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Court of Appeals
Division II
State of Washington
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NO. 52879-7-II

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

STATE OF WASHINGTON,

Respondent,

v.

LISA HURDE,

Appellant.

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

The Honorable Erik S. Rohrer, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

HURDE'S STATEMENTS IN RESPONSE TO CUSTODIAL INTERROGATION SHOULD HAVE BEEN SUPPRESSED, BECAUSE SHE WAS NOT PROVIDED *MIRANDA* WARNINGS.

Miranda warnings protect a defendant from making incriminating statements to police while in the coercive environment of police custody. *See State v. Heritage*, 152 Wn.2d 210, 214, 95 P.3d 345 (2004) (citing *State v. Harris*, 106 Wn.2d 784, 789, 725 P.2d 975 (1986), *cert. denied*, 480 U.S. 940 (1987)). Police must advise suspects of their *Miranda* rights before questioning them in a custodial setting. *See Heritage*, 152 Wn.2d at 214 (citing *State v. Sargent*, 111 Wn.2d 641, 647, 762 P.2d 1127 (1988)); *see also Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Absent *Miranda* warnings, a suspect's statements during a custodial interrogation are presumed involuntary. *Heritage*, 152 Wn.2d at 214 (citing *Sargent*, 111 Wn.2d at 647-48). Appellant Lisa Hurde was subjected to custodial interrogation without being provided *Miranda* warnings, in response to which she handed over controlled substances in her possession. As she handed over the substance to one of the interrogating officers, Hurde started explaining the circumstances of her possession. RP 43, 93-94. She told Deputy Clark that she wasn't using the methamphetamine, but she had given some to the other inmates. RP

93-94, 102. The State relied upon these statements to prove intent to deliver. RP 143-45. Because Hurde was not provided *Miranda* warnings, admission of her statements violated her constitutional right against self-incrimination. *See State v. Spotted Elk*, 109 Wn. App. 253, 261, 34 P.3d 906 (2001).

The State argues in its brief that Hurde waived any objection to admission of her statements regarding possession because she stipulated to the fact of possession. Br. of Resp. at 6-7. It is true that Hurde never challenged the fact that she was in possession of methamphetamine. She entered a guilty plea to possession by a prisoner and she stipulated to admission of test results to establish the controlled substance element. RP 11-12; CP 25-36. But she was also charged with possession of methamphetamine with intent to deliver, and she went to trial on that charge. She testified and the defense argued that she had no intent to deliver the methamphetamine she possessed. RP 133, 146-47. While admission of statements relating to the element of possession is harmless, no stipulation or waiver allowed use of Hurde's statements to establish intent.

Next, the State contends that Hurde's statements to Clark regarding the circumstances of her possession were unrelated to the custodial interrogation and therefore were properly admitted, regardless of the lack

of *Miranda* warnings. Br. of Resp. at 10-11. This attempt to separate Hurde's statements from the interrogation fails.

The evidence was clear that Hurde was subjected to custodial interrogation. She was an inmate in the Clallam County Jail when she was questioned by corrections officers about whether she had any controlled substances. It is undisputed that Deputy Brooks did not provide *Miranda* warnings before he asked Hurde whether she had any controlled substances on her person. RP 44. Sergeant Bryant did not provide *Miranda* warnings when he joined in the interrogation, telling Hurde she was going to be searched and it would be better if she voluntarily turned over any contraband. RP 72-73. Within seconds of the questioning by Brooks and Bryant, Hurde handed the container of methamphetamine to Clark and started explaining the circumstances of her possession. RP 43, 93-94. Although Clark did not personally ask Hurde any questions, there can be no doubt Hurde's statements were elicited by the coercive environment of the custodial interrogation. Clark was part of the interrogation, standing with Bryant and Brooks as they posed questions to Hurde. RP 41-43, 73-74, 117. The contact was still ongoing, and Hurde was responding to that interrogation when she made the statements at issue. Because Hurde was not provided *Miranda* warnings, admission of

her statements violated her constitutional right against self-incrimination. *See Spotted Elk*, 109 Wn. App. at 261.

The State next argues that Hurde's statements to Clark were volunteered in an attempt to set the record straight and therefore not subject to *Miranda*. Br. Resp. at 12. It relies on *State v. Roberts*, 14 Wn. App. 727, 544 P.2d 754 (1976). In *Roberts*, the defendant called his parole officer to offer his side of the story to a burglary he had just been involved in. His statements were admissible because the defendant gave them on his own initiative to set the record straight. *Roberts*, 14 Wn. App. at 728, 731.

The State's reliance on *Roberts* is misplaced. *Miranda* applies to custodial interrogation, and in that case there was no need for *Miranda* warnings because there was no custody and there was no interrogation. Here, on the other hand, Hurde was in custody, and she was interrogated without being provided *Miranda* warnings. Hurde did not initiate contact with Clark in order to set the record straight. She made statements during the course of custodial interrogation in response to that interrogation. Because Hurde was not advised of her constitutional rights, her statements must be suppressed.

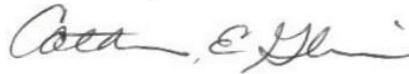
B. CONCLUSION

Because Hurde was not provided *Miranda* warnings, her statements in response to the custodial interrogation should have been suppressed. For the reasons addressed above and in the Brief of Appellant, her conviction for possession with intent must be reversed and the charge dismissed.

DATED November 21, 2019.

Respectfully submitted,

GLINSKI LAW FIRM PLLC



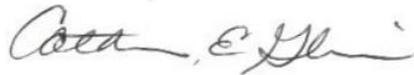
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Certification of Service by Mail

Today I caused to be mailed copies of the Reply Brief of Appellant
in *State v. Lisa Hurde*, Cause No. 52879-7-II as follows:

Lisa Hurde/DOC#828521
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I certify under penalty of perjury of the laws of the State of Washington
that the foregoing is true and correct.



Catherine E. Glinski
Done in Manchester, WA
November 21, 2019

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