FILED
COURT OF APPEALS
DIVISION II
08 NOV 18 PM 1:49
STATE OF WASHINGTON
BY DEPUTY

NO. 37620-2-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JOSEPH DORN, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Linda Lee

No. 07-1-03815-1

BRIEF OF RESPONDENT

GERALD A. HORNE
Prosecuting Attorney

By
STEPHEN TRINEN
Deputy Prosecuting Attorney
WSB # 30925

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

Table of Contents

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR. 1

1. Whether there was prima facie evidence that the defendant possessed pseudephedrine with intent to manufacture methamphetamine so that the defendant's statements were admissible under the *corpus dilecti* rule. 1

2. Whether the evidence was sufficient to establish intent to manufacture beyond a reasonable doubt. 1

3. Whether the court's oral ruling was sufficiently detailed to avoid any prejudice to the defendant. 1

B. STATEMENT OF THE CASE. 1

1. Procedure 1

2. Facts 2

C. ARGUMENT 6

1. THE COURT PROPERLY ADMITTED DORN'S STATEMENTS WHERE THE INDEPENDENT EVIDENCE ESTABLISHED *PRIMA FACIE* THE *CORPUS DILECTI* OF POSSESSION OF PSEUDOEPHEDRINE WITH INTENT TO MANUFACTURE METHAMPHETAMINE 6

2. THERE WAS SUFFICIENT EVIDENCE AT TRIAL OF INTENT TO MANUFACTURE 10

3. THE COURT'S FAILURE TO ENTER WRITTEN FINDINGS AND CONCLUSIONS WAS AT WORST HARMLESS ERROR WHERE THE COURT MADE DETAILED ORAL FINDINGS 15

D. CONCLUSION. 19

Table of Authorities

State Cases

Bremerton v. Corbett, 106 Wn.2d 569, 571, 723 P.2d 1135 (1986).....7

Seattle v. Gellein, 112 Wn.2d 58, 61, 768 P.2d 470 (1989).....10

State v. Aten, 130 Wn.2d 640, 656, 927 P.2d 210 (1996).....7

State v. Banks, 149 Wn.2d 38, 43, 65 P.3d 1198 (2003).....15, 16

State v. Barrington, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), *review denied*, 111 Wn.2d 1033 (1988).....11

State v. Brockob, 159 Wn.2d 311, 328, 150 P.3d 59 (2006).....7, 8, 9

State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).....11

State v. Casbeer, 48 Wn. App. 539, 542, 740 P.2d 335, *review denied*, 109 Wn.2d 1008 (1987).....11

State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985).....11

State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).....11

State v. Faagata, Slip. Op. 36325-9, p. 4 (Div. II, Oct 21, 2008).....16

State v. Garcia, Slip. Op. 26037-2-III, 2008 Wash. App. Lexis 2298 (Sept. 23, 2008).....16

State v. Head, 136 Wn.2d 619, 621-22, 964P.2d 1187 (1998).....15

State v. Holbrook, 66 Wn.2d 278, 401 P.2d 971 (1965).....11

State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993).....11

State v. Mabry, 51 Wn. App. 24, 25, 751 P.2d 882 (1988).....10

State v. McCullum, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983).....10

State v. McPherson, 111 Wn. App. 747, 759, 46 P.3d 284 (2004).....12

State v. Missieur, 140 Wn. App. 181, 185, 165 P.3d 381 (2007).....12

State v. Moles, 130 Wn. App. 461, 466, 123 P.3d 132 (2005).....12, 13

State v. Nelson, 103 Wn.2d 760, 767, 697 P.2d 579 (1985).....16

State v. Oneida, 99 Wn. App. 65, 77-78, 992 P.2d 525 (2000) 7

State v. Powell, 126 Wn.2d 244, 267, 893 P.2d 615 (1995) 16

State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) 11

State v. Turner, 29 Wn. App. 282, 290, 627 P.2d 1323 (1981).....11

State v. Vangerpen, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995) 7

State v. Whalen, 131 Wn. App. 58, 62, 126 P.3d 55 (2005).....6, 7, 8, 9

Federal and Other Jurisdictions

Neder v. United States, 527 U.S. 1, 7, 119 S. Ct. 1827,
144 L. Ed. 2d 35 (1999).....15

Statutes

RCW 69.43.100 9

Rules and Regulations

CrR 6.1(d).....15

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether there was prima facie evidence that the defendant possessed pseudephedrine with intent to manufacture methamphetamine so that the defendant's statements were admissible under the *corpus dilecti* rule.

2. Whether the evidence was sufficient to establish intent to manufacture beyond a reasonable doubt.

3. Whether the court's oral ruling was sufficiently detailed to avoid any prejudice to the defendant.

B. STATEMENT OF THE CASE.

1. Procedure

On July 20, 2007 Joseph Dorn was charged with unlawful manufacture of a controlled substance, and unlawful possession of pseudoephedrine with intent to manufacture methamphetamine.

Defense filed a motion to suppress and/or dismiss based upon two issues: First to suppress the defendant's statements pursuant to a *corpus dilecti* challenge, and second, to dismiss the case for lack of a prima facie case pursuant to ***State v. Knapstad***. The motion was heard before the Honorable Ronald Culpepper. The court granted the defendant's ***Knapstad*** motion with regard to count I, unlawful manufacture of a controlled substance, methamphetamine. The court denied the motions

with regard to count II, unlawful possession of pseudoephedrine with intent to manufacture methamphetamine.

For trial, the case was assigned to the Honorable Linda Lee. The defendant waived jury trial. The court found the defendant guilty on the remaining count, of unlawful possession of pseudoephedrine with intent to manufacture methamphetamine.

The defendant was later sentenced. This appeal was timely filed.

2. Facts

Joseph Dorn had come to the attention of Pierce County Sheriff's deputies as a result of their investigation of logs containing records of suspicious pseudoephedrine purchases at area pharmacies.[1] On July 19, 2007 the Sheriff's Department conducted an undercover investigation of pseudoephedrine purchases in the Bonney Lake area. Officers observed Joseph Dorn purchase pseudoephedrine at the Bonney Lake Rite Aid.[2] Dorn then went to a Fred Meyer store where he made another pseudoephedrine purchase.[3] The officers then followed Dorn to a pharmacy in Buckley where Dorn threw something in the trash before

---

[1] RP I, p. 33-35; p. 51-53.

[2] RP I, p. 36ff; 110-112.

[3] RP I, p. 37, ln. 13ff

entering the store and was observed to come back out of the store.[4] Deputy Fry checked the trash can after Dorn left and found a torn up blister pack.[5] Officers then followed Dorn to Enumclaw, where he made another purchase of pseudoephedrine at the Rite Aid.[6]

Officers then followed Dorn to the Graham area. Dorn went to a liquor store and a gas station, and then to a property on 304th Street.[7] Officers had previously purchased methamphetamine from a subject at that address.[8] After Dorn left that property the officer arrested him.[9]

After a search incident to arrest and being advised of his rights, the Deputies interviewed Dorn.[10] Dorn admitted to using methamphetamine.[11] When asked whether he made methamphetamine himself or acquired the pseudoephedrine for other people, Dorn answered

---

[4] RP I, p. 37, ln. 15-19.

[5] RP I, p. 40-41.

[6] RP I, p. 37, ln. 19-21; p. 68-70.

[7] RP I, p. 37, on. 21-23; RP II, p. 130.

[8] RP II, p. 116, ln. 14-17.

[9] RP I, p. 37-38; p. 44-45.

[10] RP I, p. 45.

[11] RP I, p. 45, ln. 20-21.

that he made methamphetamine.[12] Dorn admitted to making anhydrous ammonia and claimed that he got the dry ice he needed to make it from Marty's on River Road or from Safeway in Yelm.[13] Dorn admitted to purchasing lithium batteries from the Ace Hardware on 224th.[14] As to other chemicals he used in the manufacturing process, Dorn stated that he purchased them from a variety of locations.[15]

Dorn told the Deputies that the pills he had purchased were in the ashtray of his pickup.[16] Dorn went on to say that he usually gets rid of the blister packages as soon as possible, if he can, in the first trash can in or out of the store.[17] Dorn also admitted going to King, Pierce, and Thurston counties to purchase pseudeoephedrine.[18]

When the deputies followed Dorn, he was using a blue pickup truck that was registered to one Ernest Gugger, an individual known to the deputies to be involved in methamphetamine manufacture and whose

---

[12] RP I, p. 45, ln. 21-23.

[13] RP I, p. 45-46.

[14] RP I, p. 46, ln. 20-24.

[15] RP I, p. 46-47.

[16] RP I, p. 47.

[17] RP I, p. 47, ln. 11-14.

[18] RP I, p. 47, ln. 15-18.

name showed upon pseudoephedrine logs.[19] Deputies searched the vehicle. Inside they found loose pseudoephedrine pills in a paper bag in the ashtray.[20] Deputies also found a length of plastic tubing in the cab compartment of the truck and behind the bench seat.[21]

Dorn had a wallet in his pant's pocket that contained a punched driver's license, some crib notes related to narcotics use.[22] One crib note entry was, "Settle up with Ted, 1200 or oz."[23] At that time $1,200 was the typical price for an ounce of methamphetamine.[24] Another note was, "Pay Ernie a thousand dollars" and another was "Get legal wheels."[25]

In Dorn's pants, deputies found a plastic baggy and a plastic wrapper of a type commonly used to package narcotics.[26]

---

[19] RP I, p. 57; RP II 115-116. [While the Report of Proceedings spells Gugger's name phonetically, as "Googer," here his correct legal spelling is used.]

[20] RP I, p. 84-85. Exhibits 7, 19, and 20.

[21] RP I, p. 90.

[22] RP I, p. 93-94. The punched license included Dorn's driver's license number which was recorded on several of the pseudoephedrine logs that were entered into evidence as exhibits. *See* RP I, p. 94, ln. 16-17; p. 51-56; Exhibit 31.

[23] RP I, p. 97.

[24] RP I, p. 97, ln. 1-3

[25] RP I, p. 97, ln. 6-7. As indicated above, Dorn was driving the vehicle of Ernest Gugger, who was also listed as making pseudoephedrine purchases.

[26] RP I, p. 98-99.

The pills found in the truck tested positive for pseudoephedrine.[27]

C. ARGUMENT.

1. THE COURT PROPERLY ADMITTED DORN'S STATEMENTS WHERE THE INDEPENDENT EVIDENCE ESTABLISHED *PRIMA FACIE* THE *CORPUS DILECTI* OF POSSESSION OF PSEUDOEPHEDRINE WITH INTENT TO MANUFACTURE METHAMPHETAMINE.

When reviewing a trial court's decision holding that there was sufficient prima facie evidence to establish the *corpus dilecti* of the crime, the reviewing court assumes the truth of the State's evidence and draw all reasonable facts and inferences in favor of the State.[28]

A confession or admission of a defendant charged with a crime cannot be used to prove the defendant's guilt absent independent evidence that corroborates the confession.[29] The State has the burden of producing evidence that *prima facie* establishes the *corpus delicti* (body of the crime).[30] In this context, *prima facie* means evidence of sufficient circumstances supporting a logical and reasonable inference of criminal

---

[27] RP II, p. 134-137.

[28] ***State v. Whalen***, 131 Wn. App. 58, 62, 126 P.3d 55 (2005).

[29] ***Whalen***, 131 Wn. App. at 62.

[30] ***Whalen***, 131 Wn. App. at 62.

activity.[31] "In determining whether the State has produced sufficient evidence, [the court] must assume the truth of the State's evidence and all reasonable inferences drawn therefrom.[32]

"The evidence need not be sufficient to support a conviction, but it must provide *prima facie* corroboration of the crime described in the defendant's incriminating statement."[33] Moreover, in Washington, the evidence must corroborate the specific crime with which the defendant has been charged.[34]

In ***Brockob***, a consolidated opinion, the Washington Supreme Court most recently addressed this issue in the context of possession of pseudoephedrine with intent to manufacture methamphetamine.[35] A separate case consolidated with ***Brockob*** involved a defendant, Gonzales. Officers pulled Gonzalez over for a traffic violation and searched the vehicle incident to arrest after Gonzales was found to have a suspended license. In the vehicle the officer found three bottles of pseudoephedrine

---

[31] ***Whalen***, 131 Wn. App. at 62 (citing ***State v. Aten***, 130 Wn.2d 640, 656, 927 P.2d 210 (1996); ***State v. Vangerpen***, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995).

[32] ***Whalen***, 131 Wn. App. at 62 (citing ***Bremerton v. Corbett***, 106 Wn.2d 569, 571, 723 P.2d 1135 (1986); ***State v. Oneida***, 99 Wn. App. 65, 77-78, 992 P.2d 525 (2000)).

[33] ***State v. Brockob***, 159 Wn.2d 311, 328, 150 P.3d 59 (2006).

[34] ***Brockob***, 159 Wn.2d at 329.

[35] ***Brockob***, 159 Wn.2d 311.

in the back seat. Apparently Gonzales was acting with another person in the vehicle to acquire pseudoephedrine in excess of the legal limit. The officer also found several loose unused coffee filters in the vehicle. The court held that this was enough to establish the *corpus delicti* for possession of pseudoephedrine with intent to manufacture methamphetamine. Accordingly, Gonzales's statement was admitted.[36]

The court held that *corpus delicti* was not established as to ***Brockob*** where he was caught attempting to shoplift 15 to 30 packages of pseudoephedrine. The court held that the facts merely established that Brockob intended to steal pseudoephedrine, not that he intended to manufacture methamphetamine with it.

The defendant was caught attempting to shoplift some thirty boxes of pseudoephedrine in ***State v. Whalen***. Officers stated to Whalen, "We both know why people take Sudafed [a brand name product containing pseudoephedrine]." To which Whalen responded, "Yes." Whalen then gave the officers the name of a third person as the cook and explained that he was obtaining the pseudoephedrine to satisfy a marijuana debt owed to the third party. The court in Whalen held that there was only evidence that Whalen possessed unopened boxes of pseudoephedrine and thus that

---

[36] ***Brockob***, 159 Wn.2d at 320-21, and 333.

there was not sufficient evidence of possession of pseudoephedrine with intent to manufacture methamphetamine to establish the *corpus delicti* of that crime. Whalen's statement was therefore held inadmissible.[37]

The facts in this case can be distinguished from those of ***Brockob*** and ***Whalen***. Here there is evidence of *prima facie* possession of pseudoephedrine with intent to manufacture independent of the defendant's statements.

The officers observed Dorn go to five different drugstores and purchase pseudoephedrine products at three of those stores in an apparent attempt to circumvent the statutory limits on pseudoephedrine purchases.[38] Further by the time he was arrested Dorn had already removed the pills from their boxes and from the blister packaging.[39] When the officers searched the defendant incident to arrest, the officers found a note that promised another person $1,200 or an "ounce."[40] The officers recovered empty blister packs that the defendant discarded in a trashcan outside

---

[37] ***Whalen***, 131 Wn. App. 58

[38] RCW 69.43.100 prohibits the purchase of more than 2 boxes of pseudoephedrine products.

[39] RPI I, p. 85; Ex. 7, 19, 20.

[40] RP I, p. 97, ln. 1-3

Chuck's Drug.[41] In the truck Dorn was driving, the officers also found a length of rubber tubing consistent with tubing used in the manufacture of methamphetamine.[42] In Dorn's pocket the officers found baggies of a type commonly used to package narcotics.[43]

This evidence, and all the reasonable and logical inferences that can be drawn therefrom, constitutes a *prima facie* case for possession of pseudoephedrine with intent to manufacture. Consequently, there is sufficient *corpus delicti* of the crime independent of the defendant's statements, and the defendant's statements were properly admitted.

2. THERE WAS SUFFICIENT EVIDENCE AT TRIAL OF INTENT TO MANUFACTURE.

Due process requires that the State bear the burden of proving each and every element of the crime charged beyond a reasonable doubt.[44] The applicable standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable

---

[41] RP I, p. 37, ln. 19-21; p. 68-70.

[42] RP I, p. 90.

[43] RP I, p. 98-99.

[44] ***State v. McCullum***, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983); *see also* ***Seattle v. Gellein***, 112 Wn.2d 58, 61, 768 P.2d 470 (1989); ***State v. Mabry***, 51 Wn. App. 24, 25, 751 P.2d 882 (1988).

doubt.[45] Also, a challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it.[46] All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.[47]

Circumstantial and direct evidence are considered equally reliable.[48] In considering this evidence, "[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal."[49]

The written record of a proceeding is an inadequate basis on which to decide issues based on witness credibility. The differences in the testimony of witnesses create the need for such credibility determinations; these should be made by the trier of fact, who is best able to observe the witnesses and evaluate their testimony as it is given. On this issue, the Supreme Court of Washington said:

> [...]great deference [. . .] is to be given the trial court's factual findings. It, alone, has had the opportunity to view the witness' demeanor and to judge his veracity.[[50]]

---

[45] ***State v. Joy***, 121 Wn.2d 333, 338, 851 P.2d 654 (1993).

[46] ***State v. Barrington***, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), *review denied*, 111 Wn.2d 1033 (1988) (citing ***State v. Holbrook***, 66 Wn.2d 278, 401 P.2d 971 (1965); ***State v. Turner***, 29 Wn. App. 282, 290, 627 P.2d 1323 (1981).

[47] ***State v. Salinas***, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

[48] ***State v. Delmarter***, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

[49] ***State v. Camarillo***, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (citing ***State v. Casbeer***, 48 Wn. App. 539, 542, 740 P.2d 335, *review denied*, 109 Wn.2d 1008 (1987)).

[50] ***State v. Cord***, 103 Wn.2d 361, 367, 693 P.2d 81 (1985) (citations omitted).

Therefore, when the State has produced evidence of all the elements of a crime, the decision of the trier of fact should be upheld.

Here, the appellant only challenges the sufficiency of the evidence to establish the element relating to his intent to manufacture methamphetamine. Generally bare possession of a controlled substance is not enough to support a conviction of possession with intent to manufacture.[51] At least one other factor supporting an inference of intent must exists and the defendant's intent must logically follow as a matter of probability from the evidence.[52]

In ***State v. Moles*** the court held that intent to manufacture methamphetamine existed where the defendants went to three different stores and upon search incident to arrest were found to have removed the pills from their packaging.[53] The court held that so many pills having been removed from their blister packs lead to the only plausible inference that the defendants were in the process of preparing the pseudoephedrine for the first stage of the manufacturing process, and that evidence alone was sufficient to support the jury's finding of intent to manufacture.[54]

---

[51] ***State v. Missieur***, 140 Wn. App. 181, 185, 165 P.3d 381 (2007).

[52] ***Missieur***, 140 Wn. App. 185 (citing ***State v. McPherson***, 111 Wn. App. 747, 759, 46 P.3d 284 (2004).

[53] ***State v. Moles***, 130 Wn. App. 461, 466, 123 P.3d 132 (2005).

[54] ***Missieur***, 140 Wn. App. at 186 (citing ***Moles***, 130 Wn. App. at 466).

Here, Dorn went to three separate stores to purchase pseudoephedrine, and thereby evaded the legal limit for such purchases.[55] Additionally, the pills were removed from the packaging when his vehicle was searched.[56] There were 50 such pills.[57] Rubber tubing consistent with that used in methamphetamine manufacture was found behind the driver's seat.[58] Baggies typically used to package the finished product were found on Dorn's person.[59]

In addition to all of that, Dorn admitted: to using methamphetamine;[60] that he made methamphetamine;[61] making anhydrous ammonia and that he got the dry ice he needed to make it from Marty's on River Road or from Safeway in Yelm;[62] and purchasing lithium batteries from the Ace Hardware on 224th.[63] As to other chemicals he used in the

---

[55] RP I, p. 30, 36-37.

[56] RPI I, p. 85; Ex. 7, 19, 20.

[57] RP II, p. 140, ln. 24-25. While ***Moles*** involved 440 pills and here there were only 50, the logic remains the same where the number of pills here is still numerous.

[58] RP I, p. 90; RP II, p. 117.

[59] RP I, p. 91; Ex 41.

[60] RP I, p. 45, ln. 20-21.

[61] RP I, p. 45, ln. 21-23.

[62] RP I, p. 45-46.

[63] RP I, p. 46, ln. 20-24.

manufacturing process, Dorn stated that he purchased them from a variety of locations.[64]

Dorn also told the Deputies that the pills he had purchased were in the ashtray of his pickup.[65] Dorn went on to say that he usually gets rid of the blister packages as soon as possible, if he can, in the first trash can in or out of the store.[66] Dorn also admitted going to King, Pierce, and Thurston counties to purchase pseudeoephedrine.[67]

When Dorn's illegal purchase of pseudoephedrine is considered with the fact that he had removed 50 pills from blister packages, along with his admissions of manufacturing methamphetamine, there was sufficient evidence to support the inference of guilt as to the element that he intended to manufacture methamphetamine.

---

[64] RP I, p. 46-47.

[65] RP I, p. 47.

[66] RP I, p. 47, ln. 11-14.

[67] RP I, p. 47, ln. 15-18.

3. THE COURT'S FAILURE TO ENTER WRITTEN FINDINGS AND CONCLUSIONS WAS AT WORST HARMLESS ERROR WHERE THE COURT MADE DETAILED ORAL FINDINGS.

After a trial without a jury, i.e. "bench trial," the court shall enter written findings of fact and conclusions of law.[68] Here, while the court did not enter written findings and conclusions, it did make detailed oral findings and conclusions. In doing so, the court identified the elements of the crime and made findings as to each element.

Even where the court erred by failing to enter written findings and conclusions, the failure to make findings and conclusions can be subject to a harmless error analysis.[69] A harmless error analysis is appropriate unless the error is "so intrinsically harmful as to require automatic reversal (i.e. 'affect substantial rights') without regard to [its] effect on the outcome."[70]

Where the trial court failed to enter a finding and conclusion as to an element of a crime, the court held that the error neither infected the whole trial process nor rendered the trial fundamentally unfair, so that the error was harmless.[71]

---

[68] ***State v. Banks***, 149 Wn.2d 38, 43, 65 P.3d 1198 (2003) (citing CrR 6.1(d)). *See also* ***State v. Head***, 136 Wn.2d 619, 621-22, 964P.2d 1187 (1998) (holding that CrR 6.1(d) requires the entry of written findings and conclusions).

[69] *See* ***Banks***, 149 Wn.2d at 43-44.

[70] ***Banks***, 149 Wn.2d at 43 (quoting ***Neder v. United States***, 527 U.S. 1, 7, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999)).

Error is harmless if it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.[72] However, "an error is not harmless beyond a reasonable doubt if there is a reasonable possibility that the outcome of the trial would have been different had the error not occurred..."[73]

Until the court in ***Banks*** approved the harmless error analysis, the practice was to remand the case on appeal to the trial court for entry of findings and conclusions.[74] However, before a case is remanded, it is also possible to enter the findings and conclusions while the appeal is still pending, if the defendant is not prejudiced by their entry.[75] Finally, where the record is sufficient, courts will review rulings based upon the oral record.[76]

---

[71] ***Banks***, 149 Wn.2d at 43-44.

[72] ***Banks***, 149 Wn.2d at 44.

[73] ***Banks***, 149 Wn.2d at 44 (quoting ***State v. Powell***, 126 Wn.2d 244, 267, 893 P.2d 615 (1995).

[74] ***Head***, 136 Wn.2d at 624. See also, ***State v. Garcia***, Slip. Op. 26037-2-III, 2008 Wash. App. Lexis 2298 (Sept. 23, 2008) p. 3-4.

[75] ***Garcia***, Slip. Op. 26037-2-III at p. 4.

[76] *See* ***State v. Faagata***, Slip. Op. 36325-9, p. 4 (Div. II, Oct 21, 2008)(declining the State's request to remand for findings and conclusions regarding the court's decision to dismiss counts at sentencing pursuant to double jeopardy); ***State v. Nelson***, 103 Wn.2d 760, 767, 697 P.2d 579 (1985)(holding that a lack of written findings and conclusions was not fatal to a DOC revocation proceeding where the oral record was adequate).

Here, the State has had findings and conclusions entered while the appeal is pending. This was done on October 31, 2008. In order to avoid prejudice to the defendant, the State's proposed findings and conclusions mirrored the court's oral ruling. Original trial counsel for the defendant was present. The findings and conclusions entered were agreed.[77]

The State attempted to fax a copy of the proposed findings and conclusions to appellate counsel at the fax number listed in the WSBA lawyer directory, but the transmission failed as "busy/no signal." Phone messages were also left for appellate counsel at the phone number listed in the WSBA directory as well as at the phone number listed on appellant's pleadings, which number differs from the number listed in the WSBA directory.

The appellant also claims that: "The judge then proceeded to rely on Dorn's statements to the officer without any indication that the evidence presented was sufficient to meet the *corpus dilecti* rule."[78] This argument is misplaced because the court had previously held a separate hearing with regard to the *corpus dilecti* was sufficiently satisfied to permit the

---

[77] CP 75-79

[78] Br. App. p. 19 (citing RP 174-75.)

admission of Dorn's statements to the officers.[79] Moreover, the court did enter written findings and conclusions with regard to that motion.[80]

Because the disputed issues at trial were limited to one element of one charge, the court's failure to enter written findings and conclusions was harmless were the court made detailed and specific findings as to the verdict, and particularly as to the one element that was in dispute. The findings and conclusions were entered late will also be sufficient where they mirror the language of the court's oral ruling. Finally, Dorn has suffered no prejudice and is not entitled to dismissal.

D. CONCLUSION.

There was sufficient independent evidence to establish that Dorn possessed the pseudoephedrine with intent to manufacture methamphetamine where the Dorn evaded legal limits by making purchases at multiple stores, had removed fifty pills from their packaging, and also possessed crib notes, baggies and tubing. Accordingly, Dorn's statements regarding manufacturing were properly admitted. There was sufficient evidence to convict Dorn when the independent evidence was

---

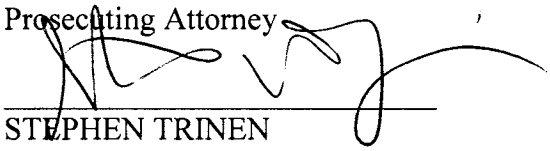
[79] *See* RP Motion, 02-20-08, p. 3-16.

[80] CP 32-41.

combined with his admissions of manufacturing. Accordingly, the court should deny Dorn's appeal and affirm the verdict of the trial court.

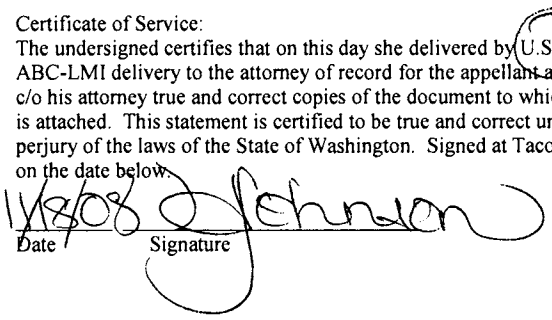
DATED: NOVEMBER 17, 2008

GERALD A. HORNE
Pierce County
Prosecuting Attorney



STEPHEN TRINEN
Deputy Prosecuting Attorney
WSB # 30925

Certificate of Service:
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

11/18/08 
Date Signature

FILED
COURT OF APPEALS
DIVISION II
08 NOV 18 PM 1:49
STATE OF WASHINGTON
BY _____
DEPUTY