IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 28584-7-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
RAYMOND AYALA,	)	**UNPUBLISHED OPINION**
	)	
Appellant.	)	
	)	

Brown, J. — Raymond Ayala appeals his violation of a no contact order conviction, contending the trial court erred by allowing his statements while in the back of a patrol vehicle, and by excluding evidence relating to the circumstances of his presence at the prohibited residence. We affirm.

FACTS

In 2007, Mr. Ayala assaulted his girl friend, Sandra Dugas, resulting in a domestic violence no contact order extending to June 26, 2009. The order prohibited Mr. Ayala from being at Ms. Dugas' residence. Mr. Ayala and Ms. Dugas have five children.

On April 14, 2009, Mr. Ayala went to Ms. Dugas' residence to see the children. A neighbor notified police of his presence at the home. The police located Mr. Ayala in the home. Pasco Officer Ryan Flanagan arrested Mr. Ayala on three outstanding arrest warrants and placed him in the back of his patrol car. The officer did not provide *Miranda*[1] warnings and did not intend to ask Mr. Ayala any questions.

Officer Flanagan learned about the no contact order during his investigation. He advised Mr. Ayala that he was being arrested for that too. Mr. Ayala then told Officer Flanagan, "he knew he wasn't supposed to be there." Report of Proceedings (RP) at 29.

The State charged Mr. Ayala with violation of a no contact order. The court denied Mr. Ayala's CrR 3.5 motion to exclude his statement. The court concluded Mr. Ayala's statement was not made in response to custodial interrogation, was voluntary, and, therefore, admissible. The court granted the State's request to exclude any testimony that Mr. Ayala was invited to the home or that family members consented to his presence. The jury found Mr. Ayala guilty as charged. He appealed.

ANALYSIS

A. Statements

The issue is whether the trial court erred by denying Mr. Ayala's CrR 3.5 motion to exclude his statement made while in the back of the patrol car. Mr. Ayala contends his statement was involuntary because he was not advised of his *Miranda* rights.

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

We review a trial court's decision after a CrR 3.5 hearing to determine if substantial evidence supports the trial court's findings of fact, and whether those findings support the conclusions of law. *State v. Broadaway*, 133 Wn.2d 118, 130-31, 942 P.2d 363 (1997). Unchallenged findings are verities on appeal. *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). We review conclusions of law de novo. *State v. Johnson*, 128 Wn.2d 431, 443, 909 P.2d 293 (1996).

"*Miranda* warnings must be given before custodial interrogations by agents of the State; otherwise, the statements obtained are presumed to be involuntary." *State v. Willis*, 64 Wn. App. 634, 636, 825 P.2d 357 (1992) (citing *State v. Sargent*, 111 Wn.2d 641, 647-48, 762 P.2d 1127 (1988)). "'[T]he term "interrogation" under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect.'" *Sargent*, 111 Wn.2d at 650 (quoting *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980)). But, "[v]olunteered statements of any kind made to police are not barred by the Fifth Amendment." *Miranda*, 384 U.S. at 478.

Mr. Ayala was in custody while in the back of the patrol car, but Officer Flanagan did not by words or actions question Mr. Ayala in any way to elicit an incriminating response. Officer Flanagan merely informed Mr. Ayala of the reasons for his arrest. Mr. Ayala then blurted out that he knew he was not supposed to be at the home. As

the trial court stated, "it's pretty basic police procedure to advise people the reason for their arrest." RP at 12. Accordingly, Mr. Ayala volunteered his statement. Because volunteered statements of any kind are not barred by the Fifth Amendment, the court properly admitted the statement.

B. Evidence Ruling

The issue is whether the trial court erred by abusing its discretion in excluding evidence relating to whether family members invited Mr. Ayala to the home or consented to his presence. He contends this evidence is relevant to whether he had knowledge he was prohibited from being at the residence.

A trial court has wide discretion in admitting evidence. *State v. Lillard*, 122 Wn. App. 422, 431, 93 P.3d 969 (2004). We review evidentiary rulings for an abuse of discretion. *Id.* A trial court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State v. Brown*, 132 Wn.2d 529, 572, 940 P.2d 546 (1997).

Evidence is relevant if it has, "any tendency to make the existence of any fact that is of consequence to the determination of that action more probable or less probable than it would be without the evidence." ER 401. In Washington, consent is not a defense to the charge of violation of a no contact order. RCW 26.50.035(1)(c). "[V]iolation of a no contact order is a crime committed by one spouse against the other,

even if the protected spouse consents to contact." *State v. Shuffelen*, 150 Wn. App. 244, 259, 208 P.3d 1167, *review denied*, ____ Wn.2d ____, 220 P.3d 210 (2009).

Based on the above, any invitation Mr. Ayala may have received to be at the residence is not relevant to whether or not he violated the no contact order. Mr. Ayala confessed he knew he was not supposed to be at the home. Accordingly, any consent testimony was irrelevant, giving the trial court tenable grounds to exclude it. The trial court did not abuse its discretion when ruling the evidence inadmissible.

Affirmed.

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.

_____
Brown, J.

WE CONCUR:

_____
Kulik, C.J.

_____
Korsmo, J.