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Court of Appeals
Division I
State of Washington

NO. 74217-5-I

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

STATE OF WASHINGTON

Respondent

v.

TRAVIS L. RIFE,

Appellant

BRIEF OF RESPONDENT

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I. ISSUES

1. Was the search of a backpack attached to the back of the defendant's wheelchair a search of the person incident to arrest?

2. After arresting the defendant but before giving the defendant Miranda warnings an officer asked if there was anything in the defendant's backpack that would stick him. Were the defendant's responses admissible under the public safety exception to the Miranda requirement?

3. Were other statements the defendant made pre-arrest and post-advisement of Miranda rights admissible?

4. If the court erred in finding some of the defendant's statements were admissible under the public safety exception to the Miranda requirement, was that error harmless?

II. STATEMENT OF THE CASE

On July 29, 2015 about 3:30 a.m. Officer Nicholas Haughian saw the defendant, Travis Rife, sitting in his wheelchair at the 22700 block of Highway 99 in Edmonds, Washington. The officer had confirmed through dispatch that Mr. Rife had warrants for his arrest. The officer contacted the defendant and confirmed that the defendant was aware that he had warrants outstanding for his arrest. 9/17/15 RP 7-8.

Officer Haughian arrested the defendant on those warrants. The officer put handcuffs on the defendant while he was still seated in his wheelchair. The officer searched the defendant's person partially while he was still seated, and partially after the defendant had been helped to his feet. During that search the officer found a pipe in the defendant's pants pocket. 9/17/15 RP 8-9.

The officer then placed the defendant in the patrol car. The defendant had a backpack attached to the back of his wheelchair and a rolling bucket next to him when the officer contacted him. The shoulder straps of the backpack were slung over the corners of the back of the chair so that when the defendant was seated in the chair it was in the same position as if he had been wearing it. The officer could not leave the backpack, wheelchair, and bucket on the streets so he put them in the patrol car to be brought to the police station for safekeeping. 9/17/15 RP 12-14.

Before placing the items in the patrol car the officer searched the backpack and bucket. He asked the defendant if there was anything in the pack that would stick him. The defendant told the officer that there were some "rigs" in his pack. The defendant explained that those were needles used for ingesting drugs. The officer then searched the backpack and bucket incident to the

defendant's arrest. He found an eyeglass case in the pack that contained another pipe and some white crystal substance. He also found the "rigs" the defendant had referred to. 9/17/15 RP 10-11.

After the defendant was placed in the patrol car the officer read the defendant his Miranda warnings. The defendant agreed to talk to the officer. He explained to the officer that the white substance was methamphetamine and that the pipes were used for ingesting that drug. 9/17/15 RP 14-18.

The defendant was charged with one count of possession of a controlled substance, methamphetamine and one count of possession of drug paraphernalia. 1 CP 72. The court denied his motion to suppress evidence found in the search of the backpack. 1 CP 63-66. It also denied the defendant's motion to suppress statements he made to the officer. 1 CP 67-71. The defendant was found guilty after bench trial on agreed documentary evidence. 10/19/15 RP 12-14; 1 CP 35-36.

III. ARGUMENT

A. THE SEARCH OF THE BACKPACK WAS JUSTIFIED AS A SEARCH INCIDENT TO ARREST.

Generally warrantless searches are prohibited by the Fourth Amendment and Art. 1, §7 of the Washington Constitution. State v. Garvin, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). There are a

few exceptions to the warrant requirement. State v. Byrd, 178 Wn.2d 611, 616, 310 P.3d 793 (2013). A search incident to a lawful arrest is one recognized exception to that requirement. State v. Smith, 119 Wn.2d 675, 678, 835 P.2d 1025 (1992). The exception is based on the need for officer safety and to prevent the destruction of evidence of the crime of arrest. State v. Patton, 167 Wn.2d 379, 386, 219 P.3d 651 (2009).

There are two distinct concepts incorporated into the search incident to arrest exception. Byrd, 178 Wn.2d at 617. The first concept involves a search of the area within the control of the arrestee in which he may reach to obtain a weapon or evidence of a crime. Chimel v. California, 395 U.S. 752, 763, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969); State v. Snapp, 174 Wn.2d 177, 190, 275 P.3d 289 (2012). Under that theory the validity of the search is dependent on whether the arrestee could have reasonably obtained a weapon or evidence from the area searched. Chimel, 395 U.S. at 768; State v. Valdez, 167 Wn.2d 761, 777, 224 P.3d 751 (2009).

The second involves a search of the person of the arrestee. United States v. Robinson, 414 U.S. 218, 224, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973); Byrd, 178 Wn.2d at 617. That exception

requires no justification other than a lawful arrest. Robinson, 414 U.S. at 232; Byrd, 178 Wn.2d at 617-618.

The trial court found that the search of the defendant's backpack fell under the second kind of search incident to arrest. It concluded that "the defendant's backpack constitutes a personal effect immediately associated with the defendant's person, and was within the defendant's immediate control and access immediately preceding and at the time of his arrest." 1 CP 66. The defendant challenges this conclusion arguing that because the backpack was not on his person nor in his arms the time of arrest it did not fall within the search of the person incident to arrest exception to the warrant requirement.

The scope of a search of the person incident to a lawful arrest extends to all articles in an arrestee's actual and exclusive possession at or immediately preceding the time of arrest. Byrd, 178 Wn.2d at 623. It does not include items within the arrestee's constructive possession. Id. Rather the exception applies "only to articles 'in such immediate physical relation to the one arrested as to be in a fair sense a projection of his person.'" Id. quoting United States v. Rabinowitz, 339 U.S. 56, 78, 70 S.Ct. 430, 94 L.Ed. 653 (1950) (Frankfurter, J., dissenting).

The search of the person incident to arrest exception applied to a purse held in an arrestee's lap at the time of her arrest. Byrd, 178 Wn.2d at 623. Similarly backpacks and briefcases in the hands of an arrestee at or immediately before the time of arrest may be included in the search of the person because they are closely associated with the arrestee's person at that time. State v. MacDicken, 179 Wn.2d 936, 941, 319 P.3d 31 (2014) (the police searched a briefcase held by the defendant at the time of his arrest); State v. Brock, 184 Wn.2d 148, 159, 355 P.3d 1118 (2015) (the arrestee was wearing a backpack immediately before his arrest which police searched incident to arrest.)

An item need not be in physical contact with an arrestee's body at the time of arrest in order to fall under the search of the person exception as the defendant argues. A backpack sitting between an arrestee's feet at the time of arrest was in the arrestee's possession and therefore subject to search of his person incident to arrest in State v. Ellison, 172 Wn. App. 710, 718, n. 4, 291 P.3d 921 (2013), review denied, 180 Wn.2d 1014 (2014). Similarly, in the context of deciding the scope of search of a premises pursuant to a search warrant, the court found that a purse resting next to a chair on which a woman was seated was under

her control in State v. Worth, 37 Wn. App. 889, 893-94, 683 P.2d 622 (1984). The court found that it would undercut the purpose of the Fourth Amendment to focus narrowly on whether the purse was held or worn by the woman. Such analysis would leave a readily identifiable personal effect of the woman subject to search even where she was not the subject of the search warrant. Id. When considering the validity of a search of a non-arrested passenger in a vehicle the court reiterated that "personal items may be so intimately connected with an individual that a search of the items constitutes a search of the person. Personal effects need not be worn or held to fall within the scope of protection." State v. Parker, 139 Wn.2d 486, 499, 987 P.2d 73 (1999)(citation omitted).

In Byrd the court explained that the State was required to justify a search of every article "not on the arrestee's person or closely associated with the arrestee's person at the time of his or her arrest." Byrd, 178 Wn.2d at 625. In Brock the court went on to explain why officers need not articulate any further officer safety or evidence preservation justification when searching an item closely related to the person subject to arrest. Because an officer seizes items closely related to an arrestee at the time of arrest, and will have to transport those items with the arrestee, the officer has the

authority to search those items pursuant to the search of the arrestee incident to arrest. Brock, 184 Wn.2d at 156-158.

Here the backpack was attached to the defendant's wheelchair. Since the defendant's mobility was dependent on the wheelchair it could be fairly characterized as a "projection of the person" of the defendant. Having attached the backpack to his wheelchair the defendant was effectively wearing the backpack.

Whether the pack was hung on his shoulders or hung on the corners of his chair by his shoulders the defendant would have to take some action to access the backpack. He would need to either remove it from his shoulders, or reposition himself in his chair to access the pack. 9/17/15 RP 30. A backpack worn at or near the time of arrest is subject to search under the search of the person justification. Brock, 184 Wn.2d at 159. Since the backpack was "worn" on the wheelchair the defendant relied on for mobility it fell under the same justification. It was not necessary for the backpack to be in actual physical contact with the defendant's body to be in his actual possession at the time of arrest for the search of the person incident to arrest exception to the warrant requirement to apply.

It also was subject to search under that exception because it was being transported with the defendant. In Brock the court contemplated that items closely associated with the defendant would be brought to jail with him because there was no other place to safely stow it, and therefore fell under the search of the person exception. Brock, 184 Wn.2d at 159. Here the defendant's belongings were taken to the police station for safekeeping because the jail would not accept those items. 9/17/15 RP 14. Where the items were stored makes no difference in the analysis however. The critical point is that the items were transported from the location of the arrest because they were items closely associated with the defendant and there was no other safe place to keep them. The same safety concerns related to storing the defendant's personal effects to where they are stored, either at a jail or a police station, are also present for the officer transporting the items in his patrol car. Ellison, 172 Wn. App. at 722 (finding officer safety concerns justified searching the defendant's backpack before putting it in the patrol car for transport with the defendant).

The defendant argues that despite the authority approving a search of an arrestee's bags closely associated with him at the time of arrest, closed bags have special protection from search because

they are intended to safeguard the person's privacy. BOA at 11-12. He relies on State v. Wisdom, 187 Wn. App. 652, 670 349 P.3d 953 (2014). That case dealt with the search of a bag left on the seat of a stolen vehicle from which the defendant had been arrested. The court analyzed the search of the bag under the search incident to arrest exception by considering whether it was in the area of the defendant's control. Id. at 672. It did not consider whether the bag was an item on or closely associated with the defendant's person at the time of arrest. Id. Because it dealt with a different aspect of the search incident to arrest exception to the warrant requirement, it has no application to the analysis in this case.

B. THE DEFENDANT'S STATEMENTS WERE PROPERLY ADMISSIBLE AT TRIAL. IF THERE WAS ERROR IN ADMITTING THE DEFENDANTS STATEMENTS IT WAS HARMLESS.

Before the defendant was taken into custody he responded to two questions from police, confirming his identity and confirming that he was aware that he had warrants for his arrest. 9/17/15 RP 7-8, 20. After he was arrested but before he was given Miranda warnings the officer asked the defendant if there was anything in the backpack that would stick the officer, and where that item was located in the backpack. The defendant told the officer that he had some "rigs" and explained what those were. 9/17/15 RP 10-11.

The officer then read the defendant his Miranda warnings. The defendant agreed to talk to the officer. He told the officer the white substance in his backpack was methamphetamine, and gave various slang terms for that drug. He also said the pipe was used for smoking methamphetamine. 9/17/15 RP 14-18, 21.

1. One Challenged Finding Of Fact Is Supported by Substantial Evidence. Error In Entering A Finding Not Supported By Substantial Evidence Was Harmless.

The defendant challenges the trial court's finding of fact that before the officer searched the backpack the defendant said that there would probably be "some pipes and dope" in there. BOA at 15; 1 CP 68 (line 10). The defendant also challenged the trial court's finding regarding when the officer read the defendant the Miranda warnings. BOA at 17; 1 CP 68 (line17-18). An appellate court will review challenged findings of fact to determine if they are supported by substantial evidence. State v. Cherry, 191 Wn. App. 456, 464, 362 P.3d 313 (2015), review denied, 185 Wn.2d 1031 (2016). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of their truth. Id.

A review of the records shows that no witness testified that that when the officer asked if there was anything in the backpack that might stick him the defendant said there was probably "some

pipes and dope" in there. An erroneous finding of fact that does not affect the conclusions of law is harmless, and does not warrant reversal. State v. Caldera, 66 Wn. App. 548, 551, 832 P.2d 139 (1992). What the defendant said before he was given Miranda warnings does not alter the court's conclusion that the defendant's statements made pre-Miranda were not the product of a custodial interrogation. The error was therefore harmless.

The court's findings do not specifically state when the officer gave the defendant Miranda warnings. Given the chronology of the findings, however, it appears the court found the officer provided Miranda warnings after he searched the defendant's backpack. 1 CP 68. The officer testified that he arrested the defendant, searched his backpack, and then gave the defendant Miranda warnings. 9/17/15 RP 20-21. Substantial evidence supports the court's finding concerning when the defendant was given constitutional rights.

2. Statements Made Before He Was Given Miranda Warnings Were Admissible.

The defendant made two sets of statements before he was given Miranda warnings. The first two statements, confirming his identity and that he was aware of warrants for his arrest, were

made while he was out of custody. The second statements, informing the officer that he had needles in his backpack and where those would be located, occurred after he was taken into custody. The court concluded that the defendant's statements made before he was given Miranda warnings were not the product of custodial interrogation and were admissible. 1 CP 69. Because he was not in custody when he made the first two statements, and he was not subject to "interrogation" as contemplated by the Miranda rule when he made the second statements, the court did not err.

A person who is not in custody must assert his Fifth Amendment right against self-incrimination. State v. Sargent, 111 Wn.2d 641, 648, 762 P.2d 1127 (1988). If he chooses to respond to police questioning his answers are presumed voluntary. Id.; Minnesota v. Murphy, 465 U.S. 420, 529, 104 S.Ct. 1136, 79 L.Ed.2d 409 (1984). Since the defendant made the first two statements regarding his identity and his warrants before he was taken into custody the court properly found that they were voluntary and admissible.

The second set of statements regarding the needles and their location was made in response to questions. Generally Miranda warnings must be given before a person is subject to a

custodial interrogation by a state agent. State v. Heritage, 152 Wn.2d 210, 214, 95 P.3d 345 (2004). An interrogation is words or actions that are reasonably likely to elicit an incriminating response. In re Cross, 180 Wn.2d 664, 687, 327 P.3d 660 (2014). Police questions do not constitute interrogation which must be preceded by Miranda warnings if the questions are designed to protect the police or the public and if the circumstances are sufficiently urgent to warrant an immediate question. New York v. Quarles, 467 U.S. 649, 656-657, n. 7, 104 S.Ct. 2626, 81 L.Ed.2d 550 (1984); State v. Lane, 77 Wn.2d 860, 863, 467 P.2d 304 (1970); State v. Spotted Elk, 109 Wn. App. 253, 260, 34 P.3d 906 (2001).

Here Officer Haughian testified that he asked the defendant if there was anything that was going to stick him for safety reasons, because he did not want to get poked with anything sharp like a knife or a needle. 9/17/15 RP 10. The officer explained that for safety reasons he delayed reading the defendant his Miranda rights until after he was sure they were in a safe environment. 9/17/15 RP 27. The court found the question was related to the officer's safety and therefore admissible. 9/17/15 RP 46.

The record supports the court's finding. The officer's questions were directed towards protecting his own safety. Even

though the officer said that he did not feel unsafe at that moment, the public safety exception to the Miranda requirement does not depend on the motivation of the individual officer. Quarles, 467 U.S. at 656. Given the time of day and location of the arrest the officer could not reasonably delay securing the scene before proceeding with securing the defendant and booking him on the warrant. The circumstances warranted the officer asking the question about dangerous objects before providing Miranda warnings.

3. Statements The Defendant Made After He Was Advised Of His Miranda Rights Were Admissible.

The defendant had been advised of his Miranda rights before he was questioned about the items that the officer found in his backpack. The defendant willingly agreed to answer the officer's questions. 9/17/15 RP 14-16, 21. Since he voluntarily waived his rights his statements in response to questions were admissible. State v. Reuben, 62 Wn. App. 620, 624, 814 P.2d 1177, review denied, 118 Wn.2d 1006 (1991).

Even if this court finds the defendant's post-arrest – pre-Miranda statements were obtained in violation of his Miranda rights, the post Miranda statements would be admissible if the prior unwarned statements were not actually coerced. State v.

Ustimenko, 137 Wn. App. 109, 116, 151 P.3d 256 (2007). Whether a statement is coerced is determined by the totality of the circumstances. State v. Unga, 165 Wn.2d 95, 101, 196 P.3d 645 (2008). The court found that the defendant knowingly, voluntarily, and intelligently waived his Miranda rights after he was properly advised, and that no threats were made to the defendant and he was not under duress when his statements were given. 1 CP 69 (conclusion of law numbers 4(f) and 4(g))¹. The defendant does not assign error to these findings. They are verities on appeal. State v. Broadaway, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). Since the unwarned statements were not coerced, his statements made after he was advised were voluntary and therefore admissible.

4. If The Court Erred When It Held The Post-Arrest Statements Made Before The Defendant Was Advised Of His Rights Were Admissible, The Error Was Harmless.

Even if the court erred in finding the defendant's post arrest statements were not admissible under the public safety exception the Miranda requirement, the error was harmless. Error in admission of involuntary statements is harmless if the court finds

¹ A finding of fact is a determination that something occurred or existed. State v. Niedergang, 43 Wn. App. 656, 658, 719 P.2d 576 (1986). If a finding of fact is labeled a conclusion of law it will be treated as a finding of fact. State v. Dorough, 2 Wn. App. 820, 823, 470 P.2d 230, review denied, 78 Wn.2d 995 (1970).

the untainted evidence so overwhelming that it necessarily leads to a finding of guilt. Reuben, 62 Wn. App. at 626.

Here the untainted evidence showed that the defendant was alone at 3:30 a.m. when he was contacted by police. He had methamphetamine and pipes used to ingest controlled substances in the backpack attached to the back of his wheelchair. After he was advised of his rights he admitted the substance was methamphetamine and the pipes the officer found in his pocket and in the backpack were used for ingesting drugs. 1 CP 45, 47, 49. Thus even without the defendant's admission that he had needles in his backpack and where they were located in the backpack, the evidence overwhelmingly established the defendant had possessed a controlled substance and had possessed drug paraphernalia. If the court erred in admitting some statements, it was harmless.

IV. CONCLUSION

For the foregoing reasons the State asks the court to affirm the defendant's convictions for possession of a controlled substance and possession of drug paraphernalia.

Respectfully submitted on July 8, 2016.

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

THE STATE OF WASHINGTON,

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v.

TRAVIS L. RIFE,

Appellant.

No. 74217-5-1

DECLARATION OF DOCUMENT
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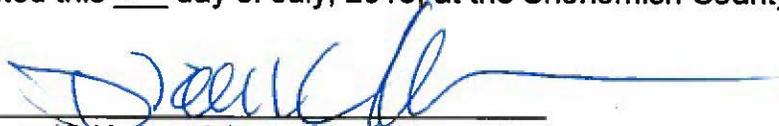
The undersigned certifies that on the 8th day of July, 2016, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

BRIEF OF RESPONDENT

I certify that I sent via e-mail a copy of the foregoing document to: The Court of Appeals via Electronic Filing and to Kathleen A. Shea, Washington Appellate Project, kathleen@washapp.org; and wapofficemail@washapp.org.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 8th day of July, 2016, at the Snohomish County Office.



Diane K. Kremenich
Legal Assistant/Appeals Unit
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