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State v. White Appellant's Reply Brief Dckt. 47291

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

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	**NO. 47291-2019**
	)	
v.	)	**KOOTENAI COUNTY**
	)	**NO. CR28-18-21327**
TANYA ELAINE WHITE,	)	
	)	**APPELLANT'S REPLY BRIEF**
Defendant-Appellant.	)	
	)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

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District Judge

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Cases

Rules

STATEMENT OF THE CASE

Nature of the Case

Tanya White appealed from the district court's judgment of conviction for possession of a controlled substance. She argued that the district court erred by denying her motion to suppress her statements made after her unlawful arrest. She also argued that the district court erred by denying her Idaho Criminal Rule 36 ("Rule 36") motion to correct a clerical error in the judgment of conviction.

The State responded and contended that the district court correctly denied Ms. White's motion to suppress. On the second issue, the State agreed that the district court erred in denying Ms. White's Rule 36 motion to correct an error in the judgment.

This Reply Brief addresses to some, but not all, of the State's arguments on the suppression issue.

Statement of Facts and Course of Proceedings

Ms. White's Appellant's Brief set out the relevant facts and proceedings. They are not repeated here, but are incorporated by reference. (App. Br., pp.1–10.)

ISSUES

I. Did the district court err by denying Ms. White's motion to suppress when Deputy Brock and Deputy Ellis arrested her without probable cause?

II. Did the district court err by denying Ms. White's Rule 36 motion to correct a clerical error in the judgment?

ARGUMENT

I.

The District Court Erred By Denying Ms. White's Motion To Suppress When Deputy Brock And Deputy Ellis Arrested Her Without Probable Cause

On appeal, Ms. White made three main arguments challenging the district court's denial of her motion to suppress. First, she argued that Deputy Brock and Deputy Ellis arrested her when they restrained her in Walmart using handcuffs without any safety or flight justification. (App. Br., pp.14–19.) Second, she argued that Deputy Brock and Deputy Ellis did not have probable cause that she committed or was going to commit any crime at the time of her arrest. (App. Br., pp.19–21.) Third, she argued that, due to her unlawful arrest, the district court should have suppressed her statements because her statements were not sufficiently attenuated from the illegal seizure. (App. Br., pp.21–26.) Ms. White replies to some of the State's arguments in opposition below. For issues not addressed here, Ms. White respectfully refers the Court to her Appellant's Brief. (App. Br., pp.12–26.)

On the arrest, the State appears to assert that an officer can use handcuffs to detain an individual, without any safety or flight justification, because handcuffing facilitates "a prompt and efficient investigation." (Resp. Br., p.11.) While that may be true (handcuffing someone certainly makes it easier to control them), that does not mean the use of handcuffs is justifiable. There is no "ease and efficiency" exception to the Fourth Amendment. Otherwise, the Fourth Amendment protection against unlawful searches and seizures would be meaningless—it is always easier and more efficient for the police to simply restrain everyone at the scene and search the place or item of interest. For de facto arrests specifically, the Court has not recognized the police's objective for an "expeditious" investigation to justify the use of handcuffs. (*See* Resp. Br., pp.11–14.) To the contrary, the Court has set a "high threshold . . . to justify the use of

handcuffs as part of an investigative detention." *State v. Pannell*, 127 Idaho 420, 424 (1995). The desire for a prompt investigation does not make the cut.[1]

Here, Deputy Brock and Deputy Ellis's decision to handcuff Ms. White was not justified by safety or flight concerns. The State does not seem to dispute the absence of safety concerns, such as a danger to the officers or others. (*See* Resp. Br., pp.9–14.) There was no evidence of weapons or imminent violence. *See Pannell*, 127 Idaho at 424 ("the substantial risk of imminent violence was readily apparent and justified the officer's use of 'reasonable force' to maintain the 'status quo'"). And, there was no real flight risk with respect to Ms. White. As explored in the case law, (App. Br., pp.17–18), the risk of flight must be something more than a generalized assumption that individuals being sought by the police have a tendency to flee. Deputy Brock did not have much more than that, and he had far less than a "substantial risk" of flight. *See Pannell*, 127 Idaho at 424. Deputy Brock saw Mr. Mann and Ms. White go into Walmart, Mr. Mann exited Walmart and abruptly walked back in, and then Deputy Brock found them after about seven minutes of an alleged "cat-and-mouse" search. (R., pp.107–09; *see* State's Ex. 1, 13:27:04–13:34:15.) Importantly, it was Mr. Mann, not Ms. White, that quickly exited and reentered Walmart. (R., p.108.) Ms. White was fully compliant with the deputies' commands. (App. Br., p.17.) Even if the deputies suspected that Mr. Mann and Ms. White possessed contraband while in Walmart, that alone does not justify the use of handcuffs because, again, it would render handcuffs permissible for any drug-related investigatory detention. In summary,

[1] Ms. White also respectfully disagrees with the State's "multifaceted, multi-suspect" description to imply a complex investigation. (Resp. Br., p.14.) This was a simple case of possession of a controlled substance. Mr. Tristan was fully compliant and admitted, almost immediately, to Mr. Mann's marijuana use. (App. Br., p.2.) Deputy Brock and Deputy Ellis located Mr. Mann and Ms. White in Walmart in less than ten minutes. (App. Br., p.2.) After the deputies took Mr. Mann and Ms. White back to the car in handcuffs, there were three officers on the scene to search the car and question the three restrained suspects. (App. Br., pp.18–19.) Nothing in the video indicates a complex, challenging investigation to necessitate handcuffs. (*See* State's Ex. 1.)

the totality of the circumstances relied upon by the State to justify handcuffs are common factors in most seizures and investigations and, therefore, do not justify the use of handcuffs.

On probable cause, the State contends that the facts here are similar to *Maryland v. Pringle*, 540 U.S. 366 (2003), but that case is distinguishable on one salient fact—the discovery of contraband. In *Pringle*, the officer had probable cause to arrest all three individuals, including the defendant, after finding cocaine and cash in the car shared by them. *Id.* at 371–72. None of the individuals admitted to ownership of the cocaine or cash. *Id.* at 372. In contrast to *Pringle*, Deputy Brock had not found any controlled substances before he arrested Ms. White. (*See* State's Ex. 1; *see also* Resp. Br., p.16.) All he had was an admission by Mr. Tristan that Mr. Mann had smoked marijuana, which was in the trunk. (R., p.109.) Mr. Mann and Ms. White were seated in the driver's seat and passenger's seat, respectively, before leaving the car for Walmart. (R., p.108.) So, unlike *Pringle* where the officer knew that three individuals had access and control over actual contraband, Deputy Brock had only an admission to potential access and control over yet-to-be-seen contraband belonging to one individual. These facts were insufficient to establish probable cause to arrest Ms. White. (*See* App. Br., pp.19–21.)

Finally, on attenuation, the State argues that the Court should examine the doctrine differently because, in theory, the deputies could have detained Ms. White (short of an arrest), questioned her, and searched the car. (Resp. Br., pp.19–20.) Put another way, the State submits the Court should separate the "fruit" of Mr. White's de facto arrest from the "fruit" of Ms. White's presence. (Resp. Br., pp.19–20.) The former would be illegally obtained, but the latter would not, since Ms. White would have been detained anyway. (Resp. Br., pp.19–20.) The Court has already flatly rejected the State's proposition. The attenuation doctrine, like the independent source and inevitable discovery doctrines, does not consider what the police could

have done, but what the police actually did. *State v. Maxim*, 165 Idaho 901, 908–10 (2019); *State v. Downing*, 163 Idaho 26, 30–32 (2017). In this case, Deputy Brock should have initiated a consensual encounter or a *Terry*[2] stop, but he did not. He chose to arrest Ms. White, without probable cause, and the State cannot separate her statements from the unlawful arrest with a hypothetical lawful action.

Along similar lines, the State contends the deputies' discovery of contraband and Deputy Brock's reading of *Miranda*[3] warnings were both intervening circumstances to break the causal chain between Ms. White's illegal arrest and her statements. (Resp. Br., pp.20–21.) First, the discovery of contraband is irrelevant. Ms. White was not seeking to suppress the contraband. (R., p.100.) The deputies' discovery of the contraband was independent from Ms. White's illegal arrest—the deputies had probable cause to search the car after Mr. Tristan's admission. That contraband has no impact on the chain between Ms. White's arrest and her statements. The State argues again, in theory, since Deputy Brock could have arrested Ms. White after discovering the contraband, this fictional lawful arrest somehow cures the actual unlawful one. (Resp. Br., p.20.) It does not. Ms. White's statements were still the product of her illegal seizure, and the State has presented no concrete evidence that Ms. White would have made the same statements had she not been illegally seized. In short, the discovery of contraband is not an applicable intervening circumstance. (*See also* App. Br., p.25.)

Second, on the *Miranda* warnings, Ms. White respectfully refers the Court to the discussion in her Appellant's Brief on why *Miranda* warnings do not purge the taint of an illegal seizure under the Fourth Amendment. (App. Br., pp.21–24.) *See also Downing*, 163 Idaho at 30–

[2] *Terry v. Ohio*, 392 U.S. 1 (1968).
[3] *Miranda v. Arizona*, 384 U.S. 436 (1966).

31 (finding no intervening circumstance when defendant made post-*Miranda* statements after illegal pat-down search and rejecting attenuation doctrine).

In sum, the State has not established any intervening circumstance "entirely unconnected" with Ms. White's illegal arrest to attenuate her statements from the taint of the illegality. *Utah v. Strieff*, 136 S. Ct. 2056, 2062 (2016). Ms. White's statements "flowed directly from the illegal [arrest], with no intervening factors to consider." *Downing*, 163 Idaho at 31. Because Ms. White's statements were a "direct outgrowth" of her illegal arrest, the attenuation doctrine does not apply. *Id.*

On the other two factors for attenuation—elapsed time and purpose and flagrancy of conduct—Ms. White maintains that these factors weigh in favor of suppression. (Resp. Br., p.21 (State agreeing elapsed time factor weighs in Ms. White's favor); R., p.95 (prosecution's concession of elapsed time factor); App. Br., pp.24–26.) For all of these reasons, and those stated in the Appellant's Brief, Ms. White submits that the district court erred by denying her motion to suppress her statements.

II.

The District Court Erred By Denying Ms. White's Rule 36 Motion To Correct A Clerical Error In The Judgment

At the sentencing hearing, the district court orally pronounced a sentence of three years, with one year fixed. (Tr. Vol. IV,[4] p.9, Ls.6–8; *see* App. Br., p.29.) The written judgment,

[4] There are four separate transcripts on appeal, contained in one electronic document titled, "Transcript Appeal Volume 1 9-19-2019 10.08.42 28690998 FF744EAF-0DBA-40A8-94AD-11D257CE1897.pdf." Each transcript is cited separately with reference to its internal pagination. Citations to "Tr. Vol. I" refer to the motion to suppress hearing, held on April 18, 2019 (pages 1 to 8 of overall electronic document). Citations to "Tr. Vol. II" refer to the motion in limine hearing, held on May 30, 2019 (pages 9 to 28). Citations to "Tr. Vol. III" refer to the change of

however, imposed a sentence of four years, with two years fixed. (R., p.202; *see* App. Br., p.29.) The State agrees that the district court's judgment of conviction contained a clerical error in imposing a harsher sentence than the sentence pronounced at the sentencing hearing. (App. Br., pp.27–31; Resp. Br., pp.22–24.) Therefore, the State joins in Ms. White's request that this Court reserve the district court's order denying her Rule 36 motion and remand this case to the district court for a new judgment of conviction with the corrected sentence. (App. Br., p.31; Resp. Br., p.24.)

CONCLUSION

Ms. White respectfully requests that this Court reverse the district court's order denying her motion to suppress, vacate her judgment of conviction, and remand this case for further proceedings.

Alternatively, in agreement with the State, she respectfully requests that this Court reverse the district court's order denying her Rule 36 motion and remand this case for the district court to enter a new judgment of conviction with the corrected sentence.

DATED this 4th day of June, 2020.

/s/ Jenny C. Swinford
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Deputy State Appellate Public Defender

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plea hearing, held on June 3, 2019 (pages 29 to 46). Citations to "Tr. Vol. IV" refer to the sentencing hearing, held on August 15, 2019 (pages 47 to 60).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of June, 2020, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF to be served as follows:

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JCS/eas