

FILED
APRIL 21, 2016
Court of Appeals
Division III
State of Washington

NO. 33329-9-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

ANTHONY RAY AGUILAR, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 15-1-00272-8

BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENTS OF ERROR

- 1. The court properly concluded that the defendant's statement was admissible based on the spontaneous nature of the statement and was not a result of interrogation.**
- 2. Any error in the admission of the defendant's statement would be harmless based on the evidence.**
- 3. The State would concede that the record does not appear to be sufficient to determine whether the defendant has the ability to pay legal financial obligations, and the case should be remanded for a determination of ability to pay.**
- 4. There is insufficient evidence in the record to allow the court to determine that the defendant does not have the ability to pay appellate costs.**

II. STATEMENT OF FACTS

On March 11, 2015, at approximately 2050 hours, Kennewick Police Detective Roman Trujillo was driving on Entiat Avenue in Kennewick, Washington, when he observed the defendant standing in the roadway. CP 6. Detective Trujillo observed the defendant holding his cell phone toward the sky and blocking the roadway. CP 6. Detective Trujillo stopped his vehicle and contacted the defendant. CP 7. Detective Trujillo collected the defendant's name and checked it through dispatch to check for warrants. CP 7. Kennewick Police Detective Chris Bennett and Kennewick Police Officer Wayne Meyer arrived at the location as cover officers. CP 7. Detective Trujillo was advised by dispatch that the

defendant had a warrant for his arrest. CP 7. The defendant was detained to check on the warrant and was asked if he had anything illegal on his person because of the potential of being searched and transported to the Benton County Jail. RP 05/06/2015 at 5-6. The defendant denied having anything illegal on his person. RP 05/06/2015 at 6. After the warrant was confirmed, the defendant was placed under arrest and searched incident to the arrest. CP 7. Detective Trujillo also asked the defendant about needles based on his prior experience of being stuck with needles. RP 05/06/2016 at 6. Detective Trujillo found a hypodermic needle and a clear plastic baggie in the defendant's coat pocket during a search of the defendant's person. CP 7. Detective Trujillo observed that the baggie contained a small amount of white crystal substance. CP 7. Detective Trujillo stated, "This looks like meth." CP 7. The defendant responded, "Yes, it is, sir." CP 7. The baggie was collected and sent to the Washington State Crime Lab for testing. CP 7. The substance was tested by Forensic Scientist Jason Trigg and found to contain less than 0.1 gram of white crystalline material that contained methamphetamine. CP 8. Methamphetamine is a controlled substance. CP 8. The defendant was found guilty after a stipulated facts bench trial. CP 8. At sentencing, the defendant was asked by the court how he supports himself, and he responded, "I work, Ma'am." RP 05/11/2015 at 5.

III. ARGUMENT

A. The defendant's response to the officer's statement was clearly spontaneous and was not a result of an interrogation.

The issue of whether a defendant was subject to interrogation under Miranda is subject to de novo review. *In re Cross*, 180 Wn.2d 664, 680, 327 P.3d 660 (2014). "Interrogation" can be express questioning, or any words or actions reasonably likely to elicit an incriminating response. *Id.* (citing *Rhode Island v. Innis*, 446 U.S. 291, 301–02, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980)). In the present case, it was clear from the brief interaction that no interrogation took place. Detective Trujillo simply asked some questions based on the probability that he would be transporting the defendant to the jail based on the warrant. Detective Trujillo was not conducting a criminal investigation into any suspected crime and was asking questions to protect himself from being injured from any needles or other sharp items possibly on the defendant's person. After searching the defendant before transport, Detective Trujillo found apparent methamphetamine and stated that he found an item that appeared to be methamphetamine. He simply stated, "This looks like meth." CP 7. The statement was not directed at anyone and could not be construed as being reasonably likely to elicit an incriminating response. RP 05/06/2015 at 7. The defendant heard the remark and chimed in that it was in fact

meth. CP 7; RP 05/06/2015 at 7. Based on the spontaneous reaction by the defendant, the trial court was correct in concluding that the statement was not the result of an interrogation.

B. Even assuming the statement was admitted in error, it was harmless beyond a reasonable doubt and the verdict should be upheld.

A defendant's statement admitted in error may be considered harmless if it appears beyond a reasonable doubt that the same result would have been reached. *Cross*, 180 Wn.2d at 688. Here, the defendant was arrested on an outstanding warrant and was searched incident to arrest. RP 05/06/2015 at 4. Detective Trujillo located a syringe and a baggie containing methamphetamine in his jacket pocket. RP 05/06/2015 at 7. The suspected methamphetamine was tested by the Washington State Crime Lab and was confirmed to contain methamphetamine. CP 8. There is no doubt that the defendant was in possession of methamphetamine, even without his admission that the substance was "meth."

C. The State would concede that it appears from the record that there is insufficient evidence to determine whether legal financial obligations should be imposed, and the case should be remanded for a hearing to determine the defendant's ability to pay.

D. The record is insufficient to determine the defendant's ability to pay appellate costs and should be determined at the time collection efforts begin.

Pursuant to Title 13 RAP, RCW 10.73.160, and *State v. Blank*, 131 Wn.2d 230, 930 P.2d 1213 (1997), the State requests appellate costs if appropriate and the defendant's ability to pay should be considered at the time of collection.

IV. CONCLUSION

It was not error for the trial court to conclude that the defendant's statement was admissible as a spontaneous statement, and even if it were error, it was harmless beyond a reasonable doubt. The defendant's conviction should be upheld. The State concedes that the record is insufficient and the case should be remanded back to Superior Court for a hearing to determine the defendant's ability to pay legal financial obligations.

RESPECTFULLY SUBMITTED this 21st day of April, 2016.

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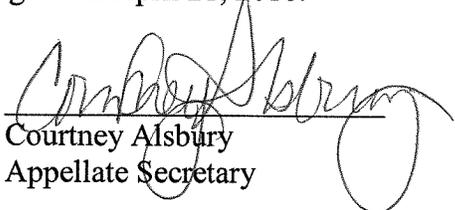
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

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Signed at Kennewick, Washington on April 21, 2016.



Courtney Alsbury
Appellate Secretary