

No. 46291-5-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

V.

CAITLYN LEDERER, APPELLANT

Appeal from the Superior Court of Mason County
The Honorable Amber L. Finlay

No. 14-1-00101-1

BRIEF OF RESPONDENT

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A. STATE'S COUNTER-STATEMENTS OF ISSUES
PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

1. Officers mistakenly, but innocently, failed to provide Miranda warnings to Lederer prior to beginning interrogation and obtaining a confession from her. But immediately after interrogation began, officers learned of the mistake and provided Miranda. Where the evidence shows that the mid-interrogation Miranda warnings were not deliberately withheld in order to circumvent Miranda, should Lederer's post-Miranda statements nevertheless be suppressed?
2. During a search incident to the arrest of a codefendant, officers discovered methamphetamine, indicating the crime of possession of a controlled substance. Lederer admitted that the methamphetamine was hers, but no evidence other than Lederer's admission was presented at trial in order to prove that Lederer possessed the methamphetamine. Did admission of Lederer's statement violate the corpus delicti rule?

B. FACTS AND STATEMENT OF THE CASE

Two officers went to Lederer's house to arrest her on an outstanding warrant. RP 6-7. Lederer's companion, Dudley Kirby, answered the door. RP 7. One of the officers, Corporal Ripp, entered the house, went to a back bedroom, and took Lederer into custody. RP 7-8, 21-22. Meanwhile the second officer, Deputy Leiter, stayed with Kirby.

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RP 7-8, 23. Because Lederer's arrest was due to an outstanding arrest warrant rather than a criminal investigation, there was no criminal investigation that would have led to any foreseeable interrogation, and Corporal Ripp did not immediately read Miranda warnings to Lederer. RP 23.

Meanwhile, as Deputy Leiter stood by with Kirby, he learned that Kirby also had an outstanding arrest warrant. RP 7. So, Deputy Leiter arrested Kirby, searched him incident to arrest, and found methamphetamine in his pocket. RP 7, 8. Kirby claimed that the methamphetamine that was in his pocket belonged to Lederer. RP 8.

Deputy Leiter thought that Corporal Ripp had already read Miranda warnings to Lederer. RP 9, 19, 23. So, Deputy Leiter approached Lederer, who was now sitting in the back of Corporal Ripp's patrol vehicle, and asked her if the methamphetamine in Kirby's pocket belonged to her. RP 9. Lederer admitted that the methamphetamine belonged to her. RP 9.

Corporal Ripp then interrupted Deputy Leiter and told him that he had not yet read Miranda warnings to Lederer. RP 9, 23. Deputy Leiter

then ceased questioning Lederer, walked away, and went to Kirby and read Miranda warnings to him. RP 10. About a minute and thirty seconds after Deputy Leiter ceased his questioning of Lederer, Corporal Ripp read Miranda warnings to Lederer. RP 25, 29. Lederer acknowledged that she understood her rights, and she said that she wished to speak. RP 25.

After Corporal Ripp informed Lederer of her Miranda rights, Deputy Leiter then approached her again and asked her who owned the methamphetamine. RP 11. Lederer again admitted ownership of the methamphetamine – now claiming joint ownership with Kirby. RP 11.

C. ARGUMENT

1. Officers mistakenly, but innocently, failed to provide Miranda warnings to Lederer prior to beginning interrogation and obtaining a confession from her. But immediately after interrogation began, officers learned of the mistake and provided Miranda. Where the evidence shows that the mid-interrogation Miranda warnings were not deliberately withheld in order to circumvent Miranda, should Lederer's post-Miranda statements nevertheless be suppressed?

Miranda warnings are required prior to the initiation of “custodial interrogation.” *State v. Heritage*, 152 Wn.2d 210, 214, 95 P.3d 345 (2004). In the instant case, there is no dispute that Lederer’s pre-Miranda statements are inadmissible because Lederer was in custody when Deputy Leiter initially questioned her.

The issue here is whether Lederer’s post-Miranda statements are admissible. The State addresses this issue below.

It is undisputed that officers did not provide Miranda warnings to Lederer until after Deputy Leiter had already questioned her about the methamphetamine and obtained her statement admitting that she possessed it. But after Lederer made this admission, Corporal Ripp then provided Miranda warnings to Lederer, and after Miranda warnings, Lederer then admitted again that she possessed the methamphetamine. RP 11.

It is undisputed here that this reading of Miranda was a mid-interrogation Miranda warning. But the question is whether the fact that Lederer made an incriminating admission prior to the mid-interrogation Miranda warnings requires suppression of the admission that she made after receiving Miranda warnings.

The State does not dispute that post-Miranda admissions must be suppressed whenever Miranda warnings are deliberately withheld in order to first obtain a confession before giving the warnings mid-interrogation. See *State v. Hickman*, 157 Wn. App. 767, 775, 238 P.3d 1240 (2010). But the State contends that in the instant case, officers did not *deliberately* withhold Miranda warnings. Instead, the initial failure to provide Miranda warnings was an innocent mistake.

To determine whether police deliberately withheld Miranda warnings, reviewing courts consider ““whether objective evidence and any available subjective evidence, such as an officer's testimony, support an inference that the two-step interrogation procedure was used to undermine the Miranda warning.”” *Hickman*, 157 Wn. App. at 775 (quoting *United States v. Williams*, 435 F.3d 1148, 1158–59 (9th Cir. 2006)). If the court finds no *deliberateness*, the admissibility of post-warning statements is governed by *Oregon v. Elstad*, 470 U.S. 298, 105 S.Ct. 1285, 84 L.Ed.2d 222 (1985), which holds that post-warning statements are admissible if voluntary. *Elstad*, 470 U.S. at 318.

The record here does not support a finding that officers deliberately withheld Miranda warnings. Because Deputy Leiter was busy watching, and then arresting, Kirby while Corporal Ripp searched for, and then arrested, Lederer, he was unable to observe that Deputy Ripp had not yet provided Miranda warnings to Lederer. RP 7-8, 21-23. Deputy Leiter testified that when he first questioned Lederer, he “was under the impression she had already been Mirandized.” RP 9. His initial questioning of her was very brief. RP 9; Ex. 1. The questioning was brief because immediately after Deputy Leiter began questioning Lederer, Corporal Ripp interrupted him and told him that he had not yet Mirandized Lederer. RP 23. These facts indicate an innocent mistake – not a deliberate intent to circumvent Miranda.

Lederer cites *Missouri v. Seibert*, 542 U.S. 600, 124 S. Ct. 2601, 159 L. Ed. 2d 643 (2004), to support her contention that her post-Miranda statements should be suppressed because, before officers questioned her post-Miranda, they did not tell her that her pre-Miranda statement could not be used against her. Br. of Appellant at 17. *Seibert*, however, was a plurality opinion; therefore, Justice Kennedy’s narrower concurrence is

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controlling in the absence of a majority opinion. *United States v. Williams*, 435 F.3d 1148, 1158 (9th Cir. 2006). Justice Kennedy's concurrence relied exclusively on the question of deliberateness. *Seibert*, 542 U.S. at 618 (Kennedy, J., concurring). Thus, *Oregon v. Elstad* is still controlling on this point and specifically rejects the contention that officers are required to inform defendants that their pre-Miranda statements are not admissible. *Oregon v. Elstad*, 470 U.S. 298, 316, 105 S. Ct. 1285, 1296-97, 84 L. Ed. 2d 222 (1985).

“[A] suspect who has once responded to unwarned yet uncoercive questioning is not thereby disabled from waiving his rights and confessing after he has been given the requisite Miranda warnings.” *Oregon v. Elstad*, 470 U.S. 298, 318, 105 S. Ct. 1285, 1298, 84 L. Ed. 2d 222 (1985). The facts of the instant case show that after receiving proper Miranda warnings, Lederer stated that she understood her rights, that she in fact did understand her rights, and that she then voluntarily gave a statement. As such, her statement is admissible. *Id.* at 305-315.

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2. During a search incident to the arrest of a codefendant, officers discovered methamphetamine, indicating the crime of possession of a controlled substance. Lederer admitted that the methamphetamine was hers, but no evidence other than Lederer's admission was presented at trial in order to prove that Lederer possessed the methamphetamine. Did admission of Lederer's statement violate the corpus delicti rule?

In the absence of some other corroborating evidence that a crime took place, a criminal defendant's incriminating statement by itself is not admissible to prove that the crime took place. *State v. Dow*, 168 Wn.2d 243, 227 P.3d 1278 (1010). In the instant case, however, officers discovered methamphetamine; thus, irrespective of Lederer's admission, the officers discovered a crime, because it is a crime to possess methamphetamine. RCW 69.50.4013(1).

Our State Supreme Court recently has explained the corpus delicti rule as follows:

Corpus delicti means the "body of the crime" and must be proved by evidence sufficient to support the inference that there has been a criminal act. *State v. Aten*, 130 Wn.2d 640, 655, 927 P.2d 210 (1996) (quoting 1 McCormick on Evidence § 145, at 227 (John W. Strong ed., 4th ed.1992)). A defendant's incriminating statement [footnote omitted] alone is not sufficient to establish that a crime took place. *Aten*, 130 Wn.2d at 655--56, 927 P.2d 210; *State v.*

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Vangerpen, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995). The State must present other independent evidence to corroborate a defendant's incriminating statement. *Aten*, 130 Wn.2d at 656, 927 P.2d 210. In other words, the State must present evidence independent of the incriminating statement that the crime a defendant *described in the statement* actually occurred.

State v. Brockob, 159 Wn.2d 311, 327-28, 150 P.3d 59 (2006), *as amended* (Jan. 26, 2007).

The crime described in Lederer's statement is possession of methamphetamine. RP 11. "[T]he corpus delicti rule revolves around whether independent evidence corroborates *the crime described in a defendant's incriminating statement.*" *Brockob* at 331 (emphasis in original). Here, there is corroborating evidence to corroborate the crime described in Lederer's statement. Regardless of Lederer's status or her identity as the perpetrator, possession of methamphetamine is a crime.

D. CONCLUSION

Officers in this case did not engage in a deliberate plan to withhold Miranda in order to circumvent the protections of Miranda. The initial failure to provide Miranda warnings was an innocent mistake. Therefore,

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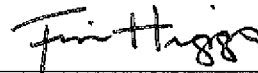
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Lederer's post-Miranda statements are admissible, because she knowingly and voluntarily chose to provide a statement after receiving proper Miranda warnings.

Possession of methamphetamine is a crime. So, when officers discovered methamphetamine, the fact that someone had committed the crime was established without Lederer's confession that she was a perpetrator of the crime. Accordingly, Lederer did not admit to perpetrating a non-existent crime. On these facts, the corpus delicti rule does not bar admission of Lederer's admission that she was a perpetrator of the crime that officers discovered and established independent of her admission.

DATED: March 24, 2015.

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