

NO. 38568-6-II

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

STATE OF WASHINGTON, Respondent

v.

AZAEL LOPEZ, Appellant

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLARK COUNTY

The Honorable John Nichols, Judge
Clark County No. 08-1-00956-4

BRIEF OF APPELLANT

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DEPT. OF JUSTICE

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A. ASSIGNMENT OF ERROR

1. The trial court erred in failing to enter written findings of fact and conclusions of law on its non-jury trial verdict as required by CrR 6.1(d)¹.

2. The trial court's failure to enter written findings of fact and conclusions of law on its verdict precludes effective appellate review.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

In order to effectuate appellate review, CrR 6.1(d) requires a court hearing a non-jury trial to enter written findings of fact and conclusions of law on its verdict. The trial court failed to enter written findings and conclusions after hearing Mr. Lopez's non-jury trial.

- (i) Has the absence of written findings of fact and conclusions of law denied Mr. Lopez effective appellate review?

¹ RULE 6.1 TRIAL BY JURY OR BY THE COURT

(d) Trial Without Jury. In a case tried without a jury, the court shall enter findings of fact and conclusions of law. In giving the decision, the facts found and the conclusions of law shall be separately stated. The court shall enter such findings of fact and conclusions of law only upon 5 days' notice of presentation to the parties.

- (ii) Should Mr. Lopez's case be remanded for entry of written findings of fact and conclusions of law on the trial court's verdict?
- (iii) Once written findings of fact and conclusions are entered, is Mr. Lopez entitled to file a supplemental brief to argue his appeal issues?

C. STATEMENT OF THE CASE

The State charged Mr. Lopez with three crimes: one count of criminal impersonation in the first degree, RCW 9A.60.040(1)(a)²; and two counts of forgery, RCW 9A.60.020(1)(a)³. CP 1-2.

Mr. Lopez waived his right to a jury trial. CP 3. The State presented its case through four types of evidence: (1) the court taking judicial notice of Clark County's case docketing process; (2) in person testimony from witnesses; (3) documents whose admission was stipulated to by Mr. Lopez; and (4) video recordings of docket hearings. RP 37-71. Mr. Lopez rested without

² RCW 9A.60.040 Criminal impersonation in the first degree

(1) A person is guilty of criminal impersonation in the first degree if the person:

(a) Assumes a false identity and does an act in his or her assumed character with intent to defraud another or for any other unlawful purpose . . .

(2) Criminal impersonation in the first degree is a class C felony.

³ RCW 9A.60.020 Forgery

(1) A person is guilty of forgery if, with intent to injure or defraud:

(a) He falsely makes, completes, or alters a written instrument . . .

(3) Forgery is a class C felony.

presenting any evidence. RP 71-72. The court found Mr. Lopez guilty as charged. RP 85-87.

Mr. Lopez was sentenced within his standard. CP 6-22. He filed a notice of appeal the same day, as well as an amended notice of appeal several days later. CP 23, 24.

To date, the trial court has yet to enter written findings of fact and conclusions of law on its verdict as required by CrR 6.1(d).

D. ARGUMENT

THE TRIAL COURT'S FAILURE TO ENTER WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AFTER THE NON-JURY TRIAL, AS REQUIRED BY CrR 6.1(d), NECESSITATES REMAND FOR ENTRY OF THE FINDINGS AND CONCLUSIONS FOLLOWED BY SUPPLEMENTAL BRIEFING ON BEHALF OF MR. LOPEZ.

The trial court found Mr. Lopez guilty of all three charges but did not enter written findings of fact and conclusions of law on its verdict. CrR 6.1(d) requires the trial court to enter written findings of fact and conclusions of law after a non-jury trial. *State v. Head*, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998). The purpose of CrR 6.1(d)'s requirement of written findings of fact and conclusions of law is to enable an appellate court to review the questions raised on appeal. *Head*, at 622. "[A]n appellate court should not have to comb an oral ruling to determine whether appropriate 'findings'

have been made, nor should a defendant be forced to interpret an oral ruling in order to appeal his or her conviction.” *Id.* at 624.

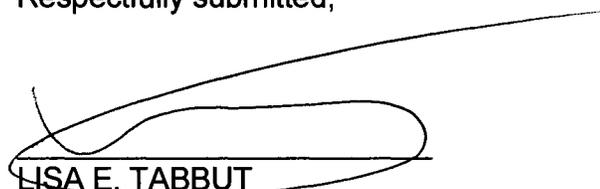
In Mr. Lopez’s case, appellate counsel had hoped to be able to address what she perceives the errors to be even without the written findings and conclusions. However, it has become apparent in reviewing the record that the assignments of error cannot be properly articulated without the written findings of fact and conclusions of law. With a view toward the sufficiency of the evidence on each of the three charges, I simply cannot make a complete argument on appeal on behalf of Mr. Lopez without these findings. Mr. Lopez respectfully requests this court remand this matter to the trial court for entry of written findings of fact and conclusions of law pursuant to CrR 6.1(d). Mr. Lopez also respectfully requests an opportunity to file a supplemental brief after these findings and conclusions are filed.

E. CONCLUSION

Mr. Lopez’s case should be remanded to the trial court for entry of written findings of fact and conclusions of law. Mr. Lopez will seek leave of the Court to file a supplemental brief after the findings and conclusions are filed.

DATED this 5th day of June 2009.

Respectfully submitted,



LISA E. TABBUT
WSBA No. 21344
Attorney for Appellant

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CERTIFICATE OF MAILING

State of Washington, Respondent, v. Azael Lopez, Appellant
No. 38568-6-II

I certify that I mailed a copy of Appellant's Brief:

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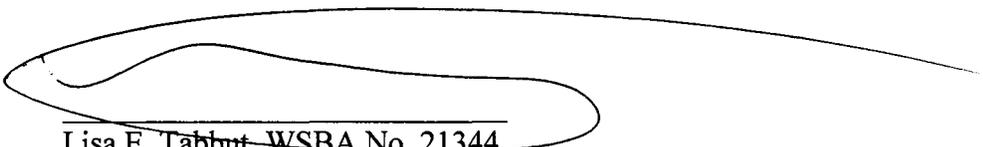
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All postage prepaid, on June 5, 2009

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE
OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Mazama, Washington, on June 4, 2009.



Lisa E. Tabbut, WSBA No. 21344
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