

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON DIVISION TWO 102458-4

STATE OF WASHINGTON,

Respondent,

v.

TRINNEL ANTHONY DIAL,

Appellant.

} COA NO. 57109-9-II
} PETITION FOR REVIEW

A. IDENTITY OF MOVING PARTY

Petitioner Trinnel Anthony Dial, through his attorney, Shawn P. Hennessy, asks this court to accept review of the Court of Appeals decision designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Mr. Dial requests review of the Court of Appeals September 6, 2023 ruling affirming his conviction under case number 57109-9-II. A copy of the decision is attached in the Appendix.

C. ISSUES PRESENTED FOR REVIEW

The Court of Appeals erred by refusing to consider the applicable law and relevant facts presented in Appellant's opening brief. Specifically, Mr. Dial argued that given his mental health issues and severe methamphetamine addiction at the time, his guilty plea was not entered into on a knowing, voluntary and intelligent basis.

D. STATEMENT OF THE CASE

Tacoma Police charged Mr. Dial with one count of Kidnapping in the First Degree, one count of Unlawful Possession of a Firearm in the First Degree, one count of Felony Harassment and one count of Assault in the Second Degree. All charges occurred between August 18-19, 2021 and involved his girlfriend, Mary Trobee ("Ms.

Trobee"). A jury convicted Mr. Dial of Unlawful Possession of a Firearm in the First Degree, but found him not guilty on

Lower Court Proceeding

Mr. Dial and Ms. Trobee began dating in November, 2020. RP 232. ("RP" refers to the pages of the Record of Proceedings). Mr. Dial often used methamphetamine and developed an addiction to it. Because of the heavy drug use, Ms. Trobee characterized Mr. Dial's behavior as "drug-induced psychosis". Ms. Trobee described that while in this condition, Mr. Dial physically and mentally deteriorated. Mr. Dial exhibited extreme paranoia that made him irrationally fearful of mundane things, such as white cars. Mr. Dial often thought the people that drove the white cars were "coming after him". Mr. Dial also exhibited delusional behavior, such as seeing people that nobody else could see and suffering physical pain "from things that weren't there". RP 232-235, 274-280.

When high on methamphetamine, Mr. Dial also became angry and aggressive toward Ms. Trobee, making her fearful of him. When Mr. Dial used drugs, Ms. Trobee saw in Mr. Dial's "eyes and his demeanor" that "he had no soul". RP 233. Mr. Dial's anger and aggressiveness "escalated" and "kept getting more intense" with every use of methamphetamine. RP 291.

In the late evening of August 18, 2021, Mr. Dial walked into Ms. Trobee's apartment as she was taking the garbage out. RP 254-255. Delusional from drug use, Mr. Dial asked Ms. Trobee "why is there a line of men outside your door here to sleep with you?" RP 255. Mr. Dial also asked Ms. Trobee why "Timmy" was in the apartment with her, despite nobody else being there but Ms. Trobee and her two children. Id. Notwithstanding assurances from Ms. Trobee that nobody named "Timmy" was there, Mr. Dial insisted "I see him". Id.

Mr. Dial noticed a bag that was on the ground in the living room of Ms. Trobee's apartment. Id. When Mr. Dial asked her whose bag it was, Ms. Trobee replied she thought it was his. Mr. Dial sometimes had homeless friends come to the apartment to clean themselves up or take a shower. RP 280. Both assumed the bag had been left there by one of Mr. Dial's homeless friends. Id.

When Ms. Trobee went to the bathroom, Mr. Dial opened up the bag and found an unloaded handgun inside. RP 255-256. As Ms. Trobee returned from the bathroom, she saw Mr. Dial "flailing" and "winging" the gun around with his hands while talking. RP 256. Fearful that Mr. Dial had a gun while in a delusional state, Ms. Trobee called the police. Id.

The police arrived minutes after Ms. Trobee called 911 and asked Mr. Dial to step outside. Mr. Dial complied and the police "sat him down on the bench" outside the

apartment. Officer Jonathon Douglas ("Officer Douglas").
309 When the police asked Mr. Dial if there was anyone else in the apartment with him, Mr. Dial told them he and "Timmy" were in the apartment together. RP 342, 359. The police called out to "Timmy", but nobody answered or came out of the apartment. Id. The police did a sweep of the apartment to look for "Timmy", but did not find him. Id.

While sitting on the bench outside the apartment, Mr. Dial told them "Timmy" walked out of the apartment and now stood in front of the trees near the parking lot. RP 359. Mr. Dial repeatedly asked the police, "do you see him?" RP 323. However, the police did not see "Timmy" walk out the apartment or standing outside by the trees. RP 358-360, 373.

Officer Douglas noted that prior to his arrest, the police "were probably not going to let him walk away at this point". RP 317. While talking with Mr. Dial, the police noticed a "bulge" in his right pocket. When they asked Mr.

Dial about the bulge, he told them it was the handgun he found in Ms. Trobee's apartment.

While detained, the police investigated Mr. Dial's criminal record and determined he had a prior felony conviction. Officer Douglas read Mr. Dial Miranda warnings and then placed Mr. Dial under arrest for unlawful possession of a firearm. RP 318.

The trial court conducted a 3.5 hearing prior to the trial testimony of Officer Douglas. The 3.5 hearing only concerned matters that occurred during and after Officer Douglas gave Miranda warnings to Mr. Dial. RP 335.

Officer Douglas testified that despite Mr. Dial talking about seeing "Timmy, " no such person was there. Officer Douglas "didn't see anybody inside the apartment...[n]obody came in...[a]nd then after that, [Mr. Dial] referred across the way...[to the] little field there at the Westside -- two trees -- he referred to him as 'Timmy'." RP 323. Despite him seeing "invisible people", Officer Douglas

did not have concerns about Mr. Dial's mental capacity or mental competency. RP 324. Officer Douglas then read Miranda warnings to Mr. Dial "word for word" from a card. RP 310. While defense counsel reviewed the body camera footage with him, Officer Douglas testified he read the 82-word Miranda warning to Mr. Dial in 17 seconds. RP 326.

After reading the warnings, Officer Douglas inquired if the delusional Mr. Dial understood the rights. RP 320-321. Officer Douglas stated he had no concern that Mr. Dial did not "understand what was going on at that point in time." RP 323-324. After Mr. Dial indicated he understood his Miranda rights, the police interrogated him. When police asked if Mr. Dial "knew that as a convicted felon, he broke the law by carrying a firearm", Mr. Dial told them "yes". RP 321.

Oral argument took place after the 3.5 hearing. Defense counsel argued that the "delivery [of Miranda

warnings] plus questions of mental capacity, weigh or mitigate in favor of suppression of post-Miranda statements” made by Mr. Dial. RP 334.

The trial court reviewed the evidence under the preponderance standard and issued both a written and verbal ruling. RP 335. In its verbal ruling, the trial court opined:

I'll be honest; I think this is a close call. I do think that I am more concerned, I think, about the speed at which it's read. I don't know that there is sufficient evidence of this idea of mental incapacity or whatever term people are using.... [s]o I am concerned about the speed. It is quite fast. The standard here is preponderance of the evidence on Miranda. If it was anything higher than that, I think I would be ruling differently, but I'm going to rule that they are admissible. It's a very close call in my mind, but only because it's preponderance. If it was a higher standard than that, I would not rule the same way.

RP. 334-335.

The trial court ruled the statements made by Mr. Dial after advisement of Miranda warnings were admissible, even though the Miranda warnings were "barely" sufficient. *Id.* Defense counsel did not object to the trial court's ruling. *Id.*

Appeal to Division Two

On appeal, Mr. Dial argued that the trial court erred when it denied his motion to suppress his statements to police. Police administered Miranda rights to Mr. Dial, Due to his mental state, from using methamphetamine. Mr. Dial, who was delusional, could not make a knowing, voluntary and intelligent waiver of his Miranda rights while in custody. Moreover, the officer spoke very rapidly when he administered the Miranda warnings to Mr. Dial. Given these circumstances, the trial court erred in not suppressing the statements he made.

Division Two Opinion

Division Two affirmed Mr. Dial's conviction. The court held that the record clearly belied Mr. Hutchins' assertion that the superior court failed to ascertain whether he understood the nature of the charges. Appendix, pp. 10-11. Division Two held that although Mr. Dial "experienced delusions due his methamphetamine use when speaking with Officers Douglas and Franco, as evidenced by his referring to an imaginary person named Timmy", the evidence supported the trial court's finding. *Id.* Division Two specifically held that the evidence did not support a finding that Dial's mental state rendered his statements involuntary, considering the officers were able to have a conversation with him and Officer Douglas testified that Dial was forming coherent sentences and was speaking normally, with the exception of referring to Timmy. *Id.*

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This Court should accept review under RAP 13.4(b) because the Court of Appeals decision is in conflict with decisions from the State Supreme Court and the Court of Appeals.

Mr. Hutchins presented the following authority in support of his argument:

Blackburn v. State, 186 Wn.2d 250, 256, 375 P.3d 1076 (2018);

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

State v. Aten, 130 Wn.2d 640, 663, 927 P.2d 210 (1996);

State v. Broadway, 133 Wn.2d 118, 132, 942 P.2d 363 (1997);

State v. Dent, 184 Wn. 1042, 2014 WL 6657489 (2014);

State v. Drum, 168 Wn.2d 23, 34-5, 225 P.3d 237 (2010);

State v. Harris, 106 Wn.2d 784, 789, 725 P.2d 975 (1986);

State v. Ng, 110 Wn.2d 32, 37, 750 P.2d 632 (1988);

State v. Rhoden, 189 Wn. App. 193, 199, 356 P.3d 242 (2015);

State v. Rupe, 101 Wn.2d 664, 679, 683 P.2d 571 (1984);

State v. Short, 113 Wn.2d 35, 40, 775 P.2d 458 (1988); and

State v. Wentz, 149 Wn.2d 342, 347, 68 P.3d 282 (2003).

The cases presented by appellate counsel provided conclusive legal authority for Mr. Dial's argument that because of his delusional state, he could not voluntarily waive his Miranda rights.

A defendant's statements are admissible when made in a knowing, voluntary and intelligent manner after being advised of *Miranda* rights. *State v. Aten*, 130 Wn.2d 640, 663, 927 P.2d 210 (1996) (citing *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)). Courts determine the voluntariness of a confession based on the totality of the circumstances. *Aten*, 130 Wn.2d at 663-64

(citing *State v. Rupe*, 101 Wn.2d 664, 679, 683 P.2d 571 (1984)).

A defendant's statement is only voluntary if the circumstances establish he exercised free will in deciding to waive his rights to speak to police. *State v. Broadaway*, 133 Wn.2d 118, 132, 942 P.2d 363 (1997). Factors to consider in determining whether a defendant exercised free will include the defendant's mental abilities, physical condition, age, experience, and police conduct. *Aten*, 130 Wn.2d at 664 (citing *Rupe*, 101 Wn.2d at 679).

Appellate courts review a trial court's findings of fact of voluntariness under the substantial evidence standard. *State v. Ng*, 110 Wn.2d 32, 37, 750 P.2d 632 (1988). The substantial evidence standard requires the evidence to be sufficient enough "to persuade a rational, fair-minded person of the truth of the finding." *Blackburn v. State*, 186 Wn.2d 250, 256, 375 P.3d 1076 (2018). Appellate courts

review conclusions of law de novo. *Blackburn*, 186 Wn.2d at 256.

The record established the effects of Mr. Dial's heavy addiction to methamphetamine on his mental capacity. Ms. Trobee testified that when Mr. Dial used methamphetamine, he displayed what she characterized as being in a "drug-induced psychosis". RP 232-235, 274-280. In this state, Mr. Dial physically and mentally changed, looking "almost like he had no soul". *Id.* While under the effects of methamphetamine, Mr. Dial also exhibited paranoia, jealousy, suffered physical pain "from things that weren't there", feared white cars, and had delusions of seeing people that were not present. RP 232-235, 274-280.

Mr. Dial displayed delusional and paranoid behavior while speaking with the police during his arrest. Mr. Dial repeatedly told police about an imaginary person named "Timmy". RP 358-360. Initially, Mr. Dial told the police he

and "Timmy" were in Ms. Trobee's apartment together. RP 342, 359. Officer Douglas called out to "Timmy" but nobody answered or came out of the apartment. Id. Officer Douglas then looked inside the apartment to find "Timmy", but did not see anybody else. Id.

After Mr. Dial walked outside of the apartment to talk with the police, "Timmy" also left the apartment and stood in front of the trees. RP 359. Mr. Dial repeatedly asked the police, "do you see him?" RP 323. However, the police did not see "Timmy" walk out the apartment or standing outside by the trees. RP 358-360.

Once outside, the police questioned Mr. Dial about the bulge in his right pocket. Prior to administering *Miranda*, Mr. Dial told them the bulge was a firearm. After determining Mr. Dial had a felony conviction, police placed him under arrest and Officer Douglas read him *Miranda* warnings off of a card. The record shows that Officer

Douglas read the *Miranda* warnings at a "quite fast speed", saying the 82 words from the card in 17 seconds. RP 326.

After reading the Miranda warnings at "a very fast pace" Officer Douglas inquired if Mr. Dial understood the rights. RP 320-321. Mr. Dial answered "yes", and Officer Douglas stated that there was "no concern from Mr. Dial that he didn't understand what was going on at that point in time." *Id.* Police then interrogated Mr. Dial by asking if he knew that as a convicted felon, he broke the law by carrying a firearm. *Id.* Mr. Dial, seeing people that were not there, replied "yes". *Id.*

In its decision, the trial court opined, "I don't know that there is sufficient evidence of this idea of mental incapacity or whatever term people are using." In its decision to affirm the conviction, Division Two cited the trial court's expressed concern over the police's conduct in how fast Officer Douglas read the Miranda warnings to Mr. Dial. Appendix, pp. 10-11. However, neither the trial court nor

Division II addressed those concerns in the context of Mr. Dial's delusions and his mental capacity to waive those rights voluntarily. *Id.* Although the Division Two acknowledged Mr. Dial's delusional state in its opinion, it supported the trial court's decision to not give them any weight. *Id.*

Considering the totality of the circumstances, Mr. Dial's did not waive *Miranda* rights voluntarily. Mr. Dial suffered from delusions and hallucinations because of extensive methamphetamine use. While in this state, Mr. Dial saw people and things that were not there, was paranoid and felt pain from imaginary sources. Testimony from Officer Douglas and Ms. Trobee, two witnesses that directly observed Mr. Dial at the time of the arrest, testified that Mr. Dial was delusional and made little sense. Both witnesses testified Mr. Dial saw the non-existent "Timmy" while in the apartment and then again outside near the trees.

While the fact that Mr. Dial took drugs would not, by itself, render his confession involuntary, courts must look to "the entire situation surrounding the giving of the statement," *State v. Lewis*, 19 Wn. App. 35, 573 P.2d 1347 (1978); *State v. Sergeant*, 27 Wn. App. 947, 621 P.2d 209 (1980). Both the trial court and Division Two erred because despite saying they did, neither looked "to the entire situation" and disregarded that Mr. Dial was in a delusional mental state. *Id.* While delusional, Mr. Dial was susceptible to suggestion from police. Police capitalized on Mr. Dial's vulnerability by rapidly reading him Miranda warnings and then asking him if he understood them. Despite being so visibly delusional, that the officers searched for "Timmy", they testified that they had no concern about Mr. Dial's mental capacity or mental competency when he told them he waived those rights. RP 324.

For these reasons, Division Two should have reversed Mr. Dial's conviction because his Miranda waiver

was involuntary. *State v. Rhoden*, 189 Wn. App. 193, 199, 356 P.3d 242 (2015) (citing *Miranda*, 384 U.S. at 476).

This court grant review of this matter and reverse the conviction of Mr. Dial. *Rhoden*, 189 Wn. App. at 203

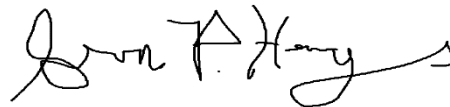
F. CONCLUSION

For the reasons stated herein and in the referenced opening brief on appeal, this Court should accept review under RAP 13.3(b)(2),(3).

DATED this 9th day of October, 2023

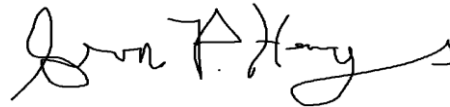
Under RAP 18.17(b), I, Shawn P. Hennessy, certify that the number of words in this document is 2,824, exclusive of the words contained in the appendices, the certificate of compliance, the certificate of service, signature blocks, and pictorial image.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Shawn P. Hennessy". The signature is written in a cursive style with a long horizontal flourish extending to the right.

SHAWN P. HENNESSY
WSBA 59801
Attorney for Mr. Hutchins

I, Shawn P. Hennessy, a person over the age of 18 years of age, served the Pierce County Prosecutor Kristie Barham at kristie.barham@piercecountywa.gov and pcpatcecf@piercecountywa.gov , and Steven Trinnel Dial, DOC No.: 807995, at Washington Corrections Center (WCC) PO Box 900 Shelton, WA 98584 true copy of the document to which this certificate is affixed on October 9, 2023. Service was made electronically to the prosecutor and by United States mail to Trinnel Dial by depositing in the mails of the United States of America, properly stamped and addressed.

A handwritten signature in black ink, appearing to read "Shawn P. Hennessy". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

SHAWN P. HENNESSY
WSBA 59801
Attorney for Appellant

APPENDIX

September 6, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

TRINNEL ANTHONY DIAL,

Appellant.

No. 57109-9-II

UNPUBLISHED OPINION

CRUSER, A.C.J. — Trinnel Dial was charged with first degree unlawful possession of a firearm, along with several other crimes. At trial, Dial sought to exclude statements that he made to law enforcement officers at the time of his arrest, arguing that his waiver of *Miranda*¹ rights was involuntary due to his methamphetamine intoxication and the speed at which the officer read him his rights. The trial court ruled that Dial’s statements were admissible. The jury found Dial guilty of first degree unlawful possession of a firearm, but not guilty as to all other counts.

Dial appeals his conviction, arguing that his statements to the officers were not voluntary and therefore should have been excluded, and that the State did not present sufficient evidence that he knowingly possessed the firearm at issue. We disagree and affirm Dial’s conviction.

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

FACTS

I. BACKGROUND

At 2:30 a.m. on August 18, 2021, Dial showed up at the home of Mary Trobee, who at that time had an off-and-on relationship with Dial. Trobee allowed Dial to sleep at her apartment, and he woke her up at 5:30 a.m. accusing her of being unfaithful and demanded she drive him to “see all these men [she] was sleeping with.” Ex. 6A at 2. Eventually, they drove to an encampment and Dial got out of the car, and Trobee was able to drive away.

Later that morning, Dial returned to Trobee’s apartment, where he and his friend called 911 for a wellness check on Trobee. Dial approached the officer that arrived at the apartment, asking the officer to enter the apartment to check on Trobee because he believed she was having a medical emergency. At some point after the officer spoke with Trobee, Dial left the scene. Trobee took several hours to fill out a handwritten statement for the officer. In her written statement, Trobee detailed the facts of what happened earlier that morning. According to Trobee’s statement, during the car ride, Dial sat behind the passenger seat and held Trobee at gunpoint.

Later that evening of August 18 and just past midnight on August 19, Trobee went into her bathroom to collect garbage to take outside, and when she came out of the bathroom, Dial was in her kitchen. There was a bag on the ground, and neither of them knew who it belonged to, but it had a gun in it that was different than the one Dial had earlier in the day. Dial picked up the gun and was “flailing” it. 3 Verbatim Report of Proceedings (VRP) at 255. Trobee became nervous because her children were in the apartment, so she asked Dial if she could call 911.

When the officers arrived, they knocked on the apartment door and asked Dial to come outside. The officers noticed a bulge in Dial’s pocket and asked him if he had a firearm, and Dial

told the officers he did. Dial was placed under arrest for unlawful possession of a firearm. Dial was charged with first degree kidnapping, first degree unlawful possession of a firearm, second degree assault, and felony harassment.

II. CRR 3.5 HEARINGS

During the trial, the court held two CrR 3.5 hearings² to determine the admissibility of statements Dial had made to law enforcement officers. At both hearings, the trial court was able to watch footage from the testifying officers' bodycams that showed Dial's interactions with the officers.

At the first hearing, Officer Sargent Kieszling testified about the events occurring on the morning of August 18, 2021, when Dial told the officer that he needed to get into Trobee's apartment because she was in danger. The court ruled that Dial was not in custody when these statements were made and that Dial's statements to Officer Kieszling were admissible.

The second CrR 3.5 hearing concerned Dial's statements to law enforcement later that night, in the early hours of August 19, 2021, when Dial and Trobee found the gun in a bag in Trobee's apartment.

a. Facts relevant to second statement

Officer Jonathon Douglas explained that he and his partner, Officer Ruanni Franco, were dispatched to Trobee's apartment. Trobee was standing in the window when the officers arrived, but as they approached, Trobee passed by them and told them that Dial was in the apartment.

² CrR 3.5(a) provides: "When a statement of the accused is to be offered in evidence, the judge . . . shall . . . set the time for a hearing, . . . for the purpose of determining whether the statement is admissible."

The officers then knocked on the door and asked Dial to step outside. The officers “sat [Dial] down” on a bench right outside of the apartment while the officers had “a little conversation with him” about what had been going on that evening. 3 VRP at 309. During the conversation, Dial repeatedly referred to someone named Timmy that he said was either inside of the apartment or across a field in the trees, but the officers did not see the person that Dial was referring to. Officer Douglas testified that Dial appeared to be speaking normally and that he could understand Dial. With the exception of Dial referring to Timmy, he was forming coherent sentences.

Officer Franco could see something in Dial’s pocket and asked him if he had a firearm on him. Dial responded that he did have a firearm in his pocket. Officer Douglas then verified that Dial had a prior felony conviction while Dial continued to talk about Timmy and had a conversation with Officer Franco. During this time, Dial was not yet under arrest. When asked whether Dial was free to leave, Officer Douglas responded: “At this point, he didn’t express the need to leave, but during our investigating to make sure there is no domestic violence stuff going on, [Officer Franco was] probably not going to let [Dial] walk away at this point, just to be sure of what was going on.” *Id.* at 317.

Once Officer Douglas confirmed Dial’s felony conviction status, the officers put Dial under arrest for unlawful possession of a firearm. Officer Douglas advised Dial of his *Miranda* rights by reading from a card that was “issued at the Law Enforcement Academy.” *Id.* at 319. It took Officer Douglas 17 seconds to read the card to Dial, but he slowed down when he asked Dial whether he understood his rights. Dial did not express any confusion about his rights, and Officer Douglas believed “it sounded like he acknowledged and he was well capable of understanding what was

going on.” *Id.* at 321. After advising Dial of his rights, Officer Douglas asked Dial whether he knew he was not supposed to have a firearm. Dial responded, “[y]es.” *Id.* at 331.

b. Dial’s argument related to the second statement

Dial argued that his mental state at the time of his conversation with the officers, as well as the speed at which he was advised of his *Miranda* rights, made it so that Dial’s waiver was not voluntary and knowing and that his statements to the officers should be suppressed. The trial court explained that the officers were able to have a lucid conversation with Dial prior to the arrest, and that there was not enough evidence to show that Dial’s mental state rendered his statements involuntary. Although the court expressed concern about the speed of the reading of the *Miranda* warnings, the court ultimately ruled that Dial was not in custody during his statements prior to the arrest and that, by a preponderance of the evidence, Dial was properly advised of his rights and made a knowing, intelligent, and voluntary waiver of his rights in his subsequent statements. Accordingly, all of Dial’s statements from this encounter were admissible.

III. TRIAL

At trial, Officers Kieszling, Douglas, and Franco testified to the facts set forth above.

Trobee testified that she had lied in her written statement to the police because she wanted Dial to get help for his drug problem. She testified that the gun Dial had in the car on the morning of August 18 was fake and, because she knew it was fake, she was not in fear for her life, but went along with what he said to appease him. Trobee also testified that Dial commonly used methamphetamine during their relationship, and that based on her observations on August 18, 2021, she believed Dial was high on methamphetamine. She also explained that he did not express any auditory or visual hallucinations when he was sober.

Dial's position at trial was that Trobee's written statement, that she later recanted in her testimony, was made up in an effort to get help for Dial. He also argued that he was too voluntarily intoxicated to "form the knowledge that is required to possess a firearm." 6 VRP at 575.

The to-convict instruction for first degree unlawful possession of a firearm provided that the State must prove "[t]hat on or between August 18, 2021, and August 19, 2021, the defendant knowingly had a firearm in his possession or control." Clerk's Papers (CP) at 196. Regarding knowledge, the jury was instructed:

A person knows or acts knowingly or with knowledge with respect to a fact, circumstance, or result when he or she is aware of that fact, circumstance, or result. It is not necessary that the person know that the fact, circumstance, or result is defined by law as being unlawful or an element of a crime.

Id. at 198. The jury was also instructed that "[n]o act committed by a person while in a state of voluntary intoxication is less criminal by reason of that condition. However, in determining whether the defendant acted with intent or knowledge, evidence of intoxication may be considered." *Id.* at 218.

The jury found Dial guilty of first degree unlawful possession of a firearm, but not guilty on all other counts. Dial appeals his conviction.

DISCUSSION

I. ADMISSIBILITY OF DIAL'S STATEMENTS TO LAW ENFORCEMENT

Dial argues that the trial court erred by denying his motion to suppress his statements to law enforcement because (1) he was in custody prior to being advised of his *Miranda* rights, and (2) after being so advised, his waiver of rights was involuntary because of his mental state and the speed at which the warnings were read. The State argues that Dial was not in custody prior to

Officer Douglas' Miranda advisement and that his post-Miranda statements were voluntary. We agree with the State.

A. LEGAL PRINCIPLES

The right not to incriminate oneself arises from the Fifth Amendment to the United States Constitution, as well as Article I, section 9 of the Washington Constitution. *State v. Radcliffe*, 164 Wn.2d 900, 905, 194 P.3d 250 (2008). To protect this right, a suspect must receive *Miranda* warnings when facing custodial interrogation by an agent of the State. *State v. Heritage*, 152 Wn.2d 210, 214, 95 P.3d 345 (2004). A person is in custody if “a reasonable person in a suspect’s position would have felt that [their] freedom was curtailed to the degree associated with a formal arrest.” *Id.* at 218.

If a suspect does not receive *Miranda* warnings, their statements are presumed involuntary and must be excluded. *Id.* at 214. If a suspect received *Miranda* warnings and proceeded to give a statement, the State bears the burden to show that the suspect knowingly, intelligently, and voluntarily waived their *Miranda* rights. *State v. Athan*, 160 Wn.2d 354, 380, 158 P.3d 27. “A defendant’s mental disability and use of drugs at the time of a confession are [factors to be] considered, but those factors do not necessarily render a confession involuntary.” *State v. Aten*, 130 Wn.2d 640, 664, 927 P.2d 210 (1996). Rather, courts look to the totality of the circumstances to determine whether a confession is voluntary. *Id.* at 663-64.

“We will not disturb a trial court’s conclusion that a waiver was voluntarily made if the trial court found, by a preponderance of the evidence, that the statements were voluntary and substantial evidence in the record supports the finding.” *Athan*, 160 Wn.2d at 380. Evidence is

substantial if the record contains a sufficient quantity of evidence to persuade a fair-minded, rational person of the truth of the assertion. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

B. DIAL WAS NOT IN CUSTODY PRIOR TO THE *MIRANDA* WARNING

Prior to the *Miranda* advisement, the statement Dial made to the officers that he sought to exclude was responding yes to Officer Franco's question of whether Dial had a firearm on him. Dial argues that a reasonable person in his position would not have felt free to leave because Officer Douglas' phrase "[w]e sat him down" implied that the officers commanded him to sit and that it was not Dial's choice, and because Officer Douglas testified that the officers were "probably not going to let [Dial] walk away at this point." 3 VRP at 309, 317.

Dial's argument takes the officer's latter statement out of context. Officer Douglas testified that the officers were "probably not going to let him walk away at this point, just to be sure of what's going on" because they knew Dial had a firearm and were investigating whether there was a domestic violence incident. *Id.* at 317. Moreover, demonstrating that Dial was subjected to a *Terry*³ stop does not equate to showing he was in "custody" for purposes of *Miranda*. *Heritage*, 152 Wn.2d at 218. Furthermore, the fact that Dial sat on the bench outside of the apartment after the officers "sat him down," although it may not have necessarily been his choice to do so, by no means curtailed Dial's freedom "to the degree associated with a formal arrest." *Id.* As noted in the trial court's order, simply asking Dial whether he had a firearm in his pocket, which was visible to the officers, was important for the officers' safety.⁴

³ *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

⁴ Officer safety is an important factor in determining the reasonableness of an officer's actions. *See Id.* at 24; *State v. Lane*, 77 Wn.2d 860, 863, 467 P.2d 304 (1970).

We hold that Dial was not in custody prior to being advised of his *Miranda* rights, and that the trial court did not err by denying Dial's motion to exclude his statement that he had a firearm in his pocket.

C. DIAL'S WAIVER WAS VOLUNTARY

After Dial was advised of his *Miranda* rights, the statement Dial made to the officers that he sought to exclude was responding yes to Officer Douglas' question of whether Dial knew he was not supposed to have a firearm. Dial argues that he experienced delusions due his methamphetamine use when speaking with Officers Douglas and Franco, as evidenced by his referring to an imaginary person named Timmy, and that the trial court disregarded Dial's mental state when ruling on the admissibility of his statement. He further argues that the officers "capitalized on Mr. Dial's vulnerability" by reading him his rights too quickly. Br. of Appellant at 21.

As an initial matter, Dial's response to the question of whether he knew he was not supposed to have a firearm did not satisfy any element of the crime for which he was arrested. It was not necessary that Dial knew he was not supposed to have a firearm in order to be guilty for first degree unlawful possession of a firearm, and the jury was instructed as such. *See* RCW 9.41.040(1)(a).⁵

Nevertheless, the trial court did take Dial's mental state into account. However, the trial court concluded that the evidence did not support a finding that Dial's mental state rendered his statements involuntary, considering the officers were able to have a conversation with him and

⁵ RCW 9.41.040 has been amended since the events of this case. *See* LAWS OF 2021, ch. 215, § 72; LAWS OF 2022, ch. 268, § 28. Because these amendments do not affect our analysis, we cite to the current version of the statute.

that the officers and Dial did not have any issues understanding each other. Officer Douglas testified that Dial was forming coherent sentences and was speaking normally, with the exception of referring to Timmy. The trial court was able to watch video footage of Officer Douglas advising Dial of his *Miranda* rights and, although it was concerned about the speed (17 seconds), it ruled that Dial's waiver was voluntary.

Looking at the totality of the circumstances, substantial evidence supports the trial court's ruling. Accordingly, we affirm the trial court's CrR 3.5 orders.

II. SUFFICIENCY OF THE EVIDENCE

Dial argues that the State did not present sufficient evidence that he was knowingly in possession of a firearm. We disagree.

A. LEGAL PRINCIPLES

There is sufficient evidence to sustain a conviction if any rational trier of fact could have found each element of the charged crime beyond a reasonable doubt. *State v. Cardenas-Flores*, 189 Wn.2d 243, 265, 401 P.3d 19 (2017). In a sufficiency of the evidence claim, the defendant admits the truth of the State's evidence, and we view the evidence and all reasonable inferences in the light most favorable to the State. *Id.* at 265-66.

B. ANALYSIS

Under RCW 9.41.040(1)(a), a person is guilty of first degree unlawful possession of a firearm if the person owns or has in their possession or control any firearm after having previously been convicted of a serious offense. The to-convict instruction provided that the State must prove “[t]hat on or between August 18, 2021, and August 19, 2021, the defendant *knowingly* had a firearm in his possession or control.” CP at 196 (emphasis added).

Dial argues that the State failed to present sufficient evidence to prove that he knowingly possessed the firearm due to his methamphetamine intoxication. As noted above, the evidence of Dial's mental state in the record at the time Dial possessed the firearm at issue was that he was seeing a person named Timmy that the officers did not see. Trobee's testimony established that neither she nor Dial knew who the firearm belonged to, but that he picked it up and was holding it, prompting her to call 911. When the officers arrived, they noticed something in Dial's pocket and asked him if he had a firearm, and Dial told the officers he did. The jury considered and rejected Dial's involuntary intoxication argument after being instructed that evidence of intoxication may be considered in determining whether Dial acted with knowledge.

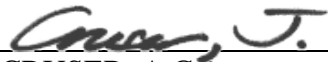
Viewing the evidence and all reasonable inferences in the light most favorable to the State, there was sufficient evidence that Dial knowingly possessed the firearm. The jury was instructed that a person acts knowingly when they are "aware of that fact," and it is a reasonable inference that Dial was aware that he possessed the firearm by answering affirmatively to Officer Franco's question of whether he had a firearm. CP at 198. Accordingly, we affirm Dial's conviction for first degree unlawful possession of a firearm.

CONCLUSION

We hold that Dial's statements to the law enforcement officers were admissible and that the State presented sufficient evidence that Dial knowingly possessed the firearm. Accordingly, we affirm Dial's conviction for first degree unlawful possession of a firearm.


A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

No. 57109-9-II




CRUSER, A.C.J.

We concur:



VELJACIC, J.



CHE, J.

LAW OFFICER OF LISE ELLNER, PLLC

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