

No. 73645-1-1

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

STATE OF WASHINGTON, Respondent,

v.

B.D-V., Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY
#14-8-00312-7

BRIEF OF RESPONDENT

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COURT OF APPEALS DIVISION ONE
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INTRODUCTION

This is an appeal from juvenile court for one count of assault in the second degree. Defendant B.D-V. challenges her sentence on two grounds. First, she alleges that the no-contact provision in her dispositional order does not have an end date. Second, she claims the trial court erred by not entering written findings and conclusions under CrR 3.5. Neither argument justifies a retrial or resentencing.

Whatcom County Superior Court Judge Charles Snyder ordered defendant to complete 12 months of community supervision. (Disposition at 3; CP 14). One condition of supervision is that defendant not contact Enio Cruz, the victim. (Disposition at 4; CP 15) Like community supervision itself, this no-contact condition ends when defendant completes the 12 months. It is not limitless.

Next, Judge Snyder held a 3.5 suppression hearing shortly before trial. Written clerk's notes document that the "Court found Miranda rights were read prior to [defendant's] statement being made." (4/20/15 Clerk's Notes; sub num. 28; CP __)*. Although these notes, combined with the Court transcript, are sufficient in

* Respondent has filed a supplemental designation of clerk's papers and CP cites do not yet exist for this document. The brief cites to the sub number to identify the document.

juvenile cases, the State will also submit proposed findings and conclusions to the Court. State v. Wolfer, 39 Wn. App. 287, 292, 693 P.2d 154 (1984) abrogated by State v. Heritage, 152 Wn.2d 210, 95 P.3d 345 (2004) (“there is no need for a separate voluntariness hearing in the case of a bench trial, reasoning that a judge is presumed to rely only upon admissible evidence in reaching a decision”).

Because defendant does not challenge her underlying conviction, the State of Washington respectfully requests the Court to dismiss her appeal.

I. RESTATEMENT OF ISSUES PRESENTED

Defendant’s appeal presents three issues:

A. “The appellate courts will not sanction a party’s failure to point out at trial an error which the trial court, if given the opportunity, might have been able to correct to avoid an appeal and a consequent new trial.” State v. Scott, 110 Wn.2d 682, 685, 757 P.2d 492 (1988). Defendant did not raise below any errors in the trial court’s disposition order or CrR 3.5 ruling. Under RAP 2.5(a), should this Court refuse to review these new allegations on appeal?

B. A juvenile disposition order, like a judgment and sentence, “must set forth in plain terms the specific length of

community placement.” State v. Jones, 96 Wn. App. 649, 653, 980 P.2d 791(1999). Here, defendant’s disposition order clearly limits community supervision – and the no-contact condition within it – to 12 months. Does the order limit the duration of the no-contact condition?

C. “Although a separate CrR 3.5 hearing is not necessary in juvenile proceedings, the circumstances surrounding a juvenile’s statement must be fully assessed before the admission of an alleged inculpatory statement, either in a formal pretrial hearing or during trial.” State v. S.A.W., 147 Wn. App. 832, 841, 197 P.3d 1190 (2008). The trial court fully assessed the circumstances of defendant’s statements, finding investigators advised her of her Miranda rights. Is the lack of written findings and conclusions under CrR 3.5(c) reversible error?

II. STATEMENT OF FACTS

Defendant B.D-V. and Enio Cruz were classmates at Sehome High School in Bellingham, Washington. On October 23, 2014 after school, defendant approached Mr. Cruz, grabbed him by the arm and then punched him. (Findings and Conclusions ¶ 2.2; CP 39). The punch was hard enough to deviate his septum. (Findings and Conclusions ¶ 2.4; CP 39).

The case went to adjudication before Whatcom County Superior Court Judge Charles Snyder. In the morning before trial, Judge Snyder held a CrR 3.5 hearing to rule on the admissibility of defendant's statement to an investigating officer. The court found that the officer gave defendant her Miranda rights and admitted the statement. (4/20/15 Clerk's Notes; sub num. 28; CP __).

After hearing testimony from four witnesses, including defendant, Judge Snyder found defendant guilty of second degree assault.

I'm reluctantly coming to the conclusion that the evidence tells me, and only the evidence tells me, that although this is not her typical behavior she on that day punched Mr. Cruz on the eye and the nose, and hit the nose hard enough to have caused a deviated septum, and on that basis I have to find her guilty of assault in the [second] degree.

(4/20/15 VRP 9).

On May 27, 2015, the trial court held its disposition hearing. (Disposition at 1; CP 12). The court found the standard range sentence would effectuate a manifest injustice, and departed downward. (Disposition at 3; CP 14). Judge Snyder sentenced defendant to 12 months community supervision after two days confinement. (Disposition at 3-4; CP 14-15).

As a condition of community supervision, the court prohibited defendant from “contact, except through counsel or a probation officer, the following person: Enio Cruz.” (Disposition at 5; CP 16). No record exists that defendant objected to this condition.

Defendant now appeals the no-contact condition and the lack of CrR 3.5 written findings. She does not challenge her underlying conviction.

ARGUMENT

III. STANDARD OF REVIEW

Because she raises new issues on appeal, defendant must prove the trial court committed manifest error affecting her constitutional rights.

SW neither requested a pretrial CrR 3.5 hearing nor objected to the juvenile court's failure to hold such a hearing during trial. Generally, we do not consider issues raised for the first time on appeal. RAP 2.5(a). SW argues that this error is manifest and “affect[s] a constitutional right,” thus, entitling him to raise it for the first time on appeal. RAP 2.5(a)(3). We review issues of law de novo.

State v. S.A.W., 147 Wn. App. 832, 837-38, 197 P.3d 1190 (2008).

IV. DEFENDANT’S CONVICTION AND SENTENCE ARE APPROPRIATE

The Court should uphold defendant’s conviction and sentence for three reasons. First, under RAP 2.5(a), defendant should have

raised her alleged errors with the trial court – and resolved them there. Second, the trial court’s disposition order limits the no-contact provision to 12 months. Third, by holding a CrR 3.5 hearing, the trial court ensured defendant’s statements were voluntary.

A. RAP 2.5 Requires Defendant To Raise Issues In the Trial Court

Defendant’s arguments illustrate why litigants should not raise new issues on appeal. Both claimed errors – no end date for the no-contact condition and no written CrR 3.5 findings – could have easily been remedied by the trial court. Because neither claimed error prejudices defendant’s constitutional rights, this Court should refuse to review these new arguments on appeal.

B. The No-Contact Condition Ends When Defendant Completes Community Supervision

Read in isolation, paragraph 4.10(M) of the disposition order – prohibiting contact with Enio Cruz – has no end date. (Disposition Order at 5; CP 16). But paragraph 4.10, titled “Conditions of Supervision” expressly modifies paragraph 4.5, which sentenced defendant to 12 months community supervision. (Disposition Order at 3, CP 14). The only reasonable reading of the order is that the no-contact condition is coextensive with the term of community

supervision. When community supervision terminates, so does the no-contact condition.

In her opening brief, defendant alleges the no-contact condition is ambiguous. “Because the court provided no statutory basis or time limit for the provision, the intended duration of the provision is unclear.” (Opening Brief at 3). But this argument presumes that the no-contact condition is independent of community supervision. The disposition order clearly makes the no-contact provision conditional on defendant’s community supervision. Read as a whole, the disposition order terminates the no-contact condition when community supervision is complete.

C. The Trial Court Satisfied CrR 3.5 As It Applies To Juvenile Court

Criminal Rule 3.5 is not a constitutional requirement but rather a procedural rule to protect defendants’ rights against self-incrimination.

The rule, as a whole, is still intended to ward against the admission of *involuntary, incriminating* statements. Even under a former version of CrR 3.5, where a *confession* was admitted into evidence without the required pretrial hearing, we held that remand for such a hearing was unnecessary where there was no question of the confession’s voluntariness. Under such circumstances, after all, it is difficult to conceive of a more idle and useless procedure.

State v. Williams, 137 Wn.2d 746, 751, 975 P.2d 963 (1999)
(citations omitted).

For this reason, a juvenile court's failure to follow CrR 3.5 to the letter is rarely reversible error. "The mere failure to give the CrR 3.5(b) advice of rights is not constitutional error and Williams cannot raise it for the first time on appeal." State v. Williams, 137 Wn.2d 746, 753-54, 975 P.2d 963, 966 (1999); State v. Summers, 52 Wn. App. 767, 774 n.7, 764 P.2d 250 (1988) ("failure to hold a 3.5 hearing does not require reversal if there is no genuine issue as to voluntariness").

Here, the trial court held a pretrial CrR 3.5 hearing and found defendant's statements were voluntary. The failure to file separate written findings is not constitutional error or grounds for reversal.

CONCLUSION

Defendant B.D-V. received a fair trial and appropriate disposition in juvenile court. Because no grounds exist to vacate her conviction or modify her sentence, the State respectfully requests the Court to affirm the disposition order and dismiss this appeal.

DATED this 12 day of February, 2016.

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By


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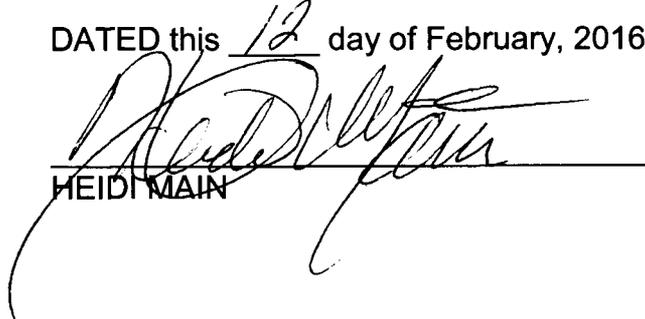
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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington, that on the date stated below, I mailed or caused delivery of **Brief of Respondent** to:

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DATED this 12 day of February, 2016.


HEIDI MAIN