IN THE COURT OF APPEALS OF THE STATE OF ALASKA

WILLIAM I. BUXTON, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11778 Trial Court No. 1KE-12-762 CR MEMORANDUM OPINION No. 6458 — May 3, 2017

Appeal from the Superior Court, First Judicial District, Ketchikan, Trevor Stephens, Judge.

Appearances: Renee McFarland, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. June Stein, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock, Superior Court Judge.[*]

Judge ALLARD.

[*] Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

William I. Buxton, who has been diagnosed with schizophrenia, was convicted of first-degree murder[1] for killing his aunt, Leona Meely, after the two had an argument in the home they shared with Buxton's mother and sister in Metlakatla. When Buxton was first taken into custody at the Metlakatla health clinic, he made a number of statements to clinic personnel that suggested he was actively psychotic at the time of the killing. Among other bizarre statements, Buxton told the clinic personnel that he was one of the four horsemen of the apocalypse, that it was the "end times," and that a figure named "the Globe" had made him kill Meely.

Based on Buxton's behavior and statements, the clinic staff gave him anti-psychotic and anti-anxiety medication. Buxton subsequently waived his *Miranda* rights and submitted to questioning from various Alaska state troopers. During these interviews, Buxton continued to make inculpatory statements and to describe his delusions.

Buxton's attorney did not file a motion to suppress Buxton's inculpatory statements to health clinic personnel or to the state troopers. Nor did he object to their admission at trial. Instead, the record indicates that the attorney tried to use these statements at trial to argue a de facto mental disease or defect defense.

On appeal, Buxton argues that the superior court committed plain error when it failed to *sua sponte* suppress these statements as involuntary. He also argues that the court should have *sua sponte* suppressed the statements as violative of Buxton's *Miranda* rights.

It is not clear that Buxton's suppression claims are reviewable on direct appeal. In *Moreau v. State*, the Alaska Supreme Court held that, absent singularly

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[1] AS 11.41.100.

egregious circumstances, a defendant is not allowed to raise arguments for suppression of evidence for the first time on appeal, even under the rubric of plain error.[2]

Buxton contends that the rule established in *Moreau* was intended only to apply to evidence that was illegally obtained under the Fourth Amendment, and he argues that it was not intended to apply to evidence obtained in violation of the Fifth Amendment or *Miranda*. In support of this claim, Buxton cites to *Berezyuk v. State*, in which we recognized that "there is a significant difference between coercive police conduct that leads to a confession and coercive police conduct that leads to the discovery of physical evidence" — largely because the confession obtained through coercive means is *untrustworthy*, while the physical evidence obtained through police misconduct "retains its probative value."[3] Because of this difference, Buxton argues that his case should be governed by the plain error test articulated in the Supreme Court decision *Adams v. State*.[4]

We need not resolve whether *Moreau* applies to the Fifth Amendment claims presented here because the current record does not support a finding of plain error under the *Adams* test.

To establish plain error under the *Adams* test, a defendant must show that (1) there was error and the error was not the result of an intelligent waiver or tactical decision not to object; (2) the error was obvious — that is, plainly apparent to any

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[2] *Moreau v. State*, 588 P.2d 275, 280 & n.13 (Alaska App. 1978); *see also* Alaska R. Crim. P. 12(b)(3) & (e).

[3] *Berezyuk v. State*, 282 P.3d 386, 402 (Alaska App. 2012).

[4] *Adams v. State*, 261 P.3d 758, 764 (Alaska 2011).

competent judge or lawyer; (3) the error affected substantial rights; and (4) the error was prejudicial.[5]

Buxton asserts that it would have been obvious to any competent judge or lawyer that he was in no position to waive his *Miranda* rights or to give a voluntary statement to the police, given his apparent state of psychosis combined with the heavy doses of anti-psychotic and anti-anxiety medication he had just received. But the record is not as clear as Buxton claims. At the hearing to determine Buxton's competency, the experts disagreed about whether Buxton was suffering from psychosis (as the clinic personnel and the defense psychiatrist believed) or whether he was suffering primarily from low potassium levels (as the State psychiatrist believed). Moreover, because Buxton's attorney did not seek suppression of the statements, there was no evidentiary hearing and therefore no findings regarding how Buxton appeared to the police at the time.

Buxton argues that the audio recordings of his statements to the clinicians and to the police demonstrate that Buxton was severely impaired and incapable of giving voluntary statements, regardless of the actual cause of that impairment. But we are reluctant to act as fact finders in the first instance and to judge these recordings on their own without the full context that an evidentiary hearing would provide and without the benefit of additional expert testimony on the matter.

Our reluctance is also informed by the fact that Buxton's trial attorney affirmatively used these statements at trial as part of Buxton's defense. As already explained, an error that is a result of an apparent tactical or strategic decision by an attorney is not reviewable for plain error on direct appeal.[6] In *Moreno v. State*, the

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[5] *Id.*

[6] *Id.*

Alaska Supreme Court clarified this prong of the plain error test, holding that "it must be plainly obvious from the record on its face: (1) that counsel had an obvious awareness or knowledge of the error, and (2) that counsel made an intentional or tactical decision not to object to the error."[7]

Here, it is obvious from the record that the defense attorney was aware of Buxton's mental health issues and the types of medication that he received and therefore the attorney was presumably aware of the obvious legal challenges that could have been made. It appears, however, that the defense attorney made a tactical decision to not file a motion to suppress these statements because he believed that there was a strategic advantage to having the jury hear these statements at trial.[8] Whether this was a competent tactical decision is essentially unknowable on the current record, given the lack of any information about how and why this decision was made, and it is therefore not reviewable on direct appeal.

Thus, because we conclude that the issues raised by Buxton in this appeal cannot be determined on the record currently before us, we do not find plain error, even assuming that a plain error analysis applies to Buxton's claims.

Buxton's excessive sentence challenge

At sentencing, the trial court imposed 80 years with 20 years suspended (60 years to serve). Buxton argues that this sentence is excessive and that the court failed to give adequate weight to Buxton's potential for rehabilitation in light of the evidence

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[7] *Moreno v. State*, 341 P.3d 1134, 1142 (Alaska 2015).

[8] *Cf. Hammonds v. State*, 442 P.2d 39, 42-43 (Alaska 1968) (refusing to review a *Miranda* claim raised for the first time on appeal because the record indicated "a deliberate design to knowingly forgo a constitutional claim").

presented at sentencing regarding Buxton's schizophrenia and his amenability to treatment and rehabilitation.[9]

When we review a sentence for excessiveness, we are required to independently review the sentencing record and to determine whether the sentence imposed is within the range of sentences that reasonable judges would impose under the circumstances.[10] We have independently examined the record in this case, and we conclude that the sentencing judge gave adequate consideration to the *Chaney* criteria, given the sentencing evidence that was presented to him. The judge's remarks focused on the horrific nature of Buxton's crime, its impact on his family, and Buxton's past antisocial behavior. The judge also addressed Buxton's past and present mental health issues and his potential for rehabilitation.

Based on the sentencing record currently before us, we conclude that Buxton's sentence was within the range of sentences that reasonable judges would impose and was not clearly mistaken.[11]

Conclusion

We AFFIRM the judgment of the superior court.

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[9] *State v. Chaney*, 477 P.2d 441, 443-44 (Alaska 1970).

[10] *McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974).

[11] *See State v. Hodari*, 996 P.2d 1230, 1232 (Alaska 2000).