DIVISION II

SAM BIRD, Judge
ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION

CACR06-218

JANUARY 31, 2007

MICHAEL BRANDON SHROPSHIRE
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT,
FORT SMITH DISTRICT,
[NO. CR04-1053]

HON. JAMES R. MARSCHEWSKI, JUDGE

AFFIRMED

Appellant Michael Shropshire was arrested on September 13, 2004, when police found contraband at his residence during their execution of a search warrant for drug paraphernalia used in the manufacture of methamphetamine. Shropshire was charged with manufacturing methamphetamine and with simultaneous possession of drugs and firearms. He was convicted by a jury and was sentenced to concurrent sentences of ten years' imprisonment. He now appeals the convictions, contending that the trial court erred in refusing to suppress all statements he gave to police. We affirm.

Detective Richard Douglas Brooks of the Fort Smith Police Department executed the affidavit in support of the search warrant. The affidavit, dated September 13, 2004, was

based upon reports by sanitation workers concerning trash bags picked up at Shropshire's residence and upon Detective Brooks's belief that items found in the bags were used in the manufacture

of methamphetamine. Brooks stated in the affidavit that a trash bag picked up on September 6, 2004 began smoking; that the bag was discovered to contain numerous matchbooks with striker plates removed; and that another bag collected on September 13 held matchbooks without striker plates, a used syringe, empty cold-tablet blister packs, a brown liquid substance believed to be iodine, and empty bottles of alcohol and hydrogen peroxide.

In a motion to suppress filed on May 25, 2005, Shropshire contended that statements he had given both before and after his arrest should be suppressed. He asserted that he was not advised of his *Miranda* rights in the afternoon when the search warrant was executed at his residence; that he did not sign a *Miranda* warning until 8:15 that evening; that any statements he made were involuntary and had been obtained through intimidation, coercion, or deception; and that officers, rather than advising him of his constitutional rights, had advised him that he would be arrested and that they had the evidence they needed "to put him away." He further alleged:

> That the statements of the Defendant were not obtained by means sufficiently distinguishable to be purged of primary taint; the Defendant was continuously in custody from the moment he arrived at his residence, through more than two sets of officer interviews; there were no intervening factors of free will sufficient to remove the taint of the illegal obtaining of a statement from the Defendant.

At a suppression hearing in the Sebastian County Circuit Court on July 13, 2005, officers testified to the following sequence of events. Shropshire arrived home around 2:30 p.m. on September 13, 2004, just minutes after officers used a battering ram to enter his residence. When Detective Paul Smith advised Shropshire that officers were in the process

of executing the search warrant, Shropshire "dropped his head. . . in a solemn manner." Smith asked if officers "would find any items associated with a clandestine methamphetamine laboratory." Shropshire replied "yes," that he had let friends "cook" methamphetamine in the residence. Shropshire consented to Smith's request that they walk through the residence and that Shropshire point out items of drugs or drug paraphernalia. Once inside, Shropshire pointed out numerous items associated with the manufacture of methamphetamine.

Sergeant George Lawson entered the residence from the garage, and Smith verbally advised Shropshire of his *Miranda* rights. Shropshire continued to speak to Smith and Lawson about the drug paraphernalia and the trash bags, admitting that items were his and that he had last cooked methamphetamine a few days earlier. Smith continued his interview outside, and Shropshire revealed where he had purchased the different chemicals and items used in the manufacturing process. Shropshire was arrested and taken to jail after admitting ownership of all the drug paraphernalia as well as loaded guns found in the residence.

Detective Brooks interviewed Shropshire at the Fort Smith Police Department about 8:15 the same night, first reading him a "rights form" and obtaining his signature on it. Shropshire waived his rights and gave a voluntary statement in which he admitted manufacturing methamphetamine. Shropshire's written statement, introduced through the testimony of Detective Brooks, included the following:

> For the last 8-9 years I have been doing meth at my house. I have been using 2-3 grams a week. For the last year I have been making it. I learned how to make it from

watching people and picking up stuff here and there. I would buy the stuff to make it from Wal-Mart and Food Stores. I would buy my Iodine from Coop in [Charleston]. The . . . and matches I would buy from Wal-Mart and Walgreen. The matches I would put in [alcohol] and drain off.

At the conclusion of the suppression hearing, the trial court ruled as follows:

[T]here is no question that Mr. Shropshire made a knowing and intelligent waiver of his constitutional rights after he was advised of his constitutional rights by the police. He was advised verbally at the house. He was advised in writing. I believe that anything that Mr. Shropshire has said, indicated or produced for the police after those advisive [sic] rights is admissible.

There is no indication that the arrest was used. There is no indication that he did not understand his rights, and the Court, even in light of prior procedure, would not feel that this is any aspect of fruit of a poisonous tree. There is every indication and a long line of cases that if the police advise the defendant of his rights and he understands them and he waives them, that he has cured that. I don't believe that he produced anything by disclosing or showing to the police anything that the police would not have disclosed as a result of the search.

What I don't believe . . . is that Mr. Shropshire was free to go when he pulled up to the house. . . . I believe that at that point in time it was clear that he was never advised that he had the right to leave or that he was free to go or that he did not have to answer any questions. I believe the police's focus of investigation had centered on Mr. Shropshire when he entered the premises. . . . I believe it was impermissible to ask him to disclose items of drug paraphernalia that constitute a felony. So, the court is going to grant the motion in part, at least to the statement that he made. I believe the evidence that he hung his head, that is clearly admissible. The fact that he made statements, or showed to police items within the house prior to his verbal warning, this Court is going to suppress.

On appeal Shropshire contends that under *Missouri v. Seibert*, 542 U.S. 600 (2004), all statements he gave to police were invalid because of the statements he gave to Detective Smith before receiving *Miranda* warnings. *See id.* at 604 (holding that a "midstream" recitation of warnings after interrogation and unwarned confession could not effectively

comply with *Miranda*'s constitutional requirement and that a statement repeated after a warning in such circumstances was inadmissible). The incriminating statements found to be inadmissible in *Seibert* had been made pursuant to a police "question-first" technique in which a suspect in custody intentionally is questioned without a *Miranda* warning, then is given the warning, and repeats the same incriminating statements. We agree with the State that nothing in the record before us suggests that Detective Smith's initial unwarned questioning of Shropshire was in any way calculated to undermine the subsequent *Miranda* warnings. We uphold the trial court's denial of Shropshire's motion to suppress the statements that he gave to officers after he was informed, both verbally and orally, of his *Miranda* rights.

Even were we to accept Shropshire's argument that all statements he gave to police were inadmissible, we would hold that any error in admitting them was harmless beyond a reasonable doubt. *See, e.g., Jones v. State*, 336 Ark. 191, 207, 984 S.W.2d 432, 440 (1999) (explaining that, in order to conclude that a constitutional error is harmless and does not mandate a reversal, the appellate court must conclude beyond a reasonable doubt that the error did not contribute to the verdict). We need look no further in the present case than Shropshire's trial testimony. He admitted to all elements of the offenses, testifying that he was manufacturing methamphetamine in his residence and that he possessed both the methamphetamine items and the weapons found there. Thus, we reject his claim of reversible error.

Affirmed.

GLADWIN and BAKER, JJ., agree.