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

STATE OF WASHINGTON, Respondent,	)	No. 65933-2-I
v.	)	UNPUBLISHED OPINION
BERNARD ANTHONY WOODS, Appellant.	)	FILED: February 6, 2012

Schindler, J. — Bernard Anthony Woods appeals his conviction for delivery of cocaine in violation of the Uniform Controlled Substances Act, RCW 69.50.401(1), (2)(a). For the first time on appeal, Woods claims the trial court erred in denying his motion to suppress evidence because the State did not establish that Seattle Police Department officers had statutory or common law authority to arrest him in the city of Burien. He also claims the trial court should have suppressed the buy money found in a search incident to arrest. Woods also challenges the trial court's calculation of his offender score. Because Woods fails to establish reversible error, we affirm.

FACTS

On the evening of January 20, 2010, Seattle Police Department Anti-Crime Team Officer Maurice Washington placed a call to a suspected drug dealer as part of an undercover narcotics operation. Police believed a drug dealer with the street name "Bink" was associated with the number. Officer Washington spoke with a person

answering to the name Bink and arranged to purchase $100 worth of crack cocaine. After a series of additional calls to discuss details, Officer Washington agreed to meet Bink at a gas station in Burien to purchase $160 dollars worth of crack cocaine.

While sitting in his car at the gas station, Officer Washington saw a car pull up to the pumps. A black male got out of the car, looked around, and eventually approached Officer Washington's car. Officer Washington motioned to the man. The man opened the back door of Officer Washington's car and sat down in the back seat behind Officer Washington. The man placed two plastic bags of what appeared to be crack cocaine in the center console between the driver and front passenger seat. Officer Washington weighed the items on a scale and then gave the man $160 in prerecorded buy money. The man got out of Officer Washington's car and walked back to the car in which he had arrived.

Based on Officer Washington's signal, Officer Steven Kaffer and his partner drove up behind the car and saw the man approach the car and quickly get into the front passenger seat. Officer Kaffer ordered the man out of the car at gunpoint. After hesitating for several seconds, the man got out and Officer Kaffer arrested him. Officer Ernest Jensen arrived as Officer Kaffer was arresting the man and saw money sticking out between the passenger seat and passenger door. Officer Jensen removed the money from the car and matched the serial numbers on the bills to the photocopies of the prerecorded buy money. Following the arrest, the police identified the man as Bernard Anthony Woods.

The State charged Woods with delivery of cocaine in violation of the Uniform

Controlled Substances Act, RCW 69.50.401(1), (2)(a). Woods filed a motion to suppress the buy money asserting the police unlawfully stopped and searched the car in which he was seated because "the Seattle Police did not have an arrest or search warrant to seize Mr. Woods or the vehicle in which he was a lawful occupant." The State filed a response arguing the officers had probable cause to arrest Woods for delivering cocaine and were justified in searching the car based on a reasonable belief that evidence of the crime for which he was arrested was in the car, citing State v. Wright, 155 Wn. App. 537, 230 P.3d 1063 (2010).

At the CrR 3.6 hearing, Woods argued that a warrantless seizure took place when the police pulled up with emergency lights activated behind the car in which he was a passenger and then jumped out and ordered him out of the car. He claimed the police lacked probable cause for the seizure because (1) there was no lab test on the substance obtained by Officer Washington, and (2) an officer described the car in which the suspect arrived as a Ford sedan but the police stopped a purple station wagon. Woods argued that without independent knowledge of the alleged drug dealer's identity, Officer Washington's identification of the suspect was not sufficient to justify his arrest. Woods also argued the police had no way of knowing that the money in the car was involved in the crime because Officer Jensen did not testify that he could see the serial numbers or had any reason to believe it was the buy money.

The trial court rejected Woods's argument that there was no probable cause. Citing Wright, the trial court held it was reasonable for the officers to believe the car where Woods sat immediately after the transaction contained evidence related to the

crime. The trial court denied the motion to suppress the buy money.[1]

Following trial, the jury found Woods guilty as charged. The trial court imposed a Drug Offender Sentencing Alternative (DOSA) as requested by Woods.

Woods appeals.

ANALYSIS

Authority to Arrest

For the first time on appeal, Woods contends the trial court erred in denying his motion to suppress evidence because the State did not establish that Seattle Police Department officers had statutory or common law authority to arrest him in the city of Burien. Without citation to authority, Woods claims that the State had an affirmative duty to establish the officers' authority under RCW 10.93.070[2] based solely on his argument that the arrest was unlawful for lack of a warrant or probable cause. But to adequately preserve an objection to the admissibility of evidence, a motion to suppress

[1] The State filed the trial court's written findings of fact and conclusions of law after Woods filed his brief. Although Woods assigns error to the trial court's failure to file the findings as required by CrR 3.6, he has not supported the assignment of error with argument and has not claimed or established any prejudice. Therefore, we do not address the assignment of error. RAP 10.3(a)(6).

[2] RCW 10.93.070 provides:

> In addition to any other powers vested by law, a general authority Washington peace officer who possesses a certificate of basic law enforcement training or a certificate of equivalency or has been exempted from the requirement therefor by the Washington state criminal justice training commission may enforce the traffic or criminal laws of this state throughout the territorial bounds of this state, under the following enumerated circumstances:
> (1) Upon the prior written consent of the sheriff or chief of police in whose primary territorial jurisdiction the exercise of the powers occurs;
> (2) In response to an emergency involving an immediate threat to human life or property;
> (3) In response to a request for assistance pursuant to a mutual law enforcement assistance agreement with the agency of primary territorial jurisdiction or in response to the request of a peace officer with enforcement authority;
> (4) When the officer is transporting a prisoner;
> (5) When the officer is executing an arrest warrant or search warrant; or
> (6) When the officer is in fresh pursuit, as defined in RCW 10.93.120.

must raise the specific grounds on which the defendant is objecting to the search. CrR

3.6(a); ER 103(a)(1).[3] Woods did not argue below that he was arrested without authority of law specifically because Seattle police lacked authority under RCW 10.93.070 or the common law to arrest him in Burien. We therefore need not review this claim. RAP 2.5(a).

To the extent Woods seeks review under the "manifest error affecting a constitutional right" exception of RAP 2.5(a)(3), if the record from the trial court is inadequate to determine the merits of the newly raised constitutional issue, then the claimed error is not manifest and review is not warranted. State v. McFarland, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). As the State correctly points out, if Woods had raised the issue at the suppression hearing, the State might have presented evidence to demonstrate the officers' authority to arrest him in Burien under RCW 10.93.070. Because the record is not adequately developed, the claimed error is not manifest and we decline to address it. Cf. State v. Barker, 143 Wn.2d 915, 920-21, 25 P.3d 423 (2001) (where trial court determined Oregon officer did not have statutory or common law authority to make arrest in Washington, stop and detention were without "authority of law" in violation of article I, section 7).

Motion to Suppress Buy Money

Woods next claims that the trial court should have suppressed the buy money seized in the search incident to arrest under State v. Patton, 167 Wn.2d 379, 219 P.3d 651 (2009), because the officers violated article I, section 7 of the Washington State

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[3] ER 103(a)(1) provides:

Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and
(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike is made, stating the specific ground of objection, if the specific ground was not apparent from the context.

Constitution. In Patton, the police approached Patton in order to arrest him on a warrant while he stood in his driveway next to his parked car with his head in the window. Patton, 167 Wn.2d at 383. After placing Patton, in handcuffs, in the back of a patrol car, the police searched Patton's car and found methamphetamine. Patton, 167 Wn.2d at 385. The Supreme Court determined that under article I, section 7, the automobile search incident to arrest exception to the warrant requirement did not apply because there was no reason to believe, at the time of the search, that Patton posed a safety risk or that the vehicle contained evidence of the crime of arrest that could be concealed or destroyed. Patton, 167 Wn.2d at 394-95. Accord, State v. Valdez, 167 Wn.2d 761, 777, 224 P.3d 751 (2009) ("A warrantless search of an automobile is permissible under the search incident to arrest exception when that search is necessary to preserve officer safety or prevent destruction or concealment of evidence of the crime of arrest.").

In Wright, this court distinguished the facts in Patton from a situation where there was a nexus between the arrest, the crime of arrest, and the search of a vehicle. Wright, 155 Wn. App. at 553. An officer stopped Wright for a traffic violation. Wright, 155 Wn. App. at 542. After noticing a strong odor of marijuana emanating from the car and observing Wright's nervousness and strange behavior, as well as a large roll of money in the glove compartment, the officer arrested Wright, the sole occupant of the car, for possession of marijuana. Wright, 155 Wn. App. at 542. After removing Wright from the car and restraining him in a patrol car, the officer, with Wright's permission, leaned into Wright's car to retrieve the registration and noticed a stronger odor of

marijuana. Wright, 155 Wn. App. at 542. The police used a drug-sniffing dog and then searched the car and found marijuana. Wright, 155 Wn. App. at 542-43. This court held that the search did not violate article 1, section 7 because the unchallenged facts established a clear nexus between Wright, the crime of the arrest, and the search of the car. Wright, 155 Wn. App. at 556. Here, as in Wright, there was a clear nexus between Woods, the crime of arrest, and the money Officer Jensen observed sticking out of the car from the seat where Woods had been sitting immediately before he was arrested.

But in any event, reversal is not required if the admission of the buy money was "harmless beyond a reasonable doubt." State v. Hanson, 59 Wn. App. 651, 659, 800 P.2d 1124 (1990) (citing Chapman v. California, 386 U.S. 18, 24, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967)). The harmless error rule dictates that "[i]f the untainted evidence is so overwhelming that it necessarily leads to a finding of the defendant's guilt, the error is harmless." State v. Koslowski, 166 Wn.2d 409, 431, 209 P.3d 479 (2009). "[C]onstitutional error is presumed to be prejudicial and the State bears the burden of proving that the error was harmless." State v. Watt, 160 Wn.2d 626, 635, 160 P.3d 640 (2007).

Here, the untainted evidence necessarily leads to a finding of Woods's guilt because it establishes the elements of the crime of delivery of cocaine.[4] Evidence at

[4] The trial court instructed the jury that to convict Woods, each of the following elements must be proved:

> (1) That on or about January 20, 2010, the defendant delivered a controlled substance, cocaine;
> (2) That the defendant knew that the substance delivered was a controlled substance; and
> (3) That the acts occurred in the State of Washington.

trial established that Officer Washington arranged over the telephone to meet a person known as “Bink” at a particular gas station on January 20, 2010 to purchase crack cocaine. Officer Washington watched the man who sold him $160 worth of crack cocaine return to the car, and identified Woods as the man who sold him the cocaine and was arrested at the scene. Surveillance officers watched Woods arrive at the gas station, get into Officer Washington’s car, and return to the car in which he arrived, where he was arrested. Under these circumstances, Woods fails to establish reversible error.

Offender Score

Woods also challenges the trial court’s calculation of his offender score as 14, claiming that the trial court’s written findings in the judgment and sentence do not support a score higher than 8. In particular, Woods points out that the criminal history appendix to the judgment and sentence lists 16 prior felony convictions between the years 1988 and 2002 but no misdemeanors. Because the current offense did not occur until 2010, he claims that the trial court’s failure to enter a written finding of any intervening misdemeanors requires a conclusion that some of his prior felonies “washed out” under RCW 9.94A.525(2)(c).[5]

But Woods provides no authority for his proposition that a sentencing court must enter written findings detailing any misdemeanor convictions that would prevent prior felonies from washing out. Although RCW 9.94A.500(1) requires the defendant’s

[5] RCW 9.94A.525(2)(c) provides, in pertinent part:

> [C]lass C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.

criminal history as described by the prosecutor and specified by the trial court to "be part of the record," it does not require the court to enter specific findings of fact in the judgment and sentence listing the relevant misdemeanors and addressing the applicability of RCW 9.94A.525(2)(c).

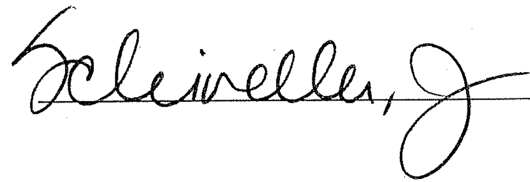
Here, it is undisputed that the State provided a complete list of all prior felonies and misdemeanors to the sentencing court and to Woods before the sentencing hearing. Contrary to Woods's claim, the lack of a written finding regarding the applicability of RCW 9.94A.525(2)(c) does not require this court to conclude that the trial court was not satisfied with the prosecutor's proof. Cf. State v. Armenta, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997) (where question at suppression motion was whether officer had reasonable suspicion of criminal activity and trial court did not enter findings as to certain testimony of arresting officer, defendant was entitled on appeal to benefit of the doubt). Instead, the court's calculation of the offender score as 14, as argued by the State, demonstrates that the trial court determined that none of the prior felonies washed out.

The record also reveals that the parties discussed Woods's misdemeanor history at the initial sentencing hearing on July 30, 2010. The prosecutor referred to a 2006 conviction for driving under the influence (DUI). Defense counsel specifically acknowledged the DUI conviction and relied on it to justify a request for a DOSA. When ruling to continue sentencing to allow for an alcohol and substance abuse evaluation in support of the DOSA request, the trial court mentioned the 2006 DUI as well as convictions for possession of marijuana in 2005 and 2006. On this record,

there is no question that the trial court considered Woods's entire criminal history, including misdemeanors, to consider the DOSA request as well as to determine the offender score. RCW 9.94A.530(2); In re Pers. Restraint of Cadwallader, 155 Wn.2d 867, 873-74, 123 P.3d 456 (2005) (trial court may rely on defendant's admitted prior convictions without further proof). Woods fails to establish error in the absence of a specific written finding of fact explicitly referring to his misdemeanor history.

In a "Statement of Additional Grounds," Woods has merely restated counsel's assignments of error with his own arguments. He fails to establish any basis for relief.

Affirmed.



WE CONCUR: