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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR09-1132

DEMETRICUS MARCUS HAMPTON APPELLANT V. STATE OF ARKANSAS APPELLEE	Opinion Delivered May 5, 2010 APPEAL FROM THE CRAIGHEAD COUNTY CIRCUIT COURT [NO. CR-2008-831] HONORABLE JOHN N. FOGLEMAN, JUDGE AFFIRMED

JOHN MAUZY PITTMAN, Judge

A jury found appellant guilty of the first-degree murder of his wife, and he was sentenced to thirty-five years' imprisonment. On appeal, he argues that the belt that he used to strangle his wife should have been excluded from evidence as being the fruit of an uncounseled interrogation. We affirm.

Appellant voluntarily went to the Jonesboro Police Department and asked Detective Chad Hogard to send officers to his house because he had fought with his wife and she was badly hurt. Appellant and Detective Hogard moved to an interview room. After being read his *Miranda* rights and executing a written waiver, appellant admitted in a taped interview to choking his wife. The interview was then terminated because appellant requested an attorney. Detective Elliot and other officers were dispatched to appellant's house to investigate.

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The officers arrived at appellant's house and found his wife dead on the bedroom floor. They observed injuries to her face and splattered blood on the wall and ceiling. At this time, Deputy Coroner Kurt Beeson found a belt between the box spring and mattress. He mentioned what he had found to Detective Elliot and put the belt on the bed. The belt was not seized at this time and remained in the house when the victim's body was then taken to the coroner's office. There, the coroner performed a more detailed examination in better light, and marks were observed on the victim's neck that appeared to have been caused by a ligature. Detective Elliot then decided to return to the house and search for items that could have been used as a ligature. He telephoned Detective Hogard and informed him that the victim may have been strangled with a ligature rather than manually. Detective Hogard then told appellant that "Lieutenant Elliott says that it didn't look like you used your hands." Appellant replied, "No, I used a belt." Detective Hogard then informed Detective Elliott of appellant's statement about the belt, and a search warrant was issued specifying that the police were looking for a belt used to strangle the victim. The warrant was obtained, and the belt was recovered. The trial court suppressed appellant's statement but admitted the belt into evidence over appellant's timely objection that it should be suppressed as the fruit of a statement obtained in violation of *Edwards v. Arizona*, 451 U.S. 477 (1981).

After an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to police-initiated interrogation after being again advised of his rights; instead,

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having expressed his desire to deal with the police only through counsel, an accused is not subject to further interrogation until counsel has been made available to him, unless the accused has himself initiated further communication, exchanges, or conversations with the police. *Id.* We agree that Detective Hogard's statement to appellant regarding Detective Elliot's theory of the method of strangulation was sufficiently interrogatory in nature to warrant the trial court's suppression of appellant's testimonial response.

We think, however, that the trial court erred in ruling that the belt itself was not subject to suppression in light of our supreme court's holding in *Osburn v. State*, 2009 Ark. 390, that the fruit-of-the-poisonous-tree doctrine applies to Fifth Amendment violations. Nevertheless, we find no reversible error because it is clear that the belt would inevitably have been discovered even in the absence of appellant's statement regarding the use of a belt in the strangulation. The inevitable-discovery rule applies to evidence that was illegally seized and provides that even though evidence is subject to suppression due to illegal conduct by police, it may still be admissible "if the State proves by a preponderance of the evidence that the police would have inevitably discovered the evidence by lawful means." *Newton v. State*, 366 Ark. 587, 591, 237 S.W.3d 451, 454 (2006) (quoting *McDonald v. State*, 354 Ark. 216, 225, 119 S.W.3d 41, 47 (2003)). Here, by the time that appellant's objectionable statement was made, Detective Elliot had already developed a theory of strangulation by ligature and intended to return to appellant's house to look for objects that could have been used as such; the belt, having already been discovered and placed on top of the bed, would certainly have

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been found. Because police would have later entered the house under a valid warrant and inevitably discovered the tainted evidence, we find no prejudicial error. *See Newton*, *supra*.

Affirmed.

VAUGHT, C.J., and BROWN, J., agree.