

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

NORDRAIN MARVIN LINEAR,

Appellant.

No. 42311-1-II

UNPUBLISHED OPINION

Hunt, P.J. — Nordrain Marvin Linear appeals his jury conviction for forgery. He argues that the trial court erred in allowing a police officer to testify about his custodial statements without first having held a CrR 3.5 hearing to determine their voluntariness. We affirm.

**FACTS**

**I. Forgery**

In January 2011, Nordrain Linear went to a US Bank branch in Lacey and presented a State Farm Insurance Company check listing him as the payee. Jennifer Kroninger, the banker to whom he presented the check, became suspicious, checked the bank's computer system, discovered an alert for fraudulent checks on that account, and notified her supervisor, Matt Yusko. Yusko sent a note to Christopher Tankersly, who called 911 to report an attempt to cash a fraudulent check.

While Tankersly waited outside the bank for the police to arrive, Linear came out and

asked why it was taking so long to cash his check. Tankersly escorted Linear back into the bank and stalled. Linear became agitated when Tankersly was slow to respond to Linear's request to return the check and his identification; Linear grabbed Tankersly's arm and released it when asked. Tankersly returned Linear's identification but not the check. Linear left the bank, passing Lacey Police Officer Christopher Wenschhof. When Tankersly identified Linear as the suspect, Wenschhof went back outside the bank to contact Linear. Another officer who had responded with Wenschhof remained outside the bank with Linear while Wenschhof investigated further.

After the officers handcuffed Linear and placed him in a patrol car, Wenschhof went back into the bank, spoke on the phone with a State Farm representative, returned to Linear, read him his constitutional rights, asked Linear if he was willing to talk, and Linear replied, "[Yes], What did you want to know?" Verbatim Report of Proceedings (VRP) (June 8, 2011) at 95. Instead of questioning Linear, Wenschhof explained his understanding of the situation, including that Linear had tried to present a bad check. According to Wenschhof, Linear then lowered his head and voice and said, "[Y]eah," and added that he had gotten the check from "Tony," who he said had owed him money and was part of larger ring of people distributing fraudulent checks. VRP (June 8, 2011) at 95. Linear also admitted he knew it was a bad check.

## II. Procedure

The State charged Linear with one count of forgery. Linear did not appear for his CrR 3.5 hearing, and the court issued a bench warrant for his arrest. Linear turned himself in the next day, and the trial court set a trial date. The record does not show that Linear asked for a new CrR 3.5 hearing date or that the hearing was rescheduled.

At trial, the bank officials testified as described above. Wenschhof testified that, after handcuffing Linear, (1) he read Linear his constitutional rights from a card he carried in his pocket<sup>1</sup>; (2) Linear said that he understood his *Miranda*<sup>2</sup> rights and agreed to speak with Wenschhof; (3) Wenschhof told Linear that he (Wenschhof) was aware “the check that [Linear] tried to present at the bank was not a good check”; and (4) Linear then slumped down, lowered his head and voice, and said that he had gotten the check from “an individual by the name of Tony” and that he knew it was “not a good check.” VRP (June 8, 2011) at 95, 96. Linear did not object to any of this testimony.

Linear testified that (1) he was a passenger with his sister in a car that another driver hit; (2) he was not surprised when he received a check in the mail from State Farm, the other driver’s insurer; (3) on the way to Portland, he stopped to cash the check at the Lacey US Bank because the check was drawn on that bank; (4) after handcuffing him, Wenschhof read him his rights and told him the check was fraudulent; and (5) he had told Wenschhof what Wenschhof wanted to hear because he did not think Wenschhof wanted to hear the truth.

The jury convicted Linear as charged. He appeals.<sup>3</sup>

#### ANALYSIS

Linear argues that the trial court erred in allowing Wenschhof to testify about Linear’s

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<sup>1</sup> Wenschhof did not bring the constitutional rights card with him to trial and could not repeat verbatim the advice he had given Linear.

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

<sup>3</sup> A commissioner of this court initially considered Linear’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

custodial statements, especially his admission that he knew the check was “not a good check,”<sup>4</sup> because the trial court did not conduct a CrR 3.5 hearing to determine the voluntariness and admissibility of his statements and because he did not waive his right to a CrR 3.5 hearing. Linear further argues that CrR 3.5 requires the trial court to conduct a hearing as to the admissibility of custodial statements by the defendant, unless the defendant waives his right to such a hearing.<sup>5</sup> We do not reach the merits of Linear’s argument because he cannot raise the voluntariness of his custodial statements for the first time on appeal where he neither requested a CrR 3.5 hearing nor objected at trial to Wenschhof’s testimony about these statements. *State v. Spearman*, 59 Wn. App. 323, 325, 796 P.2d 727, *review denied*, 115 Wn.2d 1032 (1990).

Even were we to consider the merits of Linear’s challenge, however, Linear neither claims nor shows that he suffered any prejudice from the lack of a CrR 3.5 hearing. Furthermore, failure to conduct a CrR 3.5 hearing is not reversible error, if the record shows, as here, that the defendant’s statements were voluntary and that they occurred after the defendant was advised of his constitutional rights. *State v. Renfro*, 28 Wn. App. 248, 253, 622 P.2d 1295 (1981), *aff’d*, 96 Wn.2d 902, 639 P.2d 737, *cert. denied*, 459 U.S. 842 (1982). The trial record shows that Linear acknowledged Wenschhof’s advisement of his constitutional rights and that he (Linear) had spoken voluntarily to Wenschhof.<sup>6</sup> Under these circumstances, we find no

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<sup>4</sup> VRP (June 8, 2011) at 96.

<sup>5</sup> Linear cites the following cases in support of his argument: *State v. Brown*, 132 Wn.2d 529, 582, 940 P.2d 546 (1997) (citing *Miranda v. Arizona*, 384 U.S. 436, 479, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)); *State v. Tim S.*, 41 Wn. App. 60, 63-64, 701 P.2d 1120 (1985). Because we hold that he waived his right to a CrR 3.5 hearing, we do not address these cases.

<sup>6</sup> Moreover, Linear does not directly dispute Wenschhof’s recounting of Linear’s statements;

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reversible error in the trial court's not having conducted a CrR 3.5 hearing.

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 in accordance with RCW 2.06.040, it is so ordered.

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Hunt, P.J.

We concur:

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Quinn-Brintnall, J.

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Van Deren, J.

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rather, Linear claims that he remembered the statements' content differently than did Wenschhof.