

No. 36417-4-II

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

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY: C
VALENTINE

STATE OF WASHINGTON,
Respondent,

v.

JON T. MESKE,
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE F. MARK McCAULEY

SUPPLEMENTAL BRIEF OF RESPONDENT

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SUPPLEMENTAL STATEMENT OF THE CASE

Meske filed a notice of appeal on June 11, 2007, the Report of Proceedings was filed on October 10, 2007, Meske's Motion to Extend Time to File was filed on November 26, 2007, Appellant's brief was filed on November 30, 2007. At that time the State first was alerted to the lack of findings of fact and conclusions of law. The State filed its response and request for remand to enter findings of fact and conclusions of law on February 4, 2008. This Court entered an order on February 12, 2008 allowing the State to file findings of fact and conclusions of law. The State filed its designation of clerk's papers and the findings of fact and conclusions of law were forwarded to this court on March 17, 2008. Meske filed his statement of additional grounds arguing prejudice on March 18, 2008.

SUPPLEMENTAL ARGUMENT

1. **The trial court's finding there were no undisputed facts is supported by the record.**

Meske lists this assignment of error in his supplemental brief and goes on to argue that the factual matters regarding Meke's alleged offense in the findings of fact are not in dispute but that there is no agreement between the parties that the check was a "means of identification". The supplemental papers contain no finding of fact that the check Meske

offered was a “means of identification”. The findings of fact reflect not only the testimony of the witnesses but that a check was presented is not disputed. Whether or not the check constitutes a “means of identification” is a conclusion of law and was properly included by the State in the conclusions of law. Meske lists no other facts in dispute.

2. The trial court’s finding the check presented was a means of identification is supported by the record.

Meske lists an assignment of error arguing in his second assignment of error that the second conclusion of law in the supplemental designation was not supported by the record. This argument is the same one put forth in the Appellant’s initial brief. This conclusion of law, unlike appellant argues, did not find the means of identification was the check, but that the name and address on the check were. This conclusion has no reference to any other material contained on the check and does not encompass any findings beyond those made by the court at the trial.

3. Appellate’s due process rights have not been violated as the delay is not unreasonable and the findings and conclusions are not tailored.

There is no prejudice or evidence of tailoring. Absent evidence of actual prejudice to the defendant and strong evidence of tailoring of the tardy findings and conclusions, reversal is inappropriate.¹ The defendant

¹*State v. Head*, 136 Wn.2d 619, 624-25, 964 P.2d 1187 (1998).

bears the burden of establishing tailored findings and conclusions.² The findings entered by the court directly reflect the court's oral opinion and the evidence presented at trial. The findings set forth the facts the trial court accepted as true based on all the evidence. The testimony of all the witnesses was consistent, there was no testimony presented that contradicted any other testimony.

Meske argues that the findings have been tailored to meet the issues raised on appeal and reversal is required. The findings directly address the issues discussed at trial. The fact that the same issues are raised on appeal does not mean the findings are tailored to the issues. There is no unanticipated information contained in the findings of fact and conclusions of law. The findings of fact are supported by the report of the proceedings and the conclusions of law are supported by the findings of fact.³

Meske argues that the delay in entering the findings of fact and conclusions of law prejudiced him, violating his due process rights. He argues he suffered undue delay. Whether appellate delay amounts to a due process violation is determined by Washington Courts by applying a modified version of the four-part test set forth in *Barker v. Wingo* and *State v. Lennon*. The test requires the Court examine (1) the length of the delay; (2) the reason for the delay; (3) the defendant's diligence in

²*Head*, 136 Wn.2d at 625.

³*State v. Brockob*, 159 Wn.2d 311, 343, 150 P.3d 59 (2006).

pursuing the appeal, and (4) the prejudice to the defendant.⁴

As demonstrated by the facts set forth in the supplemental statement of the case, this matter has been promptly heard and responded to. The appeal has been extended by no more than two months by the delayed entry of findings of fact and conclusions of law. Case law has found that a delay of two years is facially unreasonable.⁵ In *Brockob* the trial court failed to enter written findings of fact and conclusions of law after the 3.6 hearing. After trial an appeal was filed and the trial court did not enter its findings until the defendant raised this issue in his appellate brief. The Court found no prejudice in the delay.⁶ A delay of two months is not a significant nor unreasonable. Where the delay is not unreasonable the inquiry ends.⁷

CONCLUSION

Because the findings of fact are supported by sufficient evidence on the record, the findings of fact support the conclusions of law and the delay in filing the findings of fact and conclusions of law is minimal and not unreasonable the State respectfully requests the court deny Appellant's

⁴*Barko v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2183 (1972); *State v. Lennon*, 94 Wn.App. 573, 577-78, 976 P.2d 121 (1999).

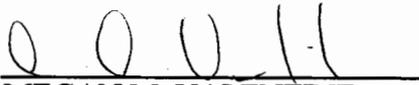
⁵*United States v. Smith*, 94 F.3d 204, 209 (6th Cir. 1996).

⁶*Brockob*, 159 Wash.2d at 344.

⁷*Lennon*, 94 Wn.App. at 578 (holding a delay of 10 months was not unreasonable).

claim the delay has violated his due process rights.

Respectfully Submitted,

By: 
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STATE OF WASHINGTON

BY [Signature]
DEPUTY

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DECLARATION OF MAILING

DECLARATION

I, Barbara Chapman, hereby declare as follows:

On the 7th day of April, 2008, I mailed a copy of the SUPPLEMENTAL BRIEF OF RESPONDENT to Christopher H. Gibson, Attorney at Law, Nielsen, Broman & Koch, PLLC, 1908 East Madison, Seattle, WA 98122, and Jon T. Meske, c/o Mary Jane Parr, 16781 740th Avenue, Dassel, MN 55325, by depositing the same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 7th day of April, 2008, in Montesano, Washington.

Barbara Chapman

DECLARATION OF MAILING

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