

FILED
Court of Appeals
Division II
State of Washington
1/11/2018 3:27 PM

NO. 50114-7-II

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

STATE OF WASHINGTON,
Respondent,

v.

JAYNE BLUNK,
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE DAVID L. EDWARDS, JUDGE

BRIEF OF RESPONDENT

KATHERINE L. SVOBODA
Prosecuting Attorney
for Grays Harbor County

BY: 

JON BELTRAN

Deputy Prosecuting Attorney
WSBA #45476

OFFICE AND POST OFFICE ADDRESS
County Courthouse
102 W. Broadway, Rm. 102
Montesano, Washington 98563
Telephone: (360) 249-3951

T A B L E

Table of Contents

STATEMENT OF THE CASE..... 1

ARGUMENT..... 8

 1. The trial court properly concluded that Officer Bradbury had probable cause to arrest Blunk for violating the order protecting Robert Schlienzen..... 8

 2. The trial court properly concluded that Blunk’s pre-arrest statements were admissible because they were not subject to Miranda. 12

 3. The trial court properly found that Blunk made a knowing, voluntary, and intelligent decision to waive her right to a jury trial. 15

 4. The trial court properly found that Blunk made a knowing, voluntary, and intelligent decision to submit to a stipulated facts trial..... 18

CONCLUSION..... 22

TABLE OF AUTHORITIES

Cases

Adams v. Peterson, 968 F.2d 835, 842 (9th Cir. 1992)..... 15

Berkemer v. McCarty, 468 U.S. 420, 440, 104 S.Ct. 3138, 3150, 82 L.Ed.2d 317 (1984)..... 11

California v. Beheler, 463 U.S. 1121, 1125, 103 S.Ct. 3517, 3520, 77 L.Ed.2d 1275 (1983) (per curiam) 11

Miranda v. Arizona, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694, 10 A.L.R.3d 974 (1966)..... 10, 11

State v. Baruso, 72 Wn.App. 603, 609. 865 P.2d 512 (1993)..... 11

State v. Benitez, 175 Wn.App. 116, 128, 302 P.3d 877 (2013) 13

State v. Chenoweth, 160 Wn.2d 454, 475-76, 158 P.3d 595 (2007)..... 7

State v. Gillenwater, 96 Wn.App. 667, 671, 980 P.2d 318 (1999) 7

State v. Harper, 33 Wn.App. 507, 510-11, 655 Wn.App. 1199 (1982).... 15

State v. Hensler, 109 Wn.2d 357, 362, 745 P.2d 34 (1987) 11

State v. Jacobson, 33 Wn.App. 529, 535, 656 P.2 1103 (1982) 15

<i>State v. Johnson</i> , 104 Wn.2d 338, 342, 705 P.2d 773 (1985).....	15
<i>State v. Levy</i> , 156 Wn.2d 709, 733, 132 P.3d 1076 (2006)	7
<i>State v. McWatters</i> , 63 Wn.App 911, 915, 822 P.2d 787, review denied, 119 Wn.2d 1012, 833 P.2d 386 (1992).....	12
<i>State v. Moore</i> , 161 Wn.2d 880, 885, 169 P.3d 469 (2007)	7
<i>State v. Nall</i> , 117 Wn.App. 647, 650, 72 P.3d 200 (2003)	8
<i>State v. Neff</i> , 163 Wn.2d 453, 458, 181 P.3d 819 (2008)	15
<i>State v. Pejsa</i> , 75 Wn.App 139, 148, 876 P.2d 963 (1994)	12
<i>State v. Pierce</i> , 134 Wn.App. 763, 771, 142 P.3d 610 (2006).....	13
<i>State v. Potter</i> , 156 Wn.2d 835, 840, 132 P.3d 1089 (2006)	7
<i>State v. Ramirez-Dominguez</i> , 140 Wn.App. 233, 239, 165 P.3d 391 (2007)	12
<i>State v. Sargent</i> , 111 Wn.2d 641, 647, 762 P.2d 1127 (1988).....	11
<i>State v. Short</i> , 113 Wn.2d 35, 41, 775 P.2d 458 (1989)	11
<i>State v. Stegall</i> , 124 Wn.2d 719, 724-25, 881 P.2d 979 (1994).....	13
<i>State v. Walton</i> , 67 Wn.App 127, 129, 834 P.2d 624 (1992).....	11
<i>State v. Watkins</i> , 53 Wn.App 264, 274, 766 P.2d 484 (1989)	11
<i>State v. Woods</i> , 143 Wn.2d 561, 608-09, 23 P.3d 1046 (2001).....	15
<i>United States v. Mesa</i> , 638 F.2d 582, 584 (3d Cir. 1980).....	11

Statutes

RCW 26.60.110	8
RCW 26.62.110(1)(i)-(iii), (2)	9
RCW 74.34	8
RCW 74.34.145(2).....	8

Rules

RAP 9.2(b)	14
------------------	----

STATEMENT OF THE CASE

On November 8, 2016, the Grays Harbor County District Court entered an Order for Protection – Harassment restraining Blunk from making any attempt to contact Julie Roberts, and restraining Blunk from entering or being within an unspecified distance of Roberts’s residence at 400 1/2 North F Street. RP January 31, 2017 at 9-10. The order was valid until November 8, 2017.

On November 22, the Grays Harbor County Superior Court entered an Order for Protection – Vulnerable Adult restraining Blunk from having any contact with Robert Schlienzy and prohibiting Blunk from coming within or knowingly remaining within 100 feet of Schlienzy’s residence at 400 1/2 North F Street. RP January 31, 2017 at 9-10. The order was valid until November 22, 2021, and was issued pursuant to RCW 74.34.

On December 1, Roberts called 911 and reported that Blunk might be going to 324 North F Street, which was adjacent to 400 1/2 North F Street. RP January 31, 2017 at 9, 11. Aberdeen Police Department (APD) Officer Ron Bradbury contacted Roberts and told her to call again if Blunk showed up. RP January 31, 2017 at 9. Officer Bradbury then went into the APD records section and found, under Blunk’s name, the orders entered on November 8 and November 22. RP January 31, 2017 at 10.

Roberts called again and reported that Blunk was at 324 North F Street. RP January 31, 2017 at 11. Officer Bradbury went to the area of 400 1/2 F Street and saw Blunk exiting 324 North F Street. RP January 31, 2017 at 11, 14. Blunk was within 100 feet of 400 1/2 North F Street. RP January 31, 2017 at 13-14.

Officer Bradbury advised Blunk that he was there to investigate the orders, that she was not to be at the location, and that she was not to be within 100 feet of 400 1/2 North F Street. RP January 31, 2017 at 15. Blunk replied that she forgot that there were two orders. RP January 31, 2017 at 15.

Officer Bradbury contacted APD records, and APD records confirmed the two orders. RP January 31, 2017 at 15. Officer Bradbury then arrested Blunk and searched her. RP January 31, 2017 at 16. He found a plastic container in her left jacket pocket, and it contained a substance that appeared to be methamphetamine. RP January 31, 2017 at 16.

On December 5, the State charged Blunk with possession of methamphetamine under 69.50.4013(1). CP 1.

On January 9, 2017, the trial court held a 3.5 status hearing and asked Blunk whether she made any custodial statements:

THE COURT: Were there custodial statements made?

DEFENSE COUNSEL: Your Honor, there was one, apparently volunteered, very brief statement, and there was a custodial statement, but it doesn't appear that it was in response to any questioning, so we are not contesting that.

THE COURT: Ms. Blunk ... I am being advised by your attorney that any statements you made to the police in this case were volunteered by you, that is, that you didn't make statements in response to specific interrogation by the police; is that correct?

BLUNK: That's correct.

RP January 9, 2017 at 2.

On January 23, Blunk filed a motion to suppress all evidence found during her arrest, arguing that Officer Bradbury lacked probable cause to arrest her because she was never served with the November 22 order. CP 9-10. The trial court set a hearing for January 31 to address Blunk's motion, and to address the admissibility of her statements at trial.

At the January 31 hearing, the trial court admitted both orders. CP 17-18. Officer Bradbury testified:

1. That he found both orders.
2. That the November 22 order prohibited Blunk from being within 100 feet of 400 1/2 North F Street.
3. That he saw Blunk within 100 feet of 400 1/2 North F Street.
4. That APD records confirmed both orders.
5. That Blunk said that she forgot that there were two orders.

6. That his contact with Blunk lasted “30 seconds to a minute.”

RP January 31, 2017 at 10, 13-16.

Blunk also testified and, when asked about whether she knew that there were two orders, she replied, “I was aware there was two orders, yes.” RP January 31, 2017 at 27.

At the end of the hearing, the trial court ruled that Blunk’s statements were admissible, stating that “[A]s far as the statements that were made, they’re clearly pre-arrest, they’re voluntary, weren’t coerced in any way. So those statements would be admissible.” RP January 31, 2017 at 34. The trial court withheld ruling on Blunk’s motion to suppress for lack of probable cause. RP January 31, 2017 at 38.

On February 9, the trial court issued a written decision denying Blunk’s motion, stating that “[A] reasonable person would believe that a violation of the vulnerable adult protection order was committed by [Blunk] because she admitted she was aware of the order, the order was “confirmed” as valid, and she was within one hundred feet of the protected person’s residence. Her signature on the order or personal service of the order on [Blunk] is not required to establish probable cause to believe she had knowledge of the order.” CP 19-21.

On February 27, Blunk asked the Court to allow her to waive her right to a jury trial and presented a signed waiver of trial by jury.

TRIAL COURT: I am being asked to do two things today. First, to allow you to waive your right to a trial by jury, and I have a document I am going to show you that you have signed where you are indicating you wish to waive your constitutional right to a jury trial; is that correct?

BLUNK: That's correct.

TRIAL COURT: Do you believe you understand that decision?

BLUNK: I believe I do.

TRIAL COURT: Did you have an opportunity to discuss your decision and to consider your decision with your attorney?

BLUNK: I believe I did.

TRIAL COURT: Did you have an opportunity to discuss your decision and to consider your decision with your attorney?

BLUNK: I believe I did.

TRIAL COURT: Do you have any questions you want to ask me about your constitutional right to a jury trial?

BLUNK: No.

TRIAL COURT: Do you believe you had adequate time to think about it and to consider it before you made the decision to sign this document to waive your right?

BLUNK: I believe I did.

TRIAL COURT: If I accept this waiver of trial by jury, you will have a trial to determine if you are guilty or not guilty of this charge before a judge. And the difference between the two

situations is that in a jury trial, the prosecuting attorney would have to convince 12 people beyond a reasonable doubt that you were guilty of this charge before you could be found guilty; do you understand?

BLUNK: Yes.

TRIAL COURT: That's a jury trial. If you waive your right to a jury trial, the prosecutor still has to prove beyond a reasonable doubt that you are guilty, but the prosecutor only has to convince one person instead of 12, that one person would be a judge; do you understand?

BLUNK: I understand

TRIAL COURT: Knowing that, do you still wish to waive your right to a jury trial?

BLUNK: I do.

In the waiver, Blunk indicated that she understood her right to a jury trial and that she agreed that her case could be tried by a judge without a jury. Defense counsel indicated that he reviewed the right to a jury trial with her, and that he believed that she made a voluntary, knowing, and intelligent waiver of that right. The trial court set a bench trial for March 7.

At the bench trial on March 7, Blunk presented a signed statement of defendant on stipulation to facts, indicating that, having been informed of and fully understanding her rights, she freely and voluntarily submitted her case to the court. CP 23-30. On Page 4 of the statement, she indicated:

“I have reviewed the reports, documents and exhibits to be submitted to the court and agree that they constitute the entire record to be considered by the court in determining my guilt *or innocence* in this case and agree that it is a sufficient basis upon which the court *may* find me guilty.

CP 29.

She also presented a signed document titled stipulated facts. On the last page, titled “certificate of defendant,” she indicated:

I am the Defendant in this case. I understand that the Court will receive a copy of this stipulation and will consider it in determining whether I am guilty of the crime of Violation of the Uniform Controlled Substances Act – Possession of Methamphetamine.

I am making this stipulation freely and voluntarily. No one has threatened me with harm of any kind to me or to any other person to cause me to make this stipulation. My lawyer has explained to me, and we have fully discussed the above paragraphs. I understand them all.”

CP 23-25.

The trial court asked Blunk several questions regarding her understanding of the documents she signed:

TRIAL COURT: [D]id you have an opportunity to review this statement of defendant on stipulation to facts?

BLUNK: Yes, I did, and I fully understand.

TRIAL COURT: You understand what it says?

BLUNK: Yes.

TRIAL COURT: Okay. Among other things this – in this document, you are acknowledging that you understand all of your constitutional rights that would be attached to this case if you wish to stand on your plea of not guilty and proceed to trial; do you fully understand your rights?

BLUNK: I do.

RP March 7, 2017 at 5-6.

After the colloquy, the trial court signed and accepted the certificate of defendant, stating: “I find that the defendant’s decision to submit these facts to be knowingly, intelligently, and voluntarily made. The defendant understands the charge and the consequences of submitting the case on stipulated facts.” CP 25.

Based on the facts set forth in the stipulation, the trial court found Blunk guilty. CP 10. On March 8, the trial court entered findings of fact and conclusions of law. CP 31-33. This appeal follows.

ARGUMENT

1. The trial court properly concluded that Officer Bradbury had probable cause to arrest Blunk for violating the order protecting Robert Schlien.

Blunk argues that the trial court erred in concluding that Officer Bradbury had probable cause to arrest her for violating the order protecting Schlien, and in suppressing the methamphetamine found on her person during the arrest. Appellant’s Opening Brief at 17.

Courts review conclusions of law pertaining to suppression of evidence de novo. *State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006). Here, the trial court’s written decision states, “I conclude that a reasonable person would believe that a violation of the vulnerable adult protection order was committed by Ms. Blunk because she admitted she was aware of the order, the order was ‘confirmed’ as valid, and she was within one hundred feet of the protected person’s residence.” CP 21.

“Probable cause exists when the arresting officer has ‘knowledge of facts sufficient to cause a reasonable [officer] to believe that an offense has been committed’ at the time of the arrest.” *State v. Moore*, 161 Wn.2d 880, 885, 169 P.3d 469 (2007) (alteration in original) (quoting *State v. Potter*, 156 Wn.2d 835, 840, 132 P.3d 1089 (2006)). This determination is made in a “practical, nontechnical manner.” *State v. Gillenwater*, 96 Wn.App. 667, 671, 980 P.2d 318 (1999). “A tolerance for factual inaccuracy is inherent to the concept of probable cause ... Probable cause requires more than suspicion or conjecture, but does not require certainty.” *State v. Chenoweth*, 160 Wn.2d 454, 475-76, 158 P.3d 595 (2007).

In circumstances where police officers act together as a unit, the “fellow officer” rule provides that the collective knowledge of all the officers involved in the arrest may be considered in determining whether

probable cause existed. *State v. Nall*, 117 Wn.App. 647, 650, 72 P.3d 200 (2003).

In the present case, the order at issue is the Order for Protection – Vulnerable Adult issued by the Grays Harbor County Superior Court on November 22. The order was issued pursuant to RCW 74.34, which states that:

Whenever an order for protection of a vulnerable adult is issued under [RCW 74.34], and the respondent or person to be restrained knows of the order, a violation of a provision restraining the person from committing acts of abuse, prohibiting contact with the vulnerable adult, excluding the person from any specified location, or prohibiting the person from coming within a specified distance of a location, shall be punishable under RCW 26.50.110...

RCW 74.34.145(2).

RCW 26.60.110 describes the elements for a misdemeanor violation of an order issued pursuant to RCW 74.34:

(1)(a) Whenever an order is granted under [RCW 74.34], and the respondent or person to be restrained knows of the order, a violation of any of the following provisions is a gross misdemeanor:

(i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;

(ii) A provision excluding the person from a residence, workplace, school, or day care;

(iii) A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location;

(2) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under [RCW 77.34]...

RCW 26.62.110(1)(i)-(iii), (2).

In the present case, at the suppression hearing, Officer Bradbury testified that Roberts reported that Blunk might be going to the residence next door at 324 North F Street. RP January 31, 2017 at 9, 11. Officer Bradbury looked up Blunk's name and located two orders, which the trial court admitted as exhibits 2 and 5. CP 10.

Exhibit 2 was the Grays Harbor Superior Court Order for Protection -- Vulnerable Adult, which restrained Blunk from knowingly coming within, or knowingly remaining within one hundred feet of Schlien's residence at 400 1/2 North F Street. The order was in effect from November 22, 2016 until November 22, 2021.

Exhibit 5 was the Grays Harbor District Court Order for Protection -- Harassment, which restrained Blunk from entering or being within an unspecified distance of Roberts's residence at 400 1/2 North F Street. The order was in effect from November 8, 2016 until November 8, 2017.

Officer Bradbury testified that:

1. After he determined that there were two no contact orders, Roberts reported that Blunk was at the residence next door at 324 North F Street. RP January 31, 2017 at 10-11.
2. He responded to the area, where he saw Blunk exiting 324 North F Street. RP January 31 at 11, 14.
3. Blunk was within 100 feet of 400 1/2 North F Street. RP January 31, 2017 at RP 13-14.
4. He contacted Blunk and told her that he was there to investigate the orders, that she was not to be at the location, and that she was not to be within 100 feet of 400 North F Street. RP January 31, 2017 at 15.
5. Blunk replied that she forgot that there were two orders. RP January 31, 2017 at 15.
6. He contacted APD records, and APD records confirmed the two orders. RP January 31, 2017 at 15.
7. He then arrested Blunk. RP January 31, 2017 at 17.

Based on Officer Bradbury's testimony and the exhibits admitted at the suppression hearing, the trial court did not err in concluding that Officer Bradbury had probable cause to arrest Blunk for violating the Order for Protection – Vulnerable Adult protecting Robert Schlien.

2. The trial court properly concluded that Blunk's pre-arrest statements were admissible because they were not subject to Miranda.

Blunk argues that the trial court erred in concluding that Blunk's pre-arrest statements were admissible because they resulted from custodial

interrogation undertaken without *Miranda* warnings. Appellant's Opening Brief at 22.

The trial court orally found that “[A]s far as the statements were made, they’re clearly pre-arrest, they’re voluntary, weren’t coerced in any way. So those statements would be admissible.” RP January 31, 2017 at 34.

Generally, the police must warn a person of his or her *Miranda* rights before conducting a custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694, 10 A.L.R.3d 974 (1966); *State v. Baruso*, 72 Wn.App. 603, 609, 865 P.2d 512 (1993); *State v. Walton*, 67 Wn.App 127, 129, 834 P.2d 624 (1992) (citing *State v. Sargent*, 111 Wn.2d 641, 647, 762 P.2d 1127 (1988)). The purposes of this requirement are to protect the individual from the potentiality of compulsion or coercion inherent in in-custody interrogation, and from deceptive practices of interrogation. *State v. Hensler*, 109 Wn.2d 357, 362, 745 P.2d 34 (1987). The requirement is not intended to unduly interfere with a proper system of law enforcement, or to hamper the traditional investigatory and public safety functions of police. *Miranda*, 384 U.S. at 481, 86 S.Ct. at 1631; *United States v. Mesa*, 638 F.2d 582, 584 (3d Cir. 1980).

A suspect is “in custody” for Fifth Amendment and *Miranda* purposes as soon as his or her freedom of action is curtailed to a “degree associated with formal arrest.” *Berkemer v. McCarty*, 468 U.S. 420, 440, 104 S.Ct. 3138, 3150, 82 L.Ed.2d 317 (1984) (quoting *California v. Beheler*), 463 U.S. 1121, 1125, 103 S.Ct. 3517, 3520, 77 L.Ed.2d 1275 (1983) (per curiam)); *State v. Watkins*, 53 Wn.App 264, 274, 766 P.2d 484 (1989). The inquiry in this regard is how a reasonable person would have understood his or her situation. *Berkemer*, 468 U.S. at 442, 104 S.Ct. at 3151; *State v. Short*, 113 Wn.2d 35, 41, 775 P.2d 458 (1989); *State v. McWatters*, 63 Wn.App 911, 915, 822 P.2d 787, review denied, 119 Wn.2d 1012, 833 P.2d 386 (1992).

The term “interrogation” under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police ... should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police.

State v. Pejisa, 75 Wn.App 139, 148, 876 P.2d 963 (1994).

In the present case, Officer Bradbury testified that he told Blunk that he was there to investigate the orders, that she was not to be at the location, and that she was not to be within 100 feet of 400 1/2 North F Street. RP January 31, 2017 at 15. She replied that she forgot that there were two orders, and then he arrested her. RP January 31, 2017 at 15-16.

He testified that the contact lasted “30 seconds to a minute.” RP January 31, 2017 at 16.

Based on Officer Bradbury’s testimony at the suppression hearing, the trial court did not err in concluding that Blunk’s pre-arrest statements were admissible because they were not subject to *Miranda*.

3. The trial court properly found that Blunk made a knowing, voluntary, and intelligent decision to waive her right to a jury trial.

Courts review the validity of a jury trial waiver de novo. *State v. Ramirez-Dominguez*, 140 Wn.App. 233, 239, 165 P.3d 391 (2007). A defendant’s waiver of his or her jury trial right must be made knowingly, intelligently, voluntarily, and without improper influences. *State v. Stegall*, 124 Wn.2d 719, 724-25, 881 P.2d 979 (1994). A written jury trial waiver “is strong evidence that the defendant validly waived the jury trial right.” *State v. Pierce*, 134 Wn.App. 763, 771, 142 P.3d 610 (2006). “An attorney’s representation that the defendant’s waiver is knowing, intelligent, and voluntary is also relevant” to a determination of whether the defendant’s jury trial waiver was valid. *State v. Benitez*, 175 Wn.App. 116, 128, 302 P.3d 877 (2013) (citing *Pierce*, 134 Wn.App. at 771). Additionally, [courts] consider whether the trial court informed the defendant of his or her jury trial right. *Pierce*, 134 Wn.App. at 771.

Washington law requires that a defendant personally express a waiver of his or her jury trial right in order for the waiver to be valid. *Pierce*, 134 Wn.App. at 771. But Washington law does not require the trial court to conduct an extensive on-the-record colloquy with the defendant prior to finding that the defendant validly waived his or her jury trial right. *Pierce*, 134 Wn.App. at 771. “As a result, the right to a jury trial is easier to waive than other constitutional rights.” *Benitez*, 175 Wn.App. at 129.

Blunk argues that she did not make a knowing, voluntary, and intelligent decision to waive her right to a jury trial. Appellant’s Opening Brief at 10. Her argument, however, omits all reference to the February 27 hearing, during which she asked the court to allow her to waive her right to a jury trial and presented a jury trial waiver.

A transcript of the February 27 hearing is necessary to challenge the validity of her waiver, because the trial court conducted an on-the-record colloquy with Blunk prior to finding that she validly waived her right to a jury trial. RAP 9.2(b) states that “A party should arrange for the transcription of all those portions of the verbatim report of proceedings necessary to present the issues raised on review. RAP 9.2(b). The colloquy went as follows:

TRIAL COURT: I am being asked to do two things today. First, to allow you to waive your right to a trial by jury, and I have a

document I am going to show you that you have signed where you are indicating you wish to waive your constitutional right to a jury trial; is that correct?

BLUNK: That's correct.

TRIAL COURT: Do you believe you understand that decision?

BLUNK: I believe I do.

TRIAL COURT: Did you have an opportunity to discuss your decision and to consider your decision with your attorney?

BLUNK: I believe I did.

TRIAL COURT: Did you have an opportunity to discuss your decision and to consider your decision with your attorney?

BLUNK: I believe I did.

TRIAL COURT: Do you have any questions you want to ask me about your constitutional right to a jury trial?

BLUNK: No.

TRIAL COURT: Do you believe you had adequate time to think about it and to consider it before you made the decision to sign this document to waive your right?

BLUNK: I believe I did.

TRIAL COURT: If I accept this waiver of trial by jury, you will have a trial to determine if you are guilty or not guilty of this charge before a judge. And the difference between the two situations is that in a jury trial, the prosecuting attorney would have to convince 12 people beyond a reasonable doubt that you were guilty of this charge before you could be found guilty; do you understand?

BLUNK: Yes.

TRIAL COURT: That's a jury trial. If you waive your right to a jury trial, the prosecutor still has to prove beyond a reasonable doubt that you are guilty, but the prosecutor only has to convince one person instead of 12, that one person would be a judge; do you understand?

BLUNK: I understand

TRIAL COURT: Knowing that, do you still wish to waive your right to a jury trial?

BLUNK: I do.

In the jury trial waiver, Blunk once again indicated that she understood her right to a jury trial and that she agreed that her case could be tried by a judge without a jury. Defense counsel indicated that he reviewed the right to a jury trial with her, and that he believed that she made a voluntarily, knowing, and intelligent waiver of that right.

The trial court confirmed with Blunk that she signed the waiver form and that she agreed with defense counsel's statements regarding her jury trial waiver. This was adequate to show that Blunk personally expressed her desire to waive her jury trial and, thus, this Court should hold that the trial court did not err by accepting her waiver.

4. The trial court properly found that Blunk made a knowing, voluntary, and intelligent decision to submit to a stipulated facts trial.

A stipulated facts trial is a procedural device where a judge finds facts based on police reports and other documents. *State v. Neff*, 163 Wn.2d 453, 458, 181 P.3d 819 (2008). The defendant does not stipulate to his guilt or her guilt; the trial court must make that determination. *State v. Jacobson*, 33 Wn.App. 529, 535, 656 P.2 1103 (1982).

In stipulated facts trial, the trial court is not required to advise the defendant of his or her constitutional rights because a stipulated facts trial is substantively different from a guilty plea proceeding. *State v. Johnson*, 104 Wn.2d 338, 342, 705 P.2d 773 (1985); *State v. Harper*, 33 Wn.App. 507, 510-11, 655 Wn.App. 1199 (1982) (held that trial court did not err by failing to admonish the defendant of his right to summon and confront witnesses because the stipulation was not tantamount to a guilty plea); *Adams v. Peterson*, 968 F.2d 835, 842 (9th Cir. 1992); *see also State v. Woods*, 143 Wn.2d 561, 608-09, 23 P.3d 1046 (2001).

In the present case, Blunk presented a signed statement of defendant on stipulation to facts, indicating that, having been informed of and fully understanding her rights, she freely and voluntarily submitted her case to the court. CP 26-29. On Page 4, Blunk indicated:

“I have reviewed the reports, documents and exhibits to be submitted to the court and agree that they constitute the entire record to be considered by the court *in determining my guilt or*

innocence in this case and agree that it is a sufficient basis upon which the court *may* find me guilty.

CP 29.

Blunk also presented a signed document titled stipulated facts. The last page, titled “certificate of defendant,” contained the following language:

I am the Defendant in this case. I understand that the Court will receive a copy of this stipulation and will consider it in determining whether I am guilty of the crime of Violation of the Uniform Controlled Substances Act – Possession of Methamphetamine.

I am making this stipulation freely and voluntarily. No one has threatened me with harm of any kind to me or to any other person to cause me to make this stipulation. My lawyer has explained to me, and we have fully discussed the above paragraphs. I understand them all.”

CP 23-25.

The trial court asked Blunk several questions regarding her understanding of the documents she signed and presented:

TRIAL COURT: [D]id you have an opportunity to review this statement of defendant on stipulation to facts?

BLUNK: Yes, I did, and I fully understand.

TRIAL COURT: You understand what it says?

BLUNK: Yes.

TRIAL COURT: Okay. Among other things this -- in this document, you are acknowledging that you understand all of your

constitutional rights that would be attached to this case if you wish to stand on your plea of not guilty and proceed to trial; do you fully understand your rights?

BLUNK: I do.

RP March 7, 2017, at 5-6.

The trial court did not treat Blunk's stipulation as a guilty plea. The trial court questioned her to make sure that she understood the statement of defendant on stipulation to facts and her rights. Accordingly, this Court should conclude that the trial court did not err by accepting the stipulation.

CONCLUSION

The trial court properly concluded that Officer Bradbury had probable cause to arrest Blunk for violating the order protecting Robert Schlienzy, and that Blunk's pre-arrest statements were not subject to *Miranda*. Furthermore, the trial court properly found that Blunk knowingly, voluntarily, and intelligently (1) waived her right to a jury trial, and (2) submitted to a stipulated facts trial. Accordingly, this Court should affirm her conviction.

DATED this 11TH day of January, 2018.

Respectfully Submitted,

By: 

JON BELTRAN
Deputy Prosecuting Attorney
WSBA #45476

JB/lh

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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

STATE OF WASHINGTON,

Respondent,

v.

JAYNE BLUNK,

Appellant.

No.: 50114-7-II

DECLARATION OF MAILING

DECLARATION

I, Jon Betran, hereby declare as follows:

On the 11th day of January, 2018, I mailed a copy of the Brief of Respondent to Lise Ellner, PO Box 2711, Vashon, WA 98070-2711 by depositing the same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 11th day of January, 2018, in Montesano, Washington.

Jon Betran

GRAYS HARBOR COUNTY PROSECUTING ATTORNEY

January 11, 2018 - 3:27 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50114-7
Appellate Court Case Title: State of Washington, Respondent v. Jayne R. Blunk, Appellant
Superior Court Case Number: 16-1-00559-7

The following documents have been uploaded:

- 501147_Briefs_20180111152636D2976182_5718.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Blunk 50114-7-II Respondents Brief.pdf

A copy of the uploaded files will be sent to:

- Liseellnerlaw@comcast.net
- valerie.liseellner@gmail.com

Comments:

Sender Name: JON BELTRAN - Email: jbeltran@co.grays-harbor.wa.us

Address:

102 W BROADWAY AVE RM 102

MONTESANO, WA, 98563-3621

Phone: 360-249-3951

Note: The Filing Id is 20180111152636D2976182