SUPREME COURT NO. 98027-6

COURT OF APPEALS NO. 36260-4-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

KURTIS P. JONES-TOLLIVER,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR STEVENS COUNTY

The Honorable Patrick Monasmith, Judge
The Honorable Jessica Reeves, Judge

PETITION FOR REVIEW

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RULES, STATUTES AND OTHER AUTHORITIES

A. IDENTITY OF PETITIONER/COURT OF APPEALS DECISION

Petitioner Kurtis Jones-Tolliver asks this Court to grant review of the court of appeals' unpublished decision in State v. Jones-Tolliver, No. 36280-4-III, filed December 17, 2019 (attached as appendix).

B. ISSUES PRESENTED FOR REVIEW

At the pre-trial CrR 3.5 hearing to determine the admissibility of Jones-Tolliver's statements to police the State failed to present any evidence that Jones-Tolliver was given the warnings required by Miranda[1]. Nonetheless, Jones-Tolliver's incriminating statements were admitted at his trial. Should this Court grant review under RAP 13.4(b)(1), (2), and (3), where the court of appeals ruled that because Jones-Tolliver did not specifically argue at the CrR 3.5 hearing the Miranda warnings were inadequate he forfeited that claim on appeal despite this Court's and the United States Supreme Court's precedent that under the Washington State and United States constitutions a defendant's statements to police are not admissible unless the State proves by a preponderance of the evidence that a defendant was advised of his Miranda rights and waived those rights?

The court of appeals ruled that because Jones-Tolliver did not argue the adequacy of the Miranda rights given to him by police, the State met its burden of proving Jones-Tolliver was adequately advised of his Miranda

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

rights and he knowingly and intelligently waived those rights even though there was no evidence in the record what police advised Jones-Tolliver. Should this Court grant review under RAP 13.4(b)(4), where the court of appeals ruled where the defendant does not argue the adequacy of the Miranda warnings at a CrR 3.5 hearing the State meets its burden of proving a defendant is adequately advised of those rights and that he knowingly and intelligently waives those rights even though the record is silent on what police advised the defendant regarding the Miranda rights?

C. STATEMENT OF THE CASE

a. Facts

The State charged Jones-Tolliver with one count of theft of a motor vehicle belonging to a customer of Colville Motor Sports (Count I), and two counts of second degree burglary. Colville Motor Sports was the named victim in one burglary charge (Count 11) and Jammin' Java was the named victim in the other burglary (Count III). CP 016-018. It was alleged Jones-Tolliver was an accomplice to those offenses. Id. Colin Haynes was the principal in the burglaries and theft.

Haynes testified that he broke into the Jammin' Java while Jones-Tolliver stood off to the side. RP 260, 262. He said Jones-Tolliver did not want him to break into the building and tried to get him to leave. RP 263.

Haynes gave Jones-Tolliver some of the money he took from the business. Id.

Haynes and Jones-Tolliver then went to Colville Motor Sports. Haynes said he jumped the fence, grabbed a couple of helmets and a motorcycle. RP 264. Jones-Tolliver refused to jump the fence with Haynes. Haynes gave one of the helmets he took to Jones-Tolliver, but Jones-Tolliver laid it on the ground. Jones-Tolliver also refused to ride on the motorcycle with Haynes and he walked off. Id.

Jones-Tolliver also testified. He admitted he was a drug addict and had a prior conviction for burglary. RP 310. He testified that he and Haynes got a ride from Spokane to visit Haynes' brother, but they were left stranded in Colville. RP 290-291. The two ingested heroin and then Jones-Tolliver followed Haynes to the Jammin' Java. Haynes broke into the building while Jones-Tolliver stood outside waiting for him. RP 292-293. Haynes never discussed breaking into the business with Jones-Tolliver. Id. Eventually Jones-Tolliver stuck his head in the window and told Haynes to leave. Id.; RP 302.

Jones-Tolliver then followed Haynes to Colville Motor Sports. RP 294-295. Jones-Tolliver was scared so he hid while Haynes jumped the fence. RP 295. Haynes then called for him, so Jones-Tolliver went in through where the fence was broken. RP 304. Haynes had two helmets.

Jones-Tolliver took one of the helmets but when the alarm went off, he set it on the ground and ran. RP 296, 304-305. Haynes got on the motorcycle and rode off. RP 297. A short time later, Haynes came back and found Jones-Tolliver. Id.

The two then went to a Safeway store and Haynes gave Jones-Tolliver some money and he used some the money to buy some food. RP 298. From there they went to Walmart. Id.

b. CrR 3.5 Hearing

Officer Gorst testified that Jones-Tolliver was picked up by two other officers at Walmart and taken to the store's security office, along with Haynes. RP 11, 13. Gorst testified he read Jones-Tolliver the "Miranda rights" because Jones-Tolliver was in custody and police wanted to interrogate him. RP 11. Gorst said he read the rights from a card he carried, but he did not have the card with him at the hearing. RP 12. Gorst said that after reading from the card, he "made sure" Jones-Tolliver understood them, and Jones-Tolliver agreed to speak with police. Id. The card was not admitted into evidence and Gorst did not testify what he advised Jones-Tolliver regarding the Miranda warnings.

Based solely on Gorst's testimony, the court found Jones-Tolliver was given the Miranda warnings and he waived his rights. RP 27-28. The court did not hold the State to its burden of proving Jones-Tolliver was

given adequate Miranda warnings and knowingly and intelligently waived his rights but instead ruled, "There's no indication that the waiver was anything other than knowing and voluntary." RP 28. It ruled the statements Jones-Tolliver made to police admissible. RP 28-29.

The court entered the following written findings of fact: "The defendant was given Miranda warnings prior to being questioned; the defendant waived those rights." CP 014. It concluded the statements made to police were admissible. Id.

Gorst was allowed to testify at trial that when interrogated by police Jones-Tolliver confessed that he actively participated in the crimes. RP 182.

c. Court of Appeals Decision

On appeal, Jones-Tolliver argued his confession to Gorst was improperly admitted because the State failed to prove he was advised of his Miranda rights before the custodial interrogation and that he knowingly and intelligently waived those rights. Thus, his statements should have suppressed. Brief of Appellant at 8-13. He argued that because the record was silent as to what Miranda warnings Gorst gave him the trial court's findings that he was given Miranda warnings prior to being questioned and that he waived those rights was not supported by the evidence. Id.

The court of appeals disagreed. It ruled that because Jones-Tolliver did not argue at the CrR 3.5 hearing that he was not properly advised of his Miranda rights, the issue of the adequacy of the Miranda warnings was waived on appeal. Opinion at 4. The court of appeals acknowledged that the issues of the adequacy and accuracy of Miranda warnings was a question of constitutional law, it ruled, however, there was no authority that requires the State to present evidence of the "substance" of the Miranda warnings to meet its burden of proving a defendant was advised of his Miranda rights and waived those rights. Id. at 5. It held that the testimony that Jones-Tolliver was read the Miranda warnings from a card "was sufficient evidence to conclude the Miranda rights were properly given and waived." Id. at 6.

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

THIS COURT OF APPEALS DECISION CONFLICTS WITH DECISIONS FROM THIS COURT AND UNITED STATES SUPREME COURT, AND THE ISSUE OF WHETHER A DEFENDANT'S STATEMENTS TO POLICE ARE ADMISSIBLE WHERE THE STATE FAILS TO PRESENT ANY EVIDENCE OF WHAT POLICE ADVISED THE DEFENDANT REGARDING HIS MIRANDA RIGHTS WHEN THE DEFENDANT DOES NOT ARGUE THE ADEQUACY OF THE MIRANDA WARNINGS AT A CrR 3.5 HEARING, IS A SIGNIFICANT QUESTION OF LAW UNDER THE WASHINGTON STATE AND UNITED STATES CONSTITUTIONS AND IS OF SUBSTANTIAL PUBLIC IMPORTANCE THAT HAS NOT BEEN DECIDED BY THIS COURT.

To protect against coerced self-incrimination prohibited by the Fifth Amendment and Washington Constitution article I, section 9,[2] Miranda requires that, before being subjected to custodial interrogation, a person must be warned "that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." State v. Brown, 132 Wn.2d 529, 582-83, 940 P.2d 546 (1997). Unless a defendant has been given these Miranda warnings, his statements during police interrogation are presumed to be involuntary. State v. Sargent, 111 Wn.2d 641, 647-48, 762 P.2d 1127 (1988). Thus, adequate Miranda warnings are a prerequisite to the admission of a defendant's statements. State v. Mayer, 184 Wn.2d. 184 Wn.2d 548, 559, 362 P.3d 745 (2015). Unwarned statements must be excluded under Miranda. Oregon v. Elstad, 470 U.S. 298, 307, 105 S.Ct. 1285, 84 L.Ed.2d 222 (1985).

Here, Gorst testified he read Jones-Tolliver the Miranda rights from his department-issued card. The card Gorst referred to was not admitted nor did Gorst testify to what was written on the card or if he even remembered

[2] The Fifth Amendment to the United States Constitution provides that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." The Washington Constitution article I, section 9 grants a similar right and its protection is coextensive with the right that the Fifth Amendment provides. State v. Unga, 165 Wn.2d 95, 100, 196 P.3d 645 (2008).

what rights he read to Jones-Tolliver. The evidence in this case fails to show that Jones-Tolliver was specifically advised of *any* of his Miranda rights. Thus, his statements should have been deemed inadmissible.

Even though there was no evidence of what Gorst read to Jones-Tolliver, the court of appeals ruled because Jones-Tolliver did not argue at the CrR 3.5 hearing that he was not properly advised of his Miranda rights, the issue of whether Jones-Tolliver was adequately advised of those rights was waived on appeal. The court of appeals recognized "the accuracy and adequacy of Miranda warnings present questions of constitutional law" but ruled there was no authority "supporting the proposition that the State must always meets its burden of proof by the reciting the substance of Miranda warnings into the record" when the adequacy of the warnings is not questioned at a CrR 3.5 hearing. Opinion at 5. It ruled that Gorst's testimony he read Jones-Tolliver the Miranda rights from his department-issued card, was substantial evidence supporting the trial court's findings. Opinion at 6. The decision is wrong for several reasons.

First, the court of appeals' reasoning improperly conflates the purpose of a CrR 3.5 hearing with the constitutional requirements that before a custodial interrogation a defendant must be advised of his Miranda rights. The purpose of a CrR 3.5 hearing is to provide a

mechanism to determine the voluntariness of an incriminating statement in a preliminary hearing, outside the presence of the jury. State v. Williams, 137 Wn.2d 746, 750, 975 P.2d 963 (1999).[3] While the right to a CrR 3.5 hearing is not itself of constitutional magnitude it was enacted to implement constitutional requirements. Id. at 756, n.4.

The court of appeals fails to cite any authority for its holding that a defendant's statements are admissible even where there was no evidence he was given adequate Miranda warnings because the defendant did not specifically argue at the CrR 3.5 hearing the inadequacy of the Miranda warnings. There is no such authority because the *issue* in a CrR 3.5 hearing is constitutional, not evidentiary. State v. Viney, 52 Wn. App. 507, 510, 761 P.2d 75 (1988). The constitution itself requires that a defendant be advised of the Miranda rights and his statements to police are a product of a knowing and intelligent and waiver of those rights. Miranda, 384 U.S. at 479. Thus, regardless of what arguments the defendant makes, if any, at a CrR 3.5 hearing, adequate Miranda warnings are a prerequisite to the admission of a defendant's statements. Mayer, 184 Wn.2d. at 559; *see* Oregon v. Elstad, 470 U.S. at 307 (unwarned statements must be excluded under Miranda).

[3] "When a statement of the accused is to be offered in evidence," the judge shall hold a hearing, "for the purpose of determining whether the statement is admissible." CrR 3.5(a).

Furthermore, Miranda claims, including the adequacy of Miranda warnings and whether there was a valid waiver of Miranda rights are issues of law that appellate courts review de novo. Mayer, 184 Wn.2d. at 555; (citing State v. Daniels, 160 Wn.2d 256, 261, 156 P.3d 905 (2007)); In re Pers. Restraint of Cross, 180 Wn.2d 664, 681, 327 P.3d 660 (2014); *see also* United States v. Connell, 869 F.2d 1349, 1351 (9th Cir.1989) (same). There is no authority for the proposition that de novo review is foreclosed where the defendant does not specifically argue the adequacy of the Miranda warning at a CrR 3.5 hearing.

Second, the court of appeals decision improperly shifted the burden to Jones-Tolliver to prove he was adequately advised of his Miranda rights and knowingly and intelligently waived those rights. That is the State's burden.

A defendant's statement to police is not admissible unless the State establishes by a preponderance of the that the defendant was fully advised of his Miranda rights, and knowingly and intelligently waived them. State v. Mayer, 184 Wn.2d at 556 (citing Miranda, 384 U.S. at 475). State v. Athan, 160 Wn.2d 354, 380, 158 P.3d 27 (2007); State v. Haack, 88 Wn.App. 423, 435–36, 958 P.2d 1001 (1997). The only way to establish whether a defendant knew of his Miranda rights is to establish that he was specifically advised of them. Miranda, 384 U.S. at 471-72. To that end,

the record must show that the State established by a preponderance of the evidence that the Miranda warnings reasonably and effectively conveyed all the necessary rights. State v. Hopkins, 134 Wn. App. 780, 785, 142 P.3d 1104 (2006) (citing Brown, 132 Wn.2d at 582).

That burden is not met unless the record shows that the person was advised of each distinct right. *See* State v. Erho, 77 Wn.2d 553, 560-61, 463 P.2d 779 (1970) (record in adequate where officer did not testify he told defendant his statements could be used against him or that he had a right to an attorney); *see also* State v. Tetzlaff, 75 Wn.2d 649, 652, 453 P.2d 638 (1969) (warnings inadequate when officer did not tell suspect of right to free legal counsel at time of interrogation). The Miranda Court itself held "we will not presume that a defendant has been effectively apprised of his rights and that his privilege against self-incrimination has been adequately safeguarded *on a record that does not show that any warnings have been given* or that any effective alternative has been employed. Nor can a knowing and intelligent waiver of these rights be assumed on a *silent record.* Miranda, 384 U.S. at 498-99 (emphasis added).

In two recent unpublished cases the court of appeals held the defendants' statements to police were erroneously admitted under similar facts. In State v. Anderson, noted at 5 Wn.App.2d 1051, 2018 WL

53050941 (2018) at *6 the court accepted the State's concession Anderson's statements to police were erroneously admitted were the officer testified he warned Anderson of his Miranda rights either verbally or from the department issued rights card but the card was not admitted into evidence, the record did not reveal what the card said, and the officer did not testify what warnings he gave Anderson. In State v. Haley, noted at 4 Wn.App.2d 1015, 2018 WL 2947942 (2018) at *1, 9, the court held Haley's statements to police were erroneously admitted where the officer only testified that he read Haley his "constitutional rights" and "right to remain silent."[4]

In ruling that in the absence of Jones-Tolliver complaining at the CrR 3.5 hearing that Gorst's testimony he read Jones-Tolliver the Miranda rights from a card, without more, was insufficient evidence that Jones-Tolliver was advised of his Miranda rights, the court of appeals erroneously placed the burden on Jones-Tolliver to show that the warnings were incorrectly or improperly administered and that he did not knowingly and voluntarily waive his rights. The ruling conflicts with Miranda and this Court's holdings in Mayer and Athan that it is the State's burden to establish by a preponderance of the evidence that the defendant was fully advised of his

[4] Jones-Tolliver does not cite these cases as authority but to illustrate conflicting appellate court decisions on similar facts to show that the issue is of substantial public interest that requires this Court's guidance to the lower bench. GR 14.1(a).

Miranda rights, and that it cannot be presumed a defendant was effectively apprised of those rights on a record that does not show that any warnings have been given. The ruling also conflicts with the above-cited unpublished cases where the statements of the defendants in those cases were ruled inadmissible because the record failed to show what warnings were given to the defendants. In sum, the court of appeals has done precisely what the law forbids: it has presumed Jones-Tolliver was adequately informed of his Miranda rights and knowingly and intelligently waived those rights on a silent record.

Third, Jones-Tolliver also argued the Miranda violation constitutes manifest constitutional error that may be raised for the first time on appellate review. RAP 2.5(a); Brief of Appellant at 12-13. Constitutional error is manifest when the record is sufficient to show the necessary facts to adjudicate the issue. State v. Malone, 193 Wn. App. 762, 767, 376 P.3d 443 (2016) (citing State v. Koss, 181 Wn.2d 493, 503, 334 P.3d 1042 (2014)). And the error caused practical and identifiable consequences. State v. Harris, 154 Wn. App. 87, 94, 224 P.3d 830 (2010).

There is a sufficient record of necessary facts to adjudicate the issue of the adequacy the Miranda warnings. The State wanted the jury to consider Jones-Tolliver's statements to police and to that end presented its evidence to justify the admission of the statements.

That error had practical and identifiable consequence. The defense theory was that Jones-Tolliver was present and knew Haynes was committing the crimes, but he did not aid, solicit, command encourage or request Haynes to commit the crimes. RP 343-349. Haynes' and Jones-Tolliver's testimony supported that theory. But for the admission of Jones-Tolliver's statements to police that he actually participated in the crimes, jurors could have found that he was not an accomplice to the crimes. Reply Brief of Appellant at 3-5.

Because the court of appeals erroneously framed the issue as the conduct of the CrR 3.5 hearing and not whether the State met its burden to show that Jones-Tolliver was given adequate Miranda warnings and knowingly and intelligently waived those rights, it concluded there was no issue of manifest constitutional law. Opinion at 6. But, where there has been a failure to give Miranda warnings, the state violates a defendant's constitutional rights if it seeks to introduce unwarned statements at trial. United States v. Patane, 542 U.S. 630, 641, 124 S.Ct. 2620, 159 L.Ed.2d 667 (2004).

The admission of Jones-Tolliver's statements violated his constitutional rights because the State's evidence failed to show what Miranda rights, if any, he was given. The mere mention of "Miranda rights" with no further explanation of what, precisely, Jones-Tolliver was warned,

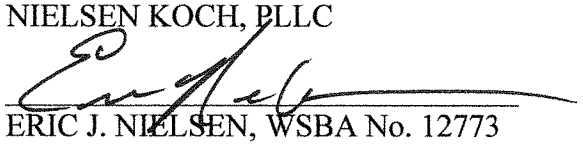
leaves a silent record on the crucial question of whether he was informed of his Miranda rights. Where the State fails to show a defendant was given Miranda rights the admission of the defendant's statements to police is a constitutional violation, contrary to the conclusion reached by the court of appeal.

E. CONCLUSION

For the reasons discussed above, this Court should grant review and reverse the court of appeals.

DATED this 30 day of December 2019.

Respectfully submitted,
NIELSEN KOCH, PLLC



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. KURTIS PAUL JONES-TOLLIVER, Appellant.	)	No. 36260-4-III UNPUBLISHED OPINION

KORSMO, J. — Kurtis Jones-Tolliver appeals from four convictions entered in the Stevens County Superior Court, arguing that the trial court erroneously admitted his statements to the arresting officer. We affirm.

FACTS

Mr. Jones-Tolliver and Mr. Colton Haynes were arrested after being questioned by law enforcement at the Colville Walmart store concerning some break-ins in the area. The interview led to Mr. Jones-Tolliver being charged initially with two counts of burglary and one count of theft of a motor vehicle. He later was charged with one count of bail jumping. The original three counts were prosecuted on an accomplice liability theory.

The court conducted a CrR 3.5 hearing before trial to determine the admissibility of Mr. Jones-Tolliver's statements. Officer Anthony Gorst testified that he jointly interviewed both Mr. Haynes and Mr. Jones-Tolliver in the security office at Walmart. He testified that he advised the defendant of his *Miranda*[1] warnings as he did in every case by reading from his department issued card. He did not recite the warnings in his testimony, nor was a copy of the *Miranda* card admitted into evidence. Officer Adam Kowal was present for the interview and also testified at the hearing that Officer Gorst had read the warnings to Mr. Jones-Tolliver.

Mr. Jones-Tolliver did not testify at the CrR 3.5 hearing. His counsel argued that his statements should be excluded to the extent they reflected the officer's "understanding" of what Jones-Tolliver had said rather than repeated the actual statements attributed to his client.[2] The trial court found that it was uncontested that the *Miranda* rights were read to Mr. Jones-Tolliver and that he voluntarily spoke with the officers. The court agreed with the defense that Officer Gorst could not testify about his impressions of the defendant's statements, but could testify that Mr. Jones-Tolliver admitted involvement, even if specific statements were not recalled. The defense was entitled to challenge the officer's trial testimony on evidentiary grounds.

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[1] *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[2] The hearing was held two years after the interview and the officers did not recall many specific statements by Mr. Jones-Tolliver.

The matter proceeded to trial. Mr. Jones-Tolliver took the stand in his own behalf. He admitted he was present during the crimes, which were committed by Mr. Haynes, but he did not knowingly take part in the crimes. Mr. Haynes testified similarly when called as a hostile witness by the State. The jury, nonetheless, convicted Mr. Jones-Tolliver as charged.

The court imposed a Drug Offender Sentencing Alternative sentence for the offenses. Mr. Jones-Tolliver timely appealed to this court. A panel considered his appeal without hearing argument.

ANALYSIS

Mr. Jones-Tolliver contends that his statements were wrongly admitted because the officers did not recite at the CrR 3.5 hearing the text of the *Miranda* warnings given to him.[3] That issue is not preserved because he did not challenge the warnings at the CrR 3.5 hearing.

Prior to conducting a custodial interrogation, an officer must first advise the suspect of his rights regarding the interrogation. *Miranda v. Arizona*, 384 U.S. at 444. The government must establish that the suspect was advised of his rights, understood the rights, and knowingly waived those rights. *Id.*

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[3] Because we conclude that no manifest error was established, we need not address the parties' competing arguments that admission of the statements was harmful or harmless.

CrR 3.5 establishes a pretrial process for admitting a defendant's statements at trial. While the rule broadly states that it governs the admission of "a statement of the accused," the rule actually applies only to custodial statements to law enforcement. *State v. McFarland*, 15 Wn. App. 220, 222, 548 P.2d 569 (1976); *State v. Harris*, 14 Wn. App. 414, 420-422, 542 P.2d 122 (1975). CrR 3.5 exists to implement the constitutional right to a voluntariness hearing for custodial statements. *State v. Williams*, 137 Wn.2d 746, 750-751, 975 P.2d 963 (1999).

Appellate courts treat uncontested findings of fact from a CrR 3.5 hearing as verities on appeal and, if challenged, examine whether the findings of fact are supported by substantial evidence. *State v. Broadaway*, 133 Wn.2d 118, 134, 942 P.2d 363 (1997). Substantial evidence exists if the evidence is sufficient to persuade a fair-minded rational person of the truth of the evidence. *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004). Whether the findings of fact support the trial court's legal conclusions is a question of law reviewed de novo. *State v. Lorenz*, 152 Wn.2d 22, 30, 93 P.3d 133 (2004).

The parties agree that Mr. Jones-Tolliver was involved in a custodial interrogation and that his statements were subject to a constitutional voluntariness hearing. Appellant argues that the State did not meet its burden of proving he was advised of his rights since the warnings were not recited in the courtroom. He has not preserved that claim.

RAP 2.5(a) acknowledges the basic principle of appellate review—appellate courts will not review issues not raised in the trial courts. Matters of manifest constitutional error may be raised for the first time on appeal if the record is adequate. RAP 2.5(a)(3); *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). Mr. Jones-Tolliver correctly observes that questions concerning the accuracy and adequacy of *Miranda* warnings present questions of constitutional law.

However, he identifies no authority supporting the proposition that the State must always meet its burden of proof by reciting the substance of the *Miranda* warnings into the record even when the adequacy of the warnings is not in question. While we agree that this is the better practice and that the State should enter at least a copy of the advice of rights into the record in some manner, the question of how the State meets its constitutional burden on this point is not itself a constitutional question.

Neither the case law nor CrR 3.5 mandates proof in such a manner. Although CrR 3.5 was designed to implement the constitutional right to challenge an involuntary statement, compliance with the rule does not present a constitutional issue. *Williams*, 137 Wn.2d at 749-755.[4] Even the failure to hold a CrR 3.5 hearing does not make a defendant's statement inadmissible. *State v. Vandiver*, 21 Wn. App. 269, 272, 584 P.2d

[4] *Williams* also noted that a CrR 3.5 hearing is not required in bench trials since a judge presumably will only consider admissible evidence. 137 Wn.2d at 752 (citing and quoting *State v. Wolfer*, 39 Wn. App. 287, 292, 693 P.2d 154 (1984)).

978 (1978); *State v. Mustain*, 21 Wn. App. 39, 42-43, 584 P.2d 405 (1978). The question of how the hearing is conducted does not present an issue of manifest constitutional law.

Mr. Jones-Tolliver did not contend that the warnings were incompletely or inaccurately conveyed to him. In that circumstance, the testimony of two officers that the warnings were read from the department issued rights card provided the trial court with sufficient evidence to conclude that the *Miranda* rights were properly given and waived.

The judgment is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Korsmo, J.

WE CONCUR:

Fearing, J.

Lawrence-Berrey, C.J.

NIELSEN, BROMAN & KOCH P.L.L.C.

December 30, 2019 - 2:37 PM

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