

1-21-2015

## State v. Burgess Respondent's Brief Dckt. 41902

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IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

STATE OF IDAHO,	)	
	)	No. 41902
Plaintiff-Respondent,	)	
	)	Ada Co. Case No.
vs.	)	CR-2013-2864
	)	
SHAYNE RAY BURGESS,	)	
	)	
Defendant-Appellant.	)	
_____	)	

**BRIEF OF RESPONDENT**

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA**

**HONORABLE RICHARD D. GREENWOOD  
District Judge**

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**FILED - COPY**  
JAN 21 2015  
Supreme Court \_\_\_\_\_ Court of Appeals \_\_\_\_\_  
Entered on ATS by \_\_\_\_\_

**ATTORNEYS FOR  
PLAINTIFF-RESPONDENT**

**ATTORNEY FOR  
DEFENDANT-APPELLANT**

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## STATEMENT OF THE CASE

### Nature of the Case

Shayne Ray Burgess appeals from the judgment entered upon the jury verdicts finding him guilty of aggravated assault on certain law enforcement personnel, use of a deadly weapon in the commission of the aggravated assault, and resisting, delaying or obstructing an officer. On appeal, Burgess challenges two of the court's evidentiary rulings.

### Statement of Facts and Course of Proceedings

In an attempt to commit "suicide by cop," Burgess swung a knife at a police officer who was attempting to detain him during a traffic stop. (11/20/13 Tr., p.168, L.5 – p.197, L.19, p.200, Ls.8-19; 11/21/13 Tr., p.11, L.15 – p.14, L.2, p.15, Ls.3-21, p.45, L.14 – p.47, L.9, p.51, L.4 – p.52, L.20, p.53, L.6 – p.54, L.12, p.59, L.10 – p.60, L.11, p.70, L.11 – p.71, L.3, p.77, L.4 – p.80, L.12, p.94, Ls.1-15, p.100, L.13 – p.102, L.5, p.131, L.19 – p.132, L.13, p.134, L.22 – p.144, L.23.) The state charged Burgess with aggravated assault on certain law enforcement personnel, use of a deadly weapon in the commission of the aggravated assault, and resisting and obstructing an officer. (R., pp.46-47.) After a trial, a jury found Burgess guilty of the charged offenses. (R., pp.120-23.) The district court entered a judgment of conviction, from which Burgess timely appealed. (R., pp.137-42, 144-47.)

## ISSUES

Burgess states the issues on appeal as:

1. Did the district court err in [sic] when it allowed the State to introduce on cross-examination Mr. Burgess's inculpatory statements that were obtained in violation of *Miranda v. Arizona*?
2. Did the district court err when it admitted Mr. Burgess's statement that he used methamphetamine on the day of the offense?

(Appellant's brief, p.4.)

The state rephrases the issues as:

1. Has Burgess failed to show the district court abused its discretion by allowing the state to cross-examine him regarding un-*Mirandized* statements he made to police where Burgess never moved before trial to suppress the statements on the ground that they were involuntary or otherwise unlawfully obtained?
2. Has Burgess failed to show the district court abused its discretion by allowing the state to cross-examine Burgess regarding his methamphetamine use on the day of the charged events, where such methamphetamine use was relevant to Burgess' credibility?

## ARGUMENT

### I.

#### Burgess Has Failed To Show The Trial Court Abused Its Discretion By Allowing The State To Cross-Examine Him Regarding Un-Mirandized Statements He Never Moved Before Trial To Suppress

##### A. Introduction

After he was taken into custody, Burgess made the following statements to the police officer who transported him from the scene of the traffic stop to the hospital:

- “You guys aren’t going to try and charge me with assault on an officer because I was trying to die, not hurt anybody[;]” and
- “[I]t’s still going to come out with assault with a weapon or some shit like that[.]”

(11/22/13 Tr., p.245, L.8 – p.246, L.12.) The prosecutor did not present evidence of these statements during the state’s case-in-chief. However, after Burgess’ counsel indicated Burgess would testify, the prosecutor sought leave to cross-examine Burgess regarding the statements, explaining:

Those comments Mr. Burgess makes to Trooper Robinson, I did not attempt to admit in my case-in-chief because there is no Miranda.<sup>[1]</sup> I didn’t want to get into that issue. He’s in the back of [the] car on the way to the hospital. But there has been no claim that those are involuntary. So I think it is permissible for me to cross-examine Mr. Burgess on any statements he made to Trooper Robinson, but I don’t want to do that without clarifying that.

(11/22/13 Tr., p.227, Ls.11-20.) Burgess objected to the prosecutor’s request, arguing:

Well, Judge, he’s clearly in custody. So I think it’s inherently at some level of coercion. It is an answer to – there is conversation initiated by Trooper Robinson.

---

<sup>1</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

So we would ask that those statements not be admissible.  
It's clearly before any Miranda warnings also.

(11/22/13 Tr., p.227, L.22 – p.228, L.3.) The trial court overruled Burgess' objection and allowed the prosecutor to question Burgess about the un-*Mirandized* statements on cross-examination. (11/22/13 Tr., p.228, Ls.4-5, p.245, L.8 – p.246, L.16.)

On appeal Burgess argues "it was error for the district court to allow the State, on cross-examination, to introduce his inculpatory statements to Trooper Robinson" because "[t]he statements were obtained in violation of *Miranda v. Arizona*, and the State did not meet its burden of showing that the statements were voluntary and that they were being offered for a permissible purpose." (Appellant's brief, p.5.) Burgess' argument fails. Burgess never moved before trial to exclude the statements on the basis that they were involuntary or otherwise unlawfully obtained. Having failed to file a timely motion to suppress the statements, Burgess waived the right to challenge their admissibility at trial. Burgess has therefore failed to show the trial court abused its discretion by allowing the prosecutor to introduce the statements during its cross-examination.

B. Standard Of Review

The trial court has broad discretion in the admission of evidence, and its judgment will be reversed only when there has been a clear abuse of discretion. State v. Perry, 139 Idaho 520, 521, 81 P.3d 1230, 1231 (2003).

C. The Trial Court Correctly Exercised Its Discretion In Allowing The State To Introduce On Cross-Examination Un-Mirandized Statements Burgess Made To Police And Never Moved Before Trial To Suppress

Burgess never moved before trial to suppress the statements he made to Trooper Robinson while he was transported to the hospital. (See generally R., pp.2-6 (register of actions).) Nevertheless, when the prosecutor sought to introduce those statements on cross-examination, Burgess objected on the bases that the statements were “coerc[ed]” and made without the benefit of *Miranda* warnings. (11/22/13 Tr., p.227, L.22 – p.228, L.3.) The trial court overruled Burgess’ objection and permitted the prosecutor to cross-examine Burgess regarding the statements. (11/22/13 Tr., pp.228, Ls.4-5.) Contrary to Burgess’ argument on appeal, the trial court correctly exercised its discretion in admitting the statements over Burgess’ objection, made for the first time at trial, that the statements were involuntary.

Idaho Criminal Rule 12(b) provides that “[m]otions to suppress evidence on the ground that it was illegally obtained” “must be raised prior to trial.” I.C.R. 12(b)(3); State v. Collinsworth, 96 Idaho 910, 912, 539 P.2d 263, 265 (1975); State v. Gleason, 130 Idaho 586, 590, 944 P.2d 721, 725 (Ct. App. 1997). “Failure to make such a motion prior to trial “shall constitute a waiver thereof, but the court for cause shown may grant relief from the waiver.” I.C.R. 12(f); Collinsworth, 96 Idaho at 912, 539 P.2d at 265; Gleason, 130 Idaho at 590, 944 P.2d at 725. “The purpose of such a rule is to avoid ‘the serious inconvenience to jurors from unnecessary disruptions of trial to deal with issues that could and should have been raised in advance.’” Collinsworth, 96 Idaho at 913, 539 P.2d

at 266 (citing United States v. Bennett, 409 F.2d 888, 901 (2d Cir. 1969); 3 Wright & Miller, Criminal § 673, p.115 (1969)). Where a defendant fails to timely file a motion to suppress evidence he or she claims was unlawfully obtained, and where the defendant offers no reason why such motion could not have been made prior to trial, the trial court does not abuse its discretion by admitting the evidence at trial. Collinsworth, 96 Idaho at 912-13, 539 P.2d at 265-66; Gleason, 130 Idaho at 590-91, 944 P.2d at 725-26.

Burgess never moved before trial to suppress the statements he made to Trooper Robinson (see generally R., pp.2-6 (register of actions)), and he offered no reason at all why such a motion could not have been made prior to trial (see Tr., p.227, L.10 – p.228, L.5). Having failed to file a timely motion to suppress, and having failed to even attempt to demonstrate good cause excusing such failure, Burgess waived the right to challenge the admissibility of his statements on the basis that statements were unlawfully obtained. I.C.R. 12(b)(3), (f); Collinsworth, 96 Idaho at 912-13, 539 P.2d at 265-66; Gleason, 130 Idaho at 590-91, 944 P.2d at 725-26. He has therefore failed to establish that the district court abused its discretion in admitting the statements at trial.

## II.

### Burgess Has Failed To Show Error In The Admission Of Evidence That He Used Methamphetamine On The Day Of The Charged Offenses

#### A. Introduction

While being treated at the hospital following the events that led to the charges in this case, Burgess told the treating physician that he had “injected

methamphetamine earlier in the day.” (11/23/13 Tr., p.224, L.10 – p.225, L.10.) Burgess moved to exclude the statement from trial, arguing evidence of his methamphetamine use on the day of the charged events was “more prejudicial than probative.” (11/23/13 Tr., p.224, Ls.10-16, p.225, Ls.16-17.) The trial court denied the motion, effectively agreeing with the prosecutor’s argument that Burgess’ methamphetamine use was relevant to his credibility because it had the “capacity” to affect Burgess’ ability to perceive and recall events, and implicitly concluding that the probative value of the evidence for that purpose was not substantially outweighed by the danger of unfair prejudice. (11/23/13 Tr., p.225, L.19 – p.226, L.15) Contrary to Burgess’ assertions on appeal, a review of the record and of the applicable law supports the trial court’s exercise of discretion.

B. Standard Of Review

The trial court has broad discretion in the admission of evidence, and its judgment will be reversed only when there has been a clear abuse of discretion. State v. Perry, 139 Idaho 520, 521, 81 P.3d 1230, 1231 (2003).

C. Burgess Has Failed To Show The Trial Court Abused Its Discretion In Determining The Probative Value Of Evidence Of Burgess’ Methamphetamine Use On The Day Of The Charged Offenses Was Not Substantially Outweighed By The Danger Of Unfair Prejudice

Pursuant to I.R.E. 403, relevant evidence may be excluded if, in the district court’s discretion, the danger of unfair prejudice – which is the tendency to suggest a decision on an improper basis – substantially outweighs the probative value of the evidence. State v. Ruiz, 150 Idaho 469, 471, 248 P.3d 720, 722 (2010); State v. Floyd, 125 Idaho 651, 654, 873 P.2d 905, 907 (Ct.

App. 1994); State v. Nichols, 124 Idaho 651, 656, 862 P.2d 343, 348 (Ct. App. 1993). “Under the rule, the evidence is only excluded if the probative value is substantially outweighed by the danger of unfair prejudice. The rule suggests a strong preference for admissibility of relevant evidence.” State v. Martin, 118 Idaho 334, 340 n.3, 796 P.2d 1007, 1013 n.3 (1990) (emphasis in original).

Application of these legal principles to the facts of this case supports the district court’s decision to admit evidence of Burgess’ methamphetamine use on the day of the charged events over Burgess’ general objection that such evidence was “more prejudicial than probative.” (11/22/13 Tr., p.225, Ls.16-17.) As argued by the state below, and found by the district court, evidence that Burgess injected methamphetamine on the same day he was alleged to have committed the charged crimes was relevant to Burgess’ ability to perceive and recall the events of that day. (11/22/13 Tr., p.225, L.19 – p.226, L.2, p.226, Ls.8-14.) Because Burgess testified to the events as he perceived them, his methamphetamine use on the day in question bore directly on the accuracy and truthfulness of his testimony. See State v. Holm, 93 Idaho 904, 909, 478 P.2d 284, 289 (1970) (“A witness’s ability to perceive bears a direct relationship to the accuracy and truthfulness of his testimony.”). While it may be true, as Burgess suggests on appeal, that methamphetamine use carries with it a “significant social stigma” (Appellant’s brief, p.10), any danger that the jury may have considered the evidence for an improper purpose – such as painting Burgess as a drug user – did not substantially outweigh the probative value of the evidence

as bearing on Burgess' credibility. This is especially true considering the prosecutor's closing remarks to the jury:

The only reason we talk about his admission to the use of methamphetamine is it may – you may decide that that has some bearing or whether Mr. Burgess's recollection of these events is entirely accurate. We are not here to say that – we're not here to pass judgment on who he is as a person. You are to decide what he did. What he did is he wanted to die rather than go to jail. And he was willing to lunge at Officer Bateman to make that happen.

(11/22/13 Tr., p.303, Ls.3-12.)

"A witness's credibility is always relevant." State v. Osterhoudt, 155 Idaho 867, 874 P.3d 636, 643 (Ct. App. 2013) (citing State v. Hairston, 133 Idaho 496, 503, 988 P.2d 1170, 1177 (1999); State v. Arledge, 119 Idaho 584, 588, 808 P.2d 1329, 1333 (Ct. App. 1991)). Because evidence of Burgess' methamphetamine use bore directly on his credibility, and because there is no indication that the jury considered the evidence for anything other than its proper purpose, Burgess has failed to show the district court abused its discretion in admitting it.

CONCLUSION

The state respectfully requests this Court to affirm the judgment entered upon the jury verdicts finding Burgess guilty of aggravated assault on certain law enforcement personnel, use of a deadly weapon in the commission of the aggravated assault, and resisting and obstructing an officer.

DATED this 21<sup>st</sup> day of January, 2015.

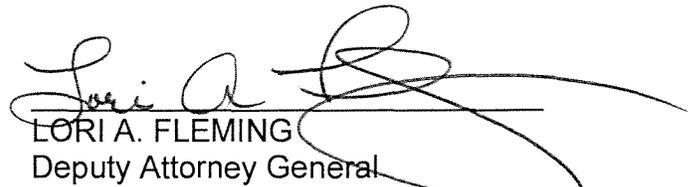
  
LORI A. FLEMING  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21<sup>st</sup> day of January, 2015, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

KIMBERLY E. SMITH  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

  
LORI A. FLEMING  
Deputy Attorney General

LAF/pm