

MAR -2 2015

NO. 71161-0

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

SENAI HANKERSON,

Appellant.

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STATE OF WASHINGTON  
COURT OF APPEALS DIVISION ONE

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MICHAEL TRICKEY

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**SUPPLEMENTAL BRIEF OF RESPONDENT**

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A. ISSUE PERTAINING TO HANKERSON'S SUPPLEMENTAL ASSIGNMENTS OF ERROR

1. Whether substantial evidence supports the trial court's written findings of fact 22 and 23?

B. ARGUMENT

1. SUBSTANTIAL EVIDENCE SUPPORTED THE NECESSARY FINDINGS OF FACT THAT OFFICERS HAD STRONG REASON TO BELIEVE THAT HANKERSON WAS IN THE GARAGE.

Hankerson assigns error to the trial court's written findings of fact, entered while his appeal was pending, and contends that substantial evidence does not support the trial court's findings of fact 22 and 23. His claim should be rejected.

a. Substantial Evidence Supports Finding Of Fact 22.

Hankerson first assigns error to finding of fact 22:

Officers arrived at around 6:00 p.m. They initially contacted two individuals near the Lexus and a 1991 Honda. Those individuals reported that a black male and white female with blond hair had jumped out of the Lexus and gone into a garage.

CP 182.

The appellate court reviews a trial court's findings of fact for substantial evidence. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Substantial evidence means that there is "a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding." Id. Unchallenged findings of fact are verities on appeal. Id.

Hankerson claims that substantial evidence does not support this finding because Officer Walter's testimony contradicted Officer Stone's testimony on what the individuals said about where the suspects went after arriving in the Lexus. However, only Stone's information was relevant to determining if the officers believed the suspects were in the garage because Walter spoke to the individuals as the other officers entered the garage.

At the CrR 3.6 hearing regarding the Lexus, Seattle Police Officers Jerry Stone and Eric Walter testified. 3RP 54; 4RP 28. Other officers had also responded to the scene, but did not testify at the hearing. 4RP 2. Stone testified that he was the second patrol car to arrive and parked his car behind Officers Brathwaite and Ortiz. 3RP 59-61. Stone explained that he and the other officers stopped and spoke to two individuals near the Lexus. 3RP 61. The two individuals told Stone that a black male and white

female with blond hair had just arrived in the Lexus and jumped out. 3RP 61. Stone explained that Officer Caille had also spoken to several witnesses across the street who had said a black man and white woman with blond hair had exited the Lexus. 3RP 61-62. The prosecutor asked Stone, "Did you have any information as to where those two individuals had gone?" 3RP 62. Stone responded, "After talking to these two individuals being stopped, it was where we learned they went into a garage that was right in front of where the Lexus was parked." 3RP 62.

From this context, it is clear that Stone was referring to the two individuals that the officers encountered near the Lexus when the officers first arrived. Those were the only individuals that Stone testified that the officers had "stopped." Stone then testified that he had opened the garage door while Officers Brathwaite and Caille entered with their guns drawn. 3RP 62-67. Therefore, Stone spoke to the two individuals near the Lexus *before* he or any officers entered the garage.

Walter also testified that he arrived and spoke to two individuals near the Lexus. 4RP 34. As Walter testified, "[B]asically, they said they saw two individuals get out of the Lexus and leave the area." 4RP 34. He said that while he was speaking

with these individuals, other officers opened the garage and found Hankerson and his codefendant Michelle Antioquia. 4RP 34-35.

Hankerson relies on Walter's testimony to contend that there were conflicting reports of what the two individuals in the Lexus had said to officers. Yet, Hankerson ignores that Walter clearly testified that he received the information from the two individuals *as the other officers were entering the garage* and Stone testified that he spoke to the two individuals *before* he opened the garage, thus, the officers had to have relied on what the individuals told Stone.

The fact that Walter testified that he learned slightly different information from the two individuals was not a contradiction that the trial court was required to resolve in its findings. All that is required is that substantial evidence supported the trial court's ultimate finding. Stone's testimony provides substantial evidence to support this finding.

Further, because Walter's testimony made it clear that he learned the information from the two individuals as other officers were entering the garage, it makes sense that the trial court did not resolve the differences in their testimony. The individuals very well could have made slightly different statements to Stone and Walter, but only the statements that they made to Stone were relevant

because those statements informed the officers' decision to enter the garage.

b. Finding Of Fact 23 Is Not Necessary To Support The Trial Court's Ultimate Conclusion That The Officers Lawfully Entered The Garage.

Hankerson also assigns error to the trial court's written finding of fact 23: "A neighbor also reported that a black man and white female had recently left the Lexus and gone into the garage." CP 182. Stone's testimony supports the first portion of this finding, but there was no testimony about what the *neighbor* had said as to *where the suspects went* after exiting the Lexus introduced at the CrR 3.6 hearing. 3RP 61-62. Regardless, this fact is not necessary to support the trial court's conclusions of law and that exigent circumstances justified the officers' entry into the garage because finding of fact 22 is sufficient.

Stone addressed what the neighbor said to Officer Caille, but testified that the neighbor said only that a black man and white woman had jumped out of the Lexus, not that they had gone into the garage. 3RP 61-62. Walter did not testify about the neighbor. 4RP 31-34. And, Caille, the officer who spoke directly to the



neighbor, did not testify at the CrR 3.6 hearing.<sup>1</sup> 4RP 2. The trial court likely reached its finding by incorporating part of the prosecutor's argument, which mistakenly contended that Stone testified that the neighbor told Caille that the black man went into the garage. 4RP 72. Because finding of fact 22 is supported by the other two individuals reporting to Stone that the suspects went into the garage, this finding is not necessary to support the conclusions of law.

Moreover, Hankerson has not assigned error to the trial court's finding of fact 26: "Officers believed that there were two people in the garage, and that those people were connected with the stolen Lexus." CP 183. This finding is a verity on appeal. See Hill, 123 Wn.2d at 644. Stone's testimony provided substantial evidence to support this finding.

In sum, findings of fact 22 and 26 support that the officers had information to lead them to conclude that Hankerson was in the garage. One of the six factors evaluated in determining whether exigent circumstances justified the officers' entry is whether officers had strong reason to believe the suspect was on the premises.

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<sup>1</sup> The prosecutor had planned to have Caille testify, but he was out-of-town the day of the hearing. 4RP 2.

State v. Cardenas, 146 Wn.2d 400, 406, 47 P.3d 127 (2002). The information Stone learned from the two individuals next to the Lexus that officers had tracked with Lojack to the driveway satisfies this factor. Those two individuals told Stone that the suspects had gone into the garage. Even if they could not hear any noises from the garage, the officers reasonably believed that these suspects were hidden in the garage. Evaluating this factor along with the totality of the other circumstances weighs in favor of finding that exigent circumstances justified the officers' entry.

C. CONCLUSION

For the reasons cited above and in Respondent's initial brief, this Court should affirm Hankerson's convictions.

DATED this 2nd day of March, 2015.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Whitney Rivera, the attorney for the appellant, at wrivera@snocopda.org, containing a copy of the Supplemental Brief of Respondent, in State v. Senai Dennis Hankerson, Cause No. 71161-0, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 2<sup>nd</sup> day of March, 2015.



Name:

Done in Seattle, Washington