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State v. Bills Appellant's Reply Brief Dckt. 46612

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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. 46612-2018**
	)	
v.	)	**TWIN FALLS COUNTY**
	)	**NO. CR42-18-772**
	)	
SHARRON AMANDA BILLS,	)	**REPLY BRIEF**
	)	
Defendant-Appellant.	)	
	)	

REPLY 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 appeals the district court's decision denying her motion to suppress statements that resulted from an unlawful search inside of her pants. Specifically, she challenges the district court's refusal to suppress the statements she made to police after being confronted with drug contraband the police retrieved during that search. The district court agreed the search violated Ms. Bills' Fourth Amendment rights. However, the district court concluded that because Ms. Bills had been given *Miranda* warnings prior to making her statements, her statements were voluntary and admissible. The district court acknowledge 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 concluded that, because the evidence with which Ms. Bills was confronted was admissible under the inevitable discovery doctrine, the exclusionary rule as applied in *Luna* did not apply to require suppression of Ms. Bills' statements.

In her Appellant's Brief, Ms. Bills argues that the district court erred in refusing to suppress her statements. (*See* Appellant's Brief, pp.6-11.) She argues that pursuant to the exclusionary rule and the applicable controlling precedent, her statements were the suppressible fruit of the unlawful search absent a showing of sufficient attenuation. (*See* Appellant's Brief, pp.6-9.) She further argues that the inevitable discovery doctrine, which was the only exception to the exclusionary rule argued by the State and addressed by the district court, did not apply to her statements, even if it applied to permit admission of the evidence found on her person. (*See* Appellant's Brief, pp.9-10.)

This Reply Brief is necessary to address the State's assertions regarding the application of the inevitable discovery doctrine in this case, and to demonstrate that: (1) the inevitable discovery doctrine is not an exception that applies to statements made by a defendant as the result of an unlawful search; and that in any case; (2) the district court did *not* find Ms. Bills' statements were inevitably discoverable; and (3) the record lacks substantial evidence to support a finding that the statements were inevitably discoverable.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Ms. Bills' Appellant's Brief and are not repeated here.

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.

As argued in the Appellant's Brief, the district court erred when it refused to suppress the statements Ms. Bills' made after she was confronted by the police with drug contraband retrieved during an unlawful search inside of her pants. (Appellant's Brief, pp.6-9.) Contrary to the State's assertions (Respondent's Brief, pp.4-7), the exclusionary rule required suppression of Ms. Bills' statements as fruit of the unlawful search, *Miranda* warnings notwithstanding, since there was no proof or finding that her statements were sufficiently attenuated from the officer's unlawful conduct. (Appellant's Brief, p.10.)

Additionally, and contrary to the State's arguments, even if the district court correctly found that the *items* found on Ms. Bills' person, *i.e.*, the cylindrical vial containing the drug evidence, would inevitably have been discovered by way of the lawful jail-booking search, the district court made no such finding, nor did the State present evidence to support a finding that the *statements* made by Ms. Bills would inevitably have been produced by the later jail-booking search.

B. Ms. Bills' Statements Are Not Admissible Under The Inevitable Discovery Exception

In its Respondent's Brief, the State claims that the district court correctly applied the inevitable discovery standards, and that, "[a]ll of the evidence found as a result of the unconstitutional frisk, both the physical evidence *and Bills' statements about that evidence*, would have been obtained by the state as a result of Bills' later, and legal, arrest and search

incident thereto." (Respondent's Brief, p.8.) As to Ms. Bills' statements – the subject of this appeal – the State's claim is incorrect and should be rejected for the reasons discussed below.

1. The Inevitable Discovery Doctrine Is Not Applicable To The Statements Made By A Defendant As The Product Of The Unlawful Search

The inevitable discovery doctrine, while a recognized exception to the exclusionary rule, is not one that applies to the statements of the defendant produced by an unlawful search or seizure. The State has not cited to, nor is undersigned appellate counsel aware of, any decision from the Idaho Supreme Court, the Idaho Court of Appeals, or the United States Supreme Court applying the inevitable discovery doctrine to allow the admission of statements made by a defendant as the result of an unlawful search or seizure. On the contrary, the attenuation doctrine appears to be the *sole* exception applicable to such statements.[1] As noted in the Appellant's Brief, the attenuation doctrine – the "one exception" – was never argued by the State nor addressed by the district court in this case. (Appellant's Brief, p.10.) Absent a finding of attenuation, the controlling precedent required the district court to suppress Ms. Bills' statements. The district court's failure to do so was error and should be reversed.

[1] As observed by the Idaho Supreme Court in *State v. Bainbridge*,

> The United States Supreme Court has consistently held that a confession obtained during a custodial interrogation that follows an illegal seizure should be excluded regardless of whether the speaker's Fifth or Sixth Amendment rights were violated, *and there is but one exception*: that is when intervening events break the causal connection between the illegal arrest and confession so that the confession is "sufficiently an act of free will to purge the primary taint."

117 Idaho 245, 248-49 (1990) (citing *Brown v. Illinois*, 422 U.S.590, 603-604 (1975)).

2. The District Court Did Not Find Ms. Bills' Statements Were Inevitably Discoverable

There is no finding by the district court that Ms. Bills' *statements* would inevitably have been discovered. (*See generally* R., pp.110-23.) The district court found only that, based on the evidence of a later search conducted at the jail, the "discovery of the clear cylinder and its contents was truly inevitable," and therefore the items found on Ms. Bills' person were admissible. (R., p.119.) However, contrary to the State's assertion (Respondent's Brief, p.5), the district court did *not* apply the inevitable discovery standards to find that Ms. Bills' *statements* about that evidence would have been obtained by the State as the result of Ms. Bills' later lawful search.

3. The Record Does Not Support A Finding That Ms. Bills' Statements Would Inevitably Have Been Discoverable

The facts established at the suppression hearing show that, following Officer Haught's unlawful search at the scene and the resulting discovery of the contraband items, Ms. Bills was taken outside and handed over to Detective Blas Martinez for questioning; it was during that questioning at the scene that Ms. Bills made the incriminating statements. (R., p.112; 6/20/18 Tr., p.51, Ls.12-22; Ex.1, Blas Interview at 0:01-3:13)). The State claims that "the interview regarding the contraband would have occurred upon the inevitable discovery of the contraband." (Respondent's Brief, p.7 n.1.) However, the State's claim has no evidentiary support in the record.

The only evidence of a later lawful search[2] is the testimony that Ms. Bills was later subjected to a strip search at the jail, as part of the jail booking process. (6/20/18 Tr., p.52, L.11

[2] The officer testified he eventually arrested Ms. Bills for frequenting based on the items observed in the residence in plain view. (6/20/18 Tr., p.52, Ls.12-14.) However, there is no testimony or other evidence the officer would have conducted an on-scene *search* inside of her

– p.55, L.9.) However, there was no evidence of a jail policy or practice by which arrestees found with contraband would be interviewed about the contraband, let alone proof of questioning that would inevitably lead to the production of the same statements that resulted from the unlawful search. (*See generally*, 6/20/18 Tr., p.4, L.6 – p.92, L.11.) The State cites the fact that Ms. Bills had been "cooperative with law enforcement" during the original unlawful search (Respondent's Brief, p.7 n.1). However, that lone fact is no substitute for proof that there would have been an interview inevitably yielding the same statements from Ms. Bills. The State's assertions to the contrary should be rejected.

CONCLUSION

For these reasons, and those set forth in the Appellant's Brief, Ms. Bills respectfully requests 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 13th day of December, 2019.

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

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pants. (*See generally*, 6/20/18 Tr., p.4, L.6 – p.92, L.11.) Rather, the only evidence of a subsequent lawful search incident to the arrest for frequenting was the testimony regarding the search conducted of all arrestees later, at the jail. (6/20/18 Tr., p.52, L.11 – p.55. L.9.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of December, 2019, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

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KAC/eas