

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	DIVISION ONE
)	
Respondent,)	No. 63149-7-I
)	
v.)	
)	UNPUBLISHED OPINION
ASFAWESAN A. DRES,)	
)	
Appellant.)	FILED: April 25, 2011
_____)	

Dwyer, C.J. — Physical evidence derived from a confession obtained in violation of Miranda¹ need not be suppressed unless the statement was obtained through actual coercion. Asfawesan Dres was not coerced into indicating to police where he had discarded narcotics and, thus, admission of the physical evidence was proper. Accordingly, we affirm.

I

In August 2007, near Pike Place Market, three Seattle police officers attempted to purchase crack cocaine from Dres and another man. Dres fled downhill from the police. However, a police officer apprehended Dres after a security guard tripped Dres. The police officer who took Dres into custody walked Dres back up the hill to a transport vehicle.

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

Officer Raul Vaca noticed that Dres “was sweating profusely, drooling, and foaming at the mouth.” Clerk’s Papers (CP) at 119. Officer Vaca, concerned that Dres had ingested narcotics, asked Dres whether “he had ingested any narcotics or dropped any narcotics.” Report of Proceedings (RP) (Sept. 17, 2008) at 11. At that time, Dres had not yet been advised of his Miranda rights. Dres responded “back there” and pointed toward where he had tripped and fallen. RP (Sept. 17, 2008) at 11. Officer Vaca did not make any promises in exchange for Dres’s answer, nor did Officer Vaca make any threats if Dres refused to answer. Another police officer then retrieved suspected narcotics from the area that Dres had indicated.

The State charged Dres with one count of a violation of the Uniform Controlled Substances Act, chapter 69.50 RCW, for possession with intent to manufacture or deliver cocaine.

Because Dres had not been read his Miranda rights before Officer Vaca questioned him regarding the narcotics, Dres moved to suppress both his statements to the police that he had discarded the narcotics and the physical narcotic evidence obtained based on Dres’s statements. At a pretrial hearing, Officer Vaca testified that, in his opinion, Dres had freely and voluntarily answered the question. The trial court suppressed Dres’s statements but declined to suppress the physical evidence of the narcotics.

A jury convicted Dres as charged, and the trial court entered judgment on

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the jury's verdict.

Dres appeals.

II

Dres contends that the trial court erred by admitting the physical narcotic evidence that was recovered based on Dres's un-Mirandized statements. We disagree.

The Fifth Amendment does not require the suppression of physical evidence derived from a confession obtained in violation of Miranda unless the statement was actually coerced. State v. Wethered, 110 Wn.2d 466, 473-75, 755 P.2d 797 (1988); accord Oregon v. Elstad, 470 U.S. 298, 304, 105 S. Ct. 1285, 84 L. Ed. 2d 222 (1985). In the absence of coercion, the federal and state constitutions require "suppression only of the un-Mirandized statement itself." State v. Russell, 125 Wn.2d 24, 56-57, 62, 882 P.2d 747 (1994).

The inquiry, then, is whether, given the totality of the circumstances, the defendant's will to resist making an incriminating statement was overborne. State v. Broadaway, 133 Wn.2d 118, 132, 942 P.2d 363 (1997). The circumstances to consider in determining whether a confession was coerced include the defendant's condition, the defendant's mental abilities, and the conduct of the police. Broadaway, 133 Wn.2d at 132.

Situations found to overbear a defendant's will include confessions obtained by physical abuse, Beecher v. Alabama, 389 U.S. 35, 38, 88 S. Ct. 189, 19 L. Ed. 2d 35 (1967); confessions obtained from a defendant who was "helplessly drunk[]," "near hysterical," "severely injured," or in "an acute, rampant

state of intoxication equivalent to mania,” State v. Cuzzetto, 76 Wn.2d 378, 386-87, 457 P.2d 204 (1969); and confessions obtained as a “result of virtually continuous questioning of a seriously and painfully wounded man” who was in a debilitated and helpless condition in a hospital’s intensive care unit, Mincey v. Arizona, 437 U.S. 385, 401, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978).

Here, Dres was questioned without first being advised of his Miranda rights. His motion to suppress these statements was properly granted. However, the trial court did not grant the motion to suppress the physical evidence of the narcotics. In so ruling, the trial court impliedly determined that Dres’s admissions were not actually coerced.²

Because Dres fled from the police and fell to the ground after being tripped by a security guard, Dres contends that he was in a “violent-fall-induced stupor.” Appellant’s Br. at 11. However, there is no evidence suggesting that Dres was physically injured in his fall or was otherwise incapacitated as a result of his flight from the police. To the contrary, Dres was able to walk up the hill from where he fell and he had the ability to communicate with the police officers, as he was able to orally respond to Officer Vaca’s question and to physically

² The trial court did not make any explicit findings that Dres’s statements were not actually coerced. This is likely because the arguments of counsel regarding suppression of the physical evidence did not include any discussion related to actual coercion. However, such a finding that Dres’s statements were not actually coerced is implicit in the trial court’s ruling. The trial court concluded that “[t]he Fifth Amendment does not require the suppression of physical evidence derived from an un-Mirandized confession *unless the statement was actually coerced.*” CP at 119 (emphasis added). The trial court then concluded that “suppression of the plastic and crack cocaine found by [the police officer] is improper as suppression of physical evidence is not a remedy for a Miranda violation. The court thus finds the crack cocaine and plastic admissible.” CP at 120. The trial court’s ruling that suppression was inappropriate implies that the trial court found that Dres’s statements were not actually coerced.

indicate where he had discarded the narcotics.

Dres was not in perfect physical condition. He was salivating at the mouth and sweating, and it appeared that he might also be going in and out of consciousness. These circumstances caused Officer Vaca to become concerned that Dres had consumed narcotics. However, there is no evidence that Dres actually was intoxicated or under the influence of controlled substances. Indeed, the opposite is suggested: in response to the question of whether he had ingested or dropped any narcotics, Dres indicated that he had discarded the narcotics. Given that Dres had just fled from the police, the fact that Dres was salivating and sweating does not indicate that he was injured and incapable of resisting the opportunity to confess.

Significantly, the police officers herein did not employ any coercive tactics. While Officer Vaca failed to provide Dres with the appropriate Miranda warnings prior to questioning Dres, no police officer made threats or promises in order to elicit Dres's response. The totality of the circumstances herein demonstrates that Dres's will was not overborne. Dres was not coerced into revealing where he had discarded the narcotics. Thus, suppression of the physical evidence was not required as a result of the Miranda violation. The trial court did not err.

Affirmed.

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Dupe, C. S.

We concur:

Jau, J.

Spears, J.