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Case Number 376,2022

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AARON GARNETT,	)	
	)	
Defendant—Below,	)	
Appellant	)	
	)	
v.	)	No. 376, 2022
	)	
	)	
	)	
STATE OF DELAWARE	)	
	)	
Plaintiff—Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S REPLY BRIEF

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I. The trial court abused its discretion by finding that, had police not searched Garnett's home illegally, they would inevitably have done so legally, pursuant to a warrant or the emergency doctrine, when neither's requirements would have inevitably been satisfied, and there was no independent investigation or established procedure which would have inevitably led to either of those paths to entry.

Neither path to entry –emergency doctrine nor search warrant – was inevitable.

The State falls short of demonstrating the trial court's decision consisted of anything more than "speculation based on the court's view of what would have followed based on 'best practices' or . . . reasonably thorough police work."[1] The judge's conclusion that police *could* have entered the home in the near future *via* (a) the emergency doctrine or (b) a hypothetical search warrant fails woefully to meet the exacting *Nix* standard which requires inevitability to be proved through "demonstrated historical facts capable of ready verification or impeachment" and not "speculative elements."[2] Glaringly absent from the Answer is any showing that police *inevitably would* have taken either path of entry into the home, or that a magistrate *inevitably would* have granted the hypothetical application for a search warrant. Op. Br. at 13—18.

There is some record support for a finding that, had Officer Starke not illegally entered, police would have *returned* to the home, but the State glosses over the fact

[1] *United States v. Carrion-Soto*, 493 F. App'x 340, 342 (3d Cir. 2012).
[2] *Nix v. Williams*, 467 U.S. 431, 444 n.5 (1984).

that no record evidence suggests they would have *entered* the home. Op. Br. at 13—14; Answer at 14 n. 30. The State also fails to explain how, given Det. Mullaney's concession that, but for the warrantless entry he may not have even been involved in the investigation, his hypothetical plans could possibly establish a warrant *would have* been obtained. Op. Br. at 15—16. And, significantly, the State fails to explain how an individual officer's post-hoc claims about what they personally would have done "demonstrate[s] historical facts capable of ready verification or impeachment." Op. Br. at 9—10, 15—16.

a. *Law enforcement would not have been aware of a valid emergency.*

The State's reliance on *Williams v. State* in its attempt to establish that a future entry would have been permitted by the emergency doctrine is misplaced.[3] *Williams* addresses the community caretaking doctrine, not the emergency doctrine.[4] The doctrines have similarities, but are distinct.[5] Most importantly, the latter is a

[3] *See* Answer at 13 (quoting *Williams v. State*, 962 A.2d 210, 218 (Del. 2008)) ("the role of police in Delaware is not limited to merely the detection and prevention of criminal activity, but also encompasses a non-investigative, non-criminal role to ensure the safety and welfare of our citizens.")

[4] *Id.* at 221 (holding it was reasonable to approach, offer help to, and ask name of individual who was outside on Route 113 at 3:50AM on a cold and windy morning).

[5] *Id.* n. 30.

justification for a warrantless search of a home,[6] while the former is not.[7] Garnett never suggested that addressing non-criminal welfare concerns is an illegitimate police function, but only that the non-criminal welfare concerns identified by the trial court are not the type of "emergencies" that justify a warrantless entry into a home. Op. Br. at 11—13. Here, the State does not identify what "emergency" it has in mind, or even if it relates to the kids' or mom's welfare.

b. *A search warrant would not have been granted.*

The State also fails to respond to key portions of the hypothetical warrant argument. It does not dispute that "[i]nevitable discovery should not be applied when police could have legally accessed the home with a warrant but did so without one," or explain why that rule would not control. Op. Br. at 18—19. Next, the State's conclusory claim that the hypothetical warrant "would have had the necessary quantum of evidence for a finding of probable cause," provides no reason, let alone probable cause, to believe the home would contain evidence of the crimes of which Garnett was already accused (criminal impersonation and offensive touching, both of which occurred at Wawa), and the State was unable to identify any additional crimes which would be investigated through the hypothetical warrant. Answer at 16.

[6] *Kentucky v. King*, 563 U.S. 452, 460 (2011) (holding officers may enter private property without warrant when there is a need to "render emergency assistance to an injured occupant or to protect an occupant from imminent injury.")
[7] *Caniglia v. Strom*, 141 S. Ct. 1596, 1599 (2021); *see* Exhibit A n.31.

II. The trial court abused its discretion by finding Garnett's confession was not a fruit of the illegal home search and would have inevitably been made even without the search, when, the interrogation was influenced by the search, there was no evidence as to why Garnett confessed and, but for the illegal search, he would likely not have been interrogated.

Below, the Court held Garnett's confession was admissible under both (1) attenuation doctrine, and (2) the inevitable discovery doctrine. The State's Answer affirmatively waives the second argument.[8] Therefore, if this Court agrees that the trial court's attenuation holding was error, it should reverse.

The statement was not attenuated, but deeply connected to the illegal search.

The attenuation doctrine applies "when the causal connection between the unlawful police conduct and the acquisition of the challenged evidence becomes sufficiently attenuated."[9] Without support, the State offers an overly restrictive definition of "causal connection" to argue that such a connection would only exist

[8] *Emerald P'rs v. Berlin,* 2003 WL 21003437, at *43 (Del.Ch. Apr.28, 2003) ("It is settled Delaware law that a party waives an argument by not including it in its brief.") *aff'd,* 840 A.2d 641 (Del.2003); *see Taylor v. Forrester,* 903 A.2d 323 (Table) (Del.2006) ("Because the petitioner-appellee . . . did not submit an answering brief . . . the appeal [will] be decided solely on the basis of the appellant's opening brief and the Family Court record."); *Floyd v. Atl. Aviation,* 1999 WL 33217938, at *2 (Del.Super.Oct.4, 1999) ("The [defendant] did not submit an answering brief, and as such, the Court will rely upon only those submissions made to the Court and the record below.").

[9] *Lopez-Vazquez v. State*, 956 A.2d 1280, 1293 (Del. 2008).

in this case if the interrogating officers had explicitly referenced illegally obtained evidence. Answer at 20—21.

A causal connection exists in this case because police made use of, or in the Court's words, "exploited,"[10] the illegally seized evidence. Police mentioned the "visit" to the home precisely because the illegal entry made them realize that the visit was significant. Op. Br. at 25—26. Garnett also established that if the illegal entry had not occurred, he likely would not have been interviewed at all,[11] (Op. Br. at 23—25), and if he were interviewed, it would have been at a different time, and his statement and decision whether to confess would have been different. Op. Br. at 22—23.

[10] *Id.*

[11] *Compare with Wong Sun et al. v. United States*, 371 U.S. 461 (1963) (holding confession after illegal arrest sufficiently attenuated where defendant released on his own recognizance and returned several days later to give unsigned confession).

III. The trial court erred by holding the Delaware Constitution incorporates the inevitable discovery doctrine as described in *Nix v. Williams*.

The Answer does *not* argue that the Delaware Constitution incorporates an inevitable discovery exception.[12] Its sole argument is that the lower court "did not hold that the Delaware Constitution incorporates the inevitable discovery doctrine. Answer 28. According to the State, "the following represents the totality of the court's consideration of the issue under the Delaware Constitution:"

> *For a motion to suppress evidence seized during a warrantless search, the State bears the burden of showing that the challenged seizure complied with the requirements of the United States Constitution, the Delaware Constitution, and any applicable statutes*. Answer at 24 (citing Exhibit A at 3).

The Answer is wrong. The portion of the decision it quotes, unquestionably, is not "the totality of the court's consideration of the issue under the Delaware Constitution." *See* Answer at 24. Rather, the trial court directly addressed Garnett's State Constitutional claim elsewhere, in a lengthy footnote which is nowhere

[12] The Answer (at 25) reviews this Court's historical recognition of the doctrine, but that history is irrelevant because it does not apply the doctrine to the state constitution. The Answer does not suggest otherwise, and even highlights this point by noting (Answer at 25) that the inevitable discovery doctrine "flows" from the federal exclusionary rule's deterrence purpose, which is notoriously distinct from the state analog. *See Dorsey v. State*, 761 A.2d 807, 816—17 (Del. 2000) (rejecting good faith exception and recognizing State exclusionary rule embodies principle "that every right, when withheld, must have a remedy.")

acknowledged in the Answer. Exhibit A n.40 (recognizing that "Delaware's Constitution affords its citizens greater protections against unlawful search and seizure," but not "in a way that would forbid the application of the inevitable discovery exception in circumstances akin to this matter").[13]

[13] Even if the record were not what it is, the Answer would still be inadequate. It does not refer to Rule 8 or identify any procedural rule that weighs against addressing the merits of a fairly presented claim. The State has not claimed (below, or in its Answer) that the argument was inadequately briefed or otherwise waived. Similarly, the trial court did not so find.

CONCLUSION

Because Defendant could not have been convicted without the disputed evidence, and for the reasons and upon the authorities cited herein, Defendant's aforesaid convictions should be vacated.

Respectfully submitted,

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