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Court of Appeals
Division II
State of Washington
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NO. 49888-0-II

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

STATE OF WASHINGTON, Respondent

v.

JOSEPH WILLIAM HANSEN, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.15-1-00440-9

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENT OF ERROR

I. The Trial Court's Failure to Enter Written Findings on the CrR 3.5 Hearing Was Harmless and does not require remand.

STATEMENT OF THE CASE

The State charged Hansen with Hit and Run - Injury for an incident that occurred on March 9, 2015. CP 1. The State alleged that the defendant was driving a vehicle which collided with a semi-truck in Camas, Washington on March 9, 2015. CP 15. A passenger in the defendant's vehicle was injured; witnesses saw a male, whom police later determined to be Hansen, exit the vehicle and leave the scene of the accident. CP 15. During interviews with police, Hansen admitted to driving the vehicle at the time of the collision and having consumed alcohol at the time of the collision. CP 16. The case proceeded to trial. On the morning of the first day of trial the court held a hearing pursuant to CrR 3.5 to determine the admissibility of statements the defendant made to police. RP 91-155. The trial court did not enter written findings of fact or conclusions of law following the CrR 3.5 hearing.

The trial court made oral findings and conclusions on the CrR 3.5 hearing to determine whether Hansen's statements to police were admissible at trial. RP 147-55. The trial court discussed multiple separate

occasions when police had contact with Hansen and he made statement to the officers. RP 148. The trial court found that on the first occasion Det. Garcia read Hansen the *Miranda* warnings from his department-issued card and that Hansen indicated he understood his rights. RP 148. Hansen displayed no signs of confusion and agreed to talk to Det. Garcia. RP 148. At this time, Hansen was not in custody, he was not handcuffed or under arrest. RP 149. The court ruled that the statements Hansen made to Det. Garcia during this contact were admissible into evidence. RP 149.

Less than an hour later at the hospital, during the second contact, Det. Garcia spoke to Hansen again. RP 150. Det. Garcia did not re-read the *Miranda* warnings to Hansen; Hansen was not in custody at the time. RP 150. Those statements were ruled admissible. RP 150. The trial court found this second contact occurred less than an hour after the first contact and was a continuation of the first conversation.

The third occasion the trial court discussed actually occurred prior to the first occasion. RP 151-52. At that time, police had contact with Hansen near the back of his residence and he made a spontaneous statement, saying "I'm here to smoke a cigarette." RP 151-52.

On a fourth occasion, the following day, occurred at about not long after 12pm when police arrived at a residence and placed Hansen under arrest. RP 153. *Miranda* warnings were given, Hansen expressed no

confusion and agreed to talk with police. RP 153-54. The trial court specifically found there was nothing in the record to suggest Hansen was confused or had any reason to be confused. RP 154. The trial court stated,

There has been no evidence of any head injury at the time of this hearing; there was only a request for pain medication. The only other statement or allegation was 'blood on the face' and that Mr. Hansen wanted pain medication. If I looked to the totality of the circumstances, if I looked to the particular facts and circumstances surrounding any admissions made by Mr. Hansen, it does not appear from the records that Mr. Hansen was confused, dazed, or not able to answer questions in a normal manner or reasonable manner. Sergeant or Detective Garcia indicated that he responded intelligently, voluntarily, and clearly based upon the answers provided, and there was no confusion based upon my review of the record.

It appears that Mr. Hansen knowingly and voluntarily and intelligently waived his right to remain silent and volunteered those statements. Based upon my review of the totality of the circumstances and the lack of evidence indicating a head injury, confusion, or otherwise where the defendant was unable to respond to questions.

RP 154-55.

The statements Hansen made to police were admitted at trial.

Hansen was convicted of Hit and Run – Attended. CP 130. This appeal timely follows.

ARGUMENT

I. The Trial Court's Failure to Enter Written Findings on the CrR 3.5 Hearing Was Harmless and does not require remand

Hansen argues the trial court erred in failing to enter written findings pursuant to CrR 3.5 after it held a hearing on the admissibility of his statement to police. Hansen further argues this Court should remand the matter to the trial court for entry of findings and conclusions pursuant to CrR 3.5. Although the trial court did err in failing to enter written findings and conclusions pursuant to CrR 3.5, its oral findings and conclusions are clear enough to allow review and thus Hansen has not been prejudiced. Remand is not required to correct this issue.

CrR 3.5 is the procedure by which a trial court determines whether statements of a defendant, offered by the State at trial, are admissible into evidence. CrR 3.5(a). This rule requires that the trial court, "set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefor." CrR 3.5(c). The trial court did hold a hearing pursuant to CrR 3.5 on the morning of the first day of trial,

however the trial court did not enter any written findings pursuant to CrR 3.5(c). The trial court instead, gave an oral ruling finding the statement Cortez made to law enforcement officers admissible. RP 147-55.

Although a trial court's failure to enter written findings and conclusions pursuant to CrR 3.5(c) is error, it is harmless error as long as the oral findings are sufficient to allow appellate review. *State v. Thompson*, 73 Wn.App. 122, 130, 867 P.2d 691 (1994) (citing to *State v. Riley*, 69 Wn.App. 349, 352-53, 848 P.2d 1288 (1993) and *State v. Clark*, 46 Wn.App. 856, 859, 732 P.2d 1029, *rev. denied*, 108 Wn.2d 1014 (1987)). In *State v. Haynes*, 16 Wn.App. 778, 559 P.2d 583, *rev. denied*, 88 Wn.2d 1017 (1977) this Court found that the trial court's failure to enter written findings and conclusions on the CrR 3.5 hearing was not reversible absent prejudice to the defendant. *Haynes*, 16 Wn.App. at 788. This Court reasoned that the trial court gave "adequate oral reasoning in ruling that the statements, if indeed made, were voluntary" and the absence of written findings "did not hinder [its] review...." *Id.* Many courts have since upheld this reasoning. *See e.g. State v. Grogan*, 147 Wn.App. 511, 195 P.3d 1017, *rev. granted, cause remanded*, 168 Wn.2d 1039, 234 P.3d 169, *on remand*, 158 Wn.App. 272, 246 P.3d 196 (2008) (holding a trial court's failure to enter findings required is harmless error if the court's oral findings are sufficient to permit appellate review); *State v.*

Miller, 92 Wn.App. 693, 703, 964 P.2d 1196 (1998) (holding a trial court's failure to comply with CrR 3.5(c) is harmless error if the court's oral findings are sufficient to allow appellate review); *State v. Phillip Arthur Smith*, 67 Wn.App. 81, 834 P.2d 26, reviewed and affirmed on other grounds, 123 Wn.2d 51, 864 P.2d 1371, (1992) (holding a trial court's failure to enter written findings following the denial of a motion to suppress was harmless error where the court's oral findings were sufficient to permit appellate review).

Hansen cites to no case that supports his contention that the failure of a trial court to enter written findings after a CrR 3.5 hearing requires automatic remand for entry of written findings. Where the court's oral findings are sufficient to allow appellate review, then the failure to enter written findings after a CrR 3.5 hearing is harmless. *Grogan, supra*, *Miller, supra*. Hansen never suggests the trial court's findings are insufficient or unclear, and does not argue he is unable to obtain appellate review of the CrR 3.5 decision absent written findings. A simple reading of the transcript shows this issue was simple and clear and the court's findings appropriate. If Hansen wanted appellate review of the admissibility of his statements to police, the record is sufficiently clear to allow such review. The trial court's erroneous failure to enter written

findings is harmless; Hansen has not been prejudiced. This Court should deny Hansen's claim that remand is necessary.

CONCLUSION

The trial court erred in failed to enter written findings of fact and conclusions of law following the CrR 3.5 hearing held in this case. However, this error was harmless as it has not prejudiced Hansen and does not prevent appellate review of the admission of his statements to police. As such, Hansen's claim that this error requires remand should be denied.

DATED this 14 day of February, 2018.

Respectfully submitted:

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