

NO. 71843-6-1

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

STATE OF WASHINGTON,

Respondent,

v.

JONATHAN M. OLHAVA,

Appellant.

BRIEF OF RESPONDENT

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COURT OF APPEALS
DIVISION I

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I. ISSUES

1. Did the trial court err when it denied the defendant's motion to suppress his post-Miranda statements to police?
2. Are the trial court's findings of fact and conclusions of law supported by the record?

II. STATEMENT OF THE CASE

The defendant was charged by information with one count of taking a motor vehicle without permission in the first degree for an incident that took place on October 29, 2012. The defendant was convicted as charged by jury trial. The defendant timely appeals. CP 42-43, 13, 1.

A. TESTIMONY AT THE CRR 3.5 HEARING.

On October 29, 2012, Snohomish County Sheriff's deputies were dispatched to a trespassing call at a housing development construction site in Arlington. A construction worker had seen two vehicles break through a cable that was blocking the entrance to a construction area and continue up to the tree line. The construction workers could then hear the sound of banging and metal on metal. When they walked to the area, they could see both men working on the cars. When the deputies arrived they found the co-defendant in the process of using an acetylene torch to remove the catalytic

converter from a stolen Honda CRX. The defendant was standing by the stolen car. The deputies placed the defendant in handcuffs advised him of his rights and the defendant made two verbal statements, one to a deputy on scene and later to a detective at the police department. 2RP 23, 29-30, 34, 39-41, 51-55, 108-110.¹

The defendant challenged the admissibility of these statements under CrR 3.5. A testimonial hearing was held prior to trial. At the hearing, the judge heard from two witnesses, Deputy Dosch and Detective Haldeman. The defendant did not choose to testify or put on any witnesses at the CrR 3.5 hearing. 1RP 3, 26.

Deputy Dosch testified that he had been a Deputy Sheriff with the Snohomish County Sheriff's Office for approximately 16 years and had been a Seattle Police Officer before that. On October 29, 2012, he was dispatched to a trespass call at a construction site in the Arlington area. He contacted the defendant standing between the cars as the co-defendant was underneath one of the cars with a blowtorch. The defendant was placed under arrest and Deputy Dosch advised him of his constitutional rights by

¹ The state will use the same designation of transcripts as appellant; 1RP for the first volume containing the transcripts of the CrR 3.5 hearing and 2RP for the transcripts of the trial.

reading them verbatim from a pre-printed card. The defendant indicated he understood his rights and waived them. The defendant then spoke with Deputy Dosch. The defendant initially said the Acura belonged to the co-defendant and they came to that specific area to do some scrapping. They found the stolen Honda, at that location; it just happened to be there. Deputy Dosch did not make any note of the defendant being under the influence of any intoxicant or narcotic. 1RP 6-13.

Detective Haldeman also testified. He had been a police officer since 1991. He also teaches continuing education for law enforcement in the area of auto theft and heavy equipment loss, identification, and recovery and a course on illegal wrecking yards and hulk hauling and scrapping. 1RP 14-16.

When asked about his knowledge of intoxicants, Det. Haldeman indicated he had received the basic training for DUI, field sobriety evaluations through the intoxicants, that alcohol and drugs would be the basic training. 1RP 20-21.

Detective Haldeman testified that he contacted the defendant at the Snohomish County Sheriff's Office North Precinct. The defendant was still in-custody. Det. Haldeman confirmed the

defendant had been advised of his Constitutional rights and that he remembered them. He then questioned the defendant. 1RP 17-18.

Det. Haldeman indicated the defendant had been nodding off and had pinpoint pupils and that these can be indicators of someone being under the influence of narcotics. When asked what drugs would cause pinpoint pupils, Det. Haldeman responded, "the narcotics typically cause that." When he was more pointedly asked, "Narcotics is a legal classification. It's not a classification of drugs. Is it like an opiate, a benzodiazepine, PCP, marijuana?" Det. Haldeman answered, "Both legal and illegal drugs can cause that. I'm not much of an expert, sir. I know that narcotics causes that type of a reaction. And there are more than one drug – whether it's controlled or uncontrolled – that actually causes that. Yes, sir." 1RP 20-21.

Det. Haldeman did state that he thought the defendant was under the influence of narcotics. However, he said it did not influence the defendant's ability to speak or to think. Det. Haldeman described the exchange between himself and the defendant as the defendant talking with him, having a conversation and his responses were coherent and appropriately responsive to the questions. He was not rambling but was very specific in what

he said. Det. Haldeman also noted some slurred speech, but that was attributed to the defendant having an abscessed tooth. The defendant was oriented and coherent. 1RP 21-23.

During his interview of the defendant, Det. Haldeman asked the defendant if he had used any drugs. The defendant adamantly denied any drug usage at all. 1RP 23

B. TESTIMONY AT TRIAL.

At the trial, three construction workers testified about seeing the defendant's that morning at about 8:00 a.m. in a Honda CRX and an Acura. The Acura was pushing the Honda bumper to bumper. The two vehicles turned suddenly onto an access road to a new construction area. The two vehicles crashed through the cable barrier and continued to the tree line. One of the construction workers walked to where the vehicles had stopped and saw two people working on them. 2RP 27-32, 34, 36, 40-42.

When the deputies arrived, they found the defendant and his co-defendant, Mr. Hoover, in the wooded area with the two vehicles. The Honda CRX was identified as having been stolen. Mr. Hoover was under the Honda cutting out the catalytic converter. The defendant was at the front of the Honda with the hood up. 2RP 48-52, 68.

The defendant and Mr. Hoover were taken into custody and advised of their Constitutional rights. Both the defendant and Mr. Hoover admitted being there to do some scrapping. They initially claimed to have found the Honda parked there. After further questioning, Mr. Hoover admitted he lied. He then wrote a statement admitting he had stolen the Honda and driven to the location with a friend. The defendant admitted he was participating in taking parts from the Honda. 2RP 53-56, 86-88.

In January of 2014, Mr. Hoover told the defendant's investigator that the defendant drove the Acura to his house and picked him up. At trial, Mr. Hoover said after the investigator questioned him again, he thought about it, and now he remembered he drove to the defendant's house. Mr. Hoover did admit he was known to have stolen quite a few cars. The state impeached Mr. Hoover's with his multiple conflicting pre-trial statements. 2RP 76 – 80, 84-88.

III. ARGUMENT

A. THE TRIAL COURT PROPERLY DENIED THE DEFENDANT'S MOTION TO SUPPRESS HIS POST-MIRANDA STATEMENTS TO POLICE.

The defendant claims that his statements were involuntary. On appeal, the court will "review the record to determine whether

there is substantial evidence from which the trial court could have found the confession voluntary under the totality of the circumstances.” State v. Broadaway, 133 Wn.2d 118, 133, 942 P.2d 363 (1997).

In the present case, the defendant relies on his alleged intoxication to establish involuntariness. “Intoxication alone does not, as a matter of law, render a defendant’s custodial statements involuntary and thus inadmissible.” State v. Turner, 31 Wn. App. 843, 845-46, 644 P.2d 1224, review denied, 97 Wn.2d 1029 (1982). Intoxication renders a statement involuntary only if it rises to the level of mania. State v. Cuzzetto, 76 Wn.2d 378, 383, 457 P.2d 204 (1969). In this context, “mania” means that the defendant was unable to comprehend what he was doing and saying. Id. at 386.

In the present case, the court heard testimony from two law enforcement officers. The first officer did not note any indication of intoxication. The second officer noted pinpoint pupils, nodding off and some slurred speech that he attributed to the defendant having an abscessed tooth. The defendant was oriented to place, appropriately responsive to questions, precise in his responses and adamantly denied any drug use at all, legal or illegal.

The trial judge's finding of facts at the CrR 3.5 hearing included a finding that, "The degree of the defendant's being under the influence of an illegal substance at the time of the interview is disputed by the defendant." CP 36. The only testimony disputing the degree of intoxication was the defendant's adamant denial of having taken any drugs, disputing Det. Haldeman's observations.

Even if the defendant here may have been under the influence of Vicodin as he later claimed at trial, the testimony at the CrR 3.5 hearing clearly established that he was fully aware of what he was doing and saying. He responded rationally to police questions and lied to them when he considered it appropriate. The record fully supports the trial court's conclusion that the defendant "was alert and aware of his situation." His intoxication did not affect the admissibility of his statements.

B. THE TRIAL COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW ARE SUPPORTED BY THE RECORD.

"When a trial court determines a confession is voluntary, that determination is not disturbed on appeal 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." State v. Aten, 130 Wn.2d 640, 664, 927 P.2d 210, 223 (1996).

As in the present case, in Aten, the defendant may have been under the influence of a controlled substance. But there was nothing in the record indicating that the effect of the controlled substance had interfered with the defendant's ability to understand his or her constitutional rights or to knowingly and voluntarily waive them. Like in Aten, the defendant in the present case was not threatened or made any promises by the police. Under the totality of the circumstances, the evidence supports the conclusion of the trial court that the statements made by the defendant to the law enforcement were made freely and voluntarily after he voluntarily waived his rights.

IV. CONCLUSION

The judgment and sentence should be affirmed.

Respectfully submitted on January 27, 2015.

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