

NO. 68972-0-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

TYLER MARX,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE WESLEY SAINT CLAIR

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BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

GRETA JIBBENS SMITH
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

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A. ISSUES PRESENTED

1. Statements made during custodial interrogation are admissible when the individual knowingly, voluntarily, and intelligently waives his Miranda rights, but an individual's spontaneous statements are not subject to the Miranda rule. Tyler Marx's statements were spontaneous, voluntary, and not the product of custodial interrogation. Did the trial court properly admit Marx's statements?

2. The trial court's failure to enter findings of fact and conclusions of law under CrR 3.5 is harmless error and does not prejudice Tyler Marx. The trial court made oral CrR 3.5 findings and conclusions of law. Has Tyler Marx failed to establish prejudice from the lack of written findings?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

The State charged Tyler Marx by way of Information in King County Superior Court, Juvenile Division, with minor in possession of liquor. CP 1. On June 25, 2012, the Honorable Judge Wesley Saint Clair presided over Marx's adjudicatory hearing and found him guilty. CP 7.

During the adjudicatory hearing, the trial court held a hearing on the admissibility of Marx's statements pursuant to CrR 3.5. RP 79-85. The trial court issued an oral ruling on the admissibility of those statements. RP 84-85, 101.

The trial court entered written findings of fact and conclusions of law pursuant to CrR 6.1(d). CP 12-14. However, the court did not enter written findings of fact and conclusions of law pursuant to CrR 3.5.

2. SUBSTANTIVE FACTS.

Renton Police Officer Thompson was on duty on January 26, 2011, parked in the parking lot of Sam's Club in the evening. RP 32. Officer Thompson observed Marx peer into the windows of a vehicle that he knew did not belong to Marx. RP 32-33. Officer Thompson then watched as Marx climbed onto the cement base of a light pole and tug and pull at a sign that was attached to the pole. RP 33-34. At that point Officer Thompson spotlighted Marx. RP 34-35. Marx got down from the sign and began jogging away. RP 35.

Officer Thompson followed Marx with his patrol car and spotlighted him again. RP 35. Marx stopped, turned around, and

began walking towards Officer Thompson. RP 35. Officer Thompson had not ordered Marx to stop at this point. RP 35. Officer Thompson exited his vehicle and walked towards Marx. RP 36-37. As Officer Thompson got closer to Marx, he could smell the obvious odor of intoxicants emanating from his person. RP 37. As Marx was walking closer to Officer Thompson, he kept putting his hands in his pockets and pulling them out. RP 37.

Officer Thompson noted that Marx appeared to be a juvenile, and began to investigate him for the crime of minor in possession. RP 38. Officer Thompson asked Marx to turn around and placed him in handcuffs. RP 38. Officer Thompson noted that usually when he wants to make contact with an individual, he has to engage them verbally, and he thought it was unusual that Marx approached him. RP 65.

After Marx was in handcuffs, Officer Thompson asked for his name and date of birth. RP 41. Officer Thompson informed Marx that he smelled alcohol and informed him that was why he was being detained. RP 41. Officer Thompson did not anticipate that Marx would respond verbally to the information that he was being detained and investigated for the crime of minor in possession. RP 55. Marx was not under arrest at this point. RP 41. Marx

stated that he wasn't going to lie, he was on his way home and he was a little bit intoxicated. RP 42, 67. Officer Thompson had not asked him any questions prior to those statements. RP 42. Officer Thompson told Marx not to speak any further and read him his Miranda rights verbatim from the back of his department-issued code book. RP 42-43. Marx stated that he understood his rights and would be willing to speak with Officer Thompson. RP 45. Officer Thompson did not have any concerns about Marx's cognition or comprehension when he indicated that he understood his Miranda rights. RP 60.

Officer Thompson did not threaten, promise anything, or force Marx in any way to talk to him. RP 45-46. Marx stated that he had been at his friend's house and his friend had given him alcohol, and he was drunk. RP 46, 68. Marx also stated that the car he had been looking in belonged to a friend, and he was trying to get money out of it. RP 47. Marx also stated that he liked to collect signs. RP 47.

Officer Thompson contacted Marx's father to inform him of the detention. RP 50. Marx's father, Jeffrey Wik, agreed to come and pick up Marx. RP 51. Wik arrived within the hour. RP 51. During that time, Officer Thompson did not ask Marx any questions.

RP 51. Marx, who was now in the back of Officer Thompson's patrol car, was yelling that Officer Thompson should be arresting more serious criminals, and that Officer Thompson should not be wasting his time on Marx just because he was intoxicated.

RP 51, 68.

C. ARGUMENT

- 1. STATEMENTS MADE DURING CUSTODIAL INTERROGATION ARE ADMISSIBLE WHEN THE INDIVIDUAL KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY WAIVES HIS MIRANDA RIGHTS, BUT AN INDIVIDUAL'S SPONTANEOUS STATEMENTS ARE NOT SUBJECT TO THE MIRANDA RULE. TYLER MARX'S STATEMENTS WERE SPONTANEOUS, VOLUNTARY, AND NOT THE PRODUCT OF CUSTODIAL INTERROGATION.**

Under Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), a statement is voluntary, and therefore admissible, if it is made after the defendant has been advised of his rights and the defendant then knowingly, voluntarily and intelligently waived those rights. State v. Aten, 130 Wn.2d 640, 663, 927 P.2d 210 (1996). The voluntariness of a statement is determined from a totality of the circumstances under which it was made, and the court considers such factors as the defendant's physical condition, age, mental abilities, physical experience, and police conduct. Id.

at 663-64. When a trial court determines that a statement is voluntary, that determination is not disturbed on appeal if there is substantial evidence in the record from which the trial court could have found the statement was voluntary by a preponderance of the evidence. Id. at 664.

Statements made by an accused are admissible if they are made prior to being in custody. State v. Robtoy, 98 Wn.2d 30, 35, 653 P.2d 284 (1982) (citing Miranda v. Arizona, 384 U.S. 436, 479, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)). An accused is in custody when she has been arrested or otherwise deprived of her liberty in any significant way. State v. Pejsa, 75 Wn. App. 139, 146, 876 P.2d 963 (1994). If statements are made after arrest and during custodial interrogation, they are admissible if they are made after a knowing, intelligent, and voluntary waiver. Id. Interrogation is when an officer expressly questions the accused or when an officer uses words or actions that the officer should know are reasonably likely to elicit an incriminating response. Pejsa, 75 Wn. App. at 147. When a suspect voluntarily makes a statement that is not in response to a question, it is not interrogation. State v. Bradley, 105 Wn.2d 898, 904, 719 P.2d 546 (1986). Moreover, Miranda does not

apply to voluntary, spontaneous statements made outside the context of custodial interrogation. Miranda, 384 U.S. at 478, 86 S. Ct. 1602; State v. Ortiz, 104 Wn.2d 479, 484, 706 P.2d 1069 (1985).

The appellant argues that because Marx was in custody at the time that he made statements, his Fifth Amendment rights were violated. The trial court ruled that the initial statement made by Marx was spontaneous, and not the product of custodial interrogation and that his subsequent statements were admissible because they were given after a valid waiver of Miranda.

Marx's initial statement that he was not going to lie, he was on his way home and he was a little bit intoxicated, was a voluntary statement that was not the product of custodial interrogation. The State concedes that Marx was in custody at that time that Marx made that statement; he was handcuffed. However, the statement was not the product of interrogation. "A statement is voluntary if it is made spontaneously, is not solicited, and not the product of custodial interrogation." Ortiz, 104 Wn.2d at 484. Informing Marx of the reason for the detention was not an interrogation. Officer Thompson had not

asked Marx any questions. RP 42. Officer Thompson did not anticipate that Marx would respond to that statement. RP 55-56. Marx made the voluntary statement that he was not going to lie and he was a little intoxicated. RP 42. Officer Thompson immediately told Marx to stop talking and read him his Miranda rights. RP 42. The trial court found that all of the statements made by Marx were voluntary. Finding of Fact Eight addresses this particular question; it concluded that the statement "I am not going to lie I'm a little intoxicated" was voluntary and spontaneous. CP 12-14. There is sufficient evidence in the record to support this finding and the trial court's finding should not be disturbed on appeal.

The subsequent statements made by Marx were made after a knowing, intelligent, and voluntary waiver of his Miranda rights. Officer Thompson read the Miranda warnings verbatim from his department-issued code book. RP 43. Marx informed Officer Thompson that he understood his rights and wished to speak to him. RP 44-45. Officer Thompson did not threaten, promise, or coerce Marx to get him to speak to him. RP 45, 46. Post-Miranda, Marx stated that he was at a friend's house and his friend had gotten him drunk. RP 46. Marx also

spontaneously stated while he was in the back of the patrol vehicle that Officer Thompson should be out catching more serious criminals and that he should not be wasting his time on Marx because he was intoxicated. RP 68. Officer Thompson had not asked any questions of Marx. RP 51. This was a spontaneous, voluntary statement. Volunteered statements are not barred by the Fifth Amendment. Miranda, 384 U.S. at 478.

The appellant's reliance on J.D.B. v. North Carolina, 131 S. Ct. 2394, 180 L. Ed. 2d 310, 79 USLW 4504 (2011), and State v. D.R., 84 Wn. App. 832, 930 P.2d 350 (1997), is misplaced. While those cases discuss how a youth's age should be a factor in determining whether a suspect is in custody, both of those cases involve situations where the suspects were clearly interrogated. Our case is distinguishable because Marx was not interrogated.

The trial court's conclusion that Marx's statements were admissible was properly derived from the evidence. There were no impediments to the admissibility of Marx's statements, and the trial court did not err in finding that his statements were admissible.

2. THE TRIAL COURT'S FAILURE TO ENTER FINDINGS OF FACT AND CONCLUSIONS OF LAW UNDER CrR 3.5 IS HARMLESS ERROR AND DOES NOT PREJUDICE TYLER MARX.

The trial court held an evidentiary hearing on the admissibility of Tyler Marx's statement within the context of the trial and both sides litigated the CrR 3.5 issue on June 25, 2012. RP 78-83. The court ruled that all of the statements made by Marx were admissible. RP 84-85. Separate findings of fact and conclusions of law pursuant to CrR 3.5 have not been entered.

The appellant argues that because written findings of fact and conclusions of law pursuant to CrR 3.5 were not entered, this prejudices the appellant and remand and/or reversal is the appropriate remedy. However, in this case, appellant has not been prejudiced by the lack of written CrR 3.5 findings and conclusions of law.

Non-compliance with court rules requiring written findings of fact and conclusions of law can result in reversal. State v. Witherspoon, 60 Wn. App. 569, 805 P.2d 248 (1991). This is particularly so when the trial court's oral opinion is incomplete. Id. However, reversal is generally not warranted absent a showing of prejudice. State v. Charlie, 62 Wn. App. 729, 815 P.2d 819 (1991).

The failure to enter separate written findings of fact and conclusions of law pursuant to CrR 3.5 may be harmless error when there is no prejudice. “Under CrR 3.5(c), the trial court is required to enter written findings of fact and conclusions of law. A trial court’s failure to comply with this requirement constitutes error, but the error is harmless if the court’s oral findings are sufficient to allow appellate review.” State v. Miller, 92 Wn. App. 693, 703, 964 P.2d 1196 (1998); see also State v. Riley, 69 Wn. App. 349, 352-53, 848 P.2d 1288 (1993) and State v. Thompson, 73 Wn. App. 122, 130, 867 P.2d 691 (1994). Where the court provided detailed oral findings there may be no prejudice. As the Court of Appeals held in State v. Thompson, 73 Wn. App. 122, 130, 867 P.2d 691 (1994), “Here, because the trial court gave detailed oral findings, there was no prejudice.” “The State’s failure to draft formal written findings and conclusions, while clearly not recommended, does not necessitate reversal.” State v. Smith, 67 Wn. App. 81, 87, 834 P.2d 26 (1992).

“When CrR 3.5 has not been observed the appellate court may examine the record and make its own determination of voluntariness.” State v. Hoyt, 29 Wn. App. 372, 379, 628 P.2d 515 (1981); State v. Vickers, 24 Wn. App. 843, 846, 604 P.2d 997

(1979); State v. Mustain, 21 Wn. App. 39, 42-43, 584 P.2d 405 (1978).

The appellant's reliance on State v. Head, 136 Wn.2d 619, 964 P.2d 1187 (1998), is misplaced. State v. Head specifically addresses the lack of written findings of fact and conclusions of law pursuant to CrR 6.1(d), not CrR 3.5. In Head, the defendant had been charged with nine counts of first degree theft and each of these counts involved a separate victim. Id. at 622. In Head, the "trial court's oral decision does not sufficiently address each count separately, and it does not adequately identify the evidence relied upon to support each element of each count." Id. at 623. The case at hand is distinguishable because the trial court made sufficient oral findings and addressed the evidence it was relying on to find that Marx's statements were voluntary.

The trial court made sufficient oral findings to permit appellate review. The trial court's ruling on CrR 3.5 states in full:

I certainly am aware of the line of cases where the conversation that law enforcement have induces or invites responses outside of the while a person is in custody therefore have been found to be violative of the Miranda. I know there's a whole line of cases that associate with that.

But this is a voluntary statement that he's making in the course of the officer conducting a Terry stop

based upon the behaviors he saw. Once he has interaction close to where, he says within four feet, he could observe or smell the odor of strong intoxicants emanating from this person, couple with the hands, nervousness. From the court's perspective, this remained a Terry stop. It turned into a detention. Accordingly, the statements made prior to the advice of rights were voluntary in nature. From this court's perspective, it wasn't cut out of the bag line of reasoning goes along with it, and that he was properly advised of his rights and any statements both post-, pre- and post-Miranda are admissible. RP 84.

The trial court's oral findings are sufficient for appellate review and as such the error to enter written findings and conclusions pursuant to CrR 3.5 is harmless. The case should not be remanded; nor should the appellant's conviction be reversed.

Moreover, although the trial court did not enter written findings of fact and conclusions of law pursuant to CrR 3.5, it did enter findings of fact and conclusions of law to the adjudicatory phase pursuant to CrR 6.1(d). CP 12-14. Finding of Fact Eight, entered pursuant to CrR 6.1(d) addresses the voluntary nature of the statements made by Marx. "The respondent, made voluntary and spontaneous statements, specifically saying 'I am not going to lie I'm a little intoxicated.'" CP 12-14.

The trial court's conclusion that the statements were voluntary and spontaneous is supported by sufficient evidence in

the record, as already argued. Marx has failed to demonstrate how he has been prejudiced by the lack of written findings and conclusions of law pursuant to CrR 3.5. The failure to enter written findings of fact and conclusions of law pursuant to CrR 3.5 is harmless error. The case should not be remanded. The conviction should be upheld.

D. CONCLUSION

For the foregoing reasons, this Court should not reverse or remand this case. Marx's conviction should be upheld.

DATED this 24 day of April, 2013.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
GRETA JIBBENSMTIH, WSBA #41737
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jan Trasen, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. TYLER MARX, Cause No. 68972-0-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Mary Deinger
Name
Done in Kent, Washington

4/24/13
Date