's question regarding whether Franks had any drugs or weapons on him, and does not include the actual heroin.

Even if the scope of the motion somehow included the actual heroin, unless the unwarned statement was coerced and involuntary, a failure to administer Miranda warnings does not implicate fruit of the poisonous tree doctrine and the physical evidence is not suppressed. See Harms, 137 Idaho at 896, 55 P.3d at 889 (citing Michigan v. Tucker, 417 U.S. 433 (1974); Oregon v. Elstad, 470 U.S. 298 (1985)). Even if the district court erred regarding its Miranda analysis, which it did not, then only Franks verbal "no" and nonverbal responses would be potentially subject to suppression.

D. The District Correctly Determined That Franks' Verbal "No" And Nonverbal Headshake And Hand Gesture Were Voluntary And Not Coerced Statements

The district court found that Franks' response to Deputy Zuberer's question was voluntary and not coerced. (See 1/30/18 Tr., p. 62, L. 19 – p. 75, L. 9.) On appeal, Franks argues that, "Considering the circumstances of the interrogation as a whole, the district court erred in failing to conclude that Mr. Franks' will was overborne by the officer's conduct and that this incriminating statements were involuntary and coerced." (Appellant's brief, p. 13.) Franks' argument fails. The district court properly considered the totality of the circumstances and found that Franks was not coerced and that his statement was voluntary.

"The use against a criminal defendant of a statement that the defendant made involuntarily violates the Due Process Clause." State v. Hays, 159 Idaho 476, 485-486, 362 P.3d 551, 560-61 (Ct. App. 2015) (citing Miller v. Fenton, 474 U.S. 104, 109-10 (1985); Haynes v. Washington, 373 U.S. 503, 514-15 (1963); State v. Doe, 131 Idaho 709, 712, 963 P.2d 392, 395 (Ct. App. 1998)). "The exclusionary rule 'applies to any confession that was the product of police coercion, either physical or psychological, or

that was otherwise obtained by methods offensive to due process.'" Id. (citing State v. Doe, 130 Idaho 811, 814, 948 P.2d 166, 169 (Ct. App. 1997)). "In determining whether a statement was involuntary, the inquiry is whether the defendant's will was overborne by police coercion." Id. (citing Arizona v. Fulminante, 499 U.S. 279, 286 (1991); Colorado v. Connelly, 479 U.S. 157, 177 (1986); Doe, 131 Idaho at 713, 963 P.2d at 396; State v. Davila, 127 Idaho 888, 892, 908 P.2d 581, 585 (Ct. App. 1995)).

"[C]oercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment." Connelly, 479 U.S. at 167. "Indeed, coercive government misconduct was the catalyst for this Court's seminal confession case, *Brown v. Mississippi*, 297 U.S. 278, 56 S. Ct. 461, 80 L.Ed. 682 (1936)." Connelly, 479 U.S. at 163. "In [*Brown*], police officers extracted confessions from the accused through brutal torture." Id. "[T]he cases considered by th[e] Court" post-*Brown* "have focused upon the crucial element of police overreaching." Id. at 163-164. "While each confession case has turned on its own set of factors justifying the conclusion that police conduct was oppressive, all have contained a substantial element of coercive police conduct." Id. at 164. "Absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law." Id.

When examining 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;
2. The youth of the accused;
3. The accused's level of education or low intelligence;
4. The length of the detention;
5. The repeated and prolonged nature of the questioning; and
6. Deprivation of food or sleep.

State v. Troy, 124 Idaho 211, 214, 858 P.2d 750, 753 (1993) (citing Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973); Beckwith v. United States, 425 U.S. 341, 348 (1976)).

Here the district court found "that there were no promises, there were no threats, and there was no coercion to force the defendant to answer the officer's question about drugs or weapons[.]" (1/30/18 Tr., p. 69, Ls. 7-10.) The district court considered the totality of the circumstances, including the details of the "interrogation," and found that Franks' response was voluntary. (See 1/30/18 Tr., p. 69, L. 14 – p. 71, L. 23.)

The district court examined Franks' age and found that he was an adult who was familiar with the criminal justice system, including the use of strip-searches in jail:

> So in looking at the totality of the circumstances, the court can also consider the youth of the accused. The court does not find that the defendant is a minor and that he is an adult and is familiar with the criminal justice system based on his admitted extensive and numerous strip-searches, as well as the fact at the time this action took place, he had been in custody for, approximately, five weeks on other charges.

(1/30/18 Tr., p. 69, Ls. 14-23.) Franks does not dispute this finding on appeal.

Next, the district court made findings regarding Franks' level of education and found that Franks testified that he understood the Miranda rights and "there's no low intelligence factor to weigh in favor of the defendant." (1/30/18 Tr., p. 69, L. 24 – p. 70,

L. 5.) On appeal Franks argues that this finding is clearly erroneous because "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." (Appellant's brief, pp. 12-13 (citing 1/30/18 Tr., p. 11, L. 2 – p. 26, L. 9) (emphasis original).) Franks' argument is misplaced.

The factor the court examined was the "[t]he accused's level of education or low intelligence," not whether the accused had prior knowledge of the Miranda warnings. Here, the Court was using Franks' knowledge of the Miranda warnings as an indication of Franks' education and intelligence:

> There's no indication that the defendant's level of education is such that he would not understand his Miranda rights. In fact, he says he understands his Miranda rights, that it has to do with a lawyer and questioning, so there's no low intelligence factor to weigh in the favor of the defendant.

(1/30/18 Tr., p. 69, L. 24 – p. 70, L. 5.) The district court was properly applying the voluntariness factor by examining Franks' intelligence.

The district court also found that the detention was not long, there was no repeated or prolonged questioning and no deprivation of food or sleep. (1/30/18 Tr., p. 70, Ls. 6-24.) Franks does not dispute these findings on appeal. (See Appellant's brief, pp. 11-13.) Franks has failed to show the district court erred. The district court considered and applied the proper factors. The district court found that Deputy Zuberer, upon receiving information that Franks was potentially in possession of contraband, followed jail protocol and asked Franks one question prior to the search. Franks' verbal and nonverbal responses to this one question were voluntary and not coerced.

E. This Court Need Not Reach The Applicability Of The Inevitable Discovery Rule Because Franks Never Moved To Suppress The Heroin; If He Had, The Heroin In His Pants Would Have Been Inevitably Discovered By The Strip-Search

Here, the district court made an alternative finding that, even if Franks' statements were to be suppressed the heroin would not be suppressed:

> The court also finds that in this particular case, there is an argument to be made for inevitable discovery since the deputy had determined that all of these inmates were going to be strip-searched, it appears to the court that there would be an exception, even if there was a need to suppress the statement of the defendant, that that object would have been discovered on the person or in his clothing when the strip-search occurred, so I think in the alternative, the inevitable discovery exception to the Fourth Amendment would also apply to this case.

(1/30/18 Tr., p. 71, L. 24 – p. 72, L. 10.) On appeal, Franks argues the district court erred because the inevitable discovery doctrine does not allow a "do-over." (Appellant's brief, pp. 13-14.)

Franks' argument is moot because Franks' only moved to suppress his verbal and nonverbal statements, not the heroin. (See R., p. 80.) Therefore the inevitable discovery doctrine is moot as to the heroin.

Even if the inevitable discovery doctrine is somehow applicable in this case, it was inevitable that Deputy Zuberer would have discovered the heroin when he stripped-searched Franks. "The exclusionary rule is the judicial remedy for addressing illegal searches and bars the admission or use of evidence gathered pursuant to the illegal search." State v. Rowland, 158 Idaho 784, 786-87, 352 P.3d 506, 508-09 (Ct. App. 2015) (citing State v. Bunting, 142 Idaho 908, 915, 136 P.3d 379, 386 (Ct. App. 2006)). "The inevitable discovery doctrine is an exception to the exclusionary rule that was established by the United States Supreme Court in *Nix v. Williams*, 467 U.S. 431, 444, 104 S. Ct.

2501, 2509, 81 L.Ed.2d 377, 387-88 (1984) and adopted by the Idaho Supreme Court in *Stuart v. State,* 136 Idaho 490, 497-99, 36 P.3d 1278, 1285-87 (2001)." Id.

"[T]he inevitable discovery doctrine applies when a preponderance of the evidence demonstrates that the evidence discovered pursuant to an unlawful search or seizure would have inevitably been discovered by lawful methods." Id. at 787, 352 P.3d at 509 (citing Nix, 467 U.S. at 444; Bunting, 142 Idaho at 915, 136 P.3d at 386). "This doctrine balances society's interests in deterring illegal police conduct and in having juries receive all probative evidence of a crime by only applying the exclusionary rule to put the government in the same, not a worse, position than it would have occupied absent the police misconduct." Id. (citing Nix, 467 U.S. at 443; State v. Russo, 157 Idaho 299, 306, 336 P.3d 232, 239 (2014); State v. Bower, 135 Idaho 554, 558, 21 P.3d 491, 495 (Ct. App. 2001)). "When the discovery of the evidence would have been inevitable as the result of other lawful means, the exclusionary rule fails to serve this purpose, and, therefore, does not apply." Id. (citing Nix, 467 U.S. at 443-444).

"Although those lawful means need not be the result of a wholly independent investigation, they must be the result of some action that actually took place (or was in the process of taking place) that would inevitably have led to the discovery of the unlawfully obtained evidence." Id. (internal citations omitted). "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." Id. at 787-788, 352 P.3d at 509-510 (emphasis in original) (citing State v. Holman, 109 Idaho 382, 392, 707 P.2d 493, 503 (Ct. App. 1985); State v. Cook, 106 Idaho 209, 226, 677 P.2d 522, 539 (Ct. App. 1984).)

Here, the strip search was in the process of taking place, and would have taken place even if Deputy Zuberer had not asked Franks if he had any drugs or weapons on him. (See, e.g., 1/30/18 Tr., p. 36, Ls. 10-17.)

> Q. So regardless of whether he had answered that question, would you still have performed a strip search on him that day?
>
> A. Yes.
>
> Q. And in doing so that would require removing all of his clothing and any items he had on his person?
>
> A. Yes.

(Id.) Thus, even if Franks had moved to suppress the heroin, and even if somehow the heroin was subject to suppression, the heroin would have inevitably been discovered during the legal strip-search that was already in process. The district court did not err when it found that, as a potential alternate basis, the inevitable discovery rule would apply.

CONCLUSION

The state respectfully requests this Court affirm the judgment of the district court.

DATED this 10th day of June, 2019.

/s/ Ted S. Tollefson
TED S. TOLLEFSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 10th day of June, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Ted S. Tollefson
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TST/dd