3-23-2018

State v. Akins Appellant's Reply Brief Dckt. 45347

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.	)	
	)	

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

HONORABLE RICHARD S. CHRISTENSEN
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR PLAINTIFF-APPELLANT

JENNY C. SWINFORD
Deputy State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712

ATTORNEY FOR DEFENDANT-RESPONDENT

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

ARGUMENT 1

The District Court Erred By Concluding That I.C. § 19-4301A(3) Violates The Fifth Amendment Right Against Compelled Self-Incrimination 1

A. Introduction 1

B. Application Of The Relevant Legal Standards Shows The Requirement To Report Finding Or Custody Of A Body Does Not Infringe The Right Against Compelled Self-Incrimination 2

1. Akins' Argument That The Statute Required Her To Report Involvement In Illegal Activity Is Without Merit 3

2. Akins' Argument That The Statute Targets A "Selective Group Inherently Suspect Of Criminal Activities" And Focuses "Almost Exclusively On Conduct That Was Criminal" Is Without Merit 4

CONCLUSION 5

CERTIFICATE OF SERVICE 6

TABLE OF AUTHORITIES

CASES **PAGE**

Baltimore City Dept. of Social Services v. Bouknight, 493 U.S. 549 (1990)..... 2, 4

California v. Byers, 402 U.S. 424 (1971) 3

Grosso v. United States, 390 U.S. 62 (1968)..... 2

Hill v. State, Dep't of Employment, 108 Idaho 583, 701 P.2d 203 (1985) 2

Hoffman v. United States, 341 U.S. 479 (1951)..... 3

Marchetti v. United States, 390 U.S. 39 (1967)..... 2

STATUTES

I.C. § 19-4301 ..... passim

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 any "person who finds or has custody of [a] body" to, under most circumstances, "promptly notify either the coroner, … or a law enforcement officer or agency." I.C. § 19-4301A(1). The district court erred by concluding that this requirement violates the Fifth Amendment right against compelled self-incrimination because notifying proper authorities about the body does not create a substantial or real chance that a person would provide testimonial evidence of involvement in criminal activities. (Appellant's brief, pp. 3-8.)

Akins argues the district court correctly concluded that the statute "targets a highly selective group inherently suspect of criminal activities" and involves an "area permeated with criminal statutes," and therefore the reporting requirement "would provide a link in the chain for prosecution of homicide or other crimes." (Respondent's brief, pp. 8-23 (capitalization altered).) None of these claims withstands analysis. People who "find or have custody of" a body are not a "highly selective group inherently suspect of criminal activities" and determining the cause of death when unknown is not an "area permeated with criminal statutes"; and the mere possibility that an officer may discover criminal activity directly or tangentially related to the death does not convert the reporting requirement into self-incrimination.

B. Application Of The Relevant Legal Standards Shows The Requirement To Report Finding Or Custody Of A Body Does Not Infringe The Right Against Compelled Self-Incrimination

The privilege against self-incrimination applies where the hazard of self-incrimination is "substantial and real." Hill v. State, Dep't of Employment, 108 Idaho 583, 586, 701 P.2d 203, 206 (1985) (internal quotations omitted). A statute that requires a citizen to report engaging in unlawful conduct is unconstitutional. Marchetti v. United States, 390 U.S. 39 (1968); Grosso v. United States, 390 U.S. 62 (1968). However, "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). The test for whether a statute requiring reporting violates the privilege is whether it targets a "selective group inherently suspect of criminal activities" and focuses "almost exclusively on conduct that was criminal." Id. at 559-60. Contrary to Akins' arguments, I.C. § 19-4301A does not implicate the Fifth Amendment privilege against compelled self-incrimination because it (1) does not require anyone to report having engaged in illegal behavior and (2) meets both of the elements showing it is a regulatory regime constructed to effect the State's public purposes unrelated to the enforcement of its criminal laws.

The duty to report a body is triggered when two things are present: (1) the death "would be subject to investigation by the coroner" and (2) a person "finds or has custody of the body." I.C. § 19-4301A(1). A death is subject to investigation by the coroner where it (a) resulted from "violence, whether apparently by homicide, suicide or by accident;" (b) "occurred under suspicious or unknown circumstances;" or (c) was the

death of a stillborn child or any child "without a known medical disease" to account for the death. I.C. § 19-4301(1). The statute does not require any person to report having engaged in illegal activity, only that she has found or has custody of a body. Moreover, it meets the test of being a regulatory regime constructed to effect the State's public purposes unrelated to the enforcement of its criminal laws. Although a person who commits a homicide may trigger the duty to notify the coroner or law enforcement of the body, the vast majority of people who find or have custody of the body of a person who died because of homicide, suicide, accident or under unknown or even suspicious circumstances are not a "selective group inherently suspect of criminal activities" and the reporting requirement does not focus "almost exclusively on conduct that was criminal."

1. Akins' Argument That The Statute Required Her To Report Involvement In Illegal Activity Is Without Merit

Akins argues that she was required to report involvement in criminal activity because her disclosure of the death of Kimberly Sue Vezina "'would furnish a link in the chain of evidence needed to prosecute'" her for homicide or other crimes. (Respondent's brief, pp. 21-23 (quoting Hoffman v. United States, 341 U.S. 479, 486 (1951)).) This "link in the chain" standard, however, is inapplicable in this case. See California v. Byers, 402 U.S. 424, 428 (1971) (addressing the "link in the chain" analysis but concluding that "under our holdings the mere possibility of incrimination is insufficient to defeat the strong policies in favor of a disclosure called for by statutes like the one challenged here," which required notifying police of traffic accidents). The Byers decision "confirms that the ability to invoke the privilege may be greatly diminished when invocation would interfere with the effective operation of a generally applicable,

civil regulatory requirement." Bouknight, 493 U.S. at 557. The proper standard is whether I.C. § 19-4301A(1) is "a regulatory regime constructed to effect the State's public purposes unrelated to the enforcement of its criminal laws," which it is unless it targets a "selective group inherently suspect of criminal activities" and focuses "almost exclusively on conduct that was criminal." Bouknight, 493 U.S. at 556-60. As set forth above, analysis shows that the statute meets neither prong of this test.

2. Akins' Argument That The Statute Targets A "Selective Group Inherently Suspect Of Criminal Activities" And Focuses "Almost Exclusively On Conduct That Was Criminal" Is Without Merit

Akins also argues the district court "correctly held" that I.C. § 19-4301A(3) (which includes no reporting requirement) violates the privilege against self-incrimination because the intent element of the felony provision for failure to notify, "unlike the misdemeanor subsection, targets a highly selective group inherently suspect of criminal activities." (Respondent's brief, p. 9.) That a statute defining a felony applies only to criminals is both unsurprising and irrelevant. The statute, in subsections (2) and (3), criminalizes failure to report as required by subsection (1). I.C. § 19-4301A. The distinction between the felony and the misdemeanor is the defendant's "intent to prevent discovery of the manner of death." Id. If the duty to report applied *only* to those with such an intent the statute would indeed target a "selective group inherently suspect of criminal activities." However, the reporting requirement, as stated above, is not nearly so narrow, and applies to *any* person who finds or has custody of the body of a person who died by homicide, suicide, accident, or under suspicious or unknown circumstances. The reporting requirement applies to a broad range of people in a broad range of circumstances, not to a "selective group inherently suspect of criminal activities." It

applies to many causes of death, not just those resulting from criminal acts, and thus does not focus "almost exclusively on conduct that was criminal." The district court erred by concluding that the element elevating criminal noncompliance with the reporting requirement to a felony ("intent to prevent discovery of the manner of death") changes the scope of the right against compelled self-incrimination.

Akins' right against compelled self-incrimination was not implicated by the disclosure requirement of I.C. § 19-4301A(1). Indeed, the district court's conclusion (endorsed by Akins on appeal) that she could have been charged with a misdemeanor for not reporting demonstrates this. Akins' motive for not complying with the reporting requirement did not vest her with a right against compelled self-incrimination that did not otherwise exist.

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 23rd day of March, 2018.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of March, 2018, served a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

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

KKJ