IN THE SUPREME COURT OF THE STATE OF NEVADA

BELINDA MARIE CRAWFORD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57999

FILED

JAN 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of domestic battery with the use of a deadly weapon and discharging a firearm at or into a structure. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Appellant Belinda Marie Crawford contends that the district court erred by denying her pretrial motion to suppress statements she made during a police interview because she unequivocally invoked her right to counsel.[1] We agree.

The police interview transcript reveals that Detective John Ferguson advised Crawford of her rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), and then asked if she would like "to sit and talk." This colloquy followed:

Crawford: I would like to sit and talk for a bit.

Ferguson: Okay.

[1]District Judge Connie J. Steinheimer decided Crawford's pretrial suppression motion.

> Crawford: I'd like to have a lawyer appointed as well though, um, at this stage.
>
> Ferguson: Well, um, I can't do both.
>
> Crawford: You can't do both. Okay.
>
> Ferguson: Yeah, that's up to you. If you want to talk to an attorney right now, you know, Dan and I . . . Dan and I would have to get up and go. That's totally up to you. I don't want to sway you one way or another, okay. Um, the only thing that I could add is that, you know, we're trying to figure out the best way to help your kids . . .

(Emphasis added.)

We conclude that Crawford clearly and unambiguously invoked her Miranda right to counsel. See Davis v. United States, 512 U.S. 452, 459 (1994) (the determination of whether a defendant unambiguously requested counsel is made on an objective basis). She plainly conditioned her willingness to "sit and talk" with the detectives on the appointment of counsel by using the words "as well though" and "at this stage." See United States v. Ogbuehi, 18 F.3d 807, 813 (9th Cir. 1994) (reviewing de novo whether the words a defendant used to invoke his Miranda rights actually invoked those rights); Rosky v. State, 121 Nev. 184, 190, 111 P.3d 690, 694 (2005). Because the detectives did not stop the interview when Crawford invoked her right to counsel and any subsequent waiver was insufficient to cure the error, we conclude that Crawford's statements were involuntary and therefore inadmissible as substantive evidence at trial. See Solem v. Stumes, 465 U.S. 638, 646 (1984) (observing that Edwards v. Arizona, 451 U.S. 477 (1981), sets forth a bright-line rule that all questioning must cease after an accused requests counsel and, after an accused has requested counsel, the rule may only be waived if accused initiates subsequent communication); Smith v. Illinois,

469 U.S. 91, 100 (1984) ("postrequest responses to further interrogation may not be used to cast retrospective doubt on the clarity of the initial request itself"); Edwards, 451 U.S. at 484-86; Kaczmarek v. State, 120 Nev. 314, 328-29, 91 P.3d 16, 26 (2004). We further conclude that Crawford's conviction must be reversed because the error was not harmless beyond a reasonable doubt. See Arizona v. Fulminante, 499 U.S. 279, 295-96 (1991) (the admission of a statement obtained in violation of Miranda is subject to harmless error analysis). Accordingly, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[2]

Douglas, J.

Gibbons, J.

Parraguirre, J.

cc: Hon. Steven P. Elliott, District Judge
Hon. Connie J. Steinheimer, District Judge
Law Office of Thomas L. Qualls, Ltd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

[2]In light of our disposition, we decline to consider Crawford's remaining contentions.