12-21-2017

State v. Andersen Respondent's Brief Dckt. 45042

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	**NO. 45042**
	)	
v.	)	**KOOTENAI COUNTY**
	)	**NO. CR 2016-19399**
	)	
BRIANNA NICOLE ANDERSEN,	)	
	)	
Defendant-Respondent.	)	
	)	

BRIEF OF RESPONDENT

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

HONORABLE SCOTT WAYMAN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

The State appeals from the district court's order partially granting Brianna Nicole Andersen's motion to suppress. This Court should affirm the district court's order suppressing the incriminating statements Ms. Andersen made while interrogated, as she was never provided with the warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1996). This Court should also affirm the district court's ruling that Ms. Andersen's incriminating statements cannot be used for any purpose at trial because they were not voluntary, and their use would thus violate due process.

Statement of Facts and Course of Proceedings

At approximately midnight on October 1, 2016, Officer Nielsen responded to a residence in Coeur d'Alene "with the understanding that there was a male who was unconscious, not breathing and unresponsive in the bathroom area of the residence." (12/1/16 Tr., p.6, Ls.4-18, p.7, Ls.22-25, p.41, Ls.21-23.) Ms. Andersen had called 911 for help. (12/1/16 Tr., p.34, Ls.5-14.) When Officer Nielsen entered the residence, he observed "several people standing by an open doorway," and a young man, later determined to be Ryan Stebbins, lying on his back in the bathroom. (12/1/16 Tr., p.8, Ls.6-11, p.19, Ls.5-10.) Officer Nielsen saw a used syringe lying on the bathroom counter. (12/1/16 Tr., p.10, Ls.7-10, p.26, Ls.5-10.) The officer testified at the preliminary hearing that he believed Mr. Stebbins might have been under the influence of heroin. (12/1/16 Tr., p.13, Ls.8-16.)

Officer Niska also responded to the residence, and saw Mr. Stebbins lying on the floor in the bathroom, and "two males and a female in the living room just kind of hectic." (12/1/16 Tr., p.28, Ls.19-23.) Officer Niska testified Mr. Stebbins "was just starting to come to."

(12/1/16 Tr., p.30, Ls.14-17.) Sergeant Schneider, also on scene, assigned Officer Niska the task of questioning Ms. Andersen. (12/1/16 Tr., p.42, Ls.3-7.) The video recording of the incident, which was introduced into evidence at the suppression hearing, reflects that Officer Niska initiated her interrogation of Ms. Andersen by saying to her, "Why don't you come talk to me." (Amended Motion to Augment, Ex. 1, at 2:52-54.) Officer Niska testified she "pulled [Ms. Andersen] over closer to the kitchen and she opted to sit down . . . in one of the arm chairs." (12/1/16 Tr., p.31, Ls.15-20.) Officer Niska asked Ms. Andersen for her ID, which she did not have on her, and then requested her name and identifying information, which she called into dispatch. (*Id.*, at 4:18-20, 4:46-5:20, 8:22-9:25.) Officer Niska questioned Ms. Andersen at length about what happened, and testified Ms. Andersen told her "they were downstairs in the basement eating pizza" and Mr. Stebbins went upstairs on his own, and "they heard a loud thump, and . . . they found him unconscious." (12/1/16 Tr., p.32, Ls.20-25.)

Sergeant Schneider joined in the questioning of Ms. Andersen after approximately ten minutes. (Amended Motion to Augment, Ex. 1, at 12:35.) The first question he asked her was, "So, you use too, or just him?" (*Id.*, at 12:50-55.) Ms. Andersen responded that she had used before but had been clean for two-and-a-half years. (*Id.*, at 12:55.) Sergeant Schneider interrupted her to ask, "Where did you put the dope?" (*Id.*, at 13:05-07.) Ms. Andersen responded that she didn't have anything, and the officer would not accept her denial. (*Id.*, at 13:08-17.) He told her, forcefully, "Stop it . . . no you are, you are." (*Id.*, at 13:18-14:00.) He continued to question her forcefully and said, at one point, "You're worried about getting in trouble because you've got dope." (*Id.*, at 13:58-14:00.) Ms. Andersen continued to deny using drugs and being in the bathroom with Mr. Stebbins. (*Id.*, at 14:00-29.) Sergeant Schneider said,

"More lies. You were in the bathroom with him." (*Id.*, at 14:29-31.) Ms. Andersen continued to defend herself, and told the officers they could "search [her] stuff." (*Id.*, at 14:54-15:03.)

At this point, Ms. Andersen asked Mr. Stebbins, who was also in the living room, if he was okay. (*Id.*, at 15:08-10.) She made a slight movement, and both officers told her, forcefully, "Stay seated." (*Id.*, at 15:15-18.) The questioning continued. Sergeant Schneider accused Ms. Andersen of hiding the drugs and not telling the truth, and said "some magic heroin fairy" must have hid everything. (*Id.*, at 15:18-55.) Ms. Andersen made another slight movement, and was told again, forcefully, to "stay seated." (*Id.*, at 15:55-16:00.) The questioning continued. Officer Niska told Ms. Andersen, at one point, "Quit lying . . . enough with the B.S. So, what really happened? (*Id.*, at 16:50-17:10.) Ms. Andersen then told a different story. Among other things, she said she had flushed a syringe down the toilet prior to calling 911. (12/1/16 Tr., p.34, Ls.5-14.) At the preliminary hearing, Officer Niska testified Ms. Andersen changed her story after being called a liar by Sergeant Schneider. (12/1/16 Tr., p.43, Ls.4-23.)

Officer Niska continued to question Ms. Andersen, and asked for consent to search her purse. (12/1/16 Tr., p.38, Ls.4-8.) Two plastic baggies later determined to contain heroin were found in Ms. Andersen's purse. (12/1/16 Tr., p.14, Ls.9-21, p.15, Ls.3-6, p.17, L.21 – p.18, L.6; State's Ex. 1.) Officer Niska arrested Ms. Andersen, and found two syringe caps in her pocket. (12/1/16 Tr., p.40, Ls.1-10.)

Ms. Andersen was charged by Information with possession of a controlled substance and destruction of evidence. (R., pp.52-53.) She filed a motion to suppress, seeking suppression of the statements she made while being questioned, and the physical evidence seized from her purse. (R., pp.56-57, 59-72.) The district court held a hearing on Ms. Andersen's motion, and the parties submitted the matter on the briefing, without introducing any evidence beyond the

transcript of the preliminary hearing and the video recording of the incident. (3/16/17 Tr., p.3, Ls.3-11, p.4, Ls.17-22.)

The district court found Ms. Andersen "attempted to get up during the interview" and "was rather forcefully told to sit down and stay." (3/16/17 Tr., p.4, L.23 – p.5, L.1.) The court concluded she was in custody, and suppressed all of the statements she made after that point. (3/16/17 Tr., p.5, Ls.2-6.) The district court concluded Ms. Andersen voluntarily consented to the search of her purse, and thus did not suppress the physical evidence seized from her purse. (3/16/17 Tr., p.6, Ls.18-24, p.7, Ls.5-9.) After the district court pronounced its ruling, the prosecutor asked, "I recognize [the statements Ms. Andersen made] are suppressed but would the Court mind making a ruling of whether those statements were voluntarily made so I'll know if they can be used for impeachment if she testifies at trial?" (3/16/17 Tr., p.7, Ls.15-20.) Defense counsel argued the statements were not voluntary. (3/16/17 Tr., p.8, Ls.12-16.) The district court agreed, stating, "I'm going to find that her statements were not voluntary. They're not useful for any purpose. They're constitutionally prohibited." (3/16/17 Tr., p.8, Ls.18-23.)

Following the hearing, the district court entered a written order granting Ms. Andersen's motion to suppress as to her statements, but denying it as to the evidence found in her purse. (R., p.79.) The State filed a timely notice of appeal, and the district court stayed further proceedings pending a decision in this appeal. (R., pp.79-80, 81-84, 94-95.)

ISSUES

I. Did the district court correctly grant Ms. Andersen's motion to suppress with respect to the incriminating statements she made while interrogated?

II. Did the district court correctly conclude Ms. Andersen's incriminating statements were not voluntary, and thus could not be used for any purpose?

ARGUMENT

I.

The District Court Correctly Granted Ms. Andersen's Motion To Suppress With Respect To The Incriminating Statements She Made While Interrogated

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; *see also State v. Henson*, 138 Idaho 791, 795 (2003) (discussing *Miranda*). Here, it is undisputed that Ms. Andersen was never given any *Miranda* warnings prior to being interrogated. The question, then, is whether the interrogation was custodial, thus triggering the requirement for *Miranda* warnings. The district court correctly concluded Ms. Andersen was subjected to a custodial interrogation after she was twice ordered to "stay seated," and thus correctly granted her motion to suppress with respect to the statements she made after that point. (3/16/17 Tr., p.5, Ls.1-6.)

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. Ms. Andersen Was Subjected To A Custodial Interrogation

The Idaho Supreme Court recently explained that "[a]s a practical matter, *Miranda* and its progeny establish that *Miranda* warnings are required where a suspect is in custody." *State v. Huffaker*, 160 Idaho 400, 404 (2016) (citation omitted). "Custody is in turn determined by whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *Id.* (quotation marks and citations omitted). "The test to determine whether a defendant is in custody is objective." *Id.* at 405. "The only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *Id.* (quotation marks and citation omitted). Among other things, factors to be considered in determining whether a person is in custody for purposes of *Miranda* include the degree of restraint on the person's freedom of movement, the number of questions asked, the duration of the interrogation, the number of officers involved in the interrogation, the conduct of the officers, and the nature and manner of the questioning. *State v. Beck*, 157 Idaho 402, 408 (Ct. App. 2014). Looking at all of the circumstances surrounding the interrogation here, Ms. Andersen was subjected to a custodial interrogation, as a reasonable person in her position would have felt a restraint on her freedom of movement of the degree associated with a formal arrest.

Ms. Andersen was questioned by multiple officers after calling 911 for medical help for Mr. Stebbins. The officers suspected, from the very beginning, that Mr. Stebbins had overdosed on drugs. Officer Nielsen testified at the preliminary hearing that he saw a used syringe lying on the bathroom counter and believed Mr. Stebbins was under the influence of heroin. (12/1/16 Tr., p.13, Ls.8-16.) The officers and emergency medical personnel were able to quickly revive

Mr. Stebbins, but remained on scene to interrogate Ms. Andersen and the other individuals present at the residence about illegal drugs. While Ms. Andersen was not transported to the police station, her interrogation was similar to that normally undertaken at a station, and her freedom of movement was restrained to the degree associated with a formal arrest.

The officer who first questioned Ms. Andersen, Officer Niska, testified she "pulled [Ms. Andsersen] over closer to the kitchen" prior to questioning her. (Amended Motion to Augment, Ex. 1, at 2:52-54.) Though the physical contact is not clearly visible on the video recording, Officer Niska's testimony reflects her understanding that the questioning was not consensual. Officer Niska asked Ms. Andersen for her identifying information, which she called into dispatch. (*Id.* at 4:46-5:20, 8:22-9:25.) Despite receiving no concerning information from dispatch, Officer Niska and Sergeant Schneider questioned Ms. Andersen extensively, and repetitively, for approximately twenty minutes. The officers refused to accept Ms. Andersen's answers to their questions, and accused her again and again of lying.

After being questioned for approximately fifteen minutes, Ms. Andersen asked Mr. Stebbins, who was now fully conscious, if he was okay. (*Id.*, at 15:08-10.) Ms. Andersen made a slight movement to get up, and both officers told her, forcefully, to "[s]tay seated." (*Id.*, at 15:15-18.) Sergeant Schneider again accused Ms. Andersen of lying, and said "some magic heroin fairy" must have hid everything. (*Id.*, at 15:18-55.) Ms. Andersen made another slight movement, and Sergeant Schneider told her again, forcefully, to "stay seated." (*Id.*, at 15:55-16:00.) The officers continued to question her, with Officer Niska telling her, again, to "[q]uit lying." (*Id.*, at 16:50-17:10.)

Considering the number and nature of the questions asked, the presence of multiple officers, and the forceful and repetitive nature of the questioning, it is clear Ms. Andersen was

subjected to a custodial interrogation. Most tellingly, she twice attempted to stand up, and was twice instructed to stay seated. The State argues the district court erred in concluding this was a custodial interrogation because "mere detentions—even ones that are 'rather forcefully' articulated—are insufficient to establish custody." (Appellant's Br., p.12) But it is clear from all of the circumstances that Ms. Andersen was not merely (and forcefully) detained; rather, her freedom of movement was restrained to the degree associated with a formal arrest. This is the standard for determining whether an interrogation is custodial for purposes of *Miranda*, *see Huffaker*, 160 at 404, and the standard was met here.

The State contends the district court erred in focusing only on the officers' pronouncements to Ms. Andersen to stay seated. (Appellant's Br., p.12.) But the district court did not err. The district court said at the beginning of the suppression hearing that it had reviewed the video recording and the transcript of the preliminary hearing. (3/16/17 Tr., p.3, Ls.14-16.) In a close case, the district court might be expected to discuss in some detail the various factors weighing in favor of, or against, a finding of custody. But this was not a close case. The fact that Ms. Andersen was, in the district court's words, "rather forcefully told to sit down and stay," is certainly relevant to, and perhaps all but determinative of, a finding that she was subjected to a custodial interrogation. (3/16/17 Tr., p.5, Ls.1-2.) There is no indication the district court placed too much emphasis on this critical fact; nor any indication the district court ignored the other circumstances surrounding the interrogation. Because Ms. Andersen was subjected to a custodial interrogation and was never provided with *Miranda* warnings, the district court correctly concluded her incriminating statements must be suppressed.

II.

The District Court Correctly Concluded Ms. Andersen's Incriminating Statements Were Not Voluntary, And Thus Could Not Be Used For Any Purpose

A. Introduction

While unwarned statements can generally be used to impeach a defendant's testimony at trial, *see United States v. Patane*, 542 U.S. 630, 639 (2004), such statements "may not be put to any testimonial use" if they are involuntary, as their use would constitute a denial of due process of law. *New Jersey v. Portash*, 440 U.S. 450, 459 (1979). Here, the district court correctly concluded the incriminating statements Ms. Andersen made while interrogated could not be used for any purpose, even impeachment, as they were not voluntary, and were thus "constitutionally prohibited." (3/16/17 Tr., p.8, Ls.20-23.)

B. Standard Of Review

"In reviewing a district court order granting or denying a motion to suppress evidence, the standard of review is bifurcated." *Purdum*, 147 Idaho at 207 (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." *Aguirre*, 141 Idaho at 562 (citations omitted).

C. The Incriminating Statements Ms. Andersen Made Were Not Voluntary Because Her Will Was Overborne By Police Conduct

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 by a preponderance of the evidence that Ms. Andersen's incriminating statements were voluntarily given, and the totality of the circumstances reveals they were not. Most critically, Ms. Andersen should have been given *Miranda* warnings prior to being subjected to a custodial interrogation, but was not. She was questioned by two officers, at length and in great detail, after she called 911 to seek medical help for a friend. While the officers did not outright threaten Ms. Andersen, they made it very clear

they thought she was lying and would not accept her version of the events. At the preliminary hearing, Officer Niska testified Ms. Andersen changed her story after being called a liar by Sergeant Schneider. (12/1/16 Tr., p.43, Ls.4-23.)

The State argues the district court erred in concluding Ms. Andersen's statements were coerced based solely on the officers' fairly forceful initial disposition. (Appellant's Br., p.16.) That State asserts "an initially forceful, increasingly cordial conversation, with no other coercive factors identified by the court or shown by the evidence, is altogether insufficient to show Andersen's will was overborne or her statements were involuntary." (Appellants' Br., p.17) But the initially forceful nature of the encounter is clearly not the only factor the district court considered. As discussed above, the district court reviewed the video recording of the incident and the transcript of the preliminary hearing prior to the suppression hearing. (3/16/17 Tr., p.3, Ls.14-16.) The district court reached its decision based on more than just the initial disposition of the officers. Defense counsel argued to the district court that Ms. Andersen answered the officers' questions "because she felt threatened by [them]." (3/16/17 Tr., p.8, Ls.12-16.) This argument is supported by the evidence.

The State acknowledges in its Appellant's Brief that the officers yelled at Ms. Andersen during "the emotional high point of the encounter." (Appellant's Br., p.16.) The State contends, however, that the questioning was not coercive because the yelling was brief, and Ms. Andersen yelled back, indicating her will had not been overborne. (*Id.*) The State does not cite any authority for the proposition that a person's will cannot be overborne when they are yelled at only briefly, or when they respond to yelling by yelling. Considering the circumstances of the interrogation as a whole, which the district court did, the district court did not err in concluding

Ms. Andersen's will was overborne by police conduct, and that her incriminating statements were thus not voluntary, and inadmissible for any purpose.

CONCLUSION

Ms. Andersen respectfully requests that this Court affirm the district court's order partially granting her motion to suppress.

DATED this 21st day of December, 2017.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21st day of December, 2017, I served a true and correct copy of the foregoing RESPONDENT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas