No. 91334-0

(Court of Appeals No. 70419-2-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JUAN CRUZ-GRIJALVA,

Petitioner.

PETITION FOR REVIEW

ELAINE L. WINTERS
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

Washington Court of Appeals Decisions

United States Supreme Court Decisions

Federal Circuit Court of Appeals Decisions

United States Constitution

Washington Constitution

Washington Court Rule

Other Authorities

A. IDENTITY OF PETITIONER

Juan Cruz-Grijalva, defendant and appellant below, seeks review of the Court of Appeals decision terminating review designated in Part B.

B. COURT OF APPEALS DECISION

Mr. Cruz seeks review of the Court of Appeals decision affirming his King County Superior Court conviction for first degree robbery. State v. Juan Cruz-Grijalva, No. 70419-2-I. A copy of the Court of Appeals decision, dated January 20, 2015, is attached as an appendix.

C. ISSUES PRESENTED FOR REVIEW

1. The state and federal constitutions guarantee a suspect the right not to incriminate himself. U.S. Const. amend. V; Const. art. I, § 9. Prior to admission of a defendant's custodial statement, the court must determine if the defendant knowingly, intelligently and voluntarily waived his constitutional rights to remain silent and to consult with an attorney.

a. Officer Luckie arrested Juan Cruz-Grijalva, read the Miranda rights orally, and interrogated Juan without obtaining an express waiver of his constitutional rights. The trial court found a valid

waiver based upon Juan's oral statement that he understood his rights and the lack of evidence of duress, but the court failed to consider Juan's youth in determining if he knowingly and intelligently waived his rights. Does the Court of Appeals decision affirming the trial court's conclusion conflict with established federal precedent, including Berghuis v. Thompkins, 560 U.S. 370 (2010), Fare v. Michael C., 442 U.S. 707 (1979), and Miranda v. Arizona, 384 U.S. 436 (1966)?

b. Officer Nicholson did not advise Juan of his Miranda rights prior to questioning him, and the Court of Appeals upheld the admission of Juan's statement on the grounds that Miranda rights are not required when a person is the subject of an investigative stop. Juan had been patted down, he was standing at the hood of a patrol car surrounded by several armed police officers and patrol cars with their emergency lights flashing, and he was not free to leave. Where a reasonable 16-year-old in Juan's position would believe he was not free to terminate the conversation and leave, does the Court of Appeals decision affirming the trial court conflict with J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011)?

2. A defendant's constitutional right to counsel is violated when he is forced to proceed with an attorney with whom he has an irreconcilable conflict. U.S. Const. amend. VI; Const. art. I § 22. When the defendant asks to discharge his court-appointed attorney, the court must inquire into the nature and extent of the purported problem. Juan asked the court to appoint new counsel because his attorney was not preparing a defense or explaining the case to him, and he later renewed the motion adding that his attorney withheld evidence from him. Both times the trial court denied Juan's request without posing the questions necessary to understand the nature of his dissatisfaction with his lawyer. Should this Court accept review of the Court of Appeals decision holding that Juan's constitutional right to counsel was not violated when the court denied his requests for a substitute counsel?

D. STATEMENT OF THE CASE

Sixteen-year-old Juan Cruz-Grijalva was near his home where his family was gathering to celebrate his mother's birthday when he was stopped by Seattle Police Officer Scott Luckie. 2RP 80, 88-89; 4RP 44-45.[1] Officer Luckie was responding to a call of a recent

[1] The verbatim report of proceeding of Juan's trial is referred to as follows:
1RP = 3/18/13
2RP = 3/20/13 and 3/21/13 (containing court rulings and defense witnesses)
3RP = 3/25/13

robbery in the neighborhood, and he believed that Juan matched the description provided by the victim, Linda Geer. 2RP 80. Another officer drove Ms. Geer to the location where Juan was stopped, and she stated that Juan was the person who robbed her. 2RP 42-44. The King County Prosecutor charged Juan in superior court with first degree robbery with a deadly weapon with an additional deadly weapon enhancement. CP 7-8; RCW 13.04.030(1)(e)(iv)(C).

Prior to his omnibus hearing, Juan asked the court to appoint at new attorney to represent him because he did not believe his court-appointed attorney was working on his defense. 11/21/12 RP 4-5. Juan explained that trial counsel had not talked to him about the case or developed a defense and was not honoring his choice to go to trial. 11/21/12 RP 4-5. The court denied the motion. CP 6; 11/21/12 RP 6.

Juan renewed his motion for new counsel on the first day of trial before the Honorable Lori Smith. 1RP 6-8, 10-11. Judge Smith denied the motion on the grounds that Judge Roberts had already ruled on the motion, even after Juan revealed that he learned after the hearing before

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4RP = 3/26/13
5RP = 3/17/13, 4/8/13, 4/18/13 and 5/15/13
11/21/12 RP = motion for new counsel before Judge Mary Roberts

Judge Roberts that his lawyer had withheld evidence from him. 1RP 11-14.

At a CrR 3.5 hearing, the trial court ruled that Juan's pre-Miranda statements to Officer Erin Nicholson were admissible because they occurred prior to Juan's arrest and Miranda warnings were therefore not needed.[2] 1RP 82; CP 73 (Finding and Conclusion as to the Areas of Dispute 2; Conclusion of Law as to the Admissibility of the Defendant's Statement(s) 1-2). The court also ruled that Juan's post-arrest statements were admissible even though the officer questioned Juan without obtaining an express waiver of his Miranda rights. 1RP 81-82; CP 73 (Findings and Conclusions 3-4, Conclusions 1, 3).

At Juan's jury trial, Linda Geer testified that she noticed someone behind her as she was walking from her bus stop to her West Seattle home after work. 2RP 23-24, 28. When Ms. Geer slowed down to see if the man would pass her, he asked her what time it was, and Ms. Geer gave him the time. 2RP 29-31. When she looked up, the man was standing in front of her and asked her to give him the iPhone

[2] Written findings of fact and conclusions of law were entered after Juan's opening brief was filed in the Court of Appeals. CP 63-74.

that she was holding in her hand. 2RP 32. Ms. Geer could see the blade of a knife in the man's hand. 2RP 33. Although it was dark and she was focused on the knife, Ms. Geer saw the robber's face. 2RP 30, 59.

Ms. Geer asked the man if she could first remove her personal information from her telephone, and the man permitted her re-set her iPhone. 2RP 33-34. When she was done, she held the telephone out and the man took it, returned Ms. Geer's bus card to her, and walked away. 2RP 35-36, 58. Ms. Geer continued home and, after about ten minutes, called the police. 2RP 37-38.

Officer Luckie was one of the Seattle Police officers dispatched to look for the robber, described as an Hispanic male in his early 20's, about 5'0" to 5'5" tall, wearing a dark "N.Y." or "New York" baseball cap and a thick light green hooded jacket. 2RP 80-82. The officer saw Juan walking northbound on 35th Avenue and believed Juan met this description. 2RP 84. Juan was no longer on the street, however, when the officer made a U-turn to stop him. 2RP 85-86.

A few seconds later, Officer Luckie saw Juan step onto the sidewalk, no longer wearing a baseball cap. 2RP 87. Officer Luckie pulled up to Juan, directed him to the hood of his patrol car, and frisked

him. 2RP 88-89. Juan was wearing a gray jacket, not a green one. 2RP 108.

When other officers arrived, Officer Luckie asked them to watch Juan while Officer Luckie checked nearby residences for a knife and a cell phone. 2RP 89-90. Officer Nicholson talked to Juan about where he had been that evening. 3RP 57-59.

Officer Luckie found a New York Yankees baseball cap and some knit gloves in nearby yards, and he therefore handcuffed Juan and placed Juan under arrest. 2RP 91-93. Officer Luckie asked Juan if he had been in the area of the robbery, and Juan said he had ridden the bus to that area. 2RP 94. Juan explained that he was going to his mother's house, but also said he was going to a friend's home. 2RP 95. Officer Luckie opined that Juan's explanation of the location of the friend's home changed over time and his description of his route did not make sense. 2RP 96. When asked why he removed his baseball cap, Juan stated he was afraid the officer might think he had stolen it. 2RP 96-97.

Ms. Geer was brought to Juan's location and asked if he was the person who took her cell phone. 2RP 42-43, 45-46. Officer Luckie placed the baseball cap he had found in the yard on Juan's head for the

show-up. 2RP 99-100, 155. Ms. Geer identified Juan although she could only see the general shape of his face. 2RP 62; Ex. 17. She also identified Juan at trial. 2RP 25, 54.

The next day Officer Luckie found a knife in a yard near the area where he stopped and arrested Juan. 2RP 100-01, 128. No fingerprints were found on the knife. 3RP 45.

Juan was convicted of first degree robbery with a deadly weapon enhancement, and his conviction was affirmed on appeal. CP 22-23. He seeks review in his Court.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. **The trial court admitted custodial statements Juan made to the police without proof that he knowingly, intelligently, and voluntarily waived his constitutional right to remain silent.**

A suspect in police custody must be advised of his constitutional rights to remain silent and to consult with an attorney before a police officer may interrogate him, and the suspect's waiver of those constitutional rights must be knowing, intelligent, and voluntary. Officer Nicholson questioned Juan about his whereabouts while Juan was being held by several police officers, but did not first advise Juan of his constitutional rights. The Court of Appeals concluded Miranda warnings were not necessary because it was an investigative stop. Slip

Op. at 9. Officer Luckie later arrested Juan and read him the Miranda warnings, but immediately questioned Juan without ensuring he was validly waiving his constitutional rights. The Court of Appeals concluded the waiver was voluntary despite the absence of an express waiver. Slip Op. at 11. This Court should address these constitutional issues because the Court of Appeals opinion misinterprets United States Supreme Court precedent. RAP 13.4(b)(3).

The Fifth Amendment provides the accused the right not to incriminate himself, as does the Washington Constitution.[3] U.S. Const. amend. V; Const. art. I, § 9. Due to the coercive nature of police custody, police officers must advice a suspect of this and other constitutional rights prior to questioning. Miranda v. Arizona, 384 U.S. 436, 467, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). The suspect must be unequivocally advised of his right to remain silent, that anything he says may be used against him in court, that he has the right to have an

[3] The Fifth Amendment provides that no person "shall be compelled in any criminal action to be a witness against himself." The Fifth Amendment is applicable to the States through the Fourteenth Amendment. Miranda, 384 U.S. at 463-64.

Article 1, section 9 of the Washington Constitution states, "No person shall be compelled in any criminal case to give evidence against himself." Washington courts have given article 1, section 9 the same interpretation as the United States Supreme Court has given the Fifth Amendment. State v. Unga, 165 Wn.2d 95, 100, 196 P.3d 645 (2008).

attorney present if he chooses to make a statement, and that an attorney will be appointed for him if he cannot afford one. Id. at 479.

An individual may knowingly and intelligently waive these constitutional rights and answer questions or provide a statement to the police. Miranda, 384 U.S. at 479. "The question whether the accused waived his rights is 'not one of form, but rather of whether the defendant in fact waived the rights delineated in the Miranda case.'" Fare v. Michael C., 442 U.S. 707, 724, 99 S. Ct. 2560, 61 L. Ed. 2d 197 (1979) (quoting North Carolina v. Butler, 441 U.S. 369, 373, 99 S. Ct. 1755, 60 L. Ed. 2d 286 (1979)). The court must review the totality of the circumstances to determine if the accused has knowingly and voluntarily abandoned his constitutional rights. Id. at 724-25 (citing Miranda, 382 U.S. at 475-77).

If a suspect waives his constitutional rights and interrogation continues without an attorney, "a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." Miranda, 384 U.S. at 475. The government must establish that (1) the waiver was voluntary and (2) the defendant understood both the rights he was abandoning and the consequences of

a decision to waive those rights. Moran v. Burbine, 475 U .S. 412, 421, 106 S. Ct. 1135, 89 L. Ed. 2d 410 (1986); Fare, 442 U.S. at 725.

a. The admission of Juan's custodial statements to Officer Luckie conflicts with United States Supreme Court precedent requiring a knowing and intelligent waiver of the right to remain silent.

The State bears the burden of proving the admissibility of a defendant's confession, including the validity of the Miranda waiver and voluntariness of the confession. Missouri v. Seibert, 542 U.S. 602, 608 n.1, 124 S. Ct. 2601, 159 L. Ed. 2d 643 (2004). In the present case, Officer Luckie detained Juan and, after finding a baseball cap in a nearby lawn, handcuffed and arrested him. 1RP 24, 8-29. The officer read the Miranda rights out loud, asked Juan if he understood them, and began questioning the teenager without asking him if he agreed to waive his constitutional rights. 1RP 29-30, 34, 46.

The court must review the totality of the circumstances -- including the defendant's background, experience, and conduct -- to ascertain if the respondent's waiver of his constitutional rights was in fact knowing and voluntarily. Fare, 442 U.S. at 725; Butler, 441 U.S. at 374; Miranda, 384 U.S. at 475-77. A defendant's youth is necessarily one the considerations:

> The totality approach permits - indeed it mandates – inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.

Fare, 442 U.S. at 725.

A defendant's waiver of his constitutional rights need not be express. Berghuis v. Thompkins, 560 U.S. 370, 384, 130 S. Ct. 225, 176 L. Ed. 2d 1098 (2010); State v. Terrovona, 105 Wn.2d 632, 646-47, 716 P.2d 295 (1986). But it is not sufficient to show that Miranda warnings were given and the accused made an uncoerced statement; the State must still prove that the defendant understood his constitutional rights. Thompkins, 560 U.S. at 384.

The trial court admitted Juan's statements to Officer Luckie despite the absence of an express waiver without considering Juan's youth. 1RP 81-82. The Court of Appeals approved of the court's decision despite its failure to acknowledge Juan's youth. Slip Op. at 10-11.

Courts may not presume a waiver of important constitutional rights, but must "indulge every reasonable presumption against waiver" of those rights. Johnson v. Zerbst, 304 U.S. 458, 464, 58 S. Ct. 1019,

82 L. Ed. 2d 1461 (1938); accord Miranda, 384 U.S. at 475 ("[A] valid waiver will not be presumed simply from the silence of the accused after warnings are given or imply from the fact that a confession was in fact eventually obtained."). Given the lack of evidence that Juan knowing and intelligently waived his constitutional rights to remain silent and to consult with counsel, the Court of Appeals decision conflicts with Thompkins, Fare, and Miranda. This Court should accept review of this federal constitutional issue. RAP 13.4(b)(3).

b. The admission of Juan's statements to Officer Nicholson conflicts with *J.D.B. v. North Carolina* because a reasonable 16-year-old in Juan's position would have understood he was in police custody.

Due to the coercive nature of police custody, police officers must administer Miranda warnings prior to interrogation of any suspect who "has been taken into custody or otherwise deprived of his freedom of action in any significant way." Miranda, 384 U.S. at 444; accord J.D.B. v. North Carolina, __ U.S.__, 131 S. Ct. 2394, 2401-02, 180 L. Ed. 2d 310 (2011). A suspect is in custody if, in light of the totality of the circumstances, a reasonable person would have felt he "was not at liberty to terminate the interrogation and leave." Thompson v. Keohane, 516 U.S. 99, 112, 116 S. Ct. 457, 133 L. Ed. 2d 383 (1995); State v. Heritage, 152 Wn.2d 210, 218, 95 P.3d 345 (2004).

In determining if a suspect is in custody, the reviewing court looks at "all of the circumstances surrounding the interrogation" to determine "how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her freedom of action." J.D.B., 131 S. Ct. at 2402 (quoting Thompson, 516 U.S. at 112). The court must "'examine all of the circumstances surrounding the interrogation,' including any circumstance that 'would have affected how a reasonable person' in the suspect's position 'would perceive his or her freedom to leave.'" Id. (internal citations omitted) (quoting Stansbury v. California, 511 U.S. 318, 322, 325, 114 S. Ct. 1526, 128 L. Ed. 2d 293 (1994)).

The trial court found that Officer Nicholson was not required to inform Juan of his Miranda rights because Juan was not under arrest but was being held as a result of a Terry stop. The court noted he was not yet in handcuffs or in a patrol car. 1RP 82. Officer Luckie, however, had ordered Juan to come to his patrol car, where Juan placed his hands of the hood of the car and the officer patted him down for weapons. 1RP 42. Several other armed police officers arrived in addition to Officer Luckie and detained Juan in the street. 1RP 43; 2RP 135-36; Ex. 13, 17. Several patrol cars were in the street with emergency lights

flashing. Ex. 13, 17. Juan was clearly not free to leave, and a reasonable 16-year-old in his position might believe he was under arrest.

In determining if Miranda warnings were required, the Court of Appeals looked only to the fact that Juan was not under arrest. Slip Op. at 9-10. Like the trial court, the Court of Appeals did not consider Juan's youth. A child's age, however, is an objective fact that must be considered in determining if a reasonable person in the suspect's position would believe he was free to leave. J.D.B., 131 S. Ct. at 2402-03. "[A] reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult will feel free to go." Id. at 2403. The court was required to consider Juan's age in determining if he was in custody, and the court's failure to do so denied Juan "the full scope of the procedural safeguards that Miranda guarantees to adults." Id. at 2408.

Juan was in a coercive environment, standing by a police patrol car surrounded by several armed officers and patrol cars with their emergency lights flashing. A reasonable person Juan's age would not believe he could walk away from the officers and refuse to answer their questions. The Court of Appeals decision does not address J.D.B., and

this Court should accept review to address this federal constitutional issue. RAP 13.4(b)(3).

2. **Juan's constitutional right to counsel was violated when the trial court denied his motion to discharge his court-appointed attorney.**

A criminal defendant has the right to counsel, which includes effective counsel who is working on his client's behalf. Juan twice asked the superior court for a new attorney because his court-appointed lawyer was not adequately explaining the case, had withheld evidence, and had not prepared a defense, but the court made only a limited inquiry concerning the problems in the attorney-client relationship. This Court should accept review because the denial of his requests for new counsel violated Juan's constitutional right to effective assistance of counsel. RAP 13.4(b)(3).

The federal and state constitutions provide a criminal defendant with the right to counsel and to due process of law. U.S. Const. amend. VI; Const. art. 1, § 22. Counsel's critical role in the adversarial system protects the defendant's fundamental right to a fair trial. Strickland v. Washington, 466 U.S. 668, 684-85, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); United States v. Cronic, 466 U.S. 648, 656, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984). The right to counsel therefore necessarily

includes the right to effective assistance of counsel. Kimmelman v. Morrison, 477 U.S. 365, 377, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986); State v. A.N.J., 168 Wn.2d 91, 96-98, 225 P.3d 956 (2010). The right to effective counsel is not fulfilled simply because an attorney is present in court; the attorney must actually assist the client and play a role in ensuring the proceedings are adversarial and fair. Strickland, 466 U.S. at 685; A.N.J., 168 Wn.2d at 98.

The right to counsel is violated when a defendant is forced to proceed with an attorney he does not trust or with whom he has an irreconcilable conflict or cannot communicate. State v. Thompson, 169 Wn. App. 436, 463, 290 P.3d 966 (2012), rev. denied, 176 Wn.2d 1023 (2013); Daniels v. Woodford, 428 F.3d 1181, 1197 (9th Cir. 2005), cert. denied, 550 U.S. 968 (2007); United States v. Nguyen, 262 F.3d 998, 1003 (9th Cir. 2001); Brown v. Craven, 424 F.2d 1166, 1170 (9th Cir. 1970). The loss of trust and resulting breakdown in communication results in the constructive denial of counsel. Daniels, 428 F.3d at 1198; Brown, 424 F.2d at 1169.

In reviewing the denial of a defendant's motion for new counsel, the appellate court considers (1) the adequacy of the trial court's inquiry into the conflict; (2) the extent of the conflict between the

accused and his attorney, and (3) the timeliness of the motion. In re Personal Restraint of Stenson, 142 Wn.2d 710, 724, 16 P.3d 1 (2001) (citing United States v. Moore, 159 F.3d 1154, 1158 n.3 (9th Cir. 1998)); Daniels, 428 F.3d at 1197-98.

The Court of Appeals held that Juan did not demonstrate the good cause necessary to justify the appointment of new counsel but simply made "vague allegations suggesting a lack of accord." Slip Op. at 5-6. Juan, however, told the court that his attorney was not handling the case with an eye towards proving his innocence and was not honoring Juan's choice to go to trial. 11/21/12 RP 4. He later told the court that his attorney had not explained the evidence against him so that he could understand the case and had even withheld information from him. 1RP 7, 12. Juan was left with no faith that his attorney would fight for him. 1RP 12-13. Juan thus established legitimate dissatisfaction with trial counsel.

Defense counsel has a duty to establish a relationship with his client of "trust and confidence" and to act as an advocate for the client. American Bar Association, ABA Standards for Criminal Justice Prosecution Function and Defense Function, Standard 4-3.1(a) at 147 (3rd ed. 1993). Juan was a teenager facing serious charges. He had lost

confidence in his attorney and provided the court with concrete reasons why. The Court of Appeals incorrectly concluded that Juan did not provide the court with reasons to justify the appointment of new counsel.

The Court of Appeals also ignored the inadequacy of the court's inquiry into the reasons for Juan's request for new counsel. Slip Op. at 5. When the trial court learns of a conflict between a defendant and his counsel, the court must thoroughly inquire into the factual basis of the defendant's dissatisfaction. Thompson, 169 Wn. App. at 462 (court has "obligation to inquire thoroughly into the factual basis of the defendant's dissatisfaction") (quoting Smith v. Lockhart, 923 F.2d 1314, 1320 (8th Cir. 1991)); State v. Dougherty, 33 Wn. App. 466, 471, 655 P.2d 1187 (1982) ("A penetrating and comprehensive examination by the court of the defendant's allegation will serve as the basis of whether different counsel needs to be appointed"), rev. denied, 99 Wn.2d 1023 (1983);

Wayne R. LaFave, Jerold H. Israel, Nancy J. King & Orin S. Kerr, Criminal Procedure § 11.4(b) at 700-02 (3rd ed. 2007).

"[I]n most circumstances, a court can only ascertain the extent of the breakdown in communication by asking specific and targeted

questions." United States v. Adelzo-Gonzalez, 268 F.3d 772, 777-78 (9th Cir. 2001). In Juan's case, however, the court simply asked Juan to state his reasons without further, targeted inquiry. The Court of Appeals conclusion that the trial court judges adequately inquired into the reasons for Juan's request for new counsel should be reviewed by this Court.

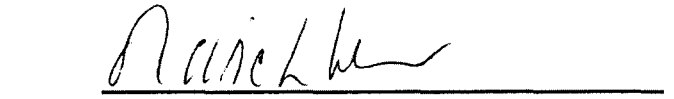
The trial court violated Juan's constitutional right to effective assistance of counsel by denying his motion for new counsel and forcing Juan to proceed to trial with an attorney who had not adequately explained the prosecution case and who Juan believed had not prepared a defense. This Court should accept review of this important constitutional issue. RAP 13.4(b)(3).

F. CONCLUSION

Juan asks this Court to accept review of the Court of Appeals decision affirming his first degree robbery conviction.

DATED this 11th day of February 2015.

Respectfully submitted,



Elaine L. Winters – WSBA # 7780
Washington Appellate Project
Attorneys for Appellant

APPENDIX

COURT OF APPEALS DECISION TERMINATING REVIEW

January 20, 2015

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JUAN CRUZ-GRIJALVA, aka JUAN ALEXANDER CRUZ, Appellant.	No. 70419-2-I DIVISION ONE UNPUBLISHED OPINION FILED: January 20, 2015

APPELWICK, J. — Cruz-Grijalva appeals his conviction for robbery. He contends that the trial court abused its discretion in denying his motions for new counsel and erred in admitting statements he made to police before and after his arrest. We affirm.

FACTS

On the evening of January 6, 2012, Linda Geer called 911 to report being robbed by a young Hispanic man wearing a light green hooded jacket and a dark New York baseball cap. The man threatened her with a knife and demanded her iPhone. Shortly thereafter, Seattle Police Officer Scott Luckie saw a man matching Geer's description of the robber near the scene of the crime. Officer Luckie told the man, Juan Cruz-Grijalva, to come to the front of his patrol car, where he conducted a frisk for weapons. Officer Luckie left Cruz-Grijalva with other officers and searched along the sidewalk and nearby yards, where he found a New York Yankees baseball cap and black knit gloves. Officer Luckie returned to his patrol car and arrested Cruz-Grijalva and put him in handcuffs.

Another officer arrived with Geer, who identified Cruz-Grijalva as the man who robbed her.

The State charged Cruz-Grijalva with first degree robbery while armed with a deadly weapon. Prior to trial, Cruz-Grijalva twice requested new counsel. At a hearing on November 21, 2012, Cruz-Grijalva claimed counsel was "not doing what he needs to do to prove my innocence. And I refuse to talk to him about my case, and . . . we have a conflict of interest." Cruz-Grijalva complained that counsel "goes against" all his choices; tried to "force [him] to take a deal"; did not visit him or answer his calls; and only asked for continuances. He wanted an attorney "that will actually show that he's, you know, really trying for me." The trial court denied his request.

On the first day of trial, March 18, 2013, Cruz-Grijalva again requested a new attorney, claiming that counsel would not explain his trial strategy and "actually withheld some evidence from" him. Cruz-Grijalva also stated, "[I]f you guys don't want to give me a new public defender . . . at least can I have some time to get a paid attorney?" He also insisted that his attorney did not tell him that any previous continuance had been granted to allow him to obtain private counsel and indicated that his sister was helping him so he could obtain private counsel within one week. The trial court denied his motion for new counsel or a continuance.

At a CrR 3.5 hearing, Officer Luckie testified that he did not recall whether Cruz-Grijalva made any statements when he initially detained him and frisked him for weapons. When he returned from searching the area, Officer Luckie

placed Cruz-Grijalva in handcuffs and advised him of his Miranda rights. See Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). Officer Luckie testified that Cruz-Grijalva indicated that he understood his rights. In response to the officer's questions, Cruz-Grijalva offered various descriptions of his destination and his routes. When asked why he had "ditched his hat," Cruz-Grijalva claimed he was afraid the police would believe it was stolen because someone had accused him of stealing it.

Officer Erin Nicholson testified that she stood with Cruz-Grijalva at the patrol car before his arrest and asked him where he had been before being detained by Officer Luckie. Cruz-Grijalva said he had been to Safeway after getting off the bus. After informing Cruz-Grijalva that the officers had stopped him because he fit the description of someone for whom they were searching, Officer Nicholson joined Officer Luckie in searching the area

The State argued that Cruz-Grijalva's statements to both officers were admissible, because he was not under arrest when he answered Officer Nicholson's questions and he had been advised of his Miranda rights when he answered Officer Luckie's questions. Cruz-Grijalva argued that Officer Nicholson's questions constituted an improper custodial interrogation and that Officer Luckie failed to properly determine whether he intended to waive his rights before questioning him. The trial court determined that Cruz-Grijalva's statements were admissible because he was detained but not in custody when he spoke to Officer Nicholson, Officer Luckie properly advised him of his Miranda rights before questioning him, and he validly waived his rights.

Following trial, the jury found Cruz-Grijalva guilty as charged. The trial court imposed a standard range sentence.

Cruz-Grijalva appeals.

DISCUSSION

Cruz-Grijalva first contends the trial court erred by denying his motion for a new attorney in November 2012 and again on the first day of trial, March 18, 2013.

Although criminal defendants are guaranteed the right to representation by counsel under the constitution, they are not guaranteed to representation by particular counsel of their choosing. State v. Stenson, 132 Wn.2d 668, 733, 940 P.2d 1239 (1997). The decision of whether a defendant's dissatisfaction with his counsel is meritorious and justifies the appointment of new counsel is an issue within the discretion of the trial court. Id. The Stenson Court elaborated:

> A criminal defendant who is dissatisfied with appointed counsel must show good cause to warrant substitution of counsel, such as a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant. Attorney-client conflicts justify the grant of a substitution motion only when counsel and defendant are so at odds as to prevent presentation of an adequate defense. The general loss of confidence or trust alone is not sufficient to substitute new counsel.
>
> Factors to be considered in a decision to grant or deny a motion to substitute counsel are (1) the reasons given for the dissatisfaction, (2) the court's own evaluation of counsel, and (3) the effect of any substitution upon the scheduled proceedings.

Id. at 734 (internal citations omitted).

In reviewing a denial of a request for new counsel, we consider (1) the extent of the conflict between the defendant and counsel, (2) the adequacy of the trial court's inquiry, and (3) the timeliness of the motion. State v. Harris, 181 Wn. App. 969, 977, 327 P.3d 1276 (2014).

Cruz-Grijalva contends that the trial court abused its discretion by failing to adequately inquire into the reasons for his conflict with counsel. He complains that the first judge asked "only two open-ended questions," and the second judge questioned him only regarding his previous request and "simply listened to [his] concerns." But, the first judge asked Cruz-Grijalva to describe the conflict of interest and then asked whether "something in particular" was "going wrong between" him and counsel. And, the judge asked defense counsel and the prosecutor to comment on Cruz-Grijalva's complaints and the preparation of the case. The second judge asked Cruz-Grijalva, defense counsel, and the prosecutor about previous requests, and then allowed Cruz-Grijalva to state the reasons for his request at length on the record. Because each judge allowed Cruz-Grijalva and counsel to fully express any concerns, Cruz-Grijalva fails to establish that the inquiry was inadequate. State v. Schaller, 143 Wn. App. 258, 271, 177 P.3d 1139 (2007) ("[A] trial court conducts adequate inquiry by allowing the defendant and counsel to express their concerns fully," and "[f]ormal inquiry is not always essential where the defendant otherwise states his reasons for dissatisfaction on the record.").

Similarly, Cruz-Grijalva fails to demonstrate a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication requiring

substitution of counsel. At the November 2012 hearing, Cruz-Grijalva indicated a general loss of confidence and trust, insufficient opportunities for communication, and dissatisfaction with counsel's preparation of the defense case. Given the trial court's determination that "everything is getting ready for trial" in the manner expected, Cruz-Grijalva's allegations, even if supported, would not necessitate the substitution of counsel. State v. Varga, 151 Wn.2d 179, 200-01, 86 P.3d 139 (2004) (defendant's general dissatisfaction and distrust insufficient to warrant substitution of counsel).

At the March 18, 2013 hearing, Cruz-Grijalva complained that his attorney failed to "explain to me our strategy we're going to take during trial," despite his desire "to come prepared and understand what's going on." He added that when he received his "discovery last month," he "found out that" his attorney "actually withheld some evidence" and "didn't really explain to me all the stuff that they had against me, or like what could help me out." But, vague allegations suggesting a general lack of accord regarding trial preparation and strategy do not establish a complete collapse of communication between counsel and client. See State v. Cross, 156 Wn.2d 580, 606-09, 132 P.3d 80 (2006) (strategic disagreement between counsel and client regarding use of mental health defense did not demonstrate legally cognizable conflict requiring new counsel).

Under these circumstances, Cruz-Grijalva fails to demonstrate abuse of discretion in the trial court's denial of his motion for new counsel at either the November 2012 or the March 2013 hearing.

Cruz-Grijalva next contends the trial court violated his Fifth Amendment rights by admitting statements he made to Officer Nicholson and Officer Luckie.

We review the trial court's decision following a CrR 3.5 hearing to determine whether substantial evidence supports the findings of fact. State v. Broadaway, 133 Wn.2d 118, 130-31, 942 P.2d 363 (1997). Unchallenged findings of fact are verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). The trial court's determination as to whether questioning constituted custodial interrogation is a conclusion of law that we review de novo. State v. Lorenz, 152 Wn.2d 22, 36, 93 P.3d 133 (2004).

Miranda warnings are required prior to the initiation of "custodial interrogation." State v. Heritage, 152 Wn.2d 210, 214, 95 P.3d 345 (2004). The test for determining whether a defendant is in custody for purposes of Miranda is an objective one: "whether a reasonable person in the individual's position would believe he or she was in police custody to a degree associated with formal arrest." Lorenz, 152 Wn.2d at 36-37.

Consistent with the Fourth Amendment and article I, section 7 of the Washington Constitution, a police officer may conduct a brief investigatory detention if the officer has a reasonable and articulable suspicion that an individual is involved in criminal activity. State v. Sieler, 95 Wn.2d 43, 46, 621 P.2d 1272 (1980); see also Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). During the course of a Terry stop, the officer may ask a moderate number of questions "to confirm or dispel the officer's suspicions." Heritage, 152 Wn.2d at 218. Because Terry stops generally are brief and occur

in public, "they are 'substantially less police dominated' than the police interrogations contemplated by Miranda." Id. (internal quotation marks omitted) (quoting Berkemer v. McCarty, 468 U.S. 420, 439, 440, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984)). Consequently, a routine investigatory detention is not custodial for purposes of Miranda. Id.

Here, when Officer Luckie called Cruz-Grijalva over to his car, he knew that Cruz-Grijalva matched the description of the robber, was walking away from the general vicinity of the crime scene, and had removed his hat since Officer Luckie first passed by in his patrol car minutes earlier. These facts justified Officer Luckie's decision to briefly detain Cruz-Grijalva to determine whether he might have committed the robbery. After conducting a Terry frisk for weapons while Cruz-Grijalva had his hands on the hood of the patrol car,[1] Officer Luckie allowed him "to stand freely" in front of the car while the investigation continued. Cruz-Grijalva was not handcuffed and had not been told he was under arrest. Officer Luckie obtained Cruz-Grijalva's identification and knew that he was under 18 years old.

As Officer Luckie finished the frisk and began to search the area, Officer Nicholson arrived and briefly asked Cruz-Grijalva about where he had been before being stopped by Officer Luckie. After Cruz-Grijalva answered this single question, Officer Nicholson told him he was being detained for the robbery investigation, but she did not tell him he was under arrest. The officers searched

[1] Cruz-Grijalva does not contend that the frisk exceeded the permissible scope of an investigatory detention. See State v. Day, 161 Wn.2d 889, 895, 168 P.3d 1265 (2007).

the area for 5 to 10 minutes. The trial court found that during that time, Cruz-Grijalva "was not free to leave, but was allowed to remain standing in front of Officer Luckie's patrol car" with other officers nearby. When Officer Luckie returned, he placed Cruz-Grijalva in handcuffs, informed him he was under arrest, and advised him of his Miranda rights.

Cruz-Grijalva argues that the trial court failed to consider his age and to determine whether a reasonable juvenile in his position would have felt free to leave at the time Officer Nicholson asked her single question. But, when a police officer questions a suspect during a valid investigatory detention, the fact that the suspect is not necessarily free to leave does not elevate the encounter into a custodial interrogation. See Berkemer, 468 U.S. at 439-40 (Fourth Amendment seizure of suspect for routine Terry stop does not rise to the level of "custody" for purposes of Miranda); Heritage, 152 Wn.2d at 218; State v. Walton, 67 Wn. App. 127, 130, 834 P.2d 624 (1992). The relevant question is whether a reasonable person in Cruz-Grijalva's position would have believed his freedom was curtailed to a degree associated with arrest at the time officers questioned him. Heritage, 152 Wn.2d at 218.

The trial court's unchallenged findings are that police (1) did not handcuff Cruz-Grijalva, (2) did not tell him he was under arrest, (3) allowed him to stand freely near the patrol car while they searched the area, and (4) asked him just one brief question regarding his activity before the stop. These findings support the conclusion that he was detained but that his freedom of movement had not been curtailed to a degree associated with formal arrest. Cruz-Grijalva fails to

demonstrate how his youth would "ultimately modify this otherwise noncustodial encounter into a custodial one." Heritage, 152 Wn.2d at 219. Given the circumstances described in the unchallenged factual findings, the trial court did not err in concluding that Cruz-Grijalva was not in custody for purposes of Miranda and admitting his statements to Officer Nicholson.

As to his statements to Officer Luckie after he was advised of his Miranda rights, Cruz-Grijalva contends the State failed to prove that he voluntarily waived his rights. Cruz-Grijalva does not dispute the trial court's findings that Officer Luckie (1) read the statement of rights to him, (2) "properly included the extra juvenile warning," and (3) asked him whether he understood his rights. He also does not dispute the finding that he orally indicated to Officer Luckie that he understood his rights. Instead, Cruz-Grijalva argues that Officer Luckie failed to do anything to additionally confirm that he actually understood his rights or specifically ask whether he wanted to waive his rights before beginning to question him.

Whether a juvenile has effectively waived his Miranda rights depends on the totality of the circumstances, including the juvenile's age, experience, background, intelligence, and his capacity to effect a voluntary waiver. State v. Blair, 56 Wn. App. 209, 212, 783 P.2d 102 (1989). Waiver of Miranda rights may be inferred when a juvenile indicates an understanding of his rights and voluntarily discusses the charged crime with police officers. See State v. Ellison, 36 Wn. App. 564, 571, 676 P.2d 531 (1984) (where juvenile acknowledged understanding rights, appeared to understand rights, and responded to questions

after initialing rights on card, waiver valid despite police failure to specifically ask for waiver or obtain signature on waiver form and despite evidence that juvenile had eleventh grade education, was in special education program, and had difficulties with reading and comprehension).

Here, the trial court found that Officer Luckie advised Cruz-Grijalva of his rights and asked him if he understood them. Cruz-Grijalva indicated that he understood his rights, "was neither hesitant nor reluctant to speak" with Officer Luckie but "willingly participated in" conversation with him, and eventually "declined . . . to provide any more information about this alleged incident." Nothing in the record indicates that Cruz-Grijalva's age, experience, education, background, intelligence, or capacity actually prevented him from waiving his rights. Thus, the trial court properly determined that Cruz-Grijalva voluntarily waived his rights and properly admitted his statements.

We affirm.

WE CONCUR:

COX, J.

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[PAOAppellateUnitMail@kingcounty.gov]
[mafe.rajul@kingcounty.gov]
King County Prosecutor's Office-Appellate Unit

☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

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PAOAppellateUnitMail@kingcounty.gov
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