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WASHINGTON STATE
SUPREME COURT

Supreme Court No. 92871-1
(Court of Appeals No. 46291-5-II)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CAITLYN LEDERER,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND OPINION BELOW

Pursuant to RAP 13.4(b)(2) and (3) Caitlyn Lederer asks this Court to accept review of the February 2, 2016 opinion of the Court of Appeals in State v. Lederer, 46291-5-II decision terminating review designated in Part B of this petition. Copy attached as Appendix A.

B. ISSUES PRESENTED FOR REVIEW

1. Before every custodial interrogation, police are to alert a suspect of her constitutional right to remain silent. Police are not to circumvent Miranda by first obtaining an unwarned confession, then giving the warnings, and questioning once more after the cat is out of the bag. Under Missouri v. Seibert, courts analyzing whether a Miranda-in-the-middle interrogation requires suppression must consider objective evidence of the interplay between the pre- and post-Miranda questioning and do not meekly defer to the stated subjective intent of the officers.

Ninety seconds after getting Ms. Lederer to confess to drug possession, the police Mirandized her, and followed-up with a second interrogation, in the same place, about the same crime, and without revealing they knew her first statement would be inadmissible in court.

Should this Court – which has never before discussed Missouri v. Seibert – grant review to guide the lower courts with respect to this significant constitutional question?

2. The corpus delicti rule requires that the prosecution produce independent evidence corroborating a confessed-to criminal offense. The State prosecuted Ms. Lederer of being in constructive possession of a 0.7 of a gram of methamphetamine found in someone else's pocket.

Should this Court grant review and clarify that people should not be prosecuted – on the basis of a confession alone – for allegedly constructively possessing what someone else actually had?

C. STATEMENT OF THE CASE

On March 13, 2014, Mason County Sheriff's Office Corporal Timothy Ripp and Deputy Michael Leiter arrested Caitlyn Lederer on a warrant. RP 6-7, 21-23. A digital audio/video recording preserved what followed and the recording is critical to this appeal. Ex. 1.

The video shows a second civilian at the scene, Dudley Kirby. He also had a warrant out for his arrest. RP 7, 16. Deputy Leiter found a little methamphetamine in Mr. Kirby's pocket. RP 7. Deputy Leiter interrogated Mr. Kirby without Miranda. RP 10, 16-17.

Four minutes into the footage, the video again shows Ms. Lederer, now in the back seat of Corporal Ripp's squad car. Corporal Ripp is in the driver's seat and he has not told her that she has the right to remain silent and the right to an attorney. RP 24, 30.

Four minutes and forty-eight seconds into the recording Deputy Leiter pulls the rear passenger door open and fires off at Ms. Lederer:

Q: "Is that your meth he had on him?"

A: "What's that?"

Q: "Is that your meth he had on him?"

A: "Yeah."

Q: "Is it?"

A: "Yeah."

Q: "Where was it?"

A: "In my trailer."

Q: "Where did he have it on him though?"

A: "In his pocket."

Q: "Which pocket?"

A: "His right one."

Q: "OK. OK."

Deputy Leiter shuts the door. RP 8, 10, 17. (Corporal Ripp has stepped out and told him Ms. Lederer was never Mirandized.) Then, Corporal Ripp takes his turn. Post-Miranda he asks: "Having these rights in mind, do you wish to talk to me now?" She shakes her head a little, but she does not answer out loud. Corporal Ripp follows with: "Is that a yes or no?" She replies: "Sure, yes."

Corporal Ripp does not tell Ms. Lederer that he knew the first confession was improperly obtained. RP 25, 29, 31.

Instead, he asks: "Regarding the methamphetamine, whose is it? The, the, bag, baggie, that he, uh, my other deputy found?" and "I'm just trying to ask you straight up, is it yours?" Just as she did moments Ms. Lederer answers: "It's mine."

Refusing to exclude the second round of questioning, the trial judge stated: "there was no purposeful violation of Miranda" RP 47. The Court of Appeals affirmed, ruling that this was not a "deliberate" two-step interrogation and also that corpus was not at issue.

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. TO PROTECT THE FIFTH AMENDMENT AND MIRANDA THIS COURT NEEDS TO REMIND LOWER COURTS THAT MIRANDA-IN-THE-MIDDLE INTERROGATIONS ARE SUSPECT

a) The police violated Miranda requirements which must be scrupulously honored to protect the constitutional right to be free from self-incrimination.

The federal and state constitutions provide the accused the right not to incriminate herself. U.S. Const. amends. V, XIV; Const. art. I, § 9. Due to the coercive nature of police custody, police officers must advise a suspect of her constitutional rights prior to custodial questioning. Miranda v. Arizona, 384 U.S. 436, 467, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Ms. Lederer had an absolute right to refuse to be questioned by her captors and should have been so informed before any interrogation. But, Corporal Ripp had Ms. Lederer in custody for over five minutes without doing what the law requires. "I just didn't [Mirandize her] at that point." RP 31. Warnings given to her were too little, too late.

Here, the police acted as if the Miranda rule was new, or did not apply to them. Deputy Leiter made no attempt to verify if Ms. Lederer had been Mirandized by any other officer and did not advise her himself before starting his interrogation. RP 19. In his dealings with Mr. Kirby, he chose to question first, warn second. RP 17. "[I]f a suspect in custody does not receive an adequate warning effectively apprising him of his rights before he incriminates himself, his statements may not be admitted as evidence against him." United States v. Williams, 435 F.3d 1148, 1152 (9th Cir. 2006), citing to Miranda, 384 U.S. at 479.

An individual may knowingly and intelligently waive their constitutional rights and answer questions or provide a statement to the police. Id. "The question whether the accused waived his rights is 'not one of form, but rather of whether the defendant in fact waived the rights delineated in the Miranda case.'" Fare v. Michael C., 442 U.S. 707, 724, 99 S. Ct. 2560, 61 L. Ed. 2d 197 (1979) (quoting North Carolina v. Butler, 441 U.S. 369, 373, 99 S. Ct. 1755, 60 L. Ed. 2d 286 (1979)); "[I]t would

be absurd to think that mere recitation of the litany suffices to satisfy Miranda in every conceivable circumstance." Missouri v. Seibert, 542 U.S. 600, 611, 124 S. Ct. 2601, 2610, 159 L. Ed. 2d 643 (2004) (Reversing murder conviction where a deliberate two-step interrogation failed to effectively advise the accused of her right to remain silent.)

If an interrogation continues without an attorney, "a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." Id. at 475. The government must establish that (1) the waiver was voluntary and (2) the defendant understood both the rights he was abandoning and the consequences of a decision to waive those rights. Moran v. Burbine, 475 U.S. 412, 421, 106 S. Ct. 1135, 89 L. Ed. 2d 410 (1986); Fare, 442 U.S. at 725. On appeal, the adequacy of a Miranda warning and the voluntariness of a suspect's statements are questions of law that are reviewed de novo. Williams, 435 F.3d at 1151, citing United States v. San Juan-Cruz, 314 F.3d 384, 387 (9th Cir. 2002); United States v. Bautista, 362 F.3d 584, 589 (9th Cir. 2004).

When an officer interrogates a suspect without giving the warnings, obtains a confession, gives the warnings, then continues the interrogation and obtains another confession, the warnings cannot "function effectively as Miranda requires." Seibert, 542 U.S. at 611-12.

The dash-cam video shows a puzzled look washing over Ms. Lederer's face[1] when Corporal Ripp asks her if she wants to answer his questions. There is resignation in her voice and she shrugs her shoulders. As Justice Souter predicted in Seibert, the video caught the futility of a Miranda-in-the-middle advisement:

> A more likely reaction on a suspect's part would be perplexity about the reason for discussing rights at that point, bewilderment being an unpromising frame of mind for knowledgeable decision.

Seibert, 542 U.S. at 613-14.

Corporal Ripp hid his awareness that Deputy Leiter's pre-Miranda interrogation was "probably [] no good," meaning unusable for court because improperly obtained. RP 31. Ms. Lederer was not given a meaningful opportunity to decide whether or not to talk to the police:

> [T]elling a suspect that "anything you say can and will be used against you," without expressly excepting the statement just given, could lead to an entirely reasonable inference that what he has just said will be used, with subsequent silence being of no avail.

Seibert, 542 U.S. at 613.

b) Under Missouri v. Seibert, the mid-interrogation warning did not effectively advise Ms. Lederer of her rights.

Under these circumstances, Ms. Lederer did not make a knowing waiver of her right to remain silent, because

[1] Exhibit 1, dash-cam recording at 6:25.

> when Miranda warnings are inserted in the midst of coordinated and continuing interrogation, they are likely to mislead and "depriv[e] a defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them."

Seibert at 542 U.S. at 613-14, quoting from Burbine 475 U.S. at 424. See also Darwin v. Connecticut, 391 U.S. 346, 350-51, 88 S.Ct. 1488, 1490, 20 L.Ed.2d 630 (1968) ("having already confessed once or twice, [one] might think he has little to lose by repetition") (Harlan, J., concurring).

Under Missouri v. Seibert "a trial court must suppress postwarning confessions obtained during a deliberate two-step interrogation where the midstream Miranda warning was objectively ineffective." Williams, 435 F.3d at 1150. (Discussing implications of fractured Seibert opinion.); State v. Hickman, 157 Wn. App. 767, 775, 238 P.3d 1240, 1244 (2010); State v. Rhoden, 189 Wn. App. 193, 201-02, 356 P.3d 242 (2015).

Seibert modified Oregon v. Elstad, 470 U.S. 298, 318, 105 S. Ct. 1285, 1297-98, 84 L. Ed. 2d 222 (1985), which had held that there is no absolute rule calling for exclusion of all statements obtained through two-step interrogations. Williams later explained that "[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." Id., at 1162 n.16. The factual relationship between the two halves of a Miranda-in-the-middle interrogation is key.

In Oregon v. Elstad, the police arrested a young man at his parents' home and briefly questioned him there about a burglary. After he said he had been at the scene, the police took him to their station. An hour passed. He was then advised of his Miranda rights, agreed to be interrogated, gave a detailed statement, and a majority of the Supreme Court allowed use of the second post-Miranda confession. What Ms. Lederer experienced far more closely resembles what occurred in Seibert, than Elstad.

In terms of timing, the police in Seibert split their two rounds of questioning with a "pause of only 15 to 20 minutes." Seibert at 616. The officers who interrogated Ms. Lederer barely paused at all.[2] Elstad was moved for the second interrogation, but not Seibert or Ms. Lederer. The Elstad pre-Miranda statement was limited, but Seibert's and Ms. Lederer's pre-Miranda statements were complete, and overlapping. "When the police were finished there was little, if anything, of incriminating potential left unsaid." Seibert at 616. Ms. Lederer admitted to Deputy Leiter the drugs found in Kirby's pocket were hers and repeated this when questioned by Corporal Ripp. Ex. 1. The officers questioned her in tandem, with Deputy Leiter interjecting more of his own questions into the post-Miranda interrogation led by Corporal Ripp. Ex. 1.

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[2] Unlike Seibert, Ms. Lederer was not treated to any coffee or cigarettes. Seibert at 605.

In suppressing Seibert's post-Miranda statements Justice Souter remarked that the interrogators "did not advise that her prior [unwarned] statement could not be used" if Seibert asserted her Fifth Amendment right to remain silent. Seibert, 616. Ms. Lederer was not told of this either.

Seibert does differ from Ms. Lederer's situation in that the interrogators there followed a departmental policy of intentionally withholding Miranda warnings, with an overarching plan to get a suspect to restate an initially unwarned confession. While the Mason County Sheriff's Officers who arrested and interrogated Ms. Lederer did not make a similar admission that the two-step procedure they employed was deliberate from the start, this does not mean the post-Miranda statement comes in. "[T]he intent of the officer will rarely be as candidly admitted as it was here." Seibert, 542 U.S. at 617 n. 6 (Souter, J., plurality opinion).

c) The objective evidence shows this was a deliberate two-step interrogation; both the trial court and the Court of Appeals misapplied Seibert.

The rule announced in Williams is as follows:

> Consistent with our sister circuits, we hold that in determining whether the interrogator deliberately withheld the Miranda warning, courts should 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.

Williams, at 1158.[3]

In other words, a police admission, like that in Seibert, that the Miranda-in-the-middle procedure was deliberately used to interfere with Miranda's purpose would lead to suppression. But, a lack of such an admission is not dispositive. What matters is relevant objective evidence which "would include the timing, setting and completeness of the prewarning interrogation, the continuity of police personnel and the overlapping content of the pre- and postwarning statements." Williams, at 1159.

Engaging in an analysis of the Williams factors for testing deliberateness, the trial court below set off on the right path, but reached the wrong result. RP 41-47. The trial court correctly found that the two halves of Ms. Lederer's interrogation were "very close in time." RP 45. Indeed, the pause between the unwarned and warned parts of the police questioning below was so short that treating what occurred as one ongoing event is more accurate than pretending there were two interrogations. "[I]t

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[3] Seibert was a fractured opinion; "[t]his test functions appropriately as a combination of Justice Souter's plurality opinion and Justice Kennedy's concurrence." Williams, at 1158 n 12. See State v. Hickman, 157 Wn. App. at 772-75 (Discussing Seibert and adopting Williams test.)

would ordinarily be unrealistic to treat two spates of integrated and proximately conducted questioning as independent interrogations subject to independent evaluation simply because Miranda warnings formally punctuate them in the middle." Seibert, 542 U.S. at 614.

Next, the trial court correctly acknowledged that the setting of Ms. Lederer's questioning remained the same both pre- and post-Miranda. RP 45-46. The trial court correctly noted that in terms of continuity of interrogating personnel, "they were the same two officers." RP 46. Last, the trial court got it right when it said "these statements overlap." RP 46. Five of the five objective factors that speak to deliberateness were present. This should have been enough – for both the trial court and the Court of Appeals – to find the process "deliberate."

Alarmingly, this analysis of timing, setting and completeness of the prewarning interrogation, the continuity of police personnel and the overlapping content of the pre- and postwarning statements is utterly missing from the Court of Appeals opinion affirming. Op. at 5-6.

However, the trial court veered off course, focusing on Deputy Leiter's claims that he thought Corporal Ripp had Mirandized Ms. Lederer. RP 46, 47. But, there would be no need for the objective part of

the analysis, if the officers' testimony could be outcome-determinative.[4] The legal standard does not change if the officers claim incompetence.

Here, the totality of the objective evidence signaled that Ms. Lederer did not receive an effective advisement of her rights due to a deliberate two-step process. In addition, the officers' actions revealed more about their subjective intent than either the trial court or the Court of Appeals cared to acknowledge. RP 8, 10, 16-17 (Deputy Leiter employing the same two-step interrogation procedure against Mr. Kirby.)

It is disappointing that the Court of Appeals' Opinion mistakenly claims that Deputy "Ripp then interrupted [Deputy] Leiter." Op. at p.2. This is not true. Corporal Ripp, sitting in the driver's seat, did not interrupt. To "interrupt," he would have had to contemporaneously open his mouth and say: *stop*, *hold-on*, or *wait a minute*, to his fellow officer. This he did not choose to do, but he admitted he could have. RP 29. Deputy Leiter was done interrogating Ms. Lederer when Corporal Ripp told him she had not been Mirandized. This was not an interruption. And, contrary to what the Court of Appeals Opinion claims, Ms. Lederer, on appeal, did challenge the trial court's finding that the police did not conduct a purposeful two-step interrogation and to the trial court finding

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[4] The dissenters in Seibert also rejected the notion of an intent-based test as not practicable. Seibert, at 622-29. (O'Connor, J., dissenting).

that the two-step interrogation was not deliberate as the term is used in Missouri v. Seibert and United States v. Williams. AOB at p.2 (assignments of error 4 and 5).

Finally, the drive to the jail was twenty to thirty minutes. RP 27. Even waiting that long to resume the questioning of Ms. Lederer would have been better because it would have changed the setting and put in a buffer between the first unwarned half of the interrogation. But, Corporal Ripp did not "see a problem" with starting-up a second interrogation of Ms. Lederer right then and there at the scene. RP 31.

Deputy Leiter may have not known that Corporal Ripp failed to Mirandize Ms. Lederer, but Corporal Ripp certainly knew that there had been a screw-up. Rather than fix it, he deliberately capitalized on it.

Corporal Ripp understood from experience that waiting carried with it the possibility that, once informed of her Miranda rights, Ms. Lederer would choose to assert them and not talk: "just because they're talkative at one point doesn't mean they're going to be talkative when I talk to them." RP 31-32. In a closely related Miranda-in-the-middle questioning such as this one, a suspect may "regard the two sessions as parts of a continuum" and find it "unnatural to refuse to repeat at the second stage what had been said before." Seibert, at 617. It is alarming that the Court of Appeals opinion does not discuss any of this record.

The trial court's conclusion was contrary to the sum of the evidence present, be it objective and subjective. Accord United States v. Capers, 627 F.3d 470, 472-73 (2d Cir. 2010) (Second Circuit Court of Appeals rejecting excuse that law enforcement officer was in too much of a hurry to give Miranda warnings and holding that "initial interrogation conducted by an investigator aware of the obvious need for a Miranda warning, followed 90 minutes later by a second, post-Miranda interrogation by the same investigator, on the same subject matter, under similar circumstances and with no explicit curative language amounted to a deliberate, two-step interrogation technique.") United States v. Barnes, 713 F.3d 1200, 1206 (9th Cir. 2013) (reversing and ordering suppression, because federal agents' interrogation more closely resembled Seibert than Elstad); State v. Hickman, 157 Wn.App. at 772 (affirming suppression where detective used Miranda-in-the-middle technique to interrogate a sex offender about his registration failures); State v. Rhoden, 189 Wn.App at 202 (finding deliberate two-step interrogation based on the Williams factors of timing, setting, completeness of first interrogation, continuity of policy personnel, and overlapping content of the second interrogation).

As argued above, the State did not establish that Ms. Lederer received an effective advisement or that she made a knowing, intelligent, and voluntary waiver. On appeal, the adequacy of the required Miranda

warning is reviewed de novo. Williams, 435 F.3d at 1151. Here, this error requires reversal. United States v. Garibay, 143 F.3d 534, 539 (9th Cir.1998), Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967)).

The wrongfully admitted statements were the very reason Ms. Lederer was prosecuted in the first place. Review should be granted, the serious constitutional error in Ms. Lederer's case should be corrected by way of reversal and dismissal, and the lower courts should be guided in how to properly apply the Williams test.

2. THIS COURT SHOULD RULE THAT A CONFESSION TO CONSTRUCTIVE POSSESSION OF DRUGS ACTUALLY FOUND IN THE POCKET OF ANOTHER CANNOT BE ADMITTED, UNDER THE CORPUS DELICTI RULE, UNLESS SOME OTHER EVIDENCE CORROBORATES THE CONSTRUCTIVE POSSESSION THEORY

The 0.7 of a gram of methamphetamine was inside a small plastic baggie in Mr. Kirby's trousers. Mr. Kirby, who was also arrested for this crime, did not testify. RP 49. The State argued that Ms. Lederer had constructive possession over the same drugs. RP 115-16.

Actual possession means that the goods are in the personal custody of the person charged with possession, while constructive possession is established when the person charged with possession has dominion and control over either the drug, State v. Callahan, 77 Wn.2d 27, 29, 459 P.2d

400 (1969), or the premises. State v. Davis, 16 Wn.App. 657, 659, 558 P.2d 263 (1977). 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. Brockob, 159 Wn. 2d 311, 327, 150 P.3d 59, 68 (2006), as amended (Jan. 26, 2007), citing State v. Aten, 130 Wn. 2d 640, 927 P.2d 210 (1996).

A defendant's incriminating statement alone is not sufficient to establish that a crime took place and the State must present other independent evidence to corroborate a defendant's statement. Aten, 130 Wn.2d at 655-56. Here, the State failed to corroborate the notion that Ms. Lederer had constructive possession over the very same baggie that Mr. Kirby actually had on his person. "[T]he State must present evidence independent of the incriminating statement that the crime a defendant described in the statement actually occurred." Brockob at 328. (Emphasis in the original.)

To determine whether there is sufficient independent evidence under the corpus delicti rule, the evidence is reviewed in the light most favorable to the State. Brockob, at 328; Aten at 658.

Both the trial court and the Court of Appeals relied on State v. Solomon, 73 Wn.App. 724, 870 P.2d 1019 (1994) to reject Ms. Lederer's corpus delicti argument. In Solomon, the police executed a search warrant

to seize narcotics at a Seattle apartment. The drugs in question were found in a nightstand. At the scene, Solomon, not the woman whose home the drugs were in, claimed ownership of the drugs to deflect police attention directed at his girlfriend, the apartment owner. Id. at 726.

At trial, Solomon moved to exclude his admission of ownership of the drugs on corpus delicti grounds. Rejecting this argument, the Solomon court said that possession of a controlled substance is not the type of crime where the identity of a particular person must be established as part of corpus delicti. Id. at 727, citing to Bremerton v. Corbett, 106 Wn.2d 569, 573–74, 723 P.2d 1135 (1986); State v. Hamrick, 19 Wn.App. 417, 419, 576 P.2d 912 (1978)). Solomon said: "in a possession case, it is clear that a crime occurred if drugs are in the possession of someone; identity is not essential to establish the fact that a crime occurred." Id.

Ms. Lederer's appeal is different because Mr. Kirby had actual possession of the drugs. This fact does not establish that Ms. Lederer was an accomplice to his drug possession, nor does it show that she had constructive possession of the same drugs found in Kirby's pocket.

A defendant's statement is admissible if the State presents evidence that corroborates "not just a crime but the specific crime with which the defendant has been charged." Brockob, at 329. (Emphasis in the original.) Under Washington law, mere proximity, without more, is

insufficient to establish constructive possession. State v. Callahan, 77 Wn.2d 27, 29, 459 P.2d 400 (1969); State v. Portrey, 102 Wn.App. 898, 902, 10 P.3d 481 (2000).

The evidence below indicated was that Mr. Kirby had an exclusive ownership interest in what was in his pocket, not that someone else was simultaneously in constructive possession of the baggie. Ms. Lederer being near the drugs, or even in the same trailer from which Mr. Kirby emerged, is not enough. The trial court said "the State need only offer proof that someone committed the crime" but this was error. RP 114.

This Court should grant review and limit Solomon and make clear that where one individual has actual possession of contraband, an un-corroborated confession to constructive possession over the same contraband cannot be admitted absent some corroboration." Evidence that simply fails to rule out criminality or innocence does not reasonably or logically support an inference of either." State v. Aten, 79 Wn.App. 79, 91, 900 P.2d 579, 585 (1995) aff'd, 130 Wn.2d 640, 927 P.2d 210 (1996).

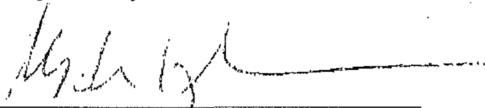
Like in Aten, Ms. Lederer's confession should have been excluded. Review should be granted, the conviction should be reversed and the case dismissed for insufficient evidence.

E. CONCLUSION

Review should be granted under RAP 13.4(b)(2) and (3) to speak to this important constitutional question. This Court should clarify, for the lower courts, how to assess the problems inherent in Miranda-in-the-middle interrogations. Ms. Lederer's conviction should be reversed and dismissed.

DATED this 3rd day of March 2016

Respectfully submitted,



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APPENDIX A

State v. Caitlyn LEDERER – Opinion of Division II in No. 46291-5-II

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. CAITLYN M. LEDERER, Appellant.	No. 46291-5-II UNPUBLISHED OPINION

SUTTON, J. — Caitlyn M. Lederer appeals her conviction for one count of unlawful possession of a controlled substance (methamphetamine). Lederer argues that the trial court erred in not suppressing her post-*Miranda*[1] warning statements because the police officers deliberately used the two-step interrogation procedure to undermine *Miranda* and erred in admitting her statements at trial in violation of the corpus delicti[2] of the crime charged. We hold that Lederer's post-*Miranda* warning statements were admissible and the trial court did not violate the corpus delicti rule. Therefore, we affirm.

FACTS

Corporal Timothy Ripp and Deputy Michael Leiter of the Mason County Sheriff's Office (the officers) went to Lederer's home to arrest her on an outstanding warrant. Lederer was at home

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[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[2] The substantial and fundamental fact or facts necessary to prove the commission of a crime; the material substance upon which a crime has been committed; literally, body of the crime. *Merriam-Webster Unabridged*, *available at* http://unabridged.merriam-webster.com.

with a companion, Dudley Kirby. Kirby answered Ripp's knock on the door. Ripp arrested Lederer. Because Lederer's arrest was due to an outstanding warrant rather than a criminal investigation that would have led to a foreseeable interrogation, Ripp did not immediately read the *Miranda* warnings to Lederer. Meanwhile, after Leiter learned that Kirby also had an outstanding arrest warrant, he arrested Kirby. Leiter searched Kirby incident to arrest and found methamphetamine in Kirby's pants pocket.

Leiter, believing that Ripp had already read Lederer her *Miranda* rights, approached Lederer as she sat in the back seat of Ripp's patrol car, and questioned her about the methamphetamine in Kirby's pocket. Ripp then interrupted Leiter and informed him that he had not yet read the *Miranda* warnings to Lederer. Ripp then advised Lederer that she was being recorded and advised her of her *Miranda* rights. Lederer stated that she understood her rights, and that she agreed to speak to Ripp. Lederer then made several incriminating statements to Ripp and admitted that the methamphetamine in Kirby's pocket belonged to her.

The State charged Lederer with unlawful possession of a controlled substance (methamphetamine). Lederer moved to suppress her post-*Miranda* warning statements and the trial court denied that motion after a CrR 3.5 hearing. The trial court made the following pertinent unchallenged finding of fact:

> [Lederer] was placed in the back of Corporal Ripp's police car in handcuffs. While Corporal Ripp was in the process of operating his dash camera/video, Deputy Leiter opened the back passenger side of Corporal Ripp's police vehicle and questioned [Lederer] about [the] methamphetamine. Whereupon, Corporal Ripp intervened and advised Deputy Leiter that he had not yet read [Lederer] her Miranda rights. Shortly after this exchange Corporal Ripp advised [Lederer] that [she] was being recorded and advised [Lederer] of her Miranda rights. [Lederer] acknowledged that she understood and agreed to speak to Corporal Ripp. [Lederer] made several incriminating statements to Corporal Ripp during the course of an approximately

> thirty minute car ride. At no time did [Lederer] invoke any of her constitutional rights. The conversation was recorded and admitted into evidence as Exhibit 1 and incorporated hereto by reference. In summary, [Lederer] acknowledged that she possessed the methamphetamine that was found in Dudley Kirby's pocket, and that she had used the methamphetamine with Kirby that evening shortly before the police arrived at [her home].

Clerk's Papers (CP) at 6 (Finding of Fact (FF) 5).

The trial court concluded that, after considering the totality of the circumstances surrounding Lederer's custodial interrogation, her self-incriminating statements "were freely and voluntarily given and not coerced." CP at 6 (Conclusion of Law (CL) 1). The trial court further concluded that Lederer "was advised of her Miranda rights and waived her constitutional rights." CP at 6 (CL 2). Lastly, the trial court concluded that "[t]he objective and available subjective evidence, including the officer's testimony, does not support an inference that [the officers] employed a deliberate 'two-step' process designed to coerce [Lederer] or circumvent the requirements of Miranda." CP at 6 (CL 3). Thus, the trial court ruled that Lederer's post-*Miranda* warning statements were admissible because she validly waived her constitutional rights and the officers did not deliberately circumvent *Miranda*.

Lederer also moved to exclude her statements under the corpus delicti rule, arguing that her post-arrest statements were the only evidence of her constructive possession of the methamphetamine. The trial court denied that motion, concluding that the State provided independent evidence that supported "a logical and reasonable inference that the crime of unlawful possession of a controlled substance occurred." CP at 7 (CL 4).

Following a bench trial, the trial court found Lederer guilty as charged. Lederer appeals.

ANALYSIS

I. POST-*MIRANDA* STATEMENTS

Lederer argues that her post-*Miranda* warning statements were inadmissible because the officers failed to give the *Miranda* warnings before questioning her about the methamphetamine, and Ripp provided the *Miranda* warnings mid-interrogation, after she had admitted it was hers. She argues that the officers deliberately employed this two-step interrogation procedure in violation of her constitutional rights.[3] We disagree.

A. STANDARD OF REVIEW

We review a trial court's ruling on a motion to suppress evidence to determine whether substantial evidence supports the trial court's findings of fact and whether the findings of fact support the trial court's conclusions of law. *State v. Russell*, 180 Wn.2d 860, 866, 330 P.3d 151 (2014). Substantial evidence is evidence that is sufficient to persuade a fair-minded person of the truth of the stated premise. *Russell*, 180 Wn.2d at 866-67. We review conclusions of law de novo. *Russell*, 180 Wn.2d at 867. Unchallenged findings of fact are verities on appeal. *State v. Homan*, 181 Wn.2d 102, 106, 330 P.3d 182 (2014).

B. LEGAL PRINCIPALS ON TWO-STEP INTERROGATION PROCEDURE

The Fifth Amendment and the Washington Constitution guarantee the right against self-incrimination. U.S. CONST. amends. V, XIV; CONST. art. I, § 9. Before subjecting a suspect to custodial interrogation, an officer must first provide the suspect with the *Miranda* warnings—that he or she has the right to remain silent, anything he or she says can be admitted in court against

[3] There is no dispute that Lederer's pre-*Miranda* statements are inadmissible.

him or her, the suspect has a right to an attorney, and if he or she cannot afford an attorney, the court will appoint one. *State v. Piatnitsky*, 180 Wn.2d 407, 412, 325 P.3d 167 (2014), *cert. denied*, 135 S. Ct. 950 (2015).

The two-step interrogation procedure occurs when an interrogator questions a suspect without first providing the *Miranda* warnings, and the suspect makes incriminating statements; then only after the interrogator provides the *Miranda* warnings and the suspect waives his or her rights, the interrogator again questions the suspect and obtains a second set of statements. *See Missouri v. Seibert*, 542 U.S. 600, 124 S. Ct. 2601, 159 L. Ed. 2d 643 (2004). We utilize the *Williams* test to determine the admissibility of statements made after a two-step interrogation procedure. *State v. Rhoden*, 189 Wn. App. 193, 201-02, 356 P.3d 242 (2015); *U.S. v. Williams*, 435 F.3d 1148 (9th Cir. 2006) (holding that post-*Miranda* statements may be admissible after a deliberate use of a two-step interrogation procedure if curative measures are present).

First, we determine whether the officer deliberately used the two-step interrogation procedure to undermine the effectiveness of the *Miranda* warnings after the suspect has already confessed. *Rhoden*, 189 Wn. App. at 200-01. We consider the objective evidence and "any available subjective evidence, such as an officer's testimony," to determine whether the record supports an inference that the two-step interrogation procedure was used to undermine the *Miranda* warnings. *Rhoden*, 189 Wn. App. at 201 (internal quotation marks omitted) (quoting *U.S. v. Williams*, 435 F.3d at 1158). Second, if we determine that the interrogator deliberately used the two-step interrogation procedure, we then determine whether the officer's *Miranda* warnings were adequate to advise the suspect of the choice to remain silent after the first admission. *Rhoden*, 189 Wn. App. at 201.

However, if we determine that the interrogator did *not* deliberately use the two-step interrogation procedure, the admissibility of post-*Miranda* warning statements is governed by *Oregon v. Elstad*, 470 U.S. 298, 105 S. Ct. 1285, 84 L. 3d. 2d 222 (1985). *State v. Hickman*, 157 Wn. App. 767, 775, 238 P.3d 1240 (2010) (quoting *Williams*, 435 F.3d at 1157-58). Under *Elstad*, a suspect's statements after voluntary waiver of his or her constitutional rights will not be suppressed unless the interrogator obtained the waiver by "actual coercion or other circumstances calculated to undermine the suspect's ability to exercise his [or her] free will. *Elstad*, 470 U.S. at 309. The coercion must so taint the investigatory process that "a subsequent voluntary and informed waiver is ineffective for some indeterminate period." *Elstad*, 470 U.S. at 309.

The State bears the burden of demonstrating a voluntary waiver by a preponderance of the evidence. *State v. Campos-Cerna*, 154 Wn. App. 702, 709, 226 P.3d 185 (2010). We review de novo whether the defendant's waiver was valid by considering the totality of the circumstances. *Campos-Cerna*, 154 Wn. App. at 708.

C. LEDERER'S POST-*MIRANDA* WARNING STATEMENTS ARE ADMISSIBLE

Lederer argues that she did not validly waive her constitutional rights after Ripp read her the *Miranda* warnings because the objective evidence demonstrated that Ripp and Leiter deliberately used the two-step interrogation procedure and the *Miranda* warnings did not effectively advise her of her constitutional rights. We disagree.

The trial court's finding of fact 5, to which Lederer does not assign error, supports the conclusion of law that the officers did not deliberately use the two-step interrogation procedure. While Ripp, was occupied with operating his dash camera, Leiter approached Lederer while she was handcuffed in the backseat of Ripp's police car and began to ask her questions. CP at 5 (FF

5). However, Ripp "intervened" and informed Leiter that Lederer had not yet been advised of her *Miranda* rights. CP at 5 (FF 5). Ripp then read Lederer her *Miranda* rights and advised her that she was being recorded. CP at 5 (FF 5). In *Hickman*, this court held that there existed objective evidence that the officer deliberately employed the two-step interrogation procedure when the officer explained that an interview would involve two parts, an "administrative" portion and an "investigati[ve]" portion, and the person would receive the *Miranda* warnings only before the investigative portion, yet the officer elicited incriminating information in both portions. *Hickman*, 157 Wn. App. at 770, 775. However, here the trial court's findings of fact do not contain any objective evidence that the officers deliberately used the two-step interrogation procedure because Leiter was not aware that Lederer had not yet been given her the *Miranda* warnings before he began questioning her and Ripp intervened to interrupt the questioning and provide Lederer with her *Miranda* rights.

Because the findings here do not contain any evidence of deliberate intent to undermine the effectiveness of the *Miranda* warnings, *Elstad* governs whether Lederer's post-*Miranda* statements followed a voluntary waiver of her rights. *Hickman*, 157 Wn. App. at 775. The trial court's unchallenged findings of fact support the conclusion of law that Lederer voluntarily waived her constitutional rights. The findings do not demonstrate that the officers coerced Lederer into waiving her rights. Instead, Lederer affirmatively acknowledged that she understood her rights and agreed to speak to Ripp before making several self-incriminating statements. Thus, Lederer validly waived her rights. Therefore, Lederer's self-incriminating post-*Miranda* statements were admissible.

II. CORPUS DELICTI

Lederer also argues the trial court erred in admitting her post-*Miranda* warning statements in violation of the corpus delicti of the crime charged. We disagree.

The term "corpus delicti" means the "'body of the crime.'" *State v. Brockob*, 159 Wn.2d 311, 327, 150 P.3d 59 (2006) (internal quotation marks omitted) (quoting *State v. Aten*, 130 Wn.2d 640, 655, 927 P.2d 210 (1996)). Under the corpus delicti rule, a conviction cannot be supported solely by the defendant's own self-incriminating statements. *State v. Dow*, 168 Wn.2d 243, 249, 227 P.3d 1278 (2010). The State must produce independent evidence other than the defendant's confession to provide prima facie corroboration that the crime described in the defendant's statement actually occurred, but this evidence need not be sufficient to support the conviction on a sufficiency of the evidence basis. *Brockob*, 159 Wn.2d at 328. "Prima facie corroboration of a defendant's incriminating statement exists if the independent evidence supports a 'logical and reasonable inference' of the facts sought to be provided." *Brockob*, 159 Wn.2d at 328 (internal quotation marks omitted) (quoting *Aten*, 130 Wn.2d at 656). We review whether the State presented independent evidence under the corpus delicti rule in the light most favorable to the State. *Brockob*, 159 Wn.2d at 328.

Here, the crime described in Lederer's self-incriminating statement, that the methamphetamine belonged to her, was unlawful possession of a controlled substance under RCW 69.50.4013.[4] Leiter found the methamphetamine in Kirby's pocket. Lederer argues that the State did not present sufficient evidence of corpus delicti because it did not identify independent evidence that *she* committed the crime of possession of a controlled substance.

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[4] "It is unlawful for any person to possess a controlled substance." RCW 69.50.4013.

However, proof of the identity of the person who committed the crime is not generally essential to satisfy the corpus delicti rule. *State v. Solomon*, 73 Wn. App. 724, 728, 870 P.2d 1019 (1994). While some crimes require proof of identity to satisfy corpus delicti because they cannot be proved without identifying a particular person, like attempt, conspiracy, or perjury, the crime of unlawful possession of a controlled substance is *not* a crime that requires proof of identity of a particular person. *Solomon*, 73 Wn. App. at 728. "Rather, in a possession case, it is clear that a crime occurred if drugs are in the possession of someone; identity is not essential to establish the fact that a crime occurred." *Solomon*, 73 Wn. App. at 728. The State need not present independent proof that the defendant, in particular, possessed the controlled substance. *See Solomon*, 73 Wn. App. at 729.

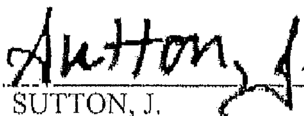
Lederer distinguishes *Solomon* because there the police found cocaine on a dresser where "it stood to reason that *someone* had constructive possession over them" whereas here Leiter found the methamphetamine in Kirby's *actual* possession. Br. of Appellant at 29-30. She argues that Kirby's actual possession prevents the inference that a different crime had occurred, her *constructive* possession. Br. of Appellant at 30. But Lederer cites no authority for the proposition that constructive possession of a controlled substance and actual possession of a controlled substance are different crimes and RCW 69.50.4013 makes no such distinction. The State may prove unlawful possession of a controlled substance through either actual or constructive possession. *State v. Hathaway*, 161 Wn. App. 634, 645-46, 251 P.3d 253 (2011).

Thus, the State presented sufficient independent evidence, specifically Leiter's discovery of methamphetamine, that the crime of unlawful possession of a controlled substance had occurred. Therefore, the trial court did not err in ruling that the State had satisfied the corpus delicti rule.

CONCLUSION

We hold that Lederer's post-*Miranda* warning statements were admissible and that the trial court did not violate the corpus delicti rule. Therefore, we affirm.

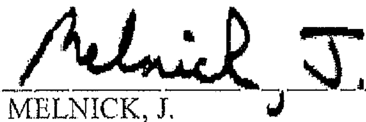
A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



SUTTON, J.

We concur:

WORSWICK, P.J.



MELNICK, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division Two** under **Case No. 46291-5-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered by other court-approved means to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

☒ respondent Timothy Higgs [timh@co.mason.wa.us]
Mason County Prosecuting Attorney

☐ appellant

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant   Date: March 3, 2016
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