IN THE UTAH COURT OF APPEALS

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Salt Lake City, Plaintiff and Appellee, v. Charles Kane, Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20060109-CA F I L E D (February 15, 2007) 2007 UT App 44

Third District, Salt Lake Department, 045900276
The Honorable L.A. Dever
The Honorable Robin W. Reese

Attorneys: Linda M. Jones, Michael Misner, and Samuel P. Newton, Salt Lake City, for Appellant
Simarjit Singh Gill and Kristin L. Zimmerman, Salt Lake City, for Appellee

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Before Judges Bench, McHugh, and Thorne.

McHUGH, Judge:

Defendant Charles Kane appeals from a conviction of driving under the influence, see Utah Code Ann. § 41-6-44 (Supp. 2004) (current version at id. § 41-6a-501 (2005)), and a red light violation, see id. § 41-6-24 (Supp. 2004) (current version at id. § 41-6a-305 (2005)). Kane argues that the trial court erred in admitting into evidence statements he made to a police officer while in custody at the police station. Kane contends that he gave the police station statements after he had made an unequivocal request for counsel under Miranda v. Arizona, 384 U.S. 436 (1965), and therefore the statements should have been suppressed under Edwards v. Arizona, 451 U.S. 477 (1981). We affirm.

Even assuming, without deciding, that Kane effectively invoked his Miranda right to counsel and that it was error to admit into evidence any subsequent statements elicited by police during custodial interrogation, Kane has failed to demonstrate that the admission of the statements was prejudicial. See State v. Velarde, 734 P.2d 440, 444 (Utah 1986); see also State v. Kiriluk, 1999 UT App 30,¶11, 975 P.2d 469 (foregoing analysis of

alleged constitutional violation where the defendant failed to demonstrate that alleged error was prejudicial). "It is well established that the admission of statements obtained in violation of Miranda can be harmless error." Velarde, 734 P.2d at 444 (citing Harryman v. Estelle, 616 F.2d 870, 875 (5th Cir.), cert. denied, 449 U.S. 860 (1980)). An error arising from a violation of the federal constitution is considered harmless when an appellate court is "able to declare a belief that it was harmless beyond a reasonable doubt." Id. (quotations and citation omitted). "In order to make this declaration, 'it is necessary to review the facts of the case and the evidence adduced at trial' to determine the effect of the challenged evidence 'upon the other evidence adduced at trial and upon the conduct of the defense . . . .'" Id. (quoting Fahy v. Connecticut, 375 U.S. 85, 86-87 (1963)). However, it is important to note that this "'standard does not require reversal solely because we might imagine a single juror whose decision hinged on [defendant's inculpatory statements]. Rather we look to what seems to us to have been the probable impact of the [statements] on the minds of the average juror.'" Kiriluk, 1999 UT App 30 at ¶11 (quoting State v. Villarreal, 889 P.2d 419, 425 (Utah 1995)).

Applying this standard, we determine that even if the trial court committed error in allowing Kane's police station statements, which we do not decide, any possible error was harmless beyond a reasonable doubt. The Utah Supreme Court has articulated several factors that weigh on whether an alleged error was harmless beyond a reasonable doubt, including "the importance of the witness'[s] testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence collaborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case." Villarreal, 889 P.2d at 425-26 (citations omitted).

We determine that the admission of Kane's statements at the police station, that he had consumed "four beers" consisting of "two bottles and two cans" between 8:00 and 11:30 p.m., were harmless because they were cumulative, largely corroborated by other admissible statements Kane made, and substantially outweighed by the overall strength of the prosecution's case. At trial, Salt Lake City (the City) produced Officer Mark Falkner, who testified that at the roadside Kane admitted to drinking "a six-pack" of beer. Additionally, Kane testified at trial that he had consumed four beers between 4:30 and 11:30 p.m. before operating the vehicle. Thus, the statements that Kane alleges were erroneously admitted at the police station--that he had consumed four beers between 8:00 and 11:30 p.m.--were cumulative

and substantially corroborated by Officer Falkner's and Kane's properly admitted testimony.[1]

Additionally, the City produced strong evidence of Kane's guilt. Officer Falkner testified that at the scene of the accident Kane smelled of alcohol and had red blood-shot eyes and slow slurred speech. Officer Falkner also testified that Kane failed two out of three field sobriety tests, could not count to thirty, failed to stop at a red light, and refused to submit to a breathalyzer test. The City also produced a witness who testified that Kane had failed to stop at a red light without making any attempt to slow or stop. Finally, Kane testified that he had consumed four beers between 4:30 and 11:30 p.m., operated the vehicle after drinking the beers, and could not remember numerous details about the night, including the name or location of the club he attended. Thus, we conclude the trial court's denial of defendant's motion to suppress the police station statements was harmless beyond a reasonable doubt.

Affirmed.

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Carolyn B. McHugh, Judge

WE CONCUR:

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Russell W. Bench,
Presiding Judge

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William A. Thorne Jr., Judge

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1. In actuality, the challenged police station statements mitigated, to some degree, Kane's roadside statements. Kane's properly admitted roadside statement--that he had consumed a "six-pack"--carried with it the inference that Kane had recently consumed the alcohol. The challenged statements, however, were mitigating because they suggested that Kane had consumed fewer beers over a defined period of time.