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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46612-2018
Plaintiff-Respondent,)	
)	TWIN FALLS COUNTY
)	NO. CR42-18-772
v.)	
)	
SHARRON AMANDA BILLS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF TWIN FALLS**

HONORABLE BENJAMIN J. CLUFF
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Sharon Amanda Bills entered conditional guilty pleas to trafficking, possession of a controlled substance, possession of paraphernalia, and being a persistent violator, reserving her right to appeal the district court's decision denying her motion to suppress. On appeal, Ms. Bills argues that the district court erred when it refused to suppress her answers to police questioning about drug contraband that the police had just unlawfully seized from inside her pants, following the unconstitutional search of her person. The district court concluded that because Ms. Bills was given *Miranda* warnings, her statements were knowing and voluntary and therefore admissible. The district court recognized the holding in *State v. Luna*, 126 Idaho 235, 239 (Ct. App. 1994), that notwithstanding *Miranda* warnings, "[s]tatements made by the defendant as a result of being confronted by the police with the fruits of an illegal search constitute the fruit of the poisonous tree and are inadmissible." However, the district court reasoned that, because the drug contraband would inevitably have been discovered and was therefore not suppressible, *Luna* did not apply.

Ms. Bills argues that the district court's refusal to suppress her statements rests on a misunderstanding of *Luna*'s holding, and is incompatible with the Idaho Supreme Court's decision in *State v. Downing*, 163 Idaho 26, 29 (2017), which held that absent proof of attenuation, post-*Miranda* answers to questioning about an item the police had just unlawfully seized must be suppressed as fruit of the poisonous tree. As in *Luna* and *Downing*, the statements in this case are suppressible as fruit of the unlawful search; the poisonous tree is the *illegality* of the search and seizure, not the *suppressibility* of other evidence that was seized. The district court's failure to suppress Ms. Bills' statements should be reversed.

Statement of the Facts and Course of Proceedings

The relevant facts are as follows.¹ Officers from the Twin Falls Sheriff's Office applied for and obtained a warrant to search the residence where Ms. Bills was living, for illegal drugs and drug paraphernalia. (R., p.111; Exhibits, p.9.) On the morning of January 16, 2018, Twin Falls officers arrived at the residence and served the warrant. (R., p.111.)

The officers entered the residence and ordered all of the occupants out, and then began removing them to the outdoors. (R., p.111.) Ms. Bills was found in the hallway and was handcuffed, taken outside, and handed over to Officer Haught. (R., p.111.) Officer Haught observed a small bulge Ms. Bills' pants, in the right, front pelvic area. (R., p.111.) Without any factual basis for believing Ms. Bills was armed or presently dangerous, Officer Haught conducted a "weapons frisk." (R., pp.111, 118.) Officer Haught felt a two-inch long cylindrical object, which she did not have reason to believe was a weapon, and after asking Ms. Bills what it was and getting no immediate answer, the officer reached into Ms. Bills' pants and retrieved the item, which was a clear cylindrical tube appearing to contain drug evidence. (R., pp.112, 118.) Officer Haught also found a small bag of methamphetamine, inside the cylindrical container. (R., p.112.) Officer Haught then handed Ms. Bills over to Officer Martinez. (R., p.112.)

Upon being handed Ms. Bills, Officer Martinez gave *Miranda* warnings, and immediately began questioning her about the contents of the cylindrical tube retrieved from her pants and how she had obtained them, and posed other questions regarding her knowledge of the items and activities in the residence. (R., p.112; 6/20/18 Tr., p.51, Ls.12-22.) In response to the

¹ At the suppression hearing, the district court admitted State's Exhibit 1, which contains photos of the items in the residence; the court also stated it had reviewed an audio interview from Officer Martinez of Sharron Bills, the officers' body-worn videos, as well as the transcript of the preliminary hearing. (6/20/18 Tr., p.4, Ls.16-22.)

questioning Ms. Bills made incriminating statements indicative of knowledge. (R., p.112; Tr., p.51, Ls.12-15.)

Ms. Bills was arrested on drug charges, including misdemeanor frequenting which was based on evidence found in the home, including items out in plain view. (6/20/18 Tr., p.52, Ls.18-25.) Ms. Bills and the other four occupants were transported to the jail. (6/20/18 Tr., p.52, Ls.18-25.) In accordance with jail procedure, all of the arrestees, even the those charged only with misdemeanor frequenting,² were strip-searched upon booking due to drug-related nature of the offenses charged. (6/20/18 Tr., p.54, L.1 – p.55, L.9.)

Following her arrest, the State filed an Information charging Ms. Bills with trafficking in heroin, possession of a controlled substance, and possession drug paraphernalia; the State also alleged Ms. Bills was a persistent violator subject to enhanced penalties. (R., pp.56-63.)

Ms. Bills filed a motion to suppress all evidence found during the search, raising multiple grounds. (R., pp.74-84.) Relevant to the present appeal, Ms. Bills claimed that Officer Haught violated her Fourth Amendment rights by searching her for weapons without a basis to believe she was presently armed and dangerous. (R., p.77; 6/20/18 Tr., p.95, Ls.15-19.) She argued that the cylindrical vial removed from her pants *and* her post-*Miranda* answers to questioning when confronted with that item – should be suppressed as the direct and indirect fruit of the unconstitutional search. (R., p.77; 6/20/18 Tr., p.95, Ls.15-19.)

The district court denied the motion in substantial part. Relevant here, regarding the warrantless weapons search of Ms. Bills' person, the district court agreed that Officer Haught violated Ms. Bills' Fourth Amendment rights by searching her person for weapons without a factual basis to support a reasonable belief that Ms. Bills was armed and dangerous. (R., pp.117-

² See Idaho Code § 37-3732D.

18.) However, the district court found the drug evidence seized from her pants would inevitably have been discovered due to her arrest on the frequenting charge and subsequent search at the jail, and based on the inevitable discovery doctrine, denied suppression of that item. (R., p.118.)

The district court also declined to suppress Ms. Bills' subsequent statements – not because they were inevitably discoverable, but because they were made after Ms. Bills was given *Miranda* warnings. (R., p.121.) The district recognized prior precedent, specifically *State v. Luna*, 126 Idaho 235, 239 (Ct. App. 1994), which holds that notwithstanding *Miranda* warnings, “[s]tatements made by the defendant as a result of being confronted by the police with the fruits of an illegal search constitute the fruit of the poisonous tree and are inadmissible,” absent a showing of attenuation. (R., p.121.) However, the district concluded that *Luna*'s reasoning did not apply to this case because, unlike in *Luna*, Ms. Bills was questioned about unlawfully-seized contraband that was ultimately *not suppressible*. (R., p.121.) For that reason, the district court held that Ms. Bills post-*Miranda* answers to questioning about *non-suppressible* contraband were knowingly and voluntarily given, and were therefore admissible. (R., pp.121-22.)

Following the denial of her motion to suppress, Ms. Bills entered conditional pleas of guilty to all charges, reserving her right to appeal the district court's prior rulings. (9/12/18 Tr., p.11, Ls.4-9; R., pp.134.) The district court sentence her to an aggregate term of twenty-two years, with ten years fixed. (R., pp.134, 170.) Ms. Bills timely appealed. (R., p.165.)

ISSUE

Did the district court err when it declined to suppress Ms. Bills' post-*Miranda* answers to police questioning about an item they had just seized from her pants during the constitutionally-unlawful weapons search?

ARGUMENT

The District Court Erred In Failing To Suppress Ms. Bills' Post-Miranda Answers To Police Questioning About An Item They Had Just Seized From Her Pants During A Constitutionally-Unlawful Weapons Search

A. Introduction

The district court erred when it refused to suppress Ms. Bills' answers to questioning after being confronted with the evidence that had just been illegally seized from her pants. The statements were "fruit" of the unlawful search of her person, and absent any showing of attenuation, her post-*Miranda* statements should have been suppressed under the clear precedent of this Court.

B. Standard Of Review

This Court defers to the district court's factual findings unless clearly erroneous, but freely reviews whether the facts surrounding the search and seizure satisfy constitutional requirements. *State v. Downing*, 163 Idaho 26, 29 (2017).

C. Ms. Bills' Statements Should Have Been Suppressed As Indirect Fruits Of The Illegal Search Of Her Person

Evidence obtained in violation of the Fourth Amendment is subject to the exclusionary rule, which requires all evidence obtained as a direct or indirect result of the illegal search or seizure, *i.e.*, the "fruit of the poisonous tree," to be excluded. *See Wong Sun v. United States*, 371 U.S. 471, 484–85 (1963); *State v. Downing*, 163 Idaho 26, 30 (2017). "It is well-established that the exclusionary rule provides that 'evidence obtained as a result of an unlawful search may not be used against the victim of the search.'"³ *Downing* 163 Idaho at 29.

³ The district court also stated that the "exceptions to the [exclusionary] rule exist where the deterrent value of excluding evidence is overshadowed by the potential 'high toll in human

1. The Warrantless Search Of Ms. Bills’ Pants For Weapons Violated The Fourth Amendment

The district court correctly concluded that Officer Haught lacked the requisite basis for conducting a protective weapons search of Ms. Bills, and that the search inside of her pants and the retrieval of the object, violated Ms. Bills’ Fourth Amendment rights. (R., pp.117-18.) Accordingly, the exclusionary rule requires suppression of all direct *and indirect* fruits of the illegal search, except to the extent that an exception to the exclusionary rule applies to allow admission.

2. Ms. Bills’ Statements Made When Confronted With The Evidence Seized From Her Pants Constituted Suppressible “Fruit” Of The Illegal Search

“Statements made by the defendant as a result of being confronted by the police with the fruits of an illegal search constitute the fruit of the poisonous tree and are inadmissible in evidence in a criminal prosecution.” *State v. Luna*, 126 Idaho 235, 239 (Ct. App. 1994). *See also State v. Tiersort*, 145 Idaho 112, 120 (Ct. App. 2007) (“Confronting a suspect with evidence found in an unlawful search may constitute an exploitation of the prior illegality that taints the consent thereby induced.”); *Downing*, 163 Idaho 26, 31 (defendant’s post-*Miranda* admissions made once confronted with the drugs seized from his pocket were fruits of the illegal search and should have been suppressed).

In *Luna*, the Court of Appeals stated that the exclusionary rule required suppression of such statements, notwithstanding *Miranda* warnings, unless it was shown the statements

injury and frustration of efforts to prevent crime” – citing a phrase that appears in the U.S. Supreme Court’s introductory remarks in *Terry v. Ohio*, 392 U.S. 1, 15 (1968). (*See R.*, p.119.) However, the Idaho Supreme Court has never adopted this rationale for recognizing, or not recognizing, any exception to the Idaho exclusionary rule, which differs both in origin and scope from the federal exclusionary rule. *See State v. Koivu*, 152 Idaho 511 (2012). Rather, the rationale for the inevitable discovery exception is as set forth by the Idaho Supreme Court in *Downing*, 163 Idaho at 29.

“occurred under circumstances where intervening events operated to break the causal chain between the illegal police conduct and the making of the statement by a defendant.” 126 Idaho at 239. The Court noted that the trial court had admitted the evidence because the defendant had waived his *Miranda* rights. *Id.* The Court also observe that the *Miranda* warnings, which protect Fifth Amendment rights, do not eliminate the taint of a Fourth Amendment violation nor prevent the application of the exclusionary rule requiring suppression of all fruits derived from the illegality. *Id.* The Court then set forth a quote from the U.S. Supreme Court’s decision in *Taylor v. Alabama*, 457 U.S. 687, 690 (1982):

If *Miranda* warnings were viewed as a talisman that cured all Fourth Amendment violations, then the constitutional guarantee against unlawful searches and seizures would be reduced to a mere “form of words.”

Luna, 126 Idaho at 239.

More recently, in *State v. Downing*, the Idaho Supreme Court reversed the district court’s denial of a defendant’s motion to suppress post-*Miranda* statements made on the heels of an illegal weapons search and retrieval of drugs from the defendant’s pockets. 163 Idaho 26, 31 (2017). The Supreme Court held that the defendant’s “admissions once confronted with the drugs in his pocket should have been suppressed,” and no attenuation occurred, because his “admissions flowed directly from the illegal search, with no intervening factors to consider.” *Id.*

The Court of Appeals holding in *Luna* reflects the well-accepted view on this issue. As explained by Professor LaFave:

In the typical case, where the defendant was present when incriminating evidence was found in an illegal search or was confronted by the police with incriminating evidence they had illegally seized earlier, it is apparent that there has been an “exploitation of that illegality” when the police subsequently question the defendant about that evidence or the crime to which it relates. This is because “the realization that the ‘cat is out of the bag’ plays a significant role in encouraging the suspect to speak.”

...

Despite an occasional holding to the contrary, it is crystal clear that giving the defendant the *Miranda* warnings will not break the causal chain between an illegal search and a subsequent confession.

WAYNE R. LAFAVE, A TREATISE ON THE FOURTH AMENDMENT § 11.4(c) (5th Edition) (updated October 2018).

Thus, in accordance with the above authorities, the fact Ms. Bills had been given *Miranda* warnings did not dissipate the taint of the illegal search. To the extent the district court's denial of suppression rests on the fact that *Miranda* warnings were given, the district court's conclusion was erroneous.

3. The Inevitable Discovery Exception Did Not Apply To Except Ms. Bills' Statements From The Exclusionary Rule

With respect to the cylindrical vial seized from Ms. Bills' pants, the district court found that the item would inevitably have been discovered as the result of Ms. Bills' subsequent lawful arrest on the frequenting charge. (R., p.119.) However, the district court did not find, nor would the record support a finding, that Ms. Bills' statements when immediately confronted with the item would inevitably have been made. (*See generally*, R, pp.106-22.)

Rather, the district court declined to apply *Luna's* holding to Ms. Bills' statements, explaining that, in *Luna*, the discovery the drug evidence with which the defendant was confronted "was suppressible," whereas in the present case, the cylinder with which Ms. Bills was confronted was "not suppressible." (R., p.16.)

Contrary to the district court's reasoning and interpretation, the *Luna* Court held the statements were suppressible because they were fruits of the *illegal search* – not because they were made in response to evidence that was *suppressible*. 126 Idaho at 239. Moreover, the inevitable discovery doctrine is an exception *to the exclusionary rule* – it is not an exception the Fourth Amendment's warrant requirement. Thus, while the court's finding that the cylindrical

vial would inevitably have been discovered, allowing the prosecution the ability to use that evidence against Ms. Bills at trial, the admissibility of that item did not alter the fact that Officer Haught's weapons search had violated Ms. Bills' Fourth Amendment rights. Consequently, even if the district court correctly applied the inevitable discovery doctrine to deny suppression of the cylindrical vial, that doctrine did not apply to Ms. Bills' subsequent statements, which were fruit derived from the illegal search.

4. The Exclusionary Rule Requires Suppression Because There Was No Attenuation

The exclusionary rule requires that Ms. Bills' statements be suppressed because there was no attenuation found by the district court nor asserted by the State. As stated in *Luna*, "post-*Miranda* statements made by a defendant after being confronted by officers with the fruits of an illegal search are inadmissible as fruits of the poisonous tree," except where it is shown that the statements, "occurred under circumstances where intervening events operated to break the causal chain between the illegal police conduct and the making of the statement by a defendant." 126 Idaho at 239. In *Downing*, the Court held that the defendant's post-*Miranda* admissions, made after being confronted with the drug evidence that had just been seized from his pocket during an unlawful weapons search should have been suppressed, since there was no attenuation demonstrated. *Id.* As in *Luna* and *Downing*, attenuation was not demonstrated in this case. Accordingly, Ms. Bills' statements should have been suppressed as fruit of the illegal search. The district court erred in concluding otherwise, and its ruling should be reversed.

CONCLUSION

Ms. Bills respectfully requests that this Court reverse, in part, the district court's suppression order, and remand the case for entry of an order suppressing all statements made by Ms. Bills after being confronted with the evidence obtained from the illegal weapons search. She further asks this Court to vacate her convictions and remand her case to the district court to allow her to withdraw her guilty pleas.

DATED this 22nd day of July, 2019.

/s/ Kimberly A. Coster
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of July, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

KAC/eas