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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO, )  
 ) No. 45347  
 Plaintiff-Appellant, )  
 ) Kootenai County Case No.  
 v. ) CR-2016-4001  
 )  
 LAURA LOUISE AKINS, )  
 )  
 Defendant-Respondent. )  
 \_\_\_\_\_ )

\_\_\_\_\_  
**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**

\_\_\_\_\_  
**HONORABLE RICHARD S. CHRISTENSEN**  
District Judge  
\_\_\_\_\_

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State of Idaho

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## STATEMENT OF THE CASE

### Nature Of The Case

The state appeals the district court's determination that I.C. § 19-4301A(3) is unconstitutional.

### Statement Of The Facts And Course Of The Proceedings

Two fishermen reported finding a body wrapped in a tarp and a shower curtain floating in Lake Coeur d'Alene. (R., pp. 11, 14, 17-19.) Police recovered the body, of a woman in her late twenties identified by her tattoos, social media and booking information as Kimberly Sue Vezina. (R., pp. 14, 19.) The evidence indicated the body had been dumped at a boat launch near where it was found and had been submerged "up to several weeks" before gases forming from decomposition caused it to resurface. (R., pp. 19-20.) Police investigation revealed that Kimberly had died of a drug overdose in Spokane and that associates with her at the time had dumped the body in Idaho. (R., pp. 22-26, 34-35, 38.) The investigation came to focus on Laura Louise Akins as one of several suspects. (R., pp. 25-26, 35-37, 39-40.) In an interview Akins admitted being present when Kimberly's body was found and admitted her role in dumping the body. (R., pp. 40-43.)

The state charged Akins with one count of failure to notify of a death and another count of destruction of evidence. (R., pp. 86-87.) Akins moved to dismiss the charges. (R., pp. 103-08, 115-20.) The district court granted the motion in part, dismissing count one (failure to notify of death) as violating the Fifth Amendment right against compelled self-incrimination. (R., pp. 236-252.) The state filed a timely notice of appeal. (R., pp. 258-60.)

ISSUE

Did the district court err by concluding that I.C. § 19-4301A(3) violates the Fifth Amendment right against compelled self-incrimination because it includes a motive element of intent to prevent the discovery of the manner of death that elevates the crime to a felony?

## ARGUMENT

### The District Court Erred By Concluding That I.C. § 19-4301A(3) Violates The Fifth Amendment Right Against Compelled Self-Incrimination

#### A. Introduction

Idaho law requires a person who finds or has custody of a body to, under certain circumstances, report the death to the coroner or law enforcement. I.C. § 19-4301A(1). The district court concluded that, although the state may require such disclosure generally, it may not require disclosure where the person's intent is to prevent discovery of the manner of death. (R., pp. 238-48.) The district court erred by carving out a criminal intent exception to the statute because the person's *motive* for refusing to provide the required reporting is irrelevant. Rather, because the reporting requirement applies generally to those who find or have custody of a body, the statute is not directed toward a selective group inherently suspect of criminal activity, nor is it focused almost exclusively on conduct which was criminal, and therefore does not violate the right against compelled self-incrimination.

#### B. Standard Of Review

The constitutionality of a statute is a question of law over which the appellate court exercises free review. Doe I v. Doe, 138 Idaho 893, 903, 71 P.3d 1040, 1050 (2003).

#### C. The Reporting Requirement Of The Statute Is Constitutional Because It Is Not Directed Toward A Selective Group Inherently Suspect Of Criminal Activities And Focused Almost Exclusively On Conduct Which Was Criminal

“The central standard for the privilege's application has been whether the claimant is confronted by substantial and “real,” and not merely trifling or imaginary, hazards of incrimination.” Hill v. State, Dep't of Employment, 108 Idaho 583, 586, 701 P.2d 203,

206 (1985) (quoting Marchetti v. United States, 390 U.S. 39, 53 (1967)). Thus ““unspecific claims”” that complying with a reporting statute ““may be self-incriminatory”” do not ““justify a refusal”” on Fifth Amendment grounds to comply with the statute. Hill v. State, Dep’t of Employment, 108 Idaho 583, 586, 701 P.2d 203, 206 (1985) (quoting Idaho State Tax Commission v. Payton, 107 Idaho 258, 259, 688 P.2d 1163, 1164 (1984)). See also State v. Reed, 107 Idaho 162, 165-66, 686 P.2d 842, 845-46 (Ct. App. 1984) (requiring motorist to present proof of insurance does not violate Fifth Amendment). “The Fifth Amendment privilege against self-incrimination protects against only compulsion to give testimony against oneself or to otherwise provide evidence of a testimonial or communicative nature.” State v. Rocha, 157 Idaho 246, 253, 335 P.3d 586, 593 (Ct. App. 2014) (internal quotation omitted). Akins showed no substantial and real hazard of self-incrimination.

The statute in question requires any “person who finds or has custody of [a] body” to “promptly notify either the coroner, ... or a law enforcement officer or agency” if the death is “subject to investigation by the coroner.” I.C. § 19-4301A(1). A death is subject to investigation by the coroner if it “occurred as a result of violence, whether apparently by homicide, suicide or by accident,” “occurred under suspicious or unknown circumstances,” or if it is “of a stillborn child” or “any child” if there is a reason to believe it was not the result of a “known medical disease.” I.C. § 19-4301(1). On its face this statute requires only the reporting of the fact of death and the location of the body. It did not require Akins to provide any testimonial evidence related to her drug use or any other criminal activity in which she might have engaged. Therefore, the statute did not directly require disclosure of testimonial self-incrimination.

Nor does the possibility that reporting the death and location of the body might lead to disclosure of nontestimonial incriminating evidence allow Akins to invoke the Fifth Amendment privilege. The Supreme Court of the United States has “on several occasions recognized that the Fifth Amendment privilege may not be invoked to resist compliance with a regulatory regime constructed to effect the State’s public purposes unrelated to the enforcement of its criminal laws.” Baltimore City Dept. of Social Services v. Bouknight, 493 U.S. 549, 556 (1990). Whether a statutory reporting requirement violates the right against compelled self-incrimination is determined by application of “two principles.” Mackey v. United States, 401 U.S. 667, 709 (1971). First, “an individual may not be compelled to disclose whether he engages” in a “given class of activities” that is primarily criminal in nature. Id. Second, “such individuals may likewise not be compelled ... to disclose the details of their activities within such a suspect class.” Id. at 709–10. “[W]here the statutory scheme is not designed to forbid certain acts, but only to require that they be done in a certain way, the Government may enforce its requirements by a compulsory scheme of reporting, directed at all who engage in those activities, and not on its face designed simply to elicit incriminating information.” Id. at 709. “When a person assumes control over items that are the legitimate object of the government’s noncriminal regulatory powers, the ability to invoke the privilege is reduced.” Bouknight, 493 U.S. at 558.

These standards have been applied to uphold use of federal wagering tax returns at trial for tax evasion, Mackey, *supra*; to find no privilege against an order demanding a foster parent turn over a child to authorities where abuse was suspected, Bouknight, *supra*; to allow inspection of business records the government required to be kept for regulatory purposes, Shapiro v. United States, 335 U.S. 1 (1948); and to require motorists involved in

automobile accidents to report those accidents, California v. Byers, 402 U.S. 424 (1971) (plurality opinion with separate concurrence). However, a statute imposing reporting requirements in relation to a tax specifically on unlawful conduct would violate the right against compelled self-incrimination. Marchetti v. United States, 390 U.S. 39 (1968); Grosso v. United States, 390 U.S. 62 (1968).

Idaho Code § 19-4301A is part of Chapter 43, addressing coroner's inquests. Although the inquest could result in criminal charges where the determination is that the death was a homicide, I.C. § 19-4308, the inquest is part of a regulatory scheme by which the coroner (or the inquest) determines the cause of death where the death was by violence (including homicide, suicide, and accident) or under unknown circumstances. I.C. § 19-4301.<sup>1</sup> The statute requires only disclosure of the death and location of the body, and does not compel anyone to disclose whether he or she engaged in a "given class of activities" that is primarily criminal in nature, nor to "disclose the details of their activities within such a suspect class." Mackey, 401 U.S. at 709-10. Thus, as in Bouknight, finding or having custody of a body did not place Akins in a "selective group inherently suspect of criminal activities," and the requirement of reporting the death and the location of the body "[did] not focus almost exclusively on conduct that was criminal." 493 U.S. at 559-60

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<sup>1</sup> The statute has been addressed on appeal in cases involving suicide, Haman v. Prudential Ins. Co. of Am., 91 Idaho 19, 22, 415 P.2d 305, 308 (1966); a car accident, Stattner v. City of Caldwell, 111 Idaho 714, 715, 727 P.2d 1142, 1143 (1986); and where a body was found in a river, Hagy v. State, 137 Idaho 618, 620, 51 P.3d 432, 434 (Ct. App. 2002). No cases address the criminal sanctions for violating the reporting requirement added in 2006. 2006 Idaho Sess. Laws, vol. 1, ch. 239, § 1, p. 724. The district court's conclusion that this statute addresses primarily homicides or other criminal investigations (R., pp. 242-46) is without support in either the plain language of the statute or the record, which does not show that a significant percentage of deaths in this state that would merit inquiry by the coroner are related to criminal activities.

(brackets altered, internal quotation omitted). Because the required disclosure of the death and location of the body was not incriminating testimony of criminal activity itself, and details of criminal activity associated with finding or possessing a body were not required to be disclosed, Akins had no constitutional right to refuse compliance with the statute.

The district court in its opinion does not identify what risk of self-incrimination Akins faced. (R., pp. 246-47.) Indeed, none is obvious on this record. The evidence suggests that Kimberly died of a drug overdose. Although reporting the death and place of the body might have incidentally led to discovery of evidence of criminal activities by Akins, the statute did not compel Akins to disclose any testimonial evidence of her own drug use or criminal activities.

The district court concluded that the felony subsection under which Akins was charged was “directed at a highly selective group inherently suspected of criminal activity.” (R., p. 240.) Under the plain language of the statute, the group to which the disclosure requirement applies are those who “find[] or [have] custody of the body.” I.C. § 19-4301A(1). Because most persons who find or have custody of a body (note that this body was found by two fishermen who promptly reported it), the statutory reporting requirements are not “directed at a highly selective group inherently suspected of criminal activity.”

The district court reasoned that because Akins was charged with a felony, which applies where the person with a duty to report does not do so “with the intent to prevent discovery of the manner of death,” I.C. § 19-4301A(3), the statute was “directed at a highly selective group inherently suspected of criminal activity.” (R., p. 240.) The district court also concluded that the 2006 statutory amendment to add criminal sanctions for not

reporting the body were intended to increase criminal prosecution. (R., pp. 242-46.) The state concedes, as it must, that the *criminal provisions of the statute are directed at criminals*. The question, however, is not whether the *criminal* provisions for failing to disclose are aimed at criminals, but whether the *disclosure* requirements are aimed at a “selective group inherently suspect of criminal activities,” or if the reporting requirement “focus[es] almost exclusively on conduct that was criminal.” Bouknight, 493 U.S. at 559-60. The flaw in the district court’s reasoning is that the motive element elevating the failure to report to a felony does not change the underlying reporting requirement. It does not require that any person report *her motive* for not reporting a body.

In this case the district court correctly concluded that the reporting requirement itself does not violate the Fifth Amendment. (R., pp. 240-42 (finding no Fifth Amendment violation had Akins been charged with the misdemeanor without the motive element).) Charging the felony for the lack of disclosure, and thus adding the motive element of intent to prevent discovery of the manner of death (motive which the statute does not require the person to disclose), did not change the disclosure requirement of the statute. Because the reporting requirement does not violate the right against compelled self-incrimination the district court erred.

CONCLUSION

The state respectfully requests this Court to reverse the district court's order dismissing the charge of failure to notify of a death.

DATED this 9th day of February, 2018.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of February, 2018, served a true and correct copy of the foregoing BRIEF OF APPELLANT by emailing an electronic copy to:

ERIC D. FREDERICKSEN  
STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/dd