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### State v. Nye, 136 Nev. Adv. Op. 48 (July 30, 2020)

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## SEARCH INCIDENT TO ARREST AND THE INEVITABLE-DISCOVERY DOCTRINE

### **Summary**

In an opinion drafted by Justice Hardesty, the Nevada Supreme Court considered whether the search of an individual's belongings is beyond the scope of a permissible search incident to arrest when the search occurs after the individual is safely under the control of officers, and whether the inevitable-discovery doctrine applies when a booking officer fails to produce any written inventory detailing the contents of an arrestee's belongings. The Court held that searching an individual's belongings after that individual is already in custody is not a valid search incident to arrest, and that the inevitable-discovery doctrine does not apply when a booking officer fails to produce written inventory detailing the contents of the arrestee's belongings.

### **Background**

Kimberly Nye was arrested in Elko County after refusing to leave a casino. The officers placed Nye into the backseat of a patrol vehicle and took possession of Nye's backpack by placing it in the trunk of the patrol vehicle. Once the officers and Nye arrived at the jail, the officers searched Nye's backpack and discovered drugs and drug paraphernalia. The officers then handed the backpack and its contents to a jail booking deputy because the police department's policy required the booking deputy to produce an itemized inventory of the contents in the backpack. However, the booking deputy simply listed "bag" on the inventory sheet and failed to produce an itemized inventory of the contents of the backpack. The State charged Nye with possession of a controlled substance.

Nye moved to suppress the evidence in district court, arguing that the search of her backpack was beyond the scope of a permissible search incident to arrest because she was already in-custody at the time of the search. She also argued that the inevitable-discovery rule would not apply to her situation because the state failed to show that the evidence of drugs would have been discovered in a valid inventory search. The state opposed Nye's motion to suppress. However, the district court granted the motion, finding that the search of Nye's backpack was beyond the scope of a permissible search incident and that the evidence would not have been discovered through a lawful inventory search. The state appealed.

### **Discussion**

#### *Search incident to arrest*

The Court first addressed whether the search of Nye's backpack was a valid search incident to arrest. The Court found that a search incident to arrest focuses on the need to disarm and prevent any evidence from being destroyed or concealed. However, the Court went on to explain that when

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an individual is placed in the patrol car or in jail, there is no longer a need for an officer to disarm her or prevent her from concealing or destroying evidence.

When the police officers searched the backpack's contents, Nye had already been safely secured in the back of the patrol car and had been taken to jail. Therefore, the police officers had no reason to believe that Nye posed a threat to officer safety. There was also no need to preserve evidence in the backpack because Nye remained separated from her backpack since the time of her arrest. Therefore, the Court affirmed the district court's ruling that the search of Nye's backpack was not a lawful search incident to arrest because she did not pose a risk to officers or pose the threat of destroying evidence.

### *The inevitable-discovery doctrine*

The Court next addressed whether the inevitable-discovery doctrine applied to this case. The inevitable-discovery doctrine holds that evidence obtained from improper police conduct will not be suppressed so long as the state can prove by a preponderance of the evidence that it would have ultimately discovered the evidence through lawful means. The Court held that, under this doctrine, a valid inventory search that would result in the ultimate discovery of the evidence can constitute a lawful means of discovery. However, as the Court explained, for the inventory search to be valid, the prosecution must establish that the inventory search was conducted under a department's operative policy, and that the inventory search yielded an actual inventory.

When the officers produced the backpack to the booking deputy for an itemized inventory of the contents of the backpack, the booking deputy simply listed "bag" on the inventory sheet. The booking deputy violated the police department's policy when she did not produce any written inventory detailing the contents of Nye's backpack. Further, the entry of "bag" did not accurately reflect the actual inventory of Nye's backpack because it failed to note the presence of drugs or drug paraphernalia. Therefore, the Court affirmed the district court's finding that the state cannot show that the inevitable-discovery doctrine would have applied here because the inventory log did not accurately reflect the actual inventory of the backpack.

### **Conclusion**

The Nevada Supreme court affirmed the district court's decision that the search of Nye's backpack was not a lawful search incident to arrest because Nye was safely under the control of officers when the backpack was searched and that the inevitable-discovery doctrine did not apply because the state failed to show that the evidence would have been discovered through a lawful inventory search.