IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MONTY R. WILLY, Appellant.	No. 40532-6-II UNPUBLISHED OPINION

Hunt, P.J. — Monty R. Willy appeals his jury conviction for first degree robbery. He argues that the trial court erred in denying his motion to suppress his confessions and failed to enter written findings of fact and conclusions of law. In his Statement of Additional Grounds (SAG), Willy raises additional suppression hearing challenges. We affirm.

FACTS

On January 11, 2010, Monty Willy robbed the Hoodsport branch of the West Coast Bank. Detective Luther Pittman was the lead investigator. Willy was arrested, waived his *Miranda* rights,[1] and confessed to Pittman. The State charged Willy with one count of first degree robbery.

[1] *Miranda v. Arizona,* 384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

I. CrR 3.5 Hearing

Before the trial, Willy moved to suppress his statements to Pittman. The trial court conducted a CrR 3.5 hearing on March 17, 2010**.**

A. Detective Pittman's Testimony

Pittman testified as follows: On January 12, 2010, after Willy and his wife left their home, the Mason County Special Weapons and Tactics (SWAT) team and Special Operations Group stopped their car; Willy was the passenger. Pittman contacted Willy outside the car and read Willy his constitutional rights from a card. Willy stated that he understood his rights, admitted that he had robbed the West Coast Bank, and said he would give a statement. According to Pittman, he never threatened to arrest Willy's wife and neither he nor Detective Adam made promises to or threats toward Willy about his statement.

Later that day, Pittman and another detective interviewed Willy at the Mason County Sheriff's Office. Pittman recorded the interview and read Willy his constitutional rights again, this time from a form. Willy answered that he understood these rights but then stated, "I think I wish to have an attorney present." V Verbatim Report of Proceedings (VRP) at 36. Pittman told Willy that was the end of the statement, ended the recording, and left to get a pen.

When Pittman returned, Willy had changed his mind and again wanted to talk, expressing concern for his wife. After starting the recording again, Pittman again advised Willy of his constitutional rights and asked Willy, "Previously . . . you were considering having a lawyer but you decided that . . . is not what you want to do, is that correct?" V VRP at 46. Willy answered, "That's correct." V VRP at 46. Pittman also asked Willy, "And you were not coerced into this statement in any way, shape or form, is that true?" Willy answered, "[N]o. . . . I haven't been

coerced." V VRP at 47. Willy signed a form reflecting that he understood his rights as explained to him and that he would like to speak with Pittman bearing those rights in mind. Willy then gave a statement admitting to having robbed the bank. During the interview, Pittman repeatedly advised Willy that he had a right to have an attorney present, but Willy did not again invoke his right to counsel.

B. Willy's Testimony

Willy testified that, when his car was pulled over, "a lot [of]," or more than five, officers came at him pointing guns. V VRP at 58. Willy said he got out of the car and onto his knees, and the men smashed his face into the ground, bloodying his face, as depicted in his booking photographs. He saw his wife detained in handcuffs. Pittman brought him to the back of the police car and read Willy his constitutional rights, which Willy acknowledged he understood. When Pittman asked if he had robbed the bank, Willy answered, "[N]o, I didn't rob it." V VRP at 60. Willy denied having talked to Pittman, claiming, "I didn't tell him nothing. I just set back there and kept my mouth shut." V VRP at 63.

According to Willy, when he asked what they were doing with his wife, Pittman stated, "[I]f you give me some information we'll let her go." V VRP at 60. When Willy replied, "[N]o," they went downtown to the Mason County Sheriff's Office, where he claimed he was threatened with his wife's being detained and charged unless he gave a statement and promised to let his wife go if he gave a statement. V VRP at 60. When he asked for a lawyer, the interview stopped. Willy denied having changed his mind and later wanting to give a statement. According to Willy, between his first and second waivers of his constitutional rights, Pittman asked if he was going to "play ball," promising to release Willy's wife if he gave a statement. V VRP at 68.

C. Detective Pittman's Rebuttal Testimony

On rebuttal, Pittman again testified that he never told Willy he would release Willy's wife if Willy gave a statement. Even assuming that Willy's wife was initially detained according to police procedure for a felony or high risk stop, Pittman testified that at least 10 to 15 minutes after the stop, Willy's wife was not in handcuffs and was asking officers for a cigarette light. As evidence that Willy's wife was not arrested at the scene of the stopped vehicle, the State submitted a photograph from the scene showing Willy's wife smoking and not handcuffed.

D. Trial Court's Oral Findings and Conclusions

At the end of the CrR 3.5 hearing, on March 18, the trial court made the following oral findings and conclusions: Pittman advised Willy of his constitutional rights from a card issued to him. Willy acknowledged that he understood his rights and waived them. After the vehicle stop and while walking toward Pittman's car, Willy gave an oral statement admitting responsibility for the bank robbery. Pittman made no threats or promises to Willy before or during this exchange.

At the Mason County Sherriff's Office, Pittman again advised Willy of his constitutional rights. When Willy stated, "I think I would like to have an attorney," Pittman immediately ended the interview and walked out of the room. V VRP at 96. When Pittman re-entered the room, Willy re-engaged Pittman in conversation and wanted to give a statement. Pittman again advised Willy of his constitutional rights. Willy acknowledged that he understood his rights. Before and during this time, no promises were made to Willy. No threats were made to Willy to encourage or to coerce him into making a statement or waiving his rights.

The trial court specifically declined to find credible Willy's testimony that Pittman required him to give a statement in order to prevent his wife's arrest or to gain her release from custody.

The trial court found that Pittman stopped questioning when Willy invoked his right to an attorney, but later Willy made a voluntary, knowing, and intelligent waiver of his right to have an attorney present.

The trial court orally denied Willy's motion to suppress on March 18. It did not reduce its findings of facts or conclusions of law to writing at that time.

II. Trial

On March 19, 2010, Willy proceeded to a jury trial. Pittman testified about Willy's confessions, and bank staff identified Willy as the robber. The jury found Willy guilty of first degree robbery.

III. Appeal; Later Entry of Written Findings and Conclusions

Willy filed a notice of appeal.[2] After he filed his Brief of Appellant and his SAG, the State noted a hearing to present written findings of fact and conclusions of law supporting the trial court's denial of Willy's motion to suppress. The trial court entered written findings of fact and conclusions of law on January 3, 2011. On March 29, 2011, we ordered the State to supplement the record on appeal with these findings and conclusions, which we received on April 1, 2011.

[2] A commissioner of this court initially considered Willy's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

ANALYSIS

I. Written Findings of Facts and Conclusions of Law

Willy argues that we should reverse and dismiss his conviction because, at the time he filed his Brief of Appellant, the trial court had failed to reduce its findings of fact and conclusions of law to writing, as required by CrR 3.5(c).[3] This argument fails.

Willy is correct that a trial court's failure to reduce its CrR 3.5 findings and conclusions to writing is error; but he ignores that such error is harmless if its oral findings in the record are sufficient to allow appellate review. *State v. Thompson*, 73 Wn. App. 122, 130, 867 P.2d 691 (1994). Here, the trial court rendered detailed oral findings of fact and conclusions of law, which allow us to address the issues Willy raises on appeal.

Furthermore, Willy shows no prejudice flowing from the trial court's later entry of written findings and conclusions after he filed his Brief of Appellant. We hold, therefore, that the trial court's failure to reduce them to writing immediately after the suppression hearing was harmless error. We further note that this harmless error has since been corrected by the trial court's eventual entry of written findings and conclusions.[4]

II. Admissibility of Willy's Confessions

Willy next argues that the trial court erred in admitting his confessions to Pittman because they were involuntary. We disagree.

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[3] Willy also argues that CrR 6.1(d) requires the trial court to enter written findings of facts and conclusions of law at the conclusion of the CrR 3.5 hearing. But CrR 6.1(d) applies after a bench trial, not after a suppression hearing. *See State v. Garcia*, 146 Wn. App. 821, 826, 193 P.3d 181 (2008).

[4] Nevertheless, we again note that the required, and better practice, is for the trial court to enter its written findings and conclusions as soon as practicable after the CrR 3.5 hearing.

Police must advise a suspect of his constitutional rights before questioning him in a custodial setting. *State v. Heritage*, 152 Wn.2d 210, 214, 95 P.3d 345 (2004) (citing *State v. Sargent*, 111 Wn.2d 641, 647, 762 P.2d 1127 (1988)); *see also Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). A confession is voluntary and, "therefore admissible, if made after the defendant has been advised concerning rights and the defendant then knowingly, voluntarily and intelligently waives those rights." *State v. Aten*, 130 Wn.2d 640, 663, 927 P.2d 210 (1996). The State bears the heavy burden of demonstrating that law enforcement officers fully advised the defendant of his rights, that he understood them, and that he knowingly and intelligently waived them. *State v. Reuben*, 62 Wn. App. 620, 625, 814 P.2d 1177 (1991).

We do not disturb on appeal a trial court's determination that a defendant's confession was voluntary "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. A confession is voluntary if it is "the product of a rational intellect and a free will." *State v. Rupe*, 101 Wn.2d 664, 679, 683 P.2d 571 (1984) (citing *Mincey v. Arizona*, 437 U.S. 385, 398, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978)). To determine the voluntariness of a confession, the trial court evaluates the totality of the circumstances of the interrogation, including the "crucial element of police coercion," the length of the interrogation, its location, its continuity, the defendant's maturity, education, physical condition, and mental health, and finally, whether police advised the defendant of the rights to remain silent and have an attorney present during custodial interrogation. *State v. Unga*, 165 Wn.2d 95, 100-01, 196 P.3d 645 (2008) (citing *Withrow v. Williams*, 507 U.S. 680, 693-94, 113 S. Ct. 1745, 123 L. Ed. 2d 407 (1993)).

The trial court must also determine whether a police officer made a promise; if so, the trial

court must then apply the "totality of the circumstances" test to determine whether the promise overbore defendant's will. *Unga*, 165 Wn.2d at 101. In addition, credibility determinations are for the trier of fact; we will not disturb the trial court's credibility determinations on appeal. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (citing *State v. Casbeer*, 48 Wn. App. 539, 542, 740 P.2d 335, *review denied*, 109 Wn.2d 1008 (1987)).

Here, the trial court heard conflicting testimonies from Pittman and Willy. Pittman denied ever making any promises about Willy's wife, including in connection with an arrest; Willy testified exactly to the contrary. The trial court found that Pittman made no threats or promises following the vehicle stop or at the Mason County Sherriff's Office. The trial court specifically declined to find credible Willy's testimony that Pittman required him (Willy) to give a statement in order to avoid having his wife arrested or to gain her release.

Substantial evidence supports the trial court's findings of fact, which, in turn, support its conclusions of law that Willy's confessions to Pittman were voluntary. Accordingly, we hold that the trial court did not err in denying Willy's motion to suppress his confessions.

III. SAG

In his SAG, Willy asserts that (1) the CrR 3.5 hearing to enter findings of fact and conclusion of law was untimely because it occurred on November 22, 2010, eight months after his trial; (2) the trial court changed the CrR 3.5 hearing "paperwork" in its own writing; (3) he never received the CrR 3.5 hearing paperwork reflecting the trial court's handwritten changes; (4) at his CrR 3.5 hearing, the trial court erred in admitting a photograph of his wife showing her not in handcuffs and smoking a cigarette; and (5) his statements to Pittman were coerced and, therefore, not voluntary.[5] The record before us on appeal does not support most of these assertions; and,

even if it did, none of these assertions support reversal of Willy's conviction.

At the outset, Willy's first assertion—that his CrR 3.5 hearing was untimely—apparently refers to the trial court's November 22, 2010 post-appeal hearing on the State's motion to enter written findings of fact and conclusions of law for the earlier CrR 3.5 hearing, not to the CrR 3.5 hearing to enter findings of fact and conclusion of law itself, which took place on December 22, 2010.[6] As we have already held, failure to enter those written findings of fact and conclusions of law earlier was harmless error.

As for Willy's second and third assertions concerning the handwritten changes to the CrR 3.5 paperwork, the trial court did not enter its CrR 3.5 hearing written findings of facts and conclusions of law until January 3, 2011; thus, there was no CrR 3.5 hearing paperwork for the trial court to have altered or for Willy to have received before he submitted his SAG on November 29, 2010.[7] Thus, the record does not support these assertions.

As to Willy's fourth assertion—that the trial court erroneously admitted his wife's photograph—he did not object below when the State moved to admit the photograph. Because he failed to preserve this issue for appeal, we do not further consider it. RAP 2.5(a); *State v. Avendano-Lopez*, 79 Wn. App. 706, 710, 904 P.3d 324 (1995), *review denied*, 129 Wn.2d 1007 (1996).

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[5] See SAG at 3.

[6] Information found at Mason County Superior Court Website, Docket #10-1-0013-5, *available at* http://dw.courts.wa.gov/index.cfm?fa=home.casesummary&crt_itl_nu=S23&casenumber=10-1000135&searchtype=sName&token=11E936BACDE6C5D20B05D193E347DECF&dt=14AB5AA4D4ECCBD2C15009530B47CF0A&courtClassCode=S&casekey=123808053&courtname=MASON CO SUPERIOR CT (last accessed June 7, 2011).

[7] Willy's counsel concedes this fact in his Brief of Appellant. *See* Br. of Appellant at 8.

We have already addressed Willy's fifth assertion—that his confession was involuntary. *See* section II of our Analysis, *supra*. Thus, this claim also fails.

We affirm.

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 pursuant to RCW 2.06.040, it is so ordered.

Hunt, P.J.

We concur:

Quinn-Brintnall, J.

Johanson, J.