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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC14–160

MIGUEL RODRIGUEZ,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

REPLY BRIEF OF PETITIONER ON THE MERITS

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

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INTRODUCTION

In this reply brief of Petitioner on the merits, as in the initial brief of Petitioner on the merits, the symbol "R" designates the record on appeal. All emphasis is supplied unless indicated otherwise.

ARGUMENT

THE EVIDENCE OBTAINED DURING THE WARRANTLESS SEARCH OF MR. RODRIGUEZ'S HOME WAS NOT ADMISSIBLE UNDER THE INEVITABLE DISCOVERY DOCTRINE, AS THE DOCTRINE ONLY APPLIES WHEN THE STATE PROVES THAT THE EVIDENCE WOULD HAVE BEEN DISCOVERED PURSUANT TO A LAWFUL AND INDEPENDENT INVESTIGATION THAT WAS ACTIVELY UNDERWAY AT THE TIME OF THE UNCONSTITUTIONAL POLICE CONDUCT, AND HERE, THE OFFICERS WERE NOT IN THE PROCESS OF OBTAINING A WARRANT WHEN THEY SEARCHED MR. RODRIGUEZ'S HOME ABSENT VALID CONSENT.

Respondent misconstrues Mr. Rodriguez's argument. Mr. Rodriguez is not asserting that the inevitable discovery doctrine only applies where the State introduces evidence that officers were actively pursuing a search warrant at the time of the unconstitutional police conduct. Rather, Mr. Rodriguez is asserting that the doctrine only applies where the State introduces evidence that, at the time of the constitutional violation, there was a separate and independent investigation underway that would have inevitably led to the same evidence.

Where, as in this case, the constitutional violation was the warrantless search of a home, this requirement that officers be engaged in a separate investigation can be satisfied by proof of any active, independent, and lawful investigation that would have given law enforcement the right to enter the home and seize the evidence. Most often, this is the active pursuit of a search warrant. *See Thomas v. State*, 127 So. 3d 658, 667 n.12 (Fla. 1st DCA 2013); *Rowell v. State*, 83 So. 3d

990, 995–96 (Fla. 4th DCA 2012); *King v. State*, 79 So. 3d 236, 237–38 (Fla. 1st DCA 2012); *McDonnell v. State*, 981 So. 2d 585, 591–93 (Fla. 1st DCA 2008), *rev. denied*, 993 So. 2d 513 (Fla. 2008); *Conner v. State*, 701 So. 2d 441, 443 (Fla. 4th DCA 1997). But that is not the only way the State can establish inevitable discovery of evidence seized in a home. The independent investigation could be established by a showing that at the time of an illegal search, a different set of officers had already obtained valid consent from someone other than defendant and were going to search the home pursuant to that consent. It could also be established with evidence that at the time of the illegal search, a separate set of officers were in hot pursuit of the defendant for an unrelated crime and were close to following him into his home where the evidence was plainly visible. Or it could be established with evidence that at the time of the illegal search, officers who had probable cause that the defendant was engaged in separate criminal activity and a reliable tip that the defendant was about to dispose of evidence related to that crime were on their way to the home to preserve the evidence of the unrelated crime.

Here, there is no evidence that there were any separate and independent means besides a search warrant that would have given the narcotics officers the right to lawfully enter Mr. Rodriguez's home and seize the drug evidence. There was no evidence that Mr. Rodriguez shared his home with anyone who also

consented to its search, so the State would not have been able to establish inevitable discovery pursuant to a third party's consent. There was no evidence that Mr. Rodriguez attempted to evade capture by retreating into his home, so the State would not have been able to establish that the evidence would have inevitably been seized pursuant to the officers' hot pursuit of Mr. Rodriguez. Finally, there was no evidence that any unrelated contraband was at risk of being destroyed, so the State would not have been able to establish inevitable discovery of the marijuana pursuant to the threatened destruction of evidence. Under the facts of this particular case, the only way the State would have been able to establish that the marijuana would have inevitably been seized by the narcotics officers is upon proof that at the time of the unconstitutional search, officers who were not involved in the illegal search were actively seeking a search warrant. Because such proof is lacking in this case, the inevitable discovery doctrine is inapplicable.

This application of the doctrine is fully consistent with this Court's decisions on the issue. While Respondent is correct that this Court has never explicitly held that the doctrine requires proof that officers were actively seeking a search warrant at the time of the unconstitutional conduct, this Court has never addressed a factual situation like that currently before it. An examination of this Court's decisions on the issue, however, demonstrates that this Court requires proof of an active, lawful, and independent investigation for the doctrine to apply. *See, e.g.*, *Jardines v. State*,

73 So. 3d 34, 54–55 (Fla. 2011), *aff'd sub nom. Florida v. Jardines*, 133 S. Ct. 1409 (2013) (implicitly concluding that doctrine was inapplicable where there was no lawful, independent investigation underway when the officer conducted the unconstitutional dog sniff, because he did not first walk up to the front door and detect the odor of marijuana himself)[1]; *Moody v. State*, 842 So. 2d 754, 759–60 (Fla. 2003), *cert. denied*, 540 U.S. 939 (2003) (refusing to apply doctrine because, at the time of illegal stop of defendant's car, police were not actively and independently investigating defendant for murder and thus, the State failed to prove that the evidence linking defendant to murder would have been discovered absent illegal stop); *see also Fitzpatrick v. State*, 900 So. 2d 495, 514 (Fla. 2005)

[1] Respondent relies on the Third District Court of Appeal's decision in *State v. Jardines*, 9 So. 3d 1 (Fla. 3d DCA 2008), in claiming that the inevitable discovery doctrine applies to evidence found in growhouses and that the doctrine was properly applied here because the growhouse was not in the home in which Mr. Rodriguez was living. First, that factual assertion is completely unsupported by the record, which is clear that the growhouse was attached to the home in which Mr. Rodriguez was living and that the officers had to enter Mr. Rodriguez's home to in order to locate the growhouse. (R. 44–48, 50, 62–63, 77, 79). Furthermore, the existence of a growhouse does not automatically trigger the inevitable discovery doctrine; the State is still required to establish that the evidence found in the growhouse would have inevitably been discovered pursuant to a lawful and independent investigation. *See Jardines v. State*, 73 So. 3d 34 (Fla. 2011), *aff'd sub nom. Florida v. Jardines*, 133 S. Ct. 1409 (2013). Finally, as noted above, the decision of the Third District Court of Appeal as it relates to the inevitable discovery doctrine is no longer good law in light of this Court's decision in *Jardines*. If this Court agreed with the Third District Court of Appeal that the evidence found during the dog sniff was admissible under the inevitable discovery doctrine, it would have affirmed that court's decision, even after concluding that the dog sniff was an unconstitutional search.

(stating, in dicta, that doctrine would have been applicable if there had been a constitutional violation because at the time defendant's parole officer purportedly coerced defendant into consenting to a blood draw, another officer was actively investigating defendant in a way that would have inevitably led to the discovery of the defendant's DNA); *Maulden v. State*, 617 So. 2d 298, 301 (Fla. 1993) (stating that even if defendant was illegally arrested, incriminating evidence in his truck would nonetheless have been admissible under doctrine because, prior to the arrest, an officer conducting random license plate checks learned that defendant's vehicle was stolen and thus, the evidence would have inevitably been discovered when the stolen car was lawfully seized); *Jennings v. State*, 512 So. 2d 169, 172 (Fla. 1987), *cert. denied*, 484 U.S. 1079 (1988) (concluding that photographs of defendant's genitalia were admissible under doctrine because defendant was a suspect in active and ongoing murder investigation and there was substantial evidence linking the defendant to the crime, and thus, defendant's imminent arrest meant that the photographing of his genitalia "would have been accomplished irrespective of his [illegally obtained] confession"); *Craig v. State*, 510 So. 2d 857, 862–63 (Fla. 1987), *cert. denied*, 484 U.S. 1020 (1988) (ruling that evidence of victims' bodies was admissible under doctrine because, at the time officers obtained statements from defendant about location of bodies in violation of defendant's constitutional rights, county in which bodies were found had a preexisting policy whereby all

sinkholes in the county were routinely examined, and routine sinkhole examination would have led to discovery of bodies absent the defendant's unconstitutionally obtained statements).

Fitzpatrick, *Maulden*, *Jennings*, and *Craig* ruled that the doctrine was applicable, absent evidence that officers were actively pursuing a search warrant, because there was evidence in each of those cases that at the time of the illegality, an *independent investigation* was already underway that would have led to the discovery of the evidence by means that did not violate the Fourth, Fifth, or Sixth Amendments. *Jardines* and *Moody* on the other hand, ruled that the doctrine was not applicable, not because of a lack of evidence that officers were actively pursuing a search warrant, but rather because of a lack of evidence that at the time of the illegality, there was an independent and lawful investigation underway that would have inevitably led to the discovery of the evidence.

Respondent recognizes that this Court requires proof a lawful, active, and independent investigation for the doctrine to apply, but fails to properly apply that test to the facts of this case. Respondent relies on the fact that the bondsmen and Officer Garfinkel had seen the marijuana prior to the illegal search and seizure to establish that an independent investigation was underway that would have led to the lawful seizure of the evidence. Respondent's reliance on that fact is misplaced. At the time that the narcotics officers illegally coerced Mr. Rodriguez into

consenting to a search of his home, neither the bondsmen nor Garfinkel were doing anything that would have led to the lawful seizure of the evidence. Their involvement in the case had ended. The only investigation that was underway was the illegal entry into Mr. Rodriguez's home and illegal seizure of the evidence. The inevitable discovery doctrine is not meant to apply to situations where officers obtain evidence in violation of an individual's constitutional rights without any independent effort to lawfully obtain the evidence. As Professor LaFave has noted, "the argument that 'if we hadn't done it wrong, we would have done it right,' is far from compelling." Wayne R. LaFave, Search & Seizure, § 11.4(a) (5th ed. 2012). Because none of the officers were attempting to lawfully obtain the drug evidence when they actually obtained it in violation of Mr. Rodriguez's Fourth Amendment rights, the Respondent's argument that the inevitable discovery doctrine is applicable to this case must fail.

CONCLUSION

Based on the foregoing facts, authorities, and arguments, the Petitioner respectfully requests that this Court quash the decision of the Third District Court of Appeal, and remand this case with instructions that the Petitioner's motion to suppress be granted and that he be discharged.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was emailed to the Office of the Attorney General, Criminal Division, at CrimAppMIA@MyFloridaLegal.com this 3rd day of October, 2014. Undersigned counsel hereby designates, pursuant to Rule 2.516, the following e-mail addresses for the purpose of service of all documents required to be served pursuant to Rule 2.516 in this proceeding: AppellateDefender@pdmiami.com (primary E-Mail Address); SAH@pdmiami.com (Secondary E-Mail Address).

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CERTIFICATE OF FONT

Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times New Roman.

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