

NO. 34771-7

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

SEAN MICHAEL MOINETTE, APPELLANT

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY [Signature]

Appeal from the Superior Court of Pierce County
The Honorable Bryan Chushcoff

No. 05-1-05298-0

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial court properly deny defendant's motion to suppress his confession when he waived his Miranda rights and voluntarily admitted his participation in the assault?

B. STATEMENT OF THE CASE.

1. Procedure

On October 27, 2005, the State charged Sean Michael Moinette, hereinafter "defendant," with one count of assault in the second degree, contrary to RCW 9A.36.021(1)(a). CP¹ 1-2.

On March 6, 2006, the Honorable Bryan E. Chushcoff held a CrR 3.5 hearing to determine the admissibility of defendant's confession. RP (03/06/06) 4. The court heard testimony from Detective John Jimenez, defendant, and Lieutenant Louis Genga, as rebuttal. RP (03/06/06) 5, 32; RP (03/07/06) 4. Defendant claimed that his confession was coerced because he thought that if he cooperated with the police he would not be sent to segregation. RP (03/06/06) 37, 38, 40. The officers testified that they made no promises, express or implied, that defendant would not go to

¹ Citations to Clerk's Papers will be to "CP." Because the verbatim report of proceedings was not sequentially numbered, citations to the transcripts will be to "RP," followed by the date of the transcript.

segregation if he admitted his part in a violent crime. RP (03/06/06) 22; (03/07/06) 10, 15-17, 19-20. Lieutenant Genga testified that he decided to send defendant to segregation because he had been implicated in a violent crime and he had concerns for the safety of the unit and the inmates. RP (03/07/06) 10, 15-16. Defendant claimed that he accepted the blame for a crime he did not commit because of the officers' promises, guilt over implicating another inmate, and status within the jail community. RP (03/06/06) 40, 54, 55, 62-63. Defendant also claimed at the hearing that he did not see the attack, but when confronted with his inconsistencies on the witness stand, stated that he did see the attack. RP (03/06/06) 50. Defendant admitted that his belief that he was not going to segregation was not based on any actual statement by the officers. RP (03/06/06) 67-68.

At the conclusion of the hearing, the court found that defendant received Miranda² warnings, knowingly waived his rights, and was not coerced into confessing. RP (03/07/06) 34-38; see also CP (Findings of Fact and Conclusions of Law Regarding Admissibility Under CrR 3.5³); Appendix A. The court found defendant's reasons to confess for morals and status more credible than his claims that the officers made any implied

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

³ The court's findings of fact were designated by defendant in a supplemental designation and have not been assigned a CP number. A copy of the findings are attached as Appendix A.

threats or promises. RP (03/07/06) 34-35. Specifically, the court found a promise that defendant would avoid segregation if he admitted to a brutal assault would be so unbelievable that the defendant would not believe it at the time the promise was made. RP (03/07/06) 34-35. The court ruled that defendant's confession was admissible. RP (03/07/06) 38.

On March 10, 2006, the jury found defendant guilty of assault in the second degree. RP (03/10/06) 5-8; CP 49. The court imposed a high end, standard range sentence of 57 months. RP (04/25/06) 10; CP 53-65.

This appeal follows. CP 70.

2. Facts

On October 19, 2005, at approximately 5:30 p.m., Michael Rogers, an inmate at the Pierce County Jail, was watching television in C pod when someone came up behind him, dropped a pink T-shirt or towel over his head, and beat him unconscious. RP (03/08/06) 48-49. Mr. Rogers felt the cloth around his face and neck get pulled back around his neck, choking him and yanking him out of his chair. RP (03/08/06) 50. At the same time, he felt a blow like being hit with a chair, to the left side of his head. RP (03/08/06) 49.

The attack lasted approximately ten to fifteen seconds. RP (03/08/06) 52. In that time, Mr. Rogers felt seven to ten blows to the left side of his head before he lost consciousness. RP (03/08/06) 49. As a result of the attack, Mr. Rogers suffered from a fractured skull, broken

occipital eye socket, fractured cheekbone, broken nose, two fractures in his jaw bone, and injuries to his neck. RP (03/08/06) 47.

When Mr. Rogers regained consciousness, he was face down on the floor with the cloth still over his head. RP (03/08/06) 52. When he pulled the cloth off his head, there was so much blood on his face and in his eyes that he could hardly see. RP (03/08/07) 52-53. He was able to see all the other inmates who had been watching television running away from him and back toward their cells. RP (03/08/06) 53. Mr. Rogers got to his feet and went to the officer station to get help. RP 54.

Pierce County Corrections Officer Seth Huber was just returning from a security check of B pod when he saw Mr. Rogers standing at the door to C pod. RP (03/07/06) 164. Mr. Rogers was covered in blood and holding a towel or T-shirt pressed to his head. RP (03/07/06) 164. Officer Huber called his supervisor, Lieutenant Louis Genga, to report the assault. RP (03/08/06) 9. Officer Huber also called officers to assist Mr. Rogers to the infirmary⁴, then he locked down the pod in preparation for his investigation. RP (03/07/06) 165. Except for a large amount of blood where Mr. Rogers had been sitting, Officer Huber found no other evidence of the assault and none of the inmates was willing to give any information. RP (03/07/06) 166, 169.

⁴ Mr. Rogers eventually had to be sent to the hospital emergency room, as his injuries were too serious for the jail infirmary. RP 03/08/06 10.

When he found out Mr. Rogers' injuries were more serious than he first thought, Lieutenant Genga called Pierce County Sheriff Detective John Jimenez to investigate the crime. RP (03/08/06) 115. After Detective Jimenez arrived, he and Lieutenant Genga interviewed Mr. Rogers. RP (03/08/06) 116. Based on information they acquired during the investigation, the officers interviewed defendant, another inmate who was in C pod. RP (03/07/06) 180; (03/08/06) 117.

At the beginning of the interview, defendant informed Detective Jimenez that he knew about the assault, but did not see it as he was in his room at the time. RP 119. Detective Jimenez then read defendant his Miranda rights from a preprinted card and defendant indicated that he understood his rights. RP (03/08/06) 119-121. Later in the interview, defendant changed his story and told the detective that he was behind the inmate who hit Mr. Rogers. RP (03/08/06) 122. Defendant informed Detective Jimenez that David Wright, another inmate in C pod, assaulted Mr. Rogers. RP (03/08/06) 141. When asked if he would give a taped statement, defendant refused and Detective Jimenez ended the interview. RP (03/08/06) 141.

Lieutenant Genga ordered Corrections Officer Mastandrea to take defendant to segregation. RP (03/08/06) 18. Officer Mastandrea came back approximately a minute later and told Detective Jimenez and Lieutenant Genga that defendant wanted to tell them something. RP

(03/08/06) 18, 141. Defendant told Detective Jimenez and Lieutenant Genga that he put the T-shirt over Mr. Rogers' head and held him while Mr. Wright punched him. RP (03/08/06) 34, 142.

Timothy Kelly, another inmate in C pod, was the sole witness for the defense. RP (03/09/06) 21. Mr. Kelly testified that he saw the assault on Mr. Rogers, but claimed that Mr. Wright acted alone, and also that Mr. Rogers had nothing over his face. RP (03/09/06) 25, 29, 44. Mr. Kelly stated that he was testifying because he had been a victim in an attempted murder, saw his attacker walk free, and wanted justice for Mr. Rogers. RP (03/09/06) 23, 27, 33. However, Mr. Kelly also testified that he made no attempt to help Mr. Rogers and did not come forward with information during the investigation because it was none of his business, and a part of the code that inmates live by. RP (03/09/06) 27. Mr. Kelly also informed the jury that he had made "poor choices" in his past, which he admitted were convictions for residential burglary and possession of stolen property in 2003, as well as shoplifting and possession of stolen property in 2004. RP (03/09/06) 22.

C. ARGUMENT.

1. THE TRIAL COURT PROPERLY DENIED
DEFENDANT'S MOTION TO SUPPRESS HIS
CONFESSION WHEN HE VOLUNTARILY ADMITTED
HIS PARTICIPATION IN THE ASSAULT.

Under Miranda v. Arizona, a confession is voluntary, and therefore admissible, if made after the defendant has been advised concerning rights and the defendant then knowingly, voluntarily, and intelligently waives those rights. When a trial court determines a confession 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 confession was voluntary by a preponderance of the evidence. State v. Ng, 110 Wn.2d 32, 37, 750 P.2d 632 (1988).

a. The trial court's findings of fact should be considered verities on appeal.

Unchallenged findings of fact are verities on appeal and an appellate court reviews only those facts to which the appellant has assigned error. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). An appellate court reviews whether substantial evidence supports the trial court's findings of fact. State v. Brockob, 159 Wn.2d 311, 343, 150 P.3d 59 (2006).

Defendant assigns error to the trial court's unnumbered findings of fact which state:

The defendant's handcuffs were removed and Det. Jimenez reminded the defendant that his Miranda rights still applied and that he didn't have to talk with the detective;

The defendant stated that he had something else he wanted to tell the detective and again Det. Jimenez reminded the defendant that his Miranda rights still applied.

CP (Findings of Fact and Conclusions of Law Regarding Admissibility of Statements Under CrR 3.5); Appendix A at 3.

Ruling that defendant's confession was admissible, the court found that "those Miranda warnings were given the first time, not the second time." RP (03/07/06) 38. Subsequently, after the findings of fact were prepared by the prosecution, the finding concluded that defendant did receive a second Miranda warning. CP (Findings of Fact and Conclusions of Law Regarding Admissibility of Statements Under CrR 3.5); Appendix A at 3. The prosecutor, defendant's trial attorney, and the judge, all signed the findings of fact that contained this determination. CP (Findings of Fact and Conclusions of Law Regarding Admissibility of Statements Under CrR 6.5); Appendix A at 4. Defendant claims the discrepancy between the oral ruling and written findings of fact render the written findings erroneous.

A judge's oral decision "is no more than a verbal expression of his informal opinion at that time. It is necessarily subject to further study and consideration, and may be altered, modified, or completely abandoned. It has no final or binding effect, unless formally incorporated into the findings, conclusions, and judgment." State v. Michielli, 132 Wn.2d 229, 242, 937 P.2d 587 (1997) (quoting Ferree v. Doric Co., 62 Wn.2d 561, 567, 383 P.2d 900 (1963)). A reviewing court can use oral rulings to interpret findings and conclusions but an inconsistent oral decision cannot be used to impeach written findings. Ferree, at 567. Since the judge's oral ruling and written findings are inconsistent in this case, the writing controls and the findings of fact should be upheld.

Sufficient evidence exists to support the written finding that Detective Jimenez reminded defendant of his rights a second time. Detective Jimenez testified that he reminded defendant of his Miranda warnings. RP (03/06/07) 17. Lieutenant Genga's testimony did not refute Detective Jimenez's. While he did not believe that Detective Jimenez re-read defendant's Miranda rights, he could not remember if there was any discussion of Miranda in the second interview. RP (03/07/06) 19.

Even without the challenged findings, defendant's confession was admissible because a second Miranda warning was not required. The court found:

... I don't think that he was required to be Mirandized given that it was Mr. Moinette who initiated the [second] contact.

...

Given that he had already been Mirandized a few minutes earlier, this whole interview thing took about 15 minutes or less the first round here because he was supposedly Mirandized at 12:45. It was at 1:05 that he was back, and he concluded the second interview. Given the proximity of the warning and given the circumstances that this was - - we are calling it two separate interviews. In some sense, it was just a continuation of the first. I find that those Miranda warnings were given the first time, not the second time. They weren't required the second time.

RP (03/07/06) 37-38. Defendant does not challenge the court's oral ruling that no Miranda warning was required when defendant initiated the second contact. See Appellant's Brief at 15.

Defendant's assignment of error is based on his claim that these written findings are inconsistent with the court's oral ruling. See Appellant's Brief at 11-12. However, defendant does not claim on appeal that he did not receive proper Miranda warnings. Instead, he claims that his confession was coerced by implied promises on the part of the officers. See Appellant's Brief at 14-15. Because an oral ruling cannot be used to impeach a written finding and defendant has not challenged the validity of his Miranda warnings, defendant's assignment of error to the court's factual findings are without merit and should not be considered by this court.

- b. Defendant's confession was properly admitted where defendant waived his Miranda rights.

To protect the Fifth Amendment right against self-incrimination, custodial interrogation must be preceded by advice to the accused that he has the right to remain silent and the right to an attorney. State v. Bradford, 95 Wn. App. 935, 944, 978 P.2d 534 (1999), review denied, 139 Wn.2d 1022, 994 P.2d 850 (2000). An accused may waive his Miranda rights if the waiver is knowing, intelligent and voluntary. Bradford, 95 Wn. App. at 944.

When a suspect indicates in any manner, at any time prior to questioning that he wishes to remain silent, interrogation must cease unless the accused initiates further communication, exchanges, or conversation. State v. Grieb, 52 Wn. App. 573, 575, 761 P.2d 970 (1988). A subsequent waiver need not be explicit, but may be inferred from particular facts and circumstances. State v. Wheeler, 108 Wn.2d 230, 237, 737 P.2d 1005 (1987); State v. Mendez, 88 Wn. App. 785, 793, 947 P.2d 256 (1997). An implied waiver has been found where the record reveals that a suspect understood his rights and then volunteered information. State v. Terrovona, 105 Wn.2d 632, 646, 716 P.2d 295 (1986). The State has the burden of proving a waiver by a preponderance of the evidence. Bradford, 95 Wn. App. at 944.

Credibility determinations are for the trier of fact and are not subject to appellate review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Unchallenged findings of fact are verities on appeal. State v. Brockob, 159 Wn.2d 311, 343, 150 P.3d 59 (2006).

The trial court in the present case entered the following Findings of Fact:

At 0045 hours, Det. Jimenez fully advised the defendant of his Miranda warnings from a preprinted card;

The defendant understood his rights and didn't have any questions about the rights;

The defendant was asked if he wished to waive his rights and speak with the officers about the incident and the defendant answered "yes;"

...

The defendant continued talking about the assault until 0100 when Det. Jimenez asked him if he'd agree to make a tape-recorded statement and the defendant declined to do so;

After the defendant declined to make a tape-recorded statement the interview was terminated and the defendant handcuffed [sic] and escorted out of the office;

Lt. Genga instructed Corrections Officer Mastandrea to take the defendant to a disciplinary unit in the jail;

The defendant and Off. Mastandrea only made it to a nearby elevator on their way to the disciplinary unit when the defendant told the officer that he wanted to speak with Det. Jimenez again[.]

CP (Findings of Facts and Conclusions of Law Regarding Admissibility)

Under CrR 3.5); Appendix A at 2-3. Defendant did not assign error to any of these findings of fact. See Appellant's Brief at 1.

Detective Jimenez and Lieutenant Genga testified that defendant was advised of his Miranda rights. RP (03/06/06) 13, RP (06/07/06) 9. Both officers heard defendant indicate that he understood his rights and agree to speak to them. RP (03/06/06) 15, RP (03/07/06) 9. When defendant did exercise his right by declining to give a taped statement, the officers immediately terminated the interview. RP (03/06/06) 15. At his own request, defendant returned within a few minutes to confess his part in the crime. RP (03/06/06) 16, 38; RP (03/07/06) 17. While he claimed that he was never given his Miranda warnings, defendant admitted that he knew what his rights were and knew he did not have to speak to the officers. RP (03/06/06) 45-46.

The record clearly indicates that defendant was given proper Miranda warnings, he understood his rights, and agreed to waive them. Defendant then exercised his rights by refusing to give a taped statement and, when the officers terminated the interview, it was defendant who initiated contact with the officers a minute later.

- c. Defendant's confession was properly admitted where he was not coerced by explicit or implied threats or promises by the officers.

A confession is coerced "if based on the totality of the circumstances the defendant's will was overborne." State v. Burkins, 94

Wn. App. 677, 694, 973 P.2d 15 (citing State v. Broadaway, 133 Wn.2d 118, 132, 942 P.2d 363 (1997), review denied, 138 Wn.2d 1014, 989 P.2d 1142 (1999)). Some of the pertinent circumstances include whether the confession “was extracted by any sort of threats, violence, or direct or implied promises, however slight.” State v. Riley, 17 Wn. App. 732, 735, 565 P.2d 105 (1977). The court also considers “the condition of the defendant, the defendant’s mental abilities, and the conduct of the police.” Broadaway, 133 Wn.2d at 132 (citing State v. Rupe, 101 Wn.2d 664, 678-79, 683 P.2d 571 (1984)).

The court’s findings and the record below do not support defendant’s contention that he was coerced into confessing his involvement in the crime.

Lieutenant Genga’s decision to send defendant to segregation was made when the officers received the anonymous note, implicating defendant. RP (03/06/06) 15. His decision was based on the fact that any time when there is a risk of assaultive behavior, the suspected participants are separated from the unit. RP (03/07/06) 10, 15-16. Nothing in the record indicates that the decision to send defendant to segregation was made in order convince defendant to confess.

Defendant knew he was going to segregation only when Lieutenant Genga told Officer Mastandrea to escort him. RP (03/7/06) 17. Nothing

in the officers' testimony indicates that they promised, or even suggested, that defendant would avoid segregation if he admitted his part in a violent assault on another inmate.

Defendant claims that he believed he was going to the "hole" for his failure to confess his role in the assault, and the officers should have known he would perceive the situation as an implied threat. See Appellant's Brief at 15-16. However, while defendant claimed that he only confessed to avoid going to the "hole" and because the officers told him "everything would go away" if he admitted his part, the court found his testimony not credible:

Now, Mr. Moinette says a couple of things. He says Mastandrea told him he should have - - he told him if he was involved, and if so, that he wouldn't be going to the hole. Presumably that conversation was between him and Officer Mastandrea. He, apparently, was not told that by the detective or by the lieutenant. Mr. Moinette also indicated that early in the interview with Detective Jimenez, the detective brought up his criminal history and indicated that he was in a lot of trouble and asked whether he wanted to see his son. Again, he was looking at a lot of time. He said then, if he did it, it would all be fine and it would all go away. I don't find that very believable. He may have mentioned his criminal history. He may have said that he was in a lot of trouble. He may have said he was looking at a lot of time, but I cannot responsibly believe that the detective would tell him that if he had assaulted this guy that it would be just fine, thanks for telling us, and there wouldn't be a problem. That is not credible to me mostly because I don't think that a detective would dare to say something so unbelievable if he is trying to get the trust of somebody to try to get him to talk to him. No one would believe that, and I don't think that Mr. Moinette would have believed it if he would have been told that. At that point, he

would have been at least suspicious of the detective and would be less likely to talk to him. Both Lieutenant Genga and Detective Jimenez do indicate that the Miranda warnings were given. I have no reason think that they weren't frankly. I don't believe Mr. Moinette saying that he didn't get them.

RP (03/07/06) 35. The court clearly found that defendant's testimony, that he perceived a promise to avoid segregation in return for his confession, was not credible.

Additionally, while defendant may not have wanted to go to segregation, he testified that there were other reasons for his confession, which had nothing to do with any action on the part of the officers. Defendant testified that he confessed because he was concerned that Mr. Wright would blame him for implicating him and that he felt guilty for getting Mr. Wright involved. RP (03/06/06) 54-55. For defendant, it was a matter of pride, rather than fear of Mr. Wright, that encouraged him to confess. RP (03/06/06) 58. Defendant also testified that he confessed because it "never hurts in here to have something like that on your record, you know, for other inmates, you know, busted somebody's head, bumped them up, you know, and jailhouse stripes, whatever you want to call them." RP (03/06/06) 62. The court asked defendant to clarify his testimony:

Judge Chushcoff: Now, you said "that doesn't hurt."

The Defendant: Yeah, it doesn't hurt with the other inmates, you know - -

Judge Chushcoff: So, you actually - - -

The Defendant: - - to look like a tough guy

Judge Chushcoff: - - so, there was actually some advantage to you saying you were involved?

The Defendant: I wouldn't say the - - the advantage is real small. Now that I'm seeing the criminal proceeding and all that, the advantage was minimal.

Judge Chushcoff: That was as it turned out, but the point is at the time - -

[The Defendant]: Right.

Judge Chushcoff: - - you were thinking, "you know what, I'll also look good to other inmates if I accept the blame on this."

The Defendant: Right. Exactly.

RP (03/06/06) 63. Finding defendant's confession admissible, the court held:

If he did decide to come back and talk to Detective Jimenez, he may not have wanted to go to the hole. That part is true. I don't think that Mastandrea or anyone else suggested that he was going to get out of this or not go to the hole or not have problems if he admitted to all of this. What did make a lot of sense to me was Mr. Moinette's own conversation and his own testimony that he was disappointed in himself for having pointed the finger at Mr. Wright. He was concerned Wright would blame him for turning him in. He felt bad about bringing Wright's name into it in the first place. He was trying to makeup [sic] for it in a small way, and he also indicated that he felt like he would have advantage with other inmates if he said that he insisted [sic] an inmate beat up Rogers. It didn't make a whole lot of sense that he was going to try to makeup [sic]

for it to then go in and say, well, yeah, Wright did it, and I just covered him with the towel or the shirt. That doesn't get Wright off the hook at all. He may well have been concerned about trying to make sure that his conduct and the whole thing was minimalized.

RP (03/07/06) 36.

Defendant's claim that the officers indicated that he would not have to go to segregation if he confessed were not credible and defendant clearly had his own reasons for confessing to his involvement in the crime.

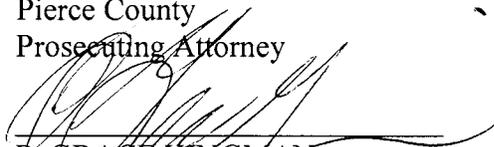
Defendant's confession was not coerced by any explicit or implied threat or promise by the officers, nor was it based on any perception of such threat or promise. Defendant freely and voluntarily spoke to the officers, he was under no compulsion to admit his part in the crime, and the court properly admitted defendant's confession.

D. CONCLUSION.

For the reasons stated above, this Court should affirm the trial court's determination that defendant's confession was admissible and affirm defendant's conviction.

DATED: March 13, 2007.

GERALD A. HORNE
Pierce County
Prosecuting Attorney



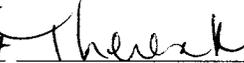
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WSB # 16717

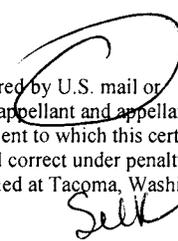


Kimberley DeMarco
Rule 9 Legal Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

3/13/07 
Date Signature



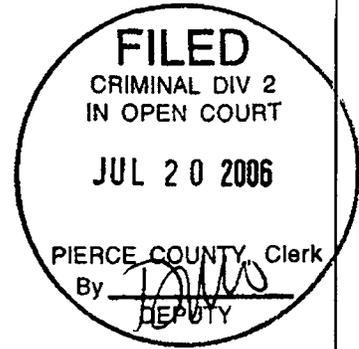
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APPENDIX "A"

*Findings of Fact and Conclusions of Law Regarding Admissibility of
Statements Under CrR 3.5*



05-1-05298-0 25835073 FNCL 07-21-06



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 05-1-05298-0

vs.

SEAN MICHAEL MOINETTE

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING ADMISSIBILITY OF STATEMENTS UNDER CrR 3.5

Defendant.

THIS MATTER having come on for hearing before the honorable Bryan Chushcoff on the 6th day of March, 2006, and the court having ruled orally that the statements of the defendant are admissible, now, therefore, the court sets forth the following Findings of Fact and Conclusions of Law as to admissibility.

UNDISPUTED FACTS

On October 19, 2005, at about 1735 hours, Pierce County Jail Corrections Officers became aware that an inmate identified as M. Rogers has sustained significant facial injuries as a result of an assault;

M. Rogers was in the 4 South Dayroom when the assault occurred;

M. Rogers had been watching television when someone placed something over his head from behind and someone else began beating him about the face;

The only thing M. Rogers remembers about the assault was that something was placed over his head before he began being hit in the face. M. Rogers woke up on the floor after being unconscious for a short period of time;

ORIGINAL

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1 As a result of the assault, M. Rogers suffered an orbital blowout fracture of bones near his left
2 eye;

3 M. Rogers did not see who assaulted him;

4 After the assault, a note written by an anonymous person was found on the jail floor indicating
5 that the defendant and another inmate had assaulted M. Rogers;

6 On October 20, 2005, at about 0040 hours, the defendant was brought to a jail office to be
7 questioned regarding the assault;

8 Present at the interview were Off. Tony Mastandrea and Lt. Luis Genga, from the Pierce County
9 Jail, and Det. John Jimenez from the Pierce County Sheriff's Department;

10 Once in the office, the defendant was asked what cell he lived in and the defendant responded "4-
11 S-C-26;"

12 The defendant was asked if he knew about the fight in the cell area and the defendant stated that
13 he did but he had been in his room when the fight occurred;

14 The defendant was then asked why he attacked the other inmate and the defendant stated "I did
15 not hit that dude, man;"

16 At 0045 hours, Det. Jimenez fully advised the defendant of his Miranda warnings from a
17 preprinted card;

18 The defendant understood his rights and didn't have any questions about the rights;

19 The defendant was asked if he wished to waive his rights and speak with the officers about the
20 incident and the defendant answered "yes;"

21 The defendant gave a statement and implicated the inmate in "27 house" as the person
22 responsible for the assault;

23 The defendant continued talking about the assault until 0100 when Det. Jimenez asked him if
24 he'd agree to make a tape-recorded statement and the defendant declined to do so;

25 After the defendant declined to make a tape-recorded statement the interview was terminated and
the defendant handcuffed and escorted out of the office;

05-1-05298-0

1 Lt. Genga instructed Corrections Officer Mastandrea to take the defendant to a disciplinary unit
2 in the jail;

3 The defendant and Off. Mastandrea only made it to a nearby elevator on their way to the
4 disciplinary unit when the defendant told the officer that he wanted to speak with Det. Jimenez again;

5 At 0105 hours Off. Mastandrea returned to the office with the defendant;

6 The defendants handcuffs were removed and Det. Jimenez reminded the defendant that his
7 Miranda rights still applied and that he didn't have to talk with the detective;

8 The defendant stated that he had something else he wanted to tell the detective and again Det.
9 Jimenez reminded the defendant that his Miranda rights still applied;

10 The defendant then made a statement admitting to putting a shirt over M. Rogers' head from
11 behind, pulling it down over his face and pulling back on the shirt;

12 The defendant named the other assailant that did the actual punching of M. Rogers' face;

13 The interview ended at 0110 hours and the defendant was escorted out of the office and to a
14 disciplinary cell in the jail;

15
16 DISPUTED FACTS

17 There are no disputed facts.

18 CONCLUSIONS AS TO DISPUTED FACTS

19 N/A

20 CONCLUSIONS AS TO ADMISSIBILITY

21 Because officers were conducting an initial investigation in their attempt to determine whether
22 the defendant was involved in an assault, the officers had no duty to advise the defendant of her Miranda
23 warnings/rights upon initial contact.

24 All statements made by the defendant to the officers before Det. Jimenez advised him of his
25 Miranda rights are admissible.

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1 After asking a couple of simple introductory questions and the defendant denying he had been
2 involved in the assault, Det. Jimenez fully advised the defendant of his Miranda rights and the defendant
3 made a knowing, voluntary and intelligent waiver of those rights and gave a statement to the detective;

4 All statements made to the detective after the advisement of Miranda rights are admissible
5 because they were made knowingly, voluntarily and intelligently after fully understanding all of his
6 Miranda warnings/rights.

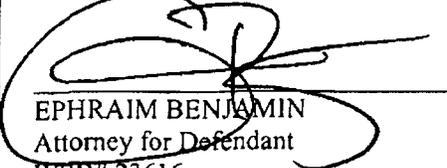
7 DONE IN OPEN COURT this 20th day of July, 2006.

8 
9 BRYAN CRUSHCOFF, JUDGE

10 Presented by:

11 
12 GREGORY L. GREER
13 Deputy Prosecuting Attorney
WSB# 22936

14 Approved as to Form:

15 
16 EPHRAIM BENJAMIN
17 Attorney for Defendant
WSB# 23616

18 glg

