IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 28024-1-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
LUIS FERNANDO MORA-JIMINEZ,	)	**UNPUBLISHED OPINION**
	)	
Appellant.	)	
	)	

Brown, J. — Luis Fernando Mora-Jiminez appeals his conviction for second degree robbery. Mr. Mora-Jiminez contends the trial court erred in (1) entering a 10-year harassment no-contact order protecting the victim, (2) delegating to a community corrections officer the decision to impose a community custody condition, and (3) failing to enter findings of fact and conclusions of law following the trial court's decision to deny his CrR 3.5 motion to suppress his statements. We accept the State's concession that the trial court erred in delegating the community custody decision to the community corrections officer under established authority without further discussion: "'A sentencing court may not wholesaledly abdicate [ ] its judicial responsibility for setting the

conditions of release.'" *State v. Sansone*, 127 Wn. App. 630, 642, 111 P.3d 1251 (2005) (internal quotation marks omitted) (alteration in original) (quoting *United States v. Loy*, 237 F.3d 251, 266 (3d Cir. 2001)). We reject Mr. Mora-Jiminez's other contentions of reversible error and affirm. We remand for the trial court to vacate the delegation order.

FACTS

According to the pretrial and trial facts, Logan Stultz was working as a loss prevention officer at Wray's Thriftway in Yakima. He saw a person, later identified as Mr. Mora-Jiminez, enter the store. Mr. Stultz saw Mr. Mora-Jiminez remove a package of razors and conceal them in his jacket pocket. Mr. Stultz then saw Mr. Mora-Jiminez exit the store without attempting to pay for the razors.

Mr. Stultz made contact with Mr. Mora-Jiminez outside the store. He identified himself as store security and told Mr. Mora-Jiminez he needed to talk with him inside the store. According to Mr. Stultz, Mr. Mora-Jiminez then ran, so he reached out and grabbed him. As he reached out, Mr. Mora-Jiminez put his elbow back, and it grazed the top of Mr. Stultz's head. Along with his partner, Jason Bergener, Mr. Stultz put Mr. Mora-Jiminez on the ground and handcuffed him. Mr. Stultz took Mr. Mora-Jiminez back into the store and contacted the Yakima Police Department. Yakima Police Officer Kimberly Hipner arrived at the store and took Mr. Mora-Jiminez into custody. After Officer Hipner read him his *Miranda*[1] rights, Mr. Mora-Jiminez admitted, as he did

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

at trial, that he took the razors, but stated, "[H]e wasn't aware that he was assaultive at that time, he wasn't aware of what he was doing." Report of Proceedings (RP) Mar. 17, 2009 at 72.

The State charged Mr. Mora-Jiminez with one count of second degree robbery. Prior to trial, the State held a CrR 3.5 hearing to determine the admissibility of Mr. Mora-Jiminez's statements to Officer Hipner. The trial court ruled the statements admissible, reasoning:

> So I find that Officer Hipner Mirandized [Mr. Mora-Jiminez].
> There's no indication of any threats or promises. [Mr. Mora-Jiminez] was clearly in custody in the back seat of a patrol car, and I believe he was handcuffed. . . . The indication was that he did understand.
> And [Officer Hipner] engaged him in conversation once the patrol car stopped and was on the way to the station, . . . and it was a fairly casual conversation. And he clearly indicated that he would talk to her by his answering the questions, and he never invoked his right to remain silent or desired to have a lawyer.

RP (Mar. 16, 2009) at 15-16. The trial court did not enter written findings of fact and conclusions of law.

Regarding his contact with Mr. Mora-Jiminez, Mr. Stultz testified he took him down to the ground "[a]s soon as I grabbed a hold of him and his right elbow came back towards my face." RP (Mar. 17, 2009) at 51. Mr. Bergener testified after Mr. Stultz identified himself as store security, "[Mr. Mora-Jiminez] ended up throwing an elbow back in the direction of [Mr. Stultz's] face." RP (Mar. 17, 2009) at 62.

Mr. Mora-Jiminez elected to testify. He admitted taking the razors from the store

without paying for them, but he denied swinging at Mr. Stultz.

The jury found Mr. Mora-Jiminez guilty as charged. At sentencing, the State requested a 10-year harassment no-contact order. Mr. Mora-Jiminez did not object. The trial court entered a 10-year harassment no-contact order, prohibiting Mr. Mora-Jiminez from contacting Mr. Stultz. As a community custody condition, without objection, the trial court ordered Mr. Mora-Jiminez to have no direct or indirect contact with Mr. Stultz. Regarding the conceded delegation error, the trial court ordered Mr. Mora-Jiminez to "[a]ttend and participate in a crime-related treatment counseling program, if ordered to do so by the supervising Community Corrections Officer." Clerk's Papers (CP) at 8. Mr. Mora-Jiminez appealed.

ANALYSIS

A. Harassment No-Contact Order

The issue is whether the trial court erred in imposing the 10-year harassment no-contact order. For the first time on appeal, Mr. Mora-Jiminez contends the trial court exceeded its statutory authority in issuing the no-contact order because under chapter 9A.46 RCW he was not convicted of a crime of harassment, and the record does not contain any proof of harassment. He contends the imposition of the no-contact order violated his due process rights. The State argues Mr. Mora-Jiminez cannot challenge the no-contact order for the first time on appeal.

Generally, we will not review an issue raised for the first time on appeal unless it

is a "manifest error affecting a constitutional right." RAP 2.5(a)(3); *State v. McFarland*, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995). "An error is manifest when it has practical and identifiable consequences in the trial of the case." *State v. Stein*, 144 Wn.2d 236, 240, 27 P.3d 184 (2001). Whether a constitutional issue can be raised for the first time on appeal involves a four-part analysis:

> First, the reviewing court must make a cursory determination as to whether the alleged error in fact suggests a constitutional issue. Second, the court must determine whether the alleged error is manifest. . . . Third, if the court finds the alleged error to be manifest, then the court must address the merits of the constitutional issue. Finally, if the court determines that an error of constitutional import was committed, then, and only then, the court undertakes a harmless error analysis.

State v. Lynn, 67 Wn. App. 339, 345, 835 P.2d 251 (1992).

Here, Mr. Mora-Jiminez argues the trial court exceeded its statutory authority in issuing the no-contact order. This does not suggest a constitutional issue, and therefore, cannot be raised for the first time on appeal. *See Lynn*, 67 Wn. App. at 345; *cf. State v. Foster*, 128 Wn. App. 932, 938, 117 P.3d 1175 (2005) (considering a challenge to a no-contact order for the first time on appeal, where the defendant argued the order interfered with his fundamental right to parent). Next, Mr. Mora-Jiminez argues the imposition of the no-contact order violated his due process rights. Although this suggests a constitutional issue, the alleged error is not manifest. *See Stein*, 144 Wn.2d at 240. Accordingly, Mr. Mora-Jiminez cannot challenge the imposition of the no-contact order for the first time on appeal.

B. Failure to Enter Findings of Fact and Conclusions of Law

The issue is whether the trial court erred by not entering written findings of fact and conclusions of law following the CrR 3.5 hearing. Mr. Mora-Jiminez contends that this failure requires reversal or remand for entry of findings of fact and conclusions of law. He does not challenge the admissibility of his statements.

Following a CrR 3.5 hearing, to determine the admissibility of a statement of the accused, the trial court must enter written findings of fact and conclusions of law. *See* CrR 3.5(c) (setting forth the duty of the court to make a record). The rule provides "[a]fter the hearing, the court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefore." CrR 3.5(c). Here, the trial court did not enter written findings of fact and conclusions of law following the CrR 3.5 hearing.

However, "'failure to enter findings required by CrR 3.5 is considered harmless error if the court's oral findings are sufficient to permit appellate review.'" *State v. Grogan*, 147 Wn. App. 511, 516, 195 P.3d 1017 (2008) (quoting *State v. Cunningham*, 116 Wn. App. 219, 226, 65 P.3d 325 (2003)). Here, the trial court's oral findings are sufficient to permit review. The trial court found that Officer Hipner read Mr. Mora-Jiminez his *Miranda* rights; that there were no threats or promises made; that Mr. Mora-Jiminez understood; that he indicated he would talk to Officer Hipner by answering her

questions; and that he did not invoke any of his *Miranda* rights. Accordingly, the trial court's error is harmless.

Affirmed. Remanded for the trial court to strike the community custody condition requiring Mr. Mora-Jiminez to "[a]ttend and participate in a crime-related treatment counseling program, if ordered to do so by the supervising Community Corrections Officer."

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Brown, J.

WE CONCUR:

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Korsmo, A.C.J.

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Sweeney, J.