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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

DARREN COOPER,

Defendant and Appellant.

E057211

(Super.Ct.No. FSB1104145)

OPINION

APPEAL from the Superior Court of San Bernardino County. Kyle S. Brodie, Judge. Affirmed with directions.

Richard Glen Boire, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Steve Oetting, and Michael T. Murphy, Deputy Attorneys General, for Plaintiff and Respondent.

# I

## INTRODUCTION

While defendant Darren Cooper waited at a hospital for his son to be treated for a broken jaw, the police arrested him on an outstanding warrant.<sup>1</sup> After searching his car, the police found 12.90 grams of methamphetamine in the trunk.

A jury convicted defendant of one count of simple possession of methamphetamine in violation of Health and Safety Code section 11377, subdivision (a), a lesser included offense of the charged offense, possession for sale. (Health & Saf. Code, § 11378.) Because the jury was unable to reach a verdict on count 2 for street terrorism (Pen. Code,<sup>2</sup> § 186.22, subd. (a)), the trial court declared a mistrial. The court found five prior convictions to be true and that two of the priors were serious or violent felony convictions. On September 6, 2012, the trial court sentenced defendant to a total determinate term of 11 years and awarded him 732 days custody credit (366 actual days, plus 366 days conduct credit). (§ 4019.)

On appeal, defendant makes two claims: the trial court erred in its rulings on the admissibility of defendant's statements to the police and the trial court should have

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<sup>1</sup> According to the probation report prepared in August 2012, defendant was born in 1966 and has nine children ranging in age from nine months to 27 years old. Defendant was diagnosed with schizophrenia 20 years ago and receives social security disability. His criminal history involves 10 cases between 1984 and 2007, including a juvenile conviction for second degree burglary and many drug-related offenses.

<sup>2</sup> All statutory references are to the Penal Code unless stated otherwise.

awarded him four additional days of credit. We affirm the judgment, modifying defendant's custody credit to 490 days.

## II

### *MIRANDA*<sup>3</sup> VIOLATION

#### *A. The Miranda Hearing*

We base our summary of the facts pertaining to the *Miranda* issues on the evidence presented at the hearing on the People's motion in limine to allow defendant's statements.

On September 5, 2011, San Bernardino police officer, Jose Vazquez, made contact with defendant at 10:00 p.m., where he was waiting outside Community Hospital of San Bernardino for his son, Darren Cooper, Jr., to be treated for a broken jaw. Vazquez was investigating Darren Jr.'s injuries and asked defendant what had happened. Defendant refused to answer questions except to say he had driven his son to the hospital for treatment in a white Cadillac. At the officer's request, defendant disclosed his name and birth date. Because defendant had a "\$250,000 warrant for drug charges," the officer placed defendant under arrest and handcuffed him. The officer searched defendant's person, finding some car keys in his pocket. He placed defendant in the back seat of the patrol car.

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<sup>3</sup> *Miranda v. Arizona* (1966) 384 U.S. 436, 444-445, 474 )

Defendant said the Cadillac belonged to his cousin. When the Department of Motor Vehicles records showed the car was registered to Darren Cooper, Vazquez confronted defendant who responded that he had misunderstood the question and that the car was actually his.

At that point, Vazquez asked defendant, “if he had anything illegal in the vehicle, and if I could search if there was any weapons or drugs in the car.” Defendant responded, “go ahead, sir, but there’s nothing in there.” Vazquez found a bag of suspected methamphetamine in the trunk. Vazquez showed the bag to defendant who volunteered that he had a drug problem and the drugs were for his personal use. Vazquez immediately arrested defendant for possession, transportation, and sale of methamphetamine and gave him the *Miranda* warning. Defendant said he understood the *Miranda* warning and agreed to talk.

Vazquez further testified: “He told me that the meth that I located inside of the car was his. He told me it was for personal use. He told me he had a drug problem, that he’s been using meth[amphetamine] for approximately six years, and he was currently trying to get himself into a residential program or house to help him with his drug problem. [¶] . . . [H]e told me he got [the methamphetamine] from a friend. [¶] [H]e had paid \$60 for it.” Vazquez also questioned defendant about being a documented Delmann Heights gang member.

After hearing argument from the parties, the court found a violation of *Miranda*, and suppressed defendant’s statements that the Cadillac was his cousin’s, followed by his

admission that he owned the Cadillac. The trial court allowed the admission of defendant's explanation, before he was *Mirandized*, that he had a drug problem and that the drugs were for his personal use. The trial court found that this was a "spontaneous statement, not a product of an interrogation" and therefore was admissible. The trial court found no violation, after the *Miranda* warning, as to defendant's subsequent statements about his personal drug use.

### *B. Standard of Review*

Defendant argues the trial court erred and all defendant's statements should have been suppressed because they flowed from the initial *Miranda* violation and they were part of one continuous investigation.

When reviewing a trial court's ruling on the admissibility of evidence obtained in violation of a defendant's Fourth Amendment rights, the reviewing court, "accept[s] the trial court's resolution of disputed facts and inferences, and its evaluation of credibility, if supported by substantial evidence." (*People v. Haley* (2004) 34 Cal.4th 283, 299, quoting *People v. Wash* (1993) 6 Cal.4th 215, 235.) The reviewing court must accept the version of events most favorable to the People, to the extent it is supported by the record. (*People v. Maury* (2003) 30 Cal.4th 342, 404.) The reviewing court, however, exercises its independent judgment to determine whether the statements were obtained in violation of *Miranda*. (*People v. Massie* (1998) 19 Cal.4th 550, 576; *People v. Waidlaw* (2000) 22 Cal.4th 690, 730; *People v. Box* (2000) 23 Cal.4th 1153, 1194.)

### C. Analysis

Defendant contends that, in the present case, the officer deliberately delayed reading defendant his *Miranda* rights until he had already questioned defendant about the Cadillac, obtained his consent to search the car, discovered the suspected methamphetamine, and arrested defendant, leading to additional inculpatory statements from defendant, who admitted that the methamphetamine was for his personal use and that he had a drug problem.

Defendant compares the sequence of events to *Missouri v. Seibert* (2004) 542 U.S. 600, which criticized “two-step interrogations.” In *Seibert*, the investigating officer consciously withheld *Miranda* warnings while questioning Seibert, a murder suspect being held at the police station. After Seibert made an incriminating statement, the officer left for 20 minutes before returning, giving the *Miranda* warning, and obtaining her waiver. The officer then confronted Seibert with her earlier statements and elicited a confession used to convict her. (*Seibert*, at pp. 604-606.) Although the second confession was made after Seibert was read *Miranda* rights, a plurality of the United States Supreme Court justices held that both her pre-*Mirandized* and post-*Mirandized* statements were inadmissible. (*Seibert*, at p. 604.) The plurality opinion condemned the “technique of interrogating in successive, unwarned and warned phases.” (*Id.* at pp. 609.) As characterized by the court, “The object of question-first is to render *Miranda* warnings ineffective by waiting for a particularly opportune time to give them, after the suspect has already confessed.” (*Id.* at p. 611.)

*Seibert* identified five factors for determining the effect of a *Miranda* violation on subsequent statements: “[t]he completeness and detail of the questions and answers in the first round of interrogation, the overlapping content of the two statements, the timing and setting of the first and the second, the continuity of police personnel, and the degree to which the interrogator’s questions treated the second round as continuous with the first.” (*Missouri v. Seibert, supra*, 542 U.S. at p. 615.)

The threshold issue concerns whether there was any interrogation at all. Here the trial court excluded defendant’s initial statements about the Cadillac. Using the *Seibert* factors, we find no error by the trial court in admitting defendant’s subsequent statement, his voluntary admission made immediately after his arrest that he had a drug problem and the methamphetamine was for his personal use. Instead, substantial evidence supports the trial court’s finding that defendant was not the subject of a custodial police interrogation when he spontaneously blurted out the information about his personal drug use. There is no evidence whatsoever that officer Vazquez deliberately delayed or “consciously withheld” *Miranda* warnings. Even though officer Vazquez showed defendant the bag containing methamphetamine immediately before he arrested him, the officer did not begin to interrogate defendant until after he gave him *Miranda* warnings. Hence, there was no first and second round of continuous questioning and there was no overlapping relationship between the pre- and post-*Miranda* statements made by defendant. (*Missouri v. Seibert, supra*, 542 U.S. at p. 16.) Defendant cannot establish any of the *Seibert* factors. Thus, the trial court properly admitted both sets of defendant’s

statements—made before and after *Miranda*—about his drug problem and his personal drug use.

#### *D. Prejudice*

Assuming the trial court erred—which we confidently find it did not—defendant further contends the error was not was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24; *People v. Racklin* (2011) 195 Cal.App.4th 872, 877.) We disagree.

To prove defendant committed the crime of possession of methamphetamine, the prosecution needed to prove several elements: defendant exercised control over a usable amount of methamphetamine and defendant knew of its presence as a controlled substance. (*People v. Tripp* (2007) 151 Cal.App.4th 951, 956.)

The record at trial offers substantial evidence of these elements. The methamphetamine was found inside the Cadillac’s trunk under a T-shirt. Defendant admitted that he owned the car and drove it to the hospital. He possessed the vehicle’s keys. He was also the registered owner. Officer Vazquez testified that the amount of methamphetamine found in the Cadillac was about 36 doses. A witness testified that when he sold defendant the Cadillac in April 2011, about five months earlier, there was no methamphetamine in the trunk to his knowledge. Defendant’s son, Darren Jr., wrote a letter stating that defendant “has a drug problem. . . .” Additionally, Darren Jr. testified that his father forced him to write the letter, in which he also falsely asserted that the Cadillac belonged to him and his father did not know about the drugs. All of this

evidence, combined with defendant's ownership and control of the Cadillac, fully supports the inference that defendant was aware of the presence and nature of the drugs in his car.

Defendant offered contrary evidence about the Cadillac's ownership—that the car was registered to "Darren Cooper," either defendant or Junior, both of whom had listed the same address with the Department of Motor Vehicles. Two witnesses testified that defendant drove a truck, not a Cadillac, and that the Cadillac belonged to Darren Jr.

Notwithstanding the defense's alternative evidence about vehicle ownership, the jury could have little doubt about defendant's knowledge of the methamphetamine secreted in the trunk of the Cadillac and his constructive possession of it. Any error—which we do not acknowledge—was harmless beyond a reasonable doubt. Therefore no prejudice was caused by the trial court's *Miranda* rulings.

### III

#### CUSTODY CREDIT

Defendant's crime was committed on September 5, 2011. Defendant was also found guilty of two prior serious felony convictions, first degree residential burglary (§§ 459, 460, and 1192.7, subd. (c)(18))—which the court dismissed—and assault with a deadly weapon or force on a peace officer. (§§ 245, subd. (c), 1992.7, subd. (c)(11).)

Under section 2900.5, subdivision (a), an incarcerated person is entitled to credit against his sentence for days spent in custody before sentencing. The parties agree that defendant was in custody for 368 days, not 366 days. The parties disagree about whether

defendant should receive additional conduct credit of one day for every day served, 368 days, or two days for every four days served, 184 days. (§ 4019, subds. (b) and (c).) Both parties have miscalculated.

Defendant is not entitled to enhanced credit because he has a prior conviction for a serious felony, assault on a peace officer. Instead, he receives two days of conduct credit for every six days served. According to the “two preeminent sentencing authorities” (*People v. Hul* (2013) 213 Cal.App.4th 182, 187), the following sentencing provisions apply: “Effective September 28, 2010, section 4019 was returned to its wording prior to January 25, 2010: . . . Section 2933, a statute applying to credits in state prison, was amended to grant persons sentenced to prison one day of credit for every day of pre-sentence time served in county jail. Excluded from the enhanced credit provisions were defendants who had a prior conviction for a serious or violent felony, . . . The excluded defendants would receive only two days of conduct credit for every six days served. The statutory change applied only to crimes committed on or after September 28, 2010.” (Couzens & Bigelow, *Awarding Custody Credits*, Feb. 2013, p. 12 and pp. 6 and 17, [http://www.courts.ca.gov/partners/documents/Credits\\_Memo.pdf](http://www.courts.ca.gov/partners/documents/Credits_Memo.pdf).) Accordingly, we conclude defendant should receive conduct credit of 122 days, plus 368 actual days, for a total of 490 days of custody credit.

IV

DISPOSITION

We order the trial court to modify the judgment to award defendant custody credit of 490 days, 368 days actual credit and 122 days of conduct credit. We direct the trial court to forward a certified copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

Otherwise, we hold there was no *Miranda* error and affirm the judgment.

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CODRINGTON  
J.

We concur:

RAMIREZ  
P. J.

KING  
J.