

NO. 46291-5-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

CAITLYN LEDERER.,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR MASON COUNTY

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

The flawed Miranda-in-the-middle procedure called for suppression, and on appeal, requires reversal and dismissal.

In its Response, the State correctly concedes that Caitlyn Lederer was questioned pre-Miranda, that her unwarned statement to Deputy Leiter was illegally obtained, and that all she ever got “was a mid-interrogation Miranda warning.” Resp. at 4. The State also accepts, as it must, that “whenever Miranda warnings are deliberately withheld in order to first obtain a confession before giving the warnings mid-interrogation,” suppression follows. Resp. at 5, citing to State v. Hickman, 157 Wn. App, 767, 775, 238 P.3d 1240 (2010). However, the State fails to analyze what “deliberately” means under the test articulated in United v. Williams, 435 F.3d 1148 (9th Cir. 2006), and strays in relying on Oregon v. Elstad to suggest there can be some “innocent mistake” exception to Miranda:

The Court today in no way retreats from the bright-line rule of *Miranda*. We do not imply that good faith excuses a failure to administer *Miranda* warnings; nor do we condone inherently coercive police tactics or methods offensive to due process that render the initial admission involuntary and undermine the suspect's will to invoke his rights once they are read to him.

Oregon v. Elstad, 470 U.S. 298, 317, 105 S. Ct. 1285, 1297, 84 L. Ed. 2d 222 (1985).

Moreover, in an attempt to excuse the police failure to comply with their Constitutional obligation to meaningfully advise Ms. Lederer of her right to remain silent, the prosecution tilts the facts. First, the State invents a post hoc justification for Corporal Ripp's decision not to Mirandize Ms. Lederer: "[b]ecause [her] 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." Resp. at 2, citing to RP 23. But when Corporal Ripp was asked directly "Why didn't you Mirandize her when you got her into the back of the car?" he gave no such explanation: "I just didn't at that point." RP 30.

The State writes that "Deputy Leiter was busy watching, and then arresting, Kirby," but a more complete recitation of the record would not omit the fact that he had also questioned Kirby, in violation of Kirby's Miranda rights. Resp. at 6, RP 16-17. Last, the State writes that Deputy Leiter's interrogation was "brief because immediately after [he] began questioning Lederer, Corporal Ripp interrupted him." Resp. at 6. Again, that is not an entirely accurate account of what occurred. If Corporal Ripp wanted to "immediately" interrupt he would have opened his mouth and said "*wait*", or maybe "*stop*," rather than

listen quietly while Deputy Leiter twice asked: “Is that your meth he had on him?”

The State emphasizes that neither Elstad, nor Missouri v. Seibert, 542 U.S. 600, 124 S. Ct. 2601, 159 L. Ed. 2d 643 (2004) require that a police officer inform a suspect that their pre-Miranda statements are inadmissible. Resp. at 7. Elstad does say that “[s]uch a requirement is neither practicable nor constitutionally necessary,” in part because a breach of the Miranda procedures may not be promptly discovered. Elstad, 470 U.S. at 316. However, here, Corporal Ripp knew right away that Deputy Leiter’s interrogation was illegally obtained and inadmissible: “I knew his – what he had talked to her about, yeah, probably was no good.” RP 31. Setting aside the question of whether he had any affirmative obligation to disclose this truth to Ms. Lederer, it is reasonable to infer that he promptly re-questioned her to get another confession to use against Ms. Lederer. That, not complying with Miranda or Seibert, was his priority.

Still, the officer’s intent is not determinative, “will rarely be as candidly admitted,” and the burden is on the State to show a voluntary waiver. Seibert, 542 U.S. at 617 n. 6. Rather, “[t]he objective inquiries into deliberateness and effectiveness function practically as an analysis

of whether the facts of a particular case more closely resemble those in Seibert or Elstad.” Williams, 435 F.3d at 1162 n.16.¹

As pointed out in the appellant’s opening brief, even the trial court’s assessment of the facts showed that what Ms. Lederer experienced looked a lot like what happened to Seibert. The pre- and post-Miranda questioning of Ms. Lederer was “very close in time,” essentially an ongoing event. RP 45. See Seibert, 542 U.S. at 614. (“unrealistic to treat two spates of integrated and proximately conducted questioning as independent interrogations.”) The setting was the same. RP 45-46. The “same two officers” did the questioning and “these statements overlap.” RP 46. With each of the five objective factors that speak to deliberateness present, it would be wrong to conclude that what occurred was anything but deliberate, as that term of art was used in Seibert and explained in Williams. Accord United States v. Capers, 627 F.3d 470, 472-73 (2d Cir. 2010); United States v. Barnes, 713 F.3d 1200, 1206 (9th Cir. 2013).

¹ Even the Seibert dissenters rejected, as not practicable, the notion of test focused on police intent. Seibert, at 622-29. (O’Connor, J., dissenting).

B. CONCLUSION

For the reasons articulated above, and in the appellant's opening brief, Ms. Lederer's conviction should be reversed and dismissed.

DATED this 29th day of April, 2015.

Respectfully submitted,

/s/ Mick Woynarowski

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Washington Appellate Project
Attorney for Appellant

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