

70965-8

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No. 70965-8-I

**COURT OF APPEALS  
OF THE STATE OF WASHINGTON,  
DIVISION ONE**

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**STATE OF WASHINGTON, Respondent,**

**v.**

**RAYMOND EDWARDS, Appellant.**

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**BRIEF OF RESPONDENT**

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**TABLE OF CONTENTS**

A. ISSUES ..... 1

B. FACTS ..... 1

C. ARGUMENT ..... 5

    1. The trial court did not err in concluding Edwards’ first statement was admissible as a spontaneous and voluntary statement or that his post arrest statement was admissible after he voluntarily, knowingly and intelligently chose to waive his right to remain silent by choosing to talk to officer Torgeson.. 5

        a.) Edwards’ pre-arrest spontaneous admission was voluntary and admissible. .... 7

        b.) The record also reflects that Edwards knowingly, intelligently and voluntarily agreed to talk to officer Torgeson following his arrest after being advised and acknowledging his Miranda warnings. .... 9

D. CONCLUSION ..... 12

## TABLE OF AUTHORITIES

<u>Miranda v. Arizona</u> , 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).....	9
<u>United States v. Mendenhall</u> , 446 U.S. 544, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980).....	7
<u>State v. Aten</u> , 130 Wn.2d 640, 927 P.2d 210 (1996).....	9
<u>State v. Cuzzetto</u> , 76 Wn.2d 378, 457 P.2d 204 (1969).....	9
<u>State v. Guloy</u> , 104 Wn.2d 412, 705 P.2d 1182 (1985).....	11
<u>State v. Mendez</u> , 137 Wash. 2d 208, 970 P.2d 722 (1999) <u>abrogated by</u> <u>Brendlin v. California</u> , 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007).....	6
<u>State v. O'Neill</u> , 148 Wn.2d 564, 62 P.3d 489 (2003).....	7, 8
<u>State v. Ortiz</u> , 104 Wn.2d 479, 706 P.2d 1069 (1985).....	9
<u>State v. Rankin</u> , 151 Wn.2d 689, 92 P.2d 202 (2004).....	7
<u>State v. Young</u> , 135 Wash. 2d 498, 957 P.2d 681 (1998).....	8
<u>State v. Aranguren</u> , 42 Wn.App. 452, 711 P.2d 1096 (1985).....	7
<u>State v. Nettles</u> , 70 Wn.App. 706, 855 P.2d 699 (1993).....	8

State v. Thomas,  
91 Wn.App. 195, 955 P.2d 420..... 7

**A. ISSUES**

1. Whether there is substantial evidence in the record to support the trial court's conclusion that Edwards pre-arrest and post arrest statements were admissible where Edwards was pre-arrest statement was spontaneous and not made while in custody or during custodial interrogation and where Edwards post arrest statement was made after he was informed and acknowledged he understood his Miranda warnings and wished to speak to Officer Torgeson notwithstanding that Edwards appeared to be under the influence of drugs.

**B. FACTS**

Raymond Edwards was convicted of unlawful possession of a controlled substance, methamphetamine and one count of bail jumping following a jury trial. CP 36-42. Prior to trial, Edward moved to suppress two incriminating statements he made to officers before and after his arrest. RP 10-11.

Following a CrR 3.5 hearing, the trial court determined the first statement Edwards made prior to his arrest, that "he had used meth earlier that day" was a spontaneous voluntary statement and therefore admissible. The trial court also determined the statement Edwards made after his arrest, that the bag found on his person incident to arrest contained methamphetamine was admissible because Edwards knowing, voluntary and intelligently waived of his right to remain silent by agreeing after being informed and acknowledging his understanding of his rights, to talk

to officers. RP 47-48, Supp. CP \_\_, Sub Nom. 79, (Findings of fact, conclusion of law).

Edwards was subsequently convicted after a jury trial and sentenced on August 29<sup>th</sup> 2013. On April 18<sup>th</sup> 2014 belated findings of fact were entered by the trial court at the request of trial counsel and a deputy prosecuting attorney filling in for now-retired chief criminal prosecutor Mac Setter, after the trial division was notified that findings needed to be completed. Supp. CP \_\_, Sub Nom. 77, 79 (findings of fact, conclusions of law, Affidavit of DPA Christopher Quinn). Deputy Prosecutor Quinn did not have access to Edwards' opening brief or to the issues specifically raised herein and was only requested to complete the requisite findings with Edwards' trial attorney based on transcript completed following the hearing. *Id.* Edwards requested this Court remand this matter to Superior Court to remedy the Court's failure to enter findings. In light of the findings having now been filed, remand is not necessary and dismissal having not been requested, would not be appropriate under the facts of this case.

*Suppression hearing facts*

On June 14<sup>th</sup> 2012, Ferndale officer Mike Catrain was dispatched to a report of an assault in progress involving Edwards and woman.

Reports indicated that Edwards was acting irrationally. Supp. CP \_\_, Sub Nom. 79, FF 1, RP 12. When Officer Catrain pulled into the parking lot of Habitat for Humanity, someone pointed out a parked car where he observed a man sitting in the passenger seat of the vehicle and a woman who appeared agitated and distressed, sitting in the driver's seat. Supp. CP \_\_, Sub Nom. 79, FF 2, RP 13-14. After confirming the woman was ok, Officer Catrain approached Edwards, who was still sitting in the passenger seat of the parked vehicle and asked what was going on since he was unsure of Edwards' physical or mental condition at this time. Supp. CP \_\_, Sub Nom. 79, FF 4, RP 16. Edwards was not under arrest nor did Officer Catrain physically detain or restrict Edwards' movements when he approached Edwards to access. Supp CP \_\_, Sub Nom. 79, FF 6, RP 15-16. Edwards was rocking back and forth, was fidgety and appeared unfocused. Supp CP \_\_ Sub Nom. 79, FF 4, RP 17. Edwards responded that he had used Meth that morning. Supp CP \_\_, Sub Nom. 79, FF 5, RP 15. The officer did not think Edwards was exhibiting a mental condition but did think he was in an altered state perhaps due to drugs. Supp CP \_\_, Sub Nom. 79, FF 4, RP 17-18.

When Edwards was then asked to step from the vehicle, notwithstanding that he was probably under the influence of something, he understood and did so. Supp CP \_\_ Sub Num. 79, FF 10, RP 15. After

additional officers arrived on-scene and determined Edwards should be arrested for assaulting the woman on-scene, Officer Torgeson approached Edwards, now sitting on the curb, asked him to stand up, turn around and place his hands behind his back. Supp CP \_\_, Sub Num 79, FF 8, 10, RP 24. Torgeson also requested Edwards interlace his fingers behind his head. Edwards appeared to understand the requests and was able to comply with all of the Officer Torgeson's requests without issue. Supp CP \_\_, Sub Num. 79, FF 10, RP 24.

A search of Edward's person for officer safety purposes revealed a clear bag with what appeared to be methamphetamine crystals inside of it. RP 25, Supp CP \_\_, Sub Num. 79, FF 9. Officer Torgeson then read Edwards his Miranda warnings in full and asked if Edwards understood and with those rights in mind knew whether Edwards wished to talk to him. Supp CP \_\_, Sub Num 79, FF 11, RP 28, 29. Edwards responded 'yes' or 'ah-hun'. Supp CP \_\_, Sub Num. 79, FF 12. Torgeson then asked Edwards what was in the bag and Edwards responded "meth." Supp CP \_\_, Sub Num. 79, FF 13, RP 30. Edwards, while appearing under the influence of something, acted cooperatively, followed all directions and verbally responded and acted in an appropriate manner throughout his contact with law enforcement. RP 39, 24. Towards the end of Torgeson's contact with Edwards, he noticed Edwards' alertness was decreasing, that

he would gaze off and was twitching and getting anxious. Supp CP \_\_\_, Sub Num. 79, FF 15, RP 36, 37. Knowing the jail would require a 'fit for release' report, particularly when it appeared Edwards was decompensating, Torgeson determined it would be best to call an aid car. Supp CP \_\_\_, Sub Nom. 79, FF 15, RP 38. Paramedics subsequently determined Edwards should be taken to the hospital before being released to the jail. RP 38. Once at the hospital the Ferndale Officers were informed by their Superior to release Edwards so they could return to the field. RP 38. Neither officer thought Edwards would have a lengthy stay but they were not sure what or how long that meant. RP 38. At no time during the officer's twenty five minute contact with Edwards, did Edwards act or respond inappropriately. RP 39.

### C. ARGUMENT

1. **The trial court did not err in concluding Edwards' first statement was admissible as a spontaneous and voluntary statement or that his post arrest statement was admissible after he voluntarily, knowingly and intelligently chose to waive his right to remain silent by choosing to talk to officer Torgeson.**

Edwards contends that his pre and post-arrest statements in this case were 'drug induced' and therefore 'not the product of free intellect.' Br. of App. at 7. Specifically, Edwards asserts that any 'questioning' that

produces a confession that his not the product of free intellect and free will renders the confession inadmissible under the Fifth Amendment. *Id.*

Edwards was not “questioned” prior to being arrested in a manner that anyone would expect him to make an incriminating statement. He was not in custody, was not in a coercive environment and the officer simply asked him what was going on. Therefore, Edwards’ pre-arrest spontaneous admission that he had been doing meth is admissible. *State v. Ortiz*, 104 Wn.2d 479, 706 p.2d 1069 (1985).

Furthermore, there is substantial evidence in the record that, despite Edwards appearing to be under the influence of something, he was cooperative, understood and followed multiple directions during his contact with Officer Catrain and subsequently, Officer Torgeson. The record also reflects that Edwards acknowledged his Miranda warnings as read to him and thereafter affirmatively agreed to speak to Officer Torgeson. Under these circumstances, the trial court did not err in concluding Edwards post arrest admission was admissible.

A trial court’s determination that a statement is voluntary and admissible is not disturbed on appeal if there is substantial evidence in the record from which the trial court could have found the statements admissible by a preponderance of the evidence. Substantial evidence is

evidence in the record sufficient to persuade a reasonable person of the finding. Mendez, 137 Wash. 2d, 214.

***a.) Edwards' pre-arrest spontaneous admission was voluntary and admissible.***

There are no facts to support any argument in this case that Edwards was in custody or improperly seized or involuntarily responded when Officer Catrain initially approached Edwards as he sat in the parked vehicle in the Humane Society parking lot. An occupant of a vehicle in a public parking lot does not have the same expectation of privacy in a vehicle parked in a private place because he or she is accessible to anyone approaching. State v. O'Neill, 148 Wn.2d 564, 579, 62 P.3d 489 (2003). Edwards was approached by Officer Catrain over concerns that there had been a domestic dispute with the distressed female sitting in the driver's seat.

Not every encounter between a police officer and a citizen is an intrusion requiring an objective justification. State v. Rankin, 151 Wn.2d 689, 92 P.2d 202 (2004), *quoting*, Mendenhall, 446 U.S., 553. Moreover, a police officer has not seized an individual merely by approaching him in a public place and asking him questions, as long as the individual need not answer questions and may walk away. State v. Thomas, 91 Wn.App. 195, 200, 955 P.2d 420, *review denied*, 136 Wn.2d 1030, 972 P.2d 467 (1988).

A person is seized only if, “in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. State v. Aranguren, 42 Wash. App. 452, 711 P.2d 1096 (1985). Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the citizen, or the use of language or tone of voice indicating that compliance with the officers is required. None of these factors were present in this case. *See*, State v. Young, 135 Wn.2d 498, 506, 957 P.2d (1998), State v. O’Neill, 148 Wn.2d 564, 62 P.3d 489 (2003). Police officers must be able to approach citizens and engage in conversation as part of their “community caretaking function.” State v. Nettles, 70 Wn.App. 706, 712, 855 P.2d 699 (1993).

Upon approaching the parked, occupied car that Edwards was sitting in, Officer Catrain simply asked Edwards what was going on and Edward replied on his own accord that he had used “meth.” These circumstances do not reflect Edwards was in custody or unlawfully seized such that Miranda warnings were required, that the circumstances or question was coercive or that Edwards’ response was involuntary. *See*, State v. Milner, 22 Wn.App. 480, 591 P.2d 812 (1979), (statements which are freely given, spontaneous, unsolicited and not the product of custodial

interrogation, are admissible and not coerced such that suppression is required under Miranda.) The trial court therefore did not err in concluding that Edwards' pre-arrest spontaneous, incriminating statement that he had used meth earlier that day, was admissible.

***b.) The record also reflects that Edwards knowingly, intelligently and voluntarily agreed to talk to officer Torgeson following his arrest after being advised and acknowledging his Miranda warnings.***

The trial court additionally did not err, looking at the totality of the circumstances, in determining that Edwards voluntarily, knowingly and intelligently waived his rights and agreed to talk to Officer Torgeson.

Pursuant to Miranda, 384 U.S. 436, a confession is voluntary and admissible if made after the defendant is advised of his rights and he knowingly, voluntarily and intelligently waives those rights.

Voluntariness, for purposes of the 5<sup>th</sup> Amendment, is determined from a totality of the circumstances under which the confession or statement is made. State v. Aten, 130 Wn.2d 640, 927 P.2d 210 (1996). A defendant's use of drugs at the time the statement is made may be considered, but those facts do not necessarily render a confession involuntary. State v. Ortiz, 104 Wn.2d 479, 706 P.2d 1069 (1985), State v. Gardner, 28

Wn.App. 721, 723, 626 P.2d 56, *review denied*, 95 Wn.2d 1027 (1981), State v. Cuzzetto, 76 Wn.2d 378, 457 P.2d 204 (1969) (defendant's condition at the time he made statements relied upon by the state was not comparable to the few cases where drugs or alcohol rendered statements inadmissible; he was not helplessly drunken, hysterically babbling or obviously mentally defective. The trial court therefore did not err when it admitted defendant's statements.)

Substantial evidence in the record reflects that Edwards, while allegedly acting 'crazy' prior to the officers' arrival on scene and observed to be in an altered state once on scene, was nonetheless compliant, cooperative, followed multiple directions and was appropriately responsive during the twenty-five minutes that officers were in contact with him. Edwards not only followed directions and was responsive, he additionally affirmatively acknowledged that he understood his rights as read to him and thereafter agreed to speak to officer Torgeson to confirm there was meth in the baggie found on his person. Under these circumstances, the trial court's conclusion that Edwards voluntarily, knowingly waived his rights and that his post arrest statement was admissible was appropriate and supported by substantial evidence in the record.

Moreover, the record reflects that Officer Torgeson became more concerned with Edwards' altered state toward the end of his contact, noticing Edwards was losing focus, was becoming twitchy and had decreased alertness. RP 34-36. These observations and determination to call a medic to check Edwards out, does not render Edwards prior statements involuntary. The record does not reflect that when Edwards made both his pre and post arrests statements, did not understand what was going on. To the contrary, Edwards followed directions, answered questions, acknowledged he understood his rights and then appropriately responded to officer Torgeson's question. Under the totality of circumstances presented to the trial court in this case, Edwards' statements were voluntarily and knowingly made and therefore admissible.

Even if the trial court erred in admitting Edwards' post arrest statements, the error was harmless because there was overwhelming untainted evidence to support Edwards' guilt, notwithstanding Edwards' confirmation that the baggie contained meth. State v. Guloy, 104 Wn.2d 412, 426, 705 P.2d 1182 (1985). Edwards stated that he had used meth and then was found in possession of methamphetamine. Even with Edwards' assertion of unwitting possession at trial, such evidence overwhelmingly supports the jury's verdict and therefore, even if the post arrest statement was admitted in error, such error was harmless.

**D. CONCLUSION**

The State of Washington respectfully requests this court to affirm the trial court's determination that Edwards' statements were admissible and affirm Edwards's conviction below.

DATED this 10<sup>th</sup> day of June, 2014.



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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington, that on the date stated below, I placed in the U.S. mail with proper postage thereon, or otherwise caused delivery of Brief of Respondent to Appellant's counsel, addressed as follows:

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\_\_\_\_\_  
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Date