

FILED

AUG 01, 2013

Court of Appeals
Division III
State of Washington

No. 31224-1-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

State of Washington, Respondent

v.

Eulogio Castro Romero, Appellant

BRIEF OF RESPONDENT

GRANT COUNTY PROSECUTOR'S OFFICE
P.O. BOX 37
Ephrata, WA 98823-0037
(509) 754-2011

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I. STATEMENT OF THE ISSUES

- A. Did the Defendant understand his Constitutional rights and freely and voluntarily waive them when (1) the Defendant was advised of his *Miranda* warnings; (2) the Defendant stated he understood those warnings; and (3) the Defendant made two sets of statements to two separate officers; the first set of statements was made immediately after being advised of his *Miranda* rights and the second set of statements was made between 10 and 18 hours after being advised of those rights?
- B. Was there sufficient evidence to convict the Defendant of the crime of Alien in Possession of a Firearm without a Valid Firearm License when (1) the Defendant admitted he was in the U.S. illegally, and (2) had a firearm hidden under his mattress?

II. STATEMENT OF THE CASE

A. Statement of Facts

On July 15, 2012, Officer Bernard entered the Defendant's residence after obtaining a search warrant authorizing officers to search for methamphetamine, a firearm, and documents establishing dominion and

control. Vol. 3RP 141-42.¹ The Defendant told Officer Bernard which room was his. Vol. 4RP 194-95. Officer Bernard found methamphetamine and a firearm in the Defendant's bedroom. Vol. 4RP 195. The methamphetamine was found on a nightstand next to the Defendant's bed and the firearm was found in between the Defendant's mattress and box spring. Vol. 4RP 209, 212.

The Defendant told Agent Jaime Waite of Immigrations and Customs Enforcement (ICE) that (1) he was born in Mexico and (2) he did not have papers to be in the U.S. nor a green card. Vol. 3RP 135-36. Relying on these admissions along with an independent inquiry into multiple databases used by ICE, Agent Waite determined that the Defendant was in the U.S. illegally. Vol. 3RP 135-36.

B. CrR 3.5 Hearing

On September 19, 2012, a CrR 3.5 hearing was held to determine the admissibility of the Defendant's statements. Vol. 1RP 19. Officer Bernard testified that around 10:45 p.m. on July 15, 2012, he contacted the Defendant and read him his *Miranda* rights, and the Defendant stated he understood those rights. Vol. 1RP 24-25, 27. Subsequently, the Defendant made a few statements to Officer Bernard relating to the residence and any items inside it. Vol. 1RP 26.

¹ For the purpose of consistency, the State applies the same citation nomenclature to the court record that the Defendant outlined in his brief.

Agent Jaime Waite of ICE also testified at the CrR 3.5 hearing. He testified that he met with the Defendant on July 16, 2012, at the jail and interviewed him without rereading him his *Miranda* rights. Vol. 1RP 36-37. Agent Waite also testified that this meeting occurred earlier in the day, likely before the Defendant had been to court. Vol. 1RP 42. Finally, Agent Waite testified that the interview was for the sole purpose of using the Defendant's statements at a non-criminal immigration-related administrative proceeding. Vol. 1RP 54.

Based on the evidence presented at the CrR 3.5 hearing, the court made the following findings of fact and conclusions of law: (1) Officer Bernard contacted the Defendant around 10:30 p.m. on July 15, 2012, and read the Defendant his *Miranda* rights; (2) The Defendant understood his *Miranda* rights and waived them prior to making any statements to Officer Bernard or Jaime Waite; and (3) On July 16, 2012, Agent Waite interviewed the Defendant in the jail and that this occurred approximately 10 to 18 hours after Officer Bernard read the Defendant his *Miranda* rights. CP 84-85.

The court ruled that although the Defendant's statements were made in response to custodial interrogation, they were made freely and voluntarily after the Defendant was informed of his Constitutional rights pursuant to *Miranda*, understood those rights, and waived them. CP 85. Based on that reasoning, the court ordered that the statements to both Officer Bernard

and Agent Waite were admissible (notwithstanding any other evidentiary limitations to admissibility). CP 85.

Prior to these formal findings and conclusions, the court issued an informal written opinion concluding that the Defendant was still aware of his rights at the time Agent Waite interviewed him based on the relatively short period of time that had elapsed between when the rights were first read and when Agent Waite interviewed him. CP 32.

III. ARGUMENT

A. The Defendant understood his Constitutional rights and voluntarily waived them at the time he made statements to Agent Jaime Waite.

1. The trial court's CrR 3.5 findings of fact are verities on appeal because they were never challenged.

“Findings of fact entered following a CrR 3.5 hearing will be verities on appeal if unchallenged; and if challenged, they are verities if supported by substantial evidence in the record.” *State v. Broadaway*, 133 Wn.2d 118, 131, 942 P.2d 363 (1997).

In the present case, the findings of fact entered by the court were never challenged by the Defendant; as such, they are deemed verities. Even if the Court does find they were challenged, there is nevertheless substantial evidence in the record to support them. The specific finding of fact at issue is the finding that, “Agent Waite asked the Defendant some questions

relating to his immigration status for the purpose of an upcoming immigration hearing.” CP 84. There is substantial evidence for this finding based on the testimony elicited from Agent Waite at the hearing:

Q: Apart from using his statements for this administrative proceeding did you have any other intent or purpose for these statements to be used in any other arena?

A: No. This information that I was gathering from this subject was strictly for his administration file for administration purposes as regards to his likely violation of the 212, the INA.

Vol. 1RP 54. Because the finding was unchallenged and/or supported by substantial evidence, the finding is a verity for this appeal.

2. The trial court’s conclusion of law that the Defendant’s statements were admissible is proper given the relatively short period of time between advising the Defendant of his Constitutional rights and asking him questions.

CrR 3.5 conclusions of law are reviewed de novo. *Spokane County v. City of Spokane*, 138 Wn. App. 120, 124, 197 P.2d 1228 (2009). The *Miranda* warnings read to (and understood by) a defendant may become stale after a period of time, and this is judged under a totality of the circumstances approach. *United States v. Rodriguez-Preciado*, 399 F.3d 1118, 1128 (9th Cir. 2005). However there is no requirement that a defendant be continually reminded of his rights once he has intelligently waived them. *United States v. Anthony*, 474 F.2d 770, 773 (5th Cir. 1973).

More importantly, a number of cases have found that *Miranda* warnings remain valid even after a substantial period of time has passed. See *United States v. Rodriguez-Preciado*, 399 F.3d 1118, 1128 (9th Cir. 2005) (holding that *Miranda* warnings were still valid after an interval of 16 hours had passed); *Puplampu v. United States*, 422 F.2d 870, 870 (9th Cir. 1970) (holding that *Miranda* warnings provided two days prior to a confession supported admissibility); *Maguire v. United States*, 396 F.2d 327, 331 (9th Cir. 1968) (holding that *Miranda* warnings provided three days prior to interrogation were sufficient to apprise the defendant of his rights); *Guam v. Dela Pena*, 72 F.3d 767, 770 (9th Cir. 1995) (holding that a 15 hour lapse between reading the warnings and the defendant's confession did not invalidate the warnings); *United States ex rel. Henne v. Fike*, 563 F.2d 809, 814 (7th Cir. 1977) (holding that a nine hour break between when *Miranda* warnings were read and the defendant's confession did require the defendant to be given fresh warnings); *State v. Blanchey*, 75 Wn.2d 926, 931, 454 P.2d 841 (1969) (holding that the defendant was still aware of his *Miranda* warnings even though four days had passed since the time they had been read to him).

In the present case, the court found that approximately 10 to 18 hours had elapsed since the Defendant had first been advised of his Constitutional rights. CP 84. The court found given this relatively short

lapse in time, the Defendant still understood his rights and waived them. CP 32, 85. As such, this Court should affirm the trial court's decision that the statements were admissible.

B. There was sufficient evidence for the crime of Alien in Possession of a Firearm without a Valid License.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Thomas*, 150 Wn.2d 821, 874 P.3d 970 (2004).

A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom . . . Credibility determinations are for the trier of fact and are not subject to review. [The appellate] court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.

Thomas at 874-75. The elements of the crime of Alien in Possession of a Firearm without an Alien Firearm License include that (1) the Defendant knowingly possessed a firearm, (2) was not a citizen or lawful permanent resident of the U.S., (3) did not have a valid alien firearm license pursuant to RCW 9.41.173, and (4) did not meet the requirements of RCW 9.41.175. RCW 9.41.171. Elements one, two, and four are met because a firearm was found between the Defendant's mattress and box spring and he admitted to not being in the country legally.

The issue the Defendant asserts here is whether there is sufficient evidence to prove that the Defendant did not have a valid alien firearm license. There are a number of ways of proving that the Defendant did not have a valid firearm license: (1) having a Department of Licensing custodian of records testify that he searched the alien firearm license database and found no record of the Defendant having a valid alien firearm license for the relevant time period; (2) obtaining an admission from the Defendant that he did not have a valid alien firearm license; and/or (3) presenting other evidence proving that it would be legally impossible for the Defendant to have obtained a valid alien firearm license.

The State relied on the third option; it presented evidence that the Defendant's status in the country would have prohibited him from ever having obtained a valid alien firearm license. In order to obtain a valid alien firearm license, the applicant must, inter alia, provide "a copy of the applicant's passport and visa showing the applicant is in the country legally." RCW 9.41.173(4). Making a false statement on the application invalidates the firearm license. RCW 9.41.173(8).

In the present case, the Defendant could never have obtained a valid alien firearm license because he would have never been able to provide a copy of his passport and visa showing he was in the country legally. The

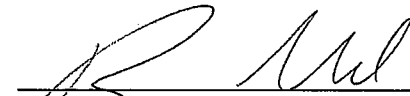
Defendant admitted to Agent Waite that he did not have any “papers” to be in the U.S., and Agent Waite then corroborated this information with other sources and confirmed the Defendant was in the country illegally. Vol. 3RP 135-36. Given the Defendant’s illegal status in the country, the obvious inference is that the Defendant could never have obtained a valid alien firearm license. Therefore, the Defendant’s illegal status provides sufficient evidence to prove that he did not have a valid alien firearm license on the date he was in possession of the firearm.

IV. CONCLUSION

Based on the foregoing analysis, both issues in front of the Court should be resolved in favor of the State. First, the Defendant still understood his rights at the time Agent Waite questioned him because he had just been read those rights a mere 10 to 18 hours earlier. And second, a rational juror could find beyond a reasonable doubt that the Defendant did not have a valid alien firearm license because the evidence showed he did not have the necessary documentation (passport and visa) to prove he was in the country legally in order to obtain the firearm license. For these reasons, the State asks this Court to affirm the Defendant’s convictions.

DATED: August 1, 2013

Respectfully submitted:
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Deputy Prosecuting Attorney

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 31224-1-III
)	
vs.)	
)	
EULOGIO CASTRO ROMERO,)	DECLARATION OF SERVICE
)	
Appellant.)	
_____)	

Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

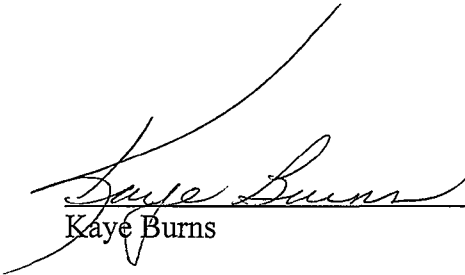
That on this day I served a copy of the Brief of Respondent in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

Marie J. Trombley
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That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Appellant containing a copy of the Brief of Respondent in the above-entitled matter.

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Dated: August 1, 2013.



Kaye Burns