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NO. 67842-6-I

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

REC'D

MAR 27 2012

King County Prosecutor  
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

E.G-S.,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY, JUVENILE  
DIVISION

The Honorable Helen Halpert, Judge

OPENING BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred when it denied appellant's motion to suppress statements obtained by police.

2. The trial court erred in finding of fact 3 of its CrR 3.5 findings when it found, "The respondent understood her rights and agreed to speak to Officer Wollan."<sup>1</sup>

3. The trial court erred when it entered conclusions of law 1, 2, 3, and 5, which indicate appellant was not intoxicated to a degree affecting her waiver of constitutional rights and that her waiver was knowing, intelligent, and voluntary.

Issues Pertaining to Assignments of Error

1. It is the State's heavy burden to prove a knowing, intelligent, and voluntary waiver of Miranda<sup>2</sup> rights. Did the State satisfy this burden where the undisputed evidence revealed that E.G-S. was intoxicated to the point of impairment when she waived her rights and made incriminating statements?

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<sup>1</sup> The court's findings and conclusions are attached to this brief as an appendix.

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

2. Several of the court's findings and conclusions indicate that E.G-S. was not sufficiently intoxicated to undermine her waiver and that the waiver was knowing, intelligent, and voluntary. Did the court err in entering these findings and conclusions where they are not supported by the evidence below?

B. STATEMENT OF THE CASE

1. Procedural Facts

The King County Prosecutor's Office charged juvenile appellant E.G-S. with one count of Minor in Possession of Liquor, in violation of RCW 66.44.270(2).<sup>3</sup> CP 1. Following a bench trial, which incorporated a CrR 3.5 hearing on the admissibility of E.G-S.'s confession to police, the Honorable Helen Halpert found the confession admissible. RP 5-6, 71-73; Supp. CP \_\_\_\_ (sub no. 54, Written Findings of Fact and Conclusions of Law on CrR 3.5 Motion to Suppress the Respondent's Statements).

Judge Halpert subsequently found the State had failed to prove possession of alcohol, but had proved E.G-S.'s guilt based

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<sup>3</sup> RCW 66.44.270(2)(a) provides:

It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor. A violation of this subsection is a gross misdemeanor . . . .

on consumption. Supp. CP \_\_\_\_ ( sub no. 37, Opinion Letter); Supp. CP \_\_ (sub no. 53, Findings of Fact and Conclusions of Law Pursuant to CrR 6.1(d)). Judge Halpert imposed local sanctions and E.G-S. timely filed her Notice of Appeal. CP 6-9.

2. Substantive Facts

The combined fact finding/CrR 3.5 hearing revealed the following. At about 2:30 a.m. on the morning of July 22, 2010, 14-year-old E.G-S. arrived home at the Tukwila trailer park where she lived with her mother, sister, and brother. RP 35, 50-52. E.G-S. was screaming and talking to her sister. Her mother got out of bed and told her to be quiet. There was a very strong odor of alcohol on E.G-S.'s breath and she was laughing. RP 52-54, 58. E.G-S.'s mother believed she was drunk. RP 55.

When E.G-S.'s mother grabbed her arm and told her to leave the trailer, E.G-S. pushed her away. RP 53, 55. It appeared the alcohol affected E.G-S.'s balance. RP 59. After she pushed her mother, she fell back on a sofa and had "like dancing eyes." RP 61-62. E.G-S. continued laughing and screaming and, according to her mother, "was not doing good." RP 53, 63. Her mother called police. RP 53.

Tukwila Police Officer Jason Wollan responded to the call. RP 9-13. E.G-S. was laying on the couch. Her speech was very slurred and mumbled, her eyes were watery and "glossy," and she smelled of alcohol. RP 14-15. She was swaying, laughing inappropriately, and her coordination was affected. RP 15, 25, 28, 58, 62. Officer Wollan had E.G-S. blow into a portable breath test device, which registered .103, which is 20% above the legal limit for adults to operate a motor vehicle. RP 16-17, 26-28. Based on the level of intoxication, and E.G-S.'s behavior toward her mother, Officer Wollan told E.G-S. that she was under arrest. RP 15-17.

Because E.G-S. was now in custody, Officer Wollan informed E.G-S. of her Miranda rights, including her juvenile rights. RP 17-19. E.G-S. indicated she understood her rights. RP 19, 30. She then confessed that she had consumed two watermelon flavored "Four Lokos," which contain "a pretty high percentage potency liquor," near the trailer while sitting on a bench. RP 21-22, 41. E.G-S. indicated a friend had purchased the alcohol, but she refused to reveal the name of that friend when asked. RP 22-23.

Officer Wollan testified that E.G-S. did not ask any questions about her rights, she seemed oriented to time and place, there were no threats or promises made to E.G-S., and there was

nothing that led him to believe her statement was involuntary. RP 19-21, 31-32, 42-43. But he did believe she was under the influence of alcohol to the point of intoxication, which affects cognition, comprehension, and judgment. RP 24, 29, 45-47. He could not say how any particular minor would react to this level of inebriation, but conceded a .10 “could be really intoxicated for a 14-year-old.” RP 48. His best guess was that E.G-S.’s level of impairment was “middle of the road.” RP 48.

Ultimately, Officer Wollan decided not to book E.G-S. into juvenile detention and released her to her mother. RP 22. After Officer Wollan left the trailer, E.G-S. continued laughing and then slept for about 12 hours. RP 56, 60. When she woke up, she felt sick. RP 42.

E.G-S. testified for purposes of the CrR 3.5 hearing only. RP 34. She admitted drinking the Four Lokos and explained that they made her feel “really drunk.” RP 35. She was “gone,” meaning “passing out, dozing” and dizzy when Officer Wollan spoke to her. RP 36, 38. She could not recall much about the interaction. Things were blurry. She heard what he was reading from his Miranda card, but did not understand what he was saying and just cooperated so that he would then leave her alone and she

could sleep. RP 37-38. Although she testified she did not think she had to speak with the officer, she also testified that she did not understand everything he was saying. RP 38-41.

At the close of evidence, the defense argued that E.G-S.'s confession had to be suppressed because the State had not established – in light of her alcohol-induced condition – that E.G-S. knowingly, intelligently, and voluntarily waived her Miranda rights. RP 66-71. The court denied the motion, finding that the State had established a valid waiver. RP 71-72; Supp. CP \_\_\_\_ (sub no. 54, Written Findings of Fact and Conclusions of Law on CrR 3.5 Motion to Suppress the Respondent's Statements). E.G-S. now appeals.

C. ARGUMENT

THE TRIAL COURT ERRED WHEN IT DENIED THE DEFENSE MOTION TO SUPPRESS E.G-S.'s CONFESSION.

Whether a confession is voluntary depends on the totality of the circumstances. State v. Aten, 130 Wn.2d 640, 663-664, 927 P.2d 210 (1996). A custodial confession is admissible for Miranda purposes only where the State meets its heavy burden to prove a defendant was properly advised of the right to remain silent and the right to counsel, understood these rights, and knowingly and intelligently waived them. Miranda, 384 U.S. at 473-475; Aten, 130

Wn.2d 640 at 663; State v. Reuben, 62 Wn. App. 620, 625, 814 P.2d 1177, review denied, 118 Wn.2d 1006, 822 P.2d 288 (1991).

When a trial court determines a confession is voluntary, that decision will be upheld only “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.” Aten, 130 Wn.2d at 664. Evidence is “substantial” if it is “sufficient to persuade a fair-minded rational person of the truth of the finding.” State v. Levy, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006) (quoting State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999)).

While intoxication, by itself, does not render a confession involuntary as a matter of law, it is one factor in the analysis. Aten, 130 Wn.2d at 664; Reuben, 62 Wn. App. at 625; State v. Gardner, 28 Wn. App. 721, 723, 626 P.2d 56, review denied, 95 Wn.2d 1027 (1981). The admission of statements made under the influence of intoxicants must be determined on the individual facts of each case. State v. Gregory, 79 Wn.2d 637, 642, 488 P.2d 757 (1971), overruled on other grounds, State v. Rogers, 83 Wn.2d 553, 556, 520 P.2d 159, cert. denied, 419 U.S. 1053 (1974).

In ruling that E.G-S. validly waived her Miranda rights, Judge Halpert found that she “understood her rights and agreed to speak

to Officer Wollan,” and concluded that intoxication did not prevent her from giving a knowing, intelligent, and voluntary waiver of those rights. Supp. CP \_\_\_\_ (sub no. 54, Written Findings of Fact and Conclusions of Law on CrR 3.5 Motion to Suppress the Respondent’s Statements (finding 3; conclusions 1-3 and 5)). The court’s decision is not supported by substantial evidence.

Judge Halpert focused on the fact E.G-S. admitted she knew she did not have to speak to Officer Wollan and, in fact, exercised this right when she refused to indicate which friend provided her with the alcohol. RP 72. The court also focused on the fact she verbally indicated she understood each right before confessing. RP 72. But even if E.G-S. knew one of her rights – that she did not have to speak to the officer at that time – this does not establish she understood all of her Miranda rights. See RP 18-19 (officer lists all rights included in warnings to E.G-S.).

Moreover, the court’s decision ignores the remainder of the evidence on the motion to suppress. E.G-S. testified she was “gone,” “really drunk,” did not understand most of what Officer Wollan was saying, and simply indicated an understanding so that the officer would leave sooner and she could fall asleep. RP 35-41. Her mother testified to the very strong odor of alcohol on her

breath, her screaming, her trouble maintaining balance, and her “dancing eyes.” RP 52-54, 58-59, 61-63. E.G-S. blew a .103, well above the legal driving limit for adults. RP 16-17, 26-28. Officer Wollan testified a .10 “could be really intoxicated for a 14-year-old” and conceded this affects cognition, comprehension, and judgment. RP 24, 29, 45-48. Under these circumstances, the State did not establish a valid waiver.

The erroneous admission of evidence in violation of Miranda requires reversal unless it is deemed harmless beyond a reasonable doubt, i.e., the untainted evidence is so overwhelming it necessarily leads to a finding of guilty. Reuben, 62 Wn. App. at 626-627. The State cannot make this showing, either.

No one saw E.G-S. consume or possess alcohol. Her confession was critical to the State’s ability to prove a violation of RCW 66.44.270(2)(a). Not surprisingly, the State focused on the confession in its closing argument. RP 80 (“most importantly we have the respondent’s own confession here where she admits to consuming alcohol”); RP 84 (emphasizing confession again).

The trial court also focused on the confession when finding the State had proved consumption. Supp. CP \_\_\_\_ ( sub no. 37, Opinion Letter); Supp. CP \_\_\_\_ (sub no. 53, Findings of Fact and

Conclusions of Law Pursuant to CrR 6.1(d) (findings 8 and 9)). Judge Halpert noted that evidence of intoxication can be circumstantial evidence of consumption and, when accompanied by other indicia of consumption, may amount to proof of the crime beyond a reasonable doubt. Supp. CP \_\_\_\_ (sub no. 37, Opinion Letter, at 2) (citing cases). She continued:

Here, respondent admitted to Officer Wollan that she drank drinking two cans of watermelon Four Loco while seated on a bench near her home in the City of Tukwila. The officer could smell an odor of intoxicants and observed that respondent had slurred speech and watery and bloodshot eyes. Respondent's behavior, before the arrival of the officer, was belligerent and out of control. Respondent's mother testified that her daughter's birthday is March 2, 1996. The court does find evidence beyond a reasonable doubt that respondent consumed alcohol the evening of July 22, 2010, in the City of Tukwila, State of Washington while under 21 years of age.

Id.

Because E.G-S.'s confession provided "the other indicia of consumption" beyond intoxication, its erroneous admission cannot be deemed harmless beyond a reasonable doubt.

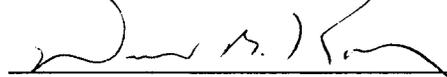
D. CONCLUSION

The trial court erred when it denied the defense motion to suppress. Admission of the confession is not harmless and requires reversal.

DATED this 26<sup>th</sup> day of March, 2012.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



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## **APPENDIX**

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**FILED**  
KING COUNTY WASHINGTON

**JAN 05 2012**

**SUPERIOR COURT CLERK  
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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	
	)	
	)	Plaintiff,
	)	No 11-8-01569-8
	)	
vs	)	
	)	WRITTEN FINDINGS OF FACT AND
EDITH G GARCIA-SANCHEZ,	)	CONCLUSIONS OF LAW ON CrR 3 5
DOB 03/02/1996	)	MOTION TO SUPPRESS THE
	)	RESPONDENT'S STATEMENTS
	)	
	)	
	)	

A hearing on the admissibility of the respondent's statements was held on October 10, 2011, before the Honorable Judge Halpert

The court informed the defendant that

(1) she may, but need not, testify at the hearing on the circumstances surrounding the statement, (2) if she does testify at the hearing, she will be subject to cross examination with respect to the circumstances surrounding the statement and with respect to her credibility, and (3) if she does testify at the hearing, she does not by so testifying waive his right to remain silent during the trial, and (4) if she does testify at the hearing, neither this fact nor her testimony at the hearing shall be considered by the court at trial After being so advised, the respondent did testify at the hearing

After considering the evidence submitted by the parties and hearing argument the court enters the following findings of fact and conclusions of law as required by CrR 3 5

FINDINGS OF FACT

1 Around 4 00 a m , Officer Jason Wollan of the Tukwila Police Department contacted the respondent, 14-year-old Edith Garcia-Sanchez, at her home at 3714 South 152<sup>nd</sup> St, #3 in

WRITTEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON CrR 3 5 MOTION TO  
SUPPRESS THE DEFENDANT'S STATEMENT(S) - 1

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1 Tukwila, after her mother, Angelica Sanchez-Lopez, called 911 to report that her daughter  
2 was intoxicated

3 2 Officer Wollan arrested the respondent after his observations led him to believe the  
4 respondent was intoxicated

5 3 Officer Wollan informed respondent of her Miranda rights and Juvenile warnings. The  
6 respondent understood her rights and agreed to speak to Officer Wollan

7 4 When asked how much she had been drinking, the respondent stated, "two watermelon Four  
8 Locos in front of my house by the bench" *The Respondent was intoxicated*

9 5 When asked who as purchased the alcohol, the respondent stated, "a friend," but would not  
10 provide the name of the friend

11 CONCLUSIONS OF LAW AS TO THE ADMISSIBILITY OF THE RESPONDENT'S  
12 STATEMENTS TO OFFICER WOLLAN

13 1 The following statements of the respondent are admissible in the State's case-in-chief

14 a All statements made to Officer Wollan on July 22, 2011, after the respondent's  
15 arrest

16 2 Miranda was applicable and the respondent's statements were made after a knowing,  
17 intelligent and voluntary waiver of her Miranda rights

18 3 The respondent was not intoxicated to a level that would affect her ability to knowingly,  
19 intelligently and voluntarily waive her Miranda rights

20 4 There is no evidence of coercion, compulsion, or any threats or promises made to the  
21 respondent

22 5 The respondent's statements to Officer Wollan were made voluntarily

23 In addition to the above written findings and conclusions, the court incorporates by  
24 reference its oral findings and conclusions

Signed this 5 day of *January, 2012*  
~~November, 2011~~

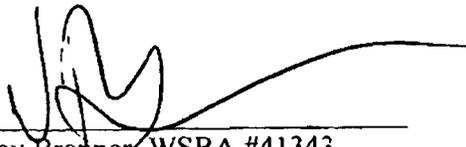
*Heleen Halpert*  
\_\_\_\_\_  
THE HONORABLE HELEN HALPERT

Presented by

WRITTEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON CrR 3.5 MOTION TO  
SUPPRESS THE DEFENDANT'S STATEMENT(S) - 2

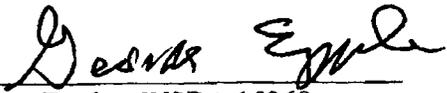
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Wesley Brenner WSBA #41343  
Deputy Prosecuting Attorney

Approved as to form only

  
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George Eppler, WSBA 15268  
Attorney for Respondent

*A Respondent signed to F of F #3.  
" " " " C of L #3*

WRITEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON CrR 3 5 MOTION TO  
SUPPRESS THE DEFENDANT'S STATEMENT(S) - 3

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