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Court of Appeals
Division I
State of Washington

NO. 73617-5-I

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

STATE OF WASHINGTON,

Respondent,

v.

TODD M. KINGMA,

Appellant.

BRIEF OF RESPONDENT

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I. ISSUES

(1) Under CrR 3.6(b), a trial court must enter written findings and conclusions when it conducts an evidentiary hearing on a motion to suppress evidence. In the present case, the court decided a suppression motion on the basis of stipulated facts. Was the court required to enter findings and conclusion?

(2) Is the defendant's request for a remand to enter findings and conclusions moot, where those findings have already been entered?

II. STATEMENT OF THE CASE

On March 19, 2015, Everett Police Officer Oleg Kravchun saw a car pull into a store parking lot. Two males got out of the car and walked in to the store. One of them was the defendant (appellant), Todd Kingma. 1 CP 73.

Officer Kravchun checked records on the car's license number. He learned that that on December 3, 2014, the car had been stopped by police. At that time, Christopher Neff was a passenger in the car. A records check on Neff showed that, as of March 19, there was an outstanding warrant for his arrest. The defendant matched Neff's physical description. Officer Kravchun

pulled up a jail booking photo of Neff. The photo resembled the defendant 1 CP 73.

Officer Kravchun got out of his patrol car and walked to the door of the store. When the two men emerged, one of them quickly walked to the car and drove away. The defendant walked towards Officer Kravchun. The officer's report describes the ensuing events:

I asked the male who I believed was Neff, "Christopher?" He looked at me but didn't say anything. I asked him if his name was Christopher Neff. He looked around from side to side, then told me it wasn't. I asked him what his name was. He replied, "Michael Carlson." I asked him to spell his last name to me, he replied "C-A-R," then stopped and thought as if he did not know how to spell it. At this point I believed he was lying since he couldn't spell his own last name. I asked him what his real name was. He again only looked at me.

I asked him if he had anything with his name on it or his photo on it to show he was not Christopher Neff. He told me he did not.

The male was wearing extremely baggy clothing. He kept putting his hands in the pockets even though I told him to take his hands out of his pockets several times. He kept looking from side to side as if he was ready to flee from me.

1 CP 73-74.

Based on these facts, Officer Kravchun detained the defendant. After being placed in handcuffs, he admitted that he was Todd Kingma. A records check showed that there was an

outstanding warrant for Kingma. He was therefore arrested and transported to jail. 1 CP 74.

At the jail, the defendant told a corrections officer that he felt as if he was going to throw up. The officer gave him a bag. The officer saw him drop something into the bag. It turned out to be a ball wrapped in electrical tape. The ball contained a plastic bag holding three other bags. One contained methamphetamine. The other two contained heroin. 1 CP 75.

The defendant was charged with possession of a controlled substance. 1 CP 81. He moved to suppress the evidence, claiming that it was the product of an illegal seizure. 1 CP 68-75. This motion was presented to the trial court on a stipulated record setting out the facts above. 1 CP 68; 5/21 RP 2. The hearing on the motion was limited to legal arguments. 5/21 RP 4-13. At the conclusion of the hearing, the court determined that the officer's actions were reasonable under the totality of the circumstances. 5/21 RP 13-15. The court entered a brief written order to that effect. The order said, "Further findings and conclusions to be presented." 1 CP 67.

Following a jury trial, the defendant was found guilty. 1 CP 28. He appealed. The Brief of Appellant was filed on October 28, 2015. The sole issue raised is the absence of written findings. On

November 6, the trial court signed findings of fact and conclusions of law. These were filed on November 10. 2 CP 83-86. A copy is attached to this brief.

III. ARGUMENT

A. SINCE THE TRIAL COURT DID NOT CONDUCT AN EVIDENTIARY HEARING, IT WAS NOT REQUIRED TO ENTER WRITTEN FINDINGS AND CONCLUSIONS.

The sole issue raised on appeal concerns the trial court's initial failure to enter findings of fact and conclusions of law following a suppression hearing. The relevant procedure is set out in CrR 3.6:

(a) Pleadings. Motions to suppress physical, oral or identification evidence, other than motion pursuant to rule 3.5, shall be in writing supported by an affidavit or document setting forth the facts the moving party anticipates will be elicited at a hearing, and a memorandum of authorities in support of the motion. Opposing counsel may be ordered to serve and file a memorandum of authorities in opposition to the motion. The court shall determine whether an evidentiary hearing is required based upon the moving papers. If the court determines that no evidentiary hearing is required, the court shall enter a written order setting forth its reasons.

(b) Hearing. If an evidentiary hearing is conducted, at its conclusion the court shall enter written findings of fact and conclusions of law.

This language was adopted in 1997. Prior to that time, the rule read as follows:

At the conclusion of a hearing, upon a motion to suppress physical, oral, or identification evidence the trial court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) the court's findings as to the disputed facts; and (4) the court's reasons for the admissibility or inadmissibility of the evidence sought to be suppressed.

See Amendment to CrR 3.6, 130 Wn.2d 1101 (eff. 1/2/97). The amendment was intended to avoid unnecessary hearings. By requiring the defense to explain the basis for the motion, the court can determine whether a hearing is necessary. Drafter's Comment to Proposed CrR 3.6, quoted in 4A Tegland, Rules Practice 260 (7th ed. 2008).

In the present case, the parties and the court complied with the current version of CrR 3.6. The defendant filed a suppression motion contending that he had been unlawfully seized. The motion did not request an evidentiary hearing. 1 CP 68. At the hearing on the motion, the parties stipulated to the evidence that the court would consider. 5/21 RP 2.

Under CrR 3.6(b), the court is only required to enter written findings and conclusions "[i]f an evidentiary hearing is conducted." Otherwise, the court is only required to "enter a written order setting forth its reasons." CrR 3.6(a). The court did exactly that. It entered

an order concluding that "the officer's actions were reasonable." 1 CP 67.

The defendant cites several cases discussing the need for written findings of fact and conclusions of law. All of these cases involve findings of guilt after a bench trial, which are required by CrR 6.1(d). State v. Head, 136 Wn.2d 619, 621-22, 964 P.2d 1187 (1998); State v. Cannon, 130 Wn.2d 313, 329, 922 P.2d 1293 (1996); State v. Hescocck, 98 Wn. App. 600, 989 P.2d 1251 (1999); State v. Vailencour, 81 Wn. App. 372, 378, 914 P.2d 767 (1996); State v. Denison, 78 Wn. App. 566, 571, 897 P.2d 437 (1995); State v. Greco, 57 Wn. App. 196, 204, 787 P.2d 940 (1990). Unlike CrR 3.6(b), CrR 6.1(d) is not limited to cases involving an "evidentiary hearing." The cases cited by the defendant therefore have little relevance.

Before 1997, CrR 3.6 required entry of findings after "a hearing," not merely "an evidentiary hearing." Even under the old version of the rule, the absence of findings did not warrant reversal if the trial court did not take testimony or resolve disputed issues of fact. State v. Stock, 44 Wn. App. 467, 477, 722 P.2d 1330 (1986). Under the current version of the rule, findings are not required at all under those circumstances. If the trial court's hearing was limited

to argument and did not involve the admission or consideration of evidence, CrR 3.6(b) does not require written findings and conclusions. State v. Powell, 181 Wn. App. 716, 722-23 ¶¶ 12-14, 326 P.3d 859, review denied, 181 Wn.2d 1011 (2014). Since the present case was decided on stipulated facts, the initial absence of findings and conclusions was not error.

B. SINCE FINDINGS AND CONCLUSIONS HAVE NOW BEEN ENTERED, THE DEFENDANT'S REQUEST FOR REMAND IS MOOT.

Even if CrR 3.6(b) applies to this case, the issue is moot. The sole remedy that the defendant seeks is remand for entry of written findings and conclusions. 2 CP 83-86. This has already been accomplished.

The defendant suggests that he might be prejudiced by late entry of findings. It is hard to see how this could be true. The facts were stipulated. The issues resolved by the court were (1) whether the defendant was "seized" and (2) whether any such seizure was supported by reasonable suspicion. 2 CP 85. Both of these are issues of law, subject to de novo consideration on appeal. See State v. Rankin, 151 Wn.2d 689, 694, 92 P.3d 202 (2004) (de novo review of whether request for identification was "seizure"); State v. Doughty, 170 Wn.2d 57, 61, 239 P.3d 571 (2010) (de novo review

of justification for investigatory detention). The defendant could have argued in his appellate brief that the stipulated facts established an unlawful detention. He chose not to do so.

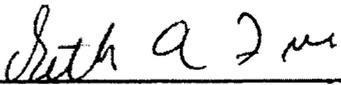
This court need not, however, resolve that issue at this point. The defendant has not yet sought permission to file a supplemental brief addressing the findings and conclusions. If and when he does so, the court can determine whether any such request is timely.

IV. CONCLUSION

The judgment and sentence should be affirmed.

Respectfully submitted on January 5, 2016.

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Attorney for Respondent



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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH**

STATE OF WASHINGTON,

Plaintiff,

vs.

TODD MIKAIL KINGMA,

Defendant.

15-1-00826-3

**FINDINGS, CONCLUSIONS, AND
ORDER RE CrR 3.6 MOTION TO
SUPPRESS**

THIS MATTER having come before the Court on May 21, 2015 when a hearing was held on the Defendant's motion to suppress evidence pursuant to CrR 3.6, and the Court having considered the stipulated evidence presented as well as the arguments and memoranda of counsel, being fully advised, the Court now enters the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

The parties stipulated to the facts for consideration in this motion. The Court adopts those facts as proved in their entirety and undisputed for purposes of this motion. The stipulated facts include the content of the police reports attached to the Defense Memorandum to Suppress; the photographs attached to the State's Response to Motion to Suppress; and the physical characteristics of Todd M. Kingma and Christopher R. Neff set forth in the Defense Memorandum to Suppress. All of said facts are incorporated herein by reference.

FINDINGS AND CONCLUSIONS - PAGE 1 OF 4

ORIGINAL

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1 Found within those facts, the court emphasizes:

2 1.1) Prior to any contact, Officer Kravchun knew Christopher Neff had an
3 outstanding warrant; that Neff was recently associated with a particular vehicle; and that
4 a man he considered quite similar to Neff just got out of the same vehicle.

5 1.2) Without detaining the Defendant, Officer Kravchun attempted to confirm or
6 dispel his suspicion in a minimally intrusive way. The officer stated a name and
7 watched the Defendant's reaction. The Defendant looked at the officer but said nothing.

8 1.3) Having not succeeded in confirming or dispelling his suspicion, the officer
9 directly asked the Defendant if his name was Christopher Neff. The Defendant denied
10 he was Neff. The officer asked the Defendant what his name was. The Defendant said,
11 "Michael Carlson" but he didn't know how to spell it. The officer asked what his real
12 name was and the Defendant looked at the officer but said nothing. Officer Kravchun
13 asked the Defendant if he had anything with his name or photo on it. The Defendant
14 said he did not.

15 1.4) The Defendant was fidgety, would not keep his hands visible as directed,
16 and was looking side to side as if preparing an escape route.

17 1.5) At this point, the Defendant was first detained in handcuffs.

18 1.6) Officer Kravchun still believed he was speaking to Christopher Ryan Neff
19 and that Neff was about to flee.

20 1.7) After being handcuffed, the Defendant provided his real name and date of
21 birth.

22 1.8) The officer confirmed the Defendant's identity via a records check and
23 discovered that the Defendant was also the subject of an arrest warrant.

24 1.9) The Defendant was arrested on his outstanding warrant.
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1 **II. CONCLUSIONS OF LAW**

2 2.1) Officer Kravchun's belief, based on the photograph, that the Defendant
3 appeared to be Christopher Neff, or looked similar enough to investigate further, was
4 reasonable. Officer Kravchun had a reasonable, well-founded suspicion that the
5 Defendant was Christopher Ryan Neff.

6 2.2 Up until to the point of being handcuffed, the Defendant was not seized.
7 Nothing had occurred that would constitute a seizure or investigative detention.

8 2.3) Handcuffing the Defendant constituted a seizure.

9 2.4) Officer Kravchun's efforts to confirm or dispel his belief that the Defendant
10 was Christopher Neff were reasonable.

11 2.5) At the time the Defendant was handcuffed, Officer Kravchun was
12 affirmatively obligated to confirm or dispel his suspicion in a reasonably timely fashion.

13 2.6 Officer Kravchun's graduated response was reasonable throughout his
14 contact with the Defendant.

15 2.7) No time was spent unreasonably from the beginning of the Defendant's
16 initial contact, through the entire time he was seized/detained.

17 2.8) The Defendant was not arrested until his identity was confirmed and his
18 outstanding warrant for arrest was discovered.

19 2.9) When the Defendant's true identity was confirmed and his outstanding
20 warrant for arrest was discovered, the Defendant was placed under arrest.

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22 **III. ORDER ON MOTION**

23 3.1) The Defendant's motion is denied, and was previously denied by separate

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1 order dated May 21, 2015.

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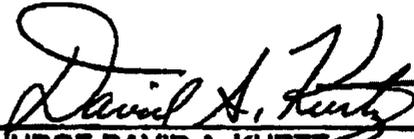
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DONE IN OPEN COURT this 6th day of November, 2015.

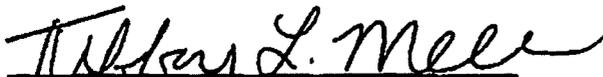

JUDGE DAVID A. KURTZ
Snohomish County Superior Court

Presented by:



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Approved for entry;
Notice of presentation waived:


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**Re: STATE v. TODD M. KINGMA
COURT OF APPEALS NO. 73617-5-I**

Dear Mr. Johnson:

The respondent's brief does not contain any counter-assignments of error. Accordingly, the State is withdrawing its cross-appeal.

Sincerely yours,

SETH A. FINE, #10937
Deputy Prosecuting Attorney

cc: Nielsen, Broman & Koch
Attorney(s) for Appellant

Sent via e-mail

I certify under penalty of perjury under the laws of the State of Washington that this is true.
I am a member of the Snohomish County Prosecutor's Office

5th _____ Jan 20 16

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

THE STATE OF WASHINGTON,

Respondent,

v.

TODD M. KINGMA,

Appellant.

No. 73617-5-I

DECLARATION OF DOCUMENT
FILING AND E-SERVICE

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 5th day of January, 2016, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

BRIEF OF RESPONDENT

I certify that I sent via e-mail a copy of the foregoing document to: The Court of Appeals via Electronic Filing and Jared B. Steed, Nielsen, Broman & Koch, steedi@nwattorney.net; and Sloanej@nwattorney.net.

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

Dated this 5th day of January, 2016, at the Snohomish County Office.



Diane K. Kremenich
Legal Assistant/Appeals Unit
Snohomish County Prosecutor's Office