

70666-7

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JUN 13 2014

King County Prosecutor
Appellate Unit

NO. 70666-7-I

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

STATE OF WASHINGTON,

Respondent,

v.

KIEL DENT,

Appellant.

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 JUN 13 PM 4:38

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

The Honorable John P. Erlick, Judge

REPLY BRIEF OF APPELLANT

KEVIN A. MARCH
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

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A. ARGUMENT IN REPLY

THE ERRONEOUS ADMISSION OF DENT'S STATEMENTS
WAS NOT HARMLESS

The State asserts that, aside from Dent's incriminating statements, there was "overwhelming evidence to conclude beyond a reasonable doubt that the defendant knowingly and intentionally used" a false prescription. Br. of Resp't at 12. However, Dent's unlawfully elicited statements formed the overwhelming proof of the mens rea element of RCW 69.50.403 at trial. See Br. of Appellant at 12-13. As Dent's statements were necessary to prove one of the elements of the crime, the error in admitting them was not harmless.

Outside of Dent's incriminating statements, there was not overwhelming untainted evidence that Dent acted knowingly or intentionally. In fact, if anything was overwhelming in this case, it was the State's reliance on Dent's statements to demonstrate that Dent acted with the requisite knowledge. RP 276 (arguing to jury that defense discussion of multiple forged prescriptions were meant to "distract you from what the Defendant did that day and what the Defendant told the Detective that day"); RP 281 ("And in this particular case, you know the Defendant knew that the prescription was false or forged, because of what he said or didn't say."); RP 301-02 ("This case boils down to the Defendant's actions and what he said

or didn't say on that date."); RP 305 ("What matters is his behavior on that day, and what he said or didn't say."). The State asserts that it "could not rely on [Dent's] statements alone to persuade the jury that he knowingly and intentionally used the forged prescription" because none of Dent's statements was a confession. Br. of Resp't at 12. Statements need not qualify as a formal confession, however, to be incriminating. In addition, the State argues that the evidence showed that the prescription "was facially and obviously false" given the misspelling of Oxycodone and the unrealistic dosage written on the prescription slip. Br. of Resp't at 12. But even the State acknowledged that the prescription appeared genuine. RP 304. Thus, to prove knowledge that the prescription was forged, the State again focused on Dent's statements to Officer D'Amico:

Is it reasonable that the defendant went to Rite[] Aid to obtain a prescription for 200 pills of [O]xycodone for pain, when he couldn't articulate that pain, when he couldn't articulate the details of the accident, when he couldn't articulate any of that information? Wouldn't it be reasonable that he would have an explanation for that if that was actually a legitimately made prescription for him?

RP 305. The State's heavy reliance on Dent's statements to Officer D'Amico demonstrates recognition that the statements were necessary to show Dent knew the prescription was forged. This court should reject the State's current inconsistent arguments to the contrary.

Finally, the State asserts that the jury could conclude that Dent knew the prescription was forged because Dr. Graustein, the physician on whose prescription form the prescription was written, testified that he had never treated or prescribed medication for Dent. Br. of Resp't at 12-13. While this testimony certainly established that Dr. Graustein knew the prescription was forged, it does not establish that *Dent* knew the prescription was forged. And, even if it is consistent with such a conclusion, it certainly does not constitute overwhelming untainted evidence of Dent's knowledge. The trial court's erroneous admission of Dent's incriminating statements was not harmless.

B. CONCLUSION

When Officer D'Amico subjected Dent to custodial interrogation without providing Miranda¹ warnings, it violated Dent's Fifth Amendment rights. These statements must be suppressed. Because these statements were the State's primary proof that Dent acted with the requisite knowledge or intent, the trial court's admission of the statements was not harmless error. This court must reverse Dent's conviction and remand for dismissal of this prosecution with prejudice.

DATED this 13th day of June, 2014.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read "K. March", written over a horizontal line.

KEVIN A. MARCH
WSBA No. 45397
Office ID No. 91051

Attorneys for Appellant

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

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STATE OF WASHINGTON)	
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Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 13TH DAY OF JUNE 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] KIEL DENT
1212 SW HOLDEN STREET, NO. 3
SEATTLE, WA 98118

SIGNED IN SEATTLE WASHINGTON, THIS 13TH DAY OF JUNE 2014.

X *Patrick Mayovsky*

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